The future of social security in Europe

shared knowledge and responsibilities

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Poland | Bulgaria | Portugal

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The present publication is an outcome of a joint action of trade unions from Poland, Portugal and Bulgaria, implemented within the framework of the project co-financed by the European Commission entitled "The Future of Social Security in Europe: Shared Knowledge and Responsibilities".

The promoter of the project is All-Poland Alliance of Trade Unions (OPZZ) from Poland.
The partners in the project are:
- Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional (CGTP-IN) from Portugal
- Confederation of Independent Trade Unions in Bulgaria (CITUB – KNSB)

The publication contains a comparative analysis of national legislation in Poland, Bulgaria and Portugal, with view to improving mechanisms of trade unions' participation in the process of implementation and coordination of social security systems in the European Union, according to Regulations 883/2004 and 987/2009. The contained information is intended to provide trade union members with knowledge on coordination of social security systems during the planned trade union trainings.

The publication is distributed free of charge.

Introduction

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Social security system is an institutional tool the aim of which is to fulfill an important function of each country, namely to provide social security to its citizens. It is based on institutional forms of material and non-material benefits that fulfill the needs of a given community by providing its members with protection against various social risks. The main risks are:
- old age – advanced age prevents work. That is why social security systems provide compulsory old-age pension schemes. They may be organized in many ways. The differences between schemes concern mainly the way benefits are collected, the requirements one must meet to be entitled to a pension, and the way benefits are calculated.
- invalidity – poor health status, which makes it difficult or even impossible to gain employment. Invalidity insurance offers protection against the consequences of that risk, providing persons entirely or partially incapable of employment with an invalidity pension.
- illness – poor health status, which makes employment temporarily impossible. Compulsory health insurance is a form of protection against that risk, providing sick persons with sickness benefits.
- unemployment (temporary loss of employment) – compulsory unemployment insurance, which requires employees to contribute to an insurance policy, which allows benefits to be paid and activation policies for the unemployed to be organized. This form of insurance is not common in national social security systems.
- difficult family situation – in order to prevent its negative effects, various benefits are paid.
- death of a breadwinner – living relatives are entitled to survivor's pension, a derivative benefit which is a form of social security resulting from the contributions paid by the deceased.

The authorities of a given country appoint institutions responsible for carrying out the tasks of social security systems.
Since the employees within the European Union have the right to share labour market, it was necessary to introduce regulations that would coordinate national social security systems. The aim of European solutions is to provide persons who want to gain employment in one of the Member States of the European Union, the European Economic Area, or Switzerland with social security.
Nowadays social security relations within the European Union, EEA, and Switzerland, are regulated by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Dz. U. EU L 200 of 07 June 2004) and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. These regulations replaced Council Regulation (EEC) No 1408/71 of 14 June

1971 on the application of social security systems to employed persons, self-employed persons and to the members of their families moving within the European Union (OJ EC L 149 of 1971, p. 2 as amended) and Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to the members of their families moving within the European Union (OJ EC L 74 of 27 March 1972).
This publication has two main goals:
- practical goal – the publication is aimed at employees who either gained employment abroad or are considering such an employment and are not certain about their situation after reaching retirement age, or are unaware of the necessity of applying for other social security benefits. The publication is meant to become a guide for the employees, its aim to lead them through a maze of both Union and national regulations. The manual presents social security systems currently binding in Bulgaria, Poland, and Portugal (chapters I, II, and III). Chapter IV is devoted to the discussion of Union regulations that coordinate social security systems in these countries. As a supplement to its practical part, the manual lists the institutions that implement the above mentioned regulations in particular countries.
- theoretical goal – the manual presents national social security systems in order to compare the data. As a result, it will point out differences and similarities between the systems, and main problems encountered by trade unions nowadays. It is especially connected with trade unions' involvement in the creation of social reality through influencing legislation and monitoring of its implementation, and their place and position in social dialogue. Chapter V is devoted to these issues.
As a supplement to its theoretical function, the manual presents the issues connected with the implementation of Union regulations on social security, including the discussion of the rulings of the Court of Justice of the European Union in that regard. The above mentioned issues are presented in Chapter VI of the publication.
The manual is a collaboration of trade union experts from Bulgaria, Poland, and Portugal and academics specialized in social security and Union regulation issues.

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SYSTEM OF SOCIAL SECURITY IN POLAND

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I. General information

Just like in other countries, in a Polish social security system, social insurance is a predominant form. From a theoretical point of view, contributions paid should correspond to the amount of benefits received. However, in practice, it applies only to retirement benefits, whose amounts depend on the value of accumulated and indexed capital from the contributions paid. It covers risk regarding old age (old-age pension), incapacity for work (invalidity pension), death of the family's sole supporter (survivors' pension), temporary incapacity for work (sickness benefits and allowances, and maternity benefits), as well as benefits resulting from accidents at work.
This form of security encompasses the self-employed conducting non-agricultural business activity as well as hired workers.
The assumption is that contributions paid for particular insurance risks are intended to cover expenses borne to this end in a longer time perspective. Contributions for this purpose are paid by employers to the Polish Social Insurance Institution's (ZUS) bank account.

Costs of health benefits are paid from the National Health Fund (NFZ), which is funded through contributions (9% of the contribution basis) paid by all employees, while a substantial part is written off from the tax base for income tax from natural persons (7.75%). Thus, those employed pay only a small percentage of the contribution (1.25%) directly from their income.

Unemployment insurance is of a para-insurance nature. Contribution for the Labour Fund which finances expenses borne with regard to unemployment benefits, is paid by employers. Funds obtained from this contribution are also used to cover expenses for other purposes, including active forms of fighting unemployment. Issues regarding unemployment were passed on to local self-governments on the level of districts (pl. powiat), i.e. to District Employment Agencies.

Another form of social security is social provision. The eligible receive due benefits which are covered directly from the national budget. Contrary to the insured, those covered by the social provision do not pay any contributions. This form of social benefits regards mainly officers of uniformed services – soldiers, firefighters, policemen and people employed in special services. This form covers also the members of the state coercive apparatus, i.e. judges and prosecutors.

The last form of social security is constituted by social assistance. Benefits from social assistance, financed from public means (national budget and budgets of local self-governments), should be paid to people and families with lowest income; their nature should not be compulsory, but optional. This theoretical doctrine was abandoned in many cases. When as a result of political transformation, standard of living of Poles decreased in a significant manner and local self-governments did not have means to pay benefits, social assistance became compulsory for the people with income below a minimum value provided for by law. At the same time, organisational units of social assistance began paying compulsory benefits for childbirth for all families, regardless of their income.

In practice, none of the types of social security exists in its pure form. Thus, it is possible to speak about a mixed provision and insurance system. The best example supporting this statement is a social security system intended for farmers, with regard to which there is an assumption that the institution collecting contributions and paying benefits to farmers (Agricultural Social Insurance Fund – KRUS), will be financed by the funds provided from the national budget to a great extent.

II. Social insurance contributions

Social security system reform, in particular the one regarding old-age pension system, introduced as of 1 January 1999 made changes in the old-age pension formula from a defined benefit to a defined contribution. Therefore, contributions for benefits became the major factor aimed at stabilizing the system in the future. It was assumed that expenses borne for benefits will be balanced by way of contributions collected.
Contributions for benefits are paid on a joint and several basis by employees and employers. Employees cover a half of the retirement contribution and a half of invalidity pension contribution for incapacity for work. They pay the entire amount of contributions for sickness and maternity benefits as well as contributions for the National Health Protection Fund, i.e. contribution for health insurance entitling to being provided with medical services free of charge.
Employers cover a half of contribution due for retirement benefit and a half of the amount due for invalidity pension for incapacity for work. Because they do not pay contributions for insurance covering sickness and maternity on behalf of employees, their participation in this insurance consists in the fact that, under the Labour Code, i.e. act indicating basic rights and duties of employers and employees, during a calendar year they pay remuneration for incapacity for work covering 33 days. From 34th day of incapacity for work, payment of benefit is made by the insuring institution, i.e. the Social Insurance Institution. Exception from this rule applies to payment of benefit to people over 50 – the Social Insurance Institution pays benefit to them from the 15th day of sickness. The above solution, introduced relatively recently, was aimed at improving employment rate among older people by reducing non-pay labour costs due from employers.
Employers pay the entire amount of contribution due for accident insurance which is the source of funds for benefits regarding accidents at work and occupational diseases. The amount of contribution varies and it depends on the accidents frequency rate in a given workplace or industry.
Employers pay the entire amount of contributions due to the Labour Fund and Guaranteed Employee Benefits Fund (FGŚP). The first one is used for payment of temporary unemployment benefits whose amount depends on the job seniority of the unemployed and for covering costs of the so called active forms of fighting unemployment (costs of providing the unemployed with training, training benefits, counselling and employment agencies, activation supplement, means for people who start conducting their own business activity etc.).
The other fund is intended, among others, for settling outstanding remuneration due to employees from those workplaces which became insolvent. The fund serves in particular as a source of means for payment of benefits resulting from unsatisfied employee claims and effecting advance payments to employers towards employee claims they failed to satisfy.

The amount of insurance contribution is expressed in percentage terms in relation to the so called contribution assessment basis. Depending on the insurance risk, the basis is constituted by an individual pay (gross pay) of an employee or a national average pay.

Insurance risk	Contribution rate expressed in %	Payer	
		employee	employer
Old age pension	19.52	9.76	9.76
Invalidity pension	8.0	1.5	6.5
Sickness and maternity	2.45	2.45	
Accident at work and occupational disease	0.67 – 3.33		0.67 – 3.33
Health protection	9.0	9.0	
Unemployment – Labour Fund	2.45		2.45
Employer's insolvency – Guaranteed Employee Benefits Fund (FGŚP)	0.1		0.1

III. Old-age pension scheme

As it was mentioned above, old-pension scheme reform introduced changes to the pension formula from a defined benefit to a defined contribution. It resulted in a complete change with regard to calculating retirement benefit. The new scheme provides everyone who reached retirement age with a possibility to retire, regardless of job seniority, while the amount of pension depends in the first place on the capital accumulated on retirement accounts.
The amount of new pension results from dividing recorded contributions by the so called average life expectancy for people at the age equal to the one in which the insured decides to retire. The average life expectancy for retirement age is calculated by the Central Statistical Office for men and women jointly.
Since the amount of contributions on individual accounts has been recorded from 1 January 1999, in the case of people working before this date, it was increased by

the so called initial capital, i.e. a probable pecuniary value of contributions, which would have been paid on behalf of an employee if there had been such an obligation. This amount, calculated according to a formula specified by law, was dependent in particular on the job seniority and amount of remuneration received.

New rules for calculating pensions of the insured, except for certain people, who acquired retirement rights on the basis of special provisions, regard all employees who were born after 31 December 1948, regardless of their sex. In order to mitigate the effects of substantial changes made to the amounts of the benefit calculated, the act provided for the so called transitory period, applicable to people retiring in 2009-2013. It consists in the fact that depending on the year of retiring, an employee receives the so called mixed pension, i.e. pension consisting of two components – a part calculated in accordance with old rules, and the other one, with the new ones.

The amount of mixed old-age pension depending on the year of reaching pensionable age:

- for a person, who reached pensionable age in a calendar year 2009
  – 80% of the old-age pension calculated in accordance with old rules and
  – 20% of the old-age pension calculated in accordance with new rules,
- for a person, who reached pensionable age in a calendar year 2010
  – 70% of the old-age pension calculated in accordance with old rules and
  – 30% of the old-age pension calculated in accordance with new rules,
- for a person, who reached pensionable age in a calendar year 2011
  – 55% of the old-age pension calculated in accordance with old rules and
  – 45% of the old-age pension calculated in accordance with new rules,
- for a person, who reached pensionable age in a calendar year 2012
  – 35% of the old-age pension calculated in accordance with old rules and
  – 65% of the old-age pension calculated in accordance with new rules,
- for a person, who reached pensionable age in a calendar year 2013
  – 20% of the old-age pension calculated in accordance with old rules and
  – 80% of the old-age pension calculated in accordance with new rules.

Because old-age pensions will be still calculated in accordance with old rules in 2013, and in some cases, also in consecutive years, it is worth analysing the rules of calculating them. It becomes even more important due to the fact that similar rules are applied to calculating invalidity pensions for incapacity for work.
A basic condition entitling to receiving this old-age pension consisted in job seniority. The benefit is due to women who proved at least 20 contributory and non-contributory years and to men with contributory and non-contributory period of at least 25 years. The act specified what periods of non-performing work were included in the job seniority as the so called non-contributory periods (military service, upbringing children, receiving sickness benefits, unemployment due to political reasons etc.). However, the amount of such periods included in the job seniority could not exceed 1/3 of contributory periods.
The second condition for awarding old-age pension consisted in reaching pensionable age. A universal pensionable age still amounts to 60 in the case of women and 65 in the case of men. Members of certain professions or those working in specific

environment or on specific positions could retire earlier (e.g. miners, metallurgists, railroaders, journalists, artists – musicians, circus performers, dancers, singers).
The amount of old-age pension calculated in accordance with old rules depends on:
- the duration of contributory and non-contributory period,
- the base amount valid as on the date of acquiring right to benefit,
- the amount of assessment basis.

The base amount is constituted by an average national remuneration determined on an annual basis and valid as of 1 March of each calendar year to the end of February of the next year.
The amount of assessment basis for old-age pension consists in an employee's pay which was a basis for calculating old-age pension insurance, from the period of 10 consecutive calendar years, selected from among the last 20 calendar years directly preceding the year in which application for benefit was filed or 20 calendar years randomly selected from the whole insurance period.

The amount old-age pension is as follows:
- 24% of the base amount, referred to above, and
- 1.3% of its assessment basis per each year of contributory periods,
- 0.7% of its assessment basis per each year of non-contributory periods.

By introducing old-age pension reform, the legislator resolved to relieve the state of a part of responsibility regarding the amount (and payment) of future old-age pensions and transfer this duty to private financial institutions. With a view to achieve this, the legislation included legal provisions allowing for establishing General Pension Societies, which administer Open Pension Funds (OFE). These institutions constitute the so called 2nd old-age pension pillar. Affiliation with Open Pension Fund is compulsory for all the insured born after 31 December 1968. People born in the period from 1 January 1949 to the end of 1968 preserved the right to choose the preferred option. Therefore, membership in Open Pension Fund was facultative to these people, yet, the decision in this regard had to be taken within a year following the date when the reform entered into force and the decision itself was final.
Old-age pension contribution from people who belong to Open Pension Fund is divided. Out of 19.52% of the contribution assessment basis, 7.3% is transferred by the Social Insurance Institution, which administrates Social Insurance Fund (FUS), to an Open Pension Fund selected by an employee. Transferring a part of contribution to the 2nd pillar leads to a situation in which funds intended for paying current old-age pensions are not sufficient. In relation to that, each year, using means from the central budget, the state reimburses the Fund for the contribution in the amount transferred to Open Pension Fund.

Open Pension Funds invest accumulated means in shares and other securities, including treasury bonds. The resultant mechanism that emerged can be described shortly in the following manner – the state transfers money to Open Pension Fund, for which Open Pension Fund purchases treasury bonds from the state. The state is obliged to redeem treasury bonds from the Open Pension Fund with high interest. Thus, private financial institutions offering compulsory social insurance are financed under law. Unfortunately, the effects of their operations cannot be pre-

dicted and none of the insured can be certain as to receiving old-age pension from the 2nd pillar and as to its amount.

This system also became the reason for the increase in the public debt, and, as a result, it increased national budget deficit. In the face of these circumstances, the legislator made the decision regarding the decrease in the amount of contribution transferred to Open Pension Fund and keeping its part on a special sub-account maintained in the Social Insurance Institution.

After the changes introduced, the division of 7.3% of the contribution originally transferred to Open Pension Fund for the forthcoming years will be made in the following manner:

Year	2011	2012	2013	2014	2015	2016	2017
The Social Insurance Institution	5	5	4.5	4.2	4	4	3.8
Open Pension Fund (OFE)	2.3	2.3	2.8	3.1	3.3	3.3	3.5

The amount of old-age pension from the 2nd pillar is calculated in the same manner as it is the case with old-age pensions from the first pillar awarded in accordance with the new rules, i.e. for funds gathered from contributions the old-age pension is bought in the amount constituting the quotient of contribution to average life expectancy.

Retiring must entice simultaneous withdrawal of funds from both pillars. Since the amount of future old-age pension paid from both pillars may be low, the state obliged itself to ensure old-age pension in the minimum amount, where the total of benefits from both pillars is lower than the minimum old-age pension. This guarantee regards only the people with long job seniority, i.e. where a woman proves 20, while man 25, years of paying old-age pension contributions.

Aware of dangers resulting from low benefits, the creators of the reform provided for a three-pillar old-pension system, justifying the solutions adopted by the willingness to make each employee take care of his future.

The third pillar is entirely voluntary. On the basis of a civil-law contract, each employee is entitled to pay additional contributions for old-pension insurance in a selected financial institution offering this kind of insurance. In exchange for a contribution paid, a financial institution will pay retirement benefit after reaching retirement age stipulated in the agreement. Some of the forms of saving are limited by a threshold for a maximum amount of a contribution, which may be paid during a calendar year. It regards saving funds as a part of Individual Retirement Account (IKE – Indywidualne Konto Emerytalne) and Individual Pension Security Account (IKZE – Indywidualne Konto Zabezpieczenia Emerytalnego).

A number of people holding additional insurance is relatively low. It results from the fact that the Polish society is rather poor to a great extent. A minimum pay differs from European standards, which increases the number of the poor employed. The greatest part of those with voluntary insurance originates from middle and upper

classes in terms of remuneration. A significant percentage is constituted by the self-employed conducting non-agricultural business activity, who, using the opportunity to declare the amount of old-age pension contribution assessment basis in the compulsory pillar (98% in the lowest effective amount), participate in a solidarity system to a very small extent.

The percentage of those voluntarily insured does not increase even despite economic incentives which consist, among others, in: the possibility to write off the amount of old-age pension insurance contribution from the base amount regarding income tax from natural persons or exempting the future benefit from income tax from natural persons.

Attention should be paid to a special form of voluntary insurance, i.e. employee pension plans (PPE). In this case, employers, in consultation with employees' representation, take decision regarding joining the old-age pension plan, where a part of old-pension contribution for employees is paid by the employer. Employer includes a contribution paid for employees in the running costs. Despite tax allowances, employers reluctantly join the plan.

The new old-age pension system does not require employees to meet the condition regarding a specific job seniority (excluding minimum amount of old-age pension). What is important is solely the capital accumulated and retirement age which has not changed.

On providing this information regarding Polish old-age pension system, the government took up works aimed at successive levelling retirement age for women and men and at rising it to 67 for both sexes. At the same time, some politicians and experts faithful to liberal social policy, claim that this opportunity should be used to limit the possibility to retire with regard to some professional groups, which preserved the right to earlier retirement.

A special category in this respect, right next to uniformed services officers, covered by the social provision system, is constituted by miners. The entitlement for miners rests with an employee who is at least 55 years of age and whose seniority at mining, together with periods of equivalent work, amounts to at least 20 years in the case of women and 25 years for men, including at least 10 years of work underground.

Miners preserved the old system of calculating old-age pensions. When determining job seniority of a miner, some periods of work underground are counted with applying indexes varying from 1.2 to 1.8 per a year of work.

Right of earlier retirement was also preserved by the insured born after 31 December 1948, if before 31 December 1998 they met the so called job seniority requirements, i.e. worked in special environment or on specific positions stipulated by the so far provisions of law (the most frequent period amounting to 15 years), while their contributory and non-contributory period amounted to 25 years, in the case of men, and 20 years for women.

Persons performing work of special nature or working under special conditions before the reform became effective were included in the scope of act on the so called bridging old-age pensions. Its nature is transitional, just like the benefit itself. It is due in the period from the lowered retirement age, usually from 5 to 10 years in relation to the normal retirement age, to the time of reaching this age.

Funds for bridging old-age pensions are provided by the Bridging Pensions' Fund, which are obtained from contributions paid by those employers, who employ persons performing work under special conditions (e.g. work performed by offshore fishermen, at drilling devices, work inside tanks, boilers and containers of a very small cubature used to store hazardous substances) or performing work of special nature (e.g. air traffic controllers, nuclear reactor operators, emergency vehicles drivers). Contribution rate is not high and it amounts to 1.5% of the assessment basis.

IV. Pensions resulting from incapacity for work

Insurance system reform implemented has not yet covered the rules for awarding and calculating the amount of pensions, both resulting from incapacity for work and from the death of the family's sole supporter.
Pension for incapacity for work is due to the insured who is not capable of working and who meets the requirement regarding the duration of contributory and non-contributory period. So as to receive the benefit, incapacity for work needs to arise during the employment period or no later than within 18 months following the termination of employment (periods regarded equally). The above period, in which incapacity for work should arise, is not required in the case of the insured who proved contributory and non-contributory period of at least 20 years for women or 25 years for men and where the insured is completely incapable of working.
While examining the health condition of the insured, a certifying doctor of the Social Insurance Institution may declare that the insured is capable of work, is partly incapable of work or completely incapable of work. A special case is to declare the insured as a completely incapable of work and unaided existence (requiring care of other people). In this case, except for pension, such a person is awarded a nursing supplement. The supplement is also due ex officio to any person who reached 75 years of age.

Contributory and non-contributory period required to be awarded pension depends on the insured's age and amounts at least to:
- 1 year – where a person became incapable for work before the age of 20;
- 2 years – where a person became incapable for work in the age of 20-22;
- 3 years – where a person became incapable for work in the age of 22-25;
- 4 years – where a person became incapable for work in the age of 25-30;
- 5 years – where a person became incapable for work after the age of 30;

Where incapacity for work results from an accident on the way to work and while returning home after work, the requirement regarding the above mentioned periods does not apply.

Pension for a person who is completely incapable of work amounts to:
- 24% of the base amount, referred to in section devoted to old-age pension, and
- 1.3% of its assessment basis per each year of contributory periods;
- 0.7% of its assessment basis per each year of non-contributory periods;
- 0.7% of its assessment basis per each year of the period lacking to complete 25 years of contributory and non-contributory periods, as of the date of submitting the application for pension to the day in which a pensioner would reach the age of 60.

Pension for a person who is partly incapable of work amounts to 75% of the pension awarded to a person who is completely incapable of work.
In order to further reduce expenses borne due to pensions for incapacity for work, the government has made two attempts to introduce changes in the rules for calculating them. They would depend on the amount of capital accumulated on the individual retirement account.

V. Family pensions resulting from the death of the family's sole supporter

Pensions resulting from the death of the family's sole supporter regard closest relatives of the deceased on condition that upon death, he met the requirements for awarding social insurance benefit (old-age pension or pension for incapacity for work). Family members are construed as children (one's own children, children of the other spouse and adopted children, siblings and grandchildren), widow (widower), parents (stepfather, stepmother and adopters). The right to pension is granted also to a divorced spouse if as on the day of the death of the sole supporter of the family, he has the right to receiving alimony from the deceased determined by the court ruling or consent decree.
One's own children, children of the other spouse and adopted children are entitled to receive survivors' pension:
- until they reach the age of 16;
- until they finish school education, where they are over 16, however not longer than until they reach the age of 25, or
- regardless of age, where they became completely incapable of work and of independent existence or completely incapable of work during education referred to above.

If a child reached the age of 25 years while being a student of the last year of study in a tertiary level school, the right to the pension is prolonged until the end of this year of study.
Grandchildren, siblings and other children who were adopted before they reached the age of seniority are entitled to receive the pension if they satisfy the same conditions as regards the deceased's own children.

A widow (widower) is entitled to receive survivor's pension if at the moment of his/her spouse's death he/she reached the age of 50 years or was incapable of work, or who brings up at least one of children, grandchildren or siblings entitled to a pension as a survivor of the spouse, if these children have not yet reached the age of 16 years, or 18 years – if they are still learning, or if they are completely incapable of work.
The right to survivors' pension is acquired also by a widow (widower), where the age of 50 was reached or where incapacity for work arose not later than within 5 years following the death of the family's sole supporter or following the end of upbringing of the above mentioned children.

Parents are entitled to receive survivors' pension, where:
- the insured (a person receiving old-age pension or pension) contributed to their maintenance directly before he died;
- they satisfy the conditions indicated for widows/widowers with regard to reaching a specific age or taking care of children.

All entitled family members acquire the right to one joint survivors' pension.

The amount of survivors' pension depends on the number of the entitled and it is payable at the following rates:
- for one entitled person – 85% of benefit that would be due to the deceased;
- for two entitled persons – 90% of benefit that would be due to the deceased;
- for two entitled persons or more– 95% of benefit that would be due to the deceased.

The amount of benefit that would be due to the deceased is construed as the amount of old-age pension or pension for complete incapacity for work.

To reduce the expenses borne for survivors' pensions, some employers' organisations postulate changes in the criterion entitling spouses and parents to receive pension resulting from the death of the sole supporter of the family, among others, by increasing the age that these persons should reach on the day of the sole supporter's death.

VI. Accident benefits

From the historical point of view, the issue regarding accident benefits remained in the centre of employees' attention and laid foundations for establishing social security systems. Their particular importance was also noticed by international societies. One of the first Conventions adopted by the International Labour Organisation regarded accidents. Already Convention No. 12 concerning workmen's compensation for accidents in agriculture adopted by the International Labour Conference at its Third Session in Geneva on 25 October 1921 endowed this insurance risk with international nature. Another Convention of ILO No. 17 adopted on 19 May 1925 was devoted to workmen's compensation for accident.
Each Member of the International Labour Organisation ratifying this convention undertook to ensure victims of accidents at work or their family members conditions for compensation which are at least equal to the ones provided for in this convention.
In Polish legislation, benefits for accidents at work and benefits for occupational diseases awarded on the same conditions were determined in two acts. Both entered into force as of 1 January 2003 and they consist in: act on social insurance in respect of accidents at work and occupational diseases and act on social security in respect of accidents and professional diseases which came into being under special conditions.
The former defines accident at work. Accident is construed as a sudden occurrence arising from external cause and resulting in injury or death and is associated with work:
- during or with regard to conducting by an employee usual activities or carrying out orders of superiors;
- during or with regard to conducting by an employee activities for the benefit of the employer even without his order;
- when an employee is at the disposal of the employer on the way from the employer's seat to the place of performing duties resulting from the employment relationship.

Accident at work is construed also as a sudden occurrence arising from external cause and resulting in injury or death, which happened in the period covered by the accident insurance during:

- practising sports at competitions and training by a person receiving sports scholarship;
- performing work for a consideration on the basis of a placement during serving a prison sentence or detention;
- holding the office of a member of the member of parliament or senator, receiving emolument;
- training or internship by a graduate receiving a scholarship during the period of this internship or training on the basis of a placement issued by a Poviat (District) Employment Agency;
- performing by a member of a farming cooperative, cooperative of farmer groups and by any other person regarded as a member of cooperative under provisions on social insurance system work for the benefit of these cooperatives;
- performing work on the basis of an agency agreement, contract of mandate or contract for provision of services, to which, under the Civil Code, the provisions regarding mandate apply;
- collaboration in performing work on the basis of an agency agreement, contract of mandate or contract for provision of services, to which, under the Civil Code, the provisions regarding mandate apply;
- conducting usual activities related to conducting non-agricultural activity as defined in provisions on the social insurance system;
- conducting usual activities related to collaboration in conducting non-agricultural activity as defined in provisions on the social insurance system;
- conducting religious activities by a clergyman or the activities related to pastoral or monastic entrusted to this person;
- doing alternative forms of military service;
- education at Poland's National School of Public Administration by students receiving scholarship;
- performing work on the basis of an agency agreement, contract of mandate or contract for provision of services, to which, under the Civil Code, the provisions regarding mandate or contract to perform a specific task apply, where such contract was entered into with the employer, with whom a person is bound by employment relationship, or where as a part of such contract the person performs work for the benefit of the employer with whom he is bound by employment relationship.

Pursuant to the provisions of this act, events equal to accidents at work are construed as occurrences
- during the business trip, unless the accident results from employee's conduct, which is not related to performance of tasks entrusted to him;
- during performing tasks commissioned by trade union organisations operating at the employer;
- during training devoted to civil self-defence.

The act enumerates types of benefits in respect of accidents at work and occupational diseases as well as conditions for acquiring right to receive these benefits. They include:

- sickness allowance in respect of incapacity for work due to accident at work or occupational disease,
- rehabilitation benefit – where after cessation of the right to sickness allowance the insured is still incapable of work and there is a good prognosis with regard to restoration of his or her earning capacity,
- compensatory allowance – payable to the employee whose remuneration has been reduced due to permanent or protracted injury
- lump-sum compensation – due to the insured who suffered a permanent or long-term injury depending on the injury determined in percentage terms;
- lump-sum compensation – due to family members of the deceased insured or pensioner,
- pension in respect of incapacity for work – due to the insured who became incapable of work as a result of accident at work or occupational disease,
- training pension – due to the insured, who has been issued a decision on the advisability of vocational retraining due to incapacity for work in earlier occupation resulting from accident at work or occupational disease,
- survivors' pension – due to family members of the insured deceased or pensioner entitled to receive pension in respect of accident at work or occupational disease,
- supplement to survivors' pension – for complete orphans,
- covering costs borne for dentist services and prophylactic vaccinations as well as costs incurred in respect of purchase of orthopaedic equipment.

The right to the benefit rests with a person who suffered accident at work, while in the case of his death, the benefit is payable to an entitled family member of the deceased. The group of persons entitled corresponds to the group of persons entitled to receive survivors' pension resulting from the death of the sole supporter of the family, referred to in the previous section.

Pension in respect of incapacity for work and training pension payable due to accident at work or occupational disease are calculated in accordance with similar rules applicable for pensions in respect of incapacity for work; however, they may not be lower than:

- 60% of the pension assessment basis – for a person partly incapable of work,
- 80% of the pension assessment basis – for a person completely incapable of work,
- 100% of the pension assessment basis – for a person entitled to training pension.

In view of the second act mentioned before, accident constituting grounds for awarding benefits is construed as a sudden occurrence arising from external cause and resulting in injury or death, which came into being, among other things, during:

- saving other people from danger threatening their lives,
- protecting public property from damage,
- providing the representative of a state body or local self-government with help in conducting official activities and in performing work related to the national census,
- pursuing or apprehending people suspected of committing a crime or protecting other people from assault,

- acting as a councillor or a member of council of all local self-government units or conducting activities by a village administrator with regard to this position,
- acting as a juror in the court,
- didactic, educational or guardianship activities conducted by organisational units of the school system, classes in higher education institutions or classes at doctoral studies or during internship provided for by the timetable or educational plan,
- performing work as a part of occupational therapy in organisational units of social assistance and public health care facilities,
- performing work aimed at direct protection from natural disasters,
- acting as a member of electoral committee appointed by a public body or local self-government body with a view to conduct elections or referendum,
- performing socially useful work by the unemployed.

It is significant that under this act, the right to benefits is granted to everyone, not only to the insured.

VII. Minimum amounts of benefits. Indexation of benefits.

The effective act on old-age pensions and pensions from Social Insurance Fund determined formula and procedure for annual indexation of benefits as of 1 March. Pursuant to this act, indexation rate is construed as an average annual index of consumer goods and services in the preceding calendar year, increased by at least 20% of real growth of average monthly remuneration in the preceding calendar year. The index of consumer goods and services is the average annual price index of consumer goods and services for households of retirees and pensioners or average annual price index of consumer goods and services in total, where it is higher than the average annual price index of consumer goods and services for households of retirees and pensioners.
The 20-percent increase in the indexation rate is subject to annual negotiations within the framework of the Tripartite Commission for Socio-Economic Issues. If members of the Commission are not able to reach consensus, the indexation rate is fixed by way of an Ordinance of the Council of Ministers.

Currently, due to economical reasons, the government abandoned a valid indexation formula for a year and carried out the so called quota indexation. As of 1 March 2012 all benefits were increased by the same amount of PLN 71, i.e. €17. In the case of pensions in respect of partial incapacity for work and 3rd disability group pensions, the indexation amounts to PLN57, i.e. approximately €13.5.

In accordance with the jurisprudence of the Constitutional Tribunal "the need to index retirement benefits is due to inflation and is aimed at mitigating its effects. Indexation is carried out with a view to preserve the actual value of pensions awarded with regard to increases in the prices of goods and services." The decision regarding quota indexation deliberately violated the Constitution, because a substantial part of the beneficiaries was not ensured the actual value of the benefit.

The quota indexation covered:

- pensions awarded under the universal system;
- pension benefits from the social insurance of farmers;
- pre-retirement benefits and allowances;

- benefits awarded in respect of accidents at work and occupational diseases;
- pensions awarded in respect of accidents or occupational diseases which came into being under special circumstances;
- social pensions;
- benefits awarded on the basis of provisions regarding old-age pensions for professional soldiers and their families and police officers, officers of the Internal Security Agency, Foreign Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Polish Border Guard, Government Protection Bureau, State Fire Service and Prison Service as well as their families;
- benefits for veterans and some persons who are victims of war and post-war reprisal;
- benefits for war veterans and military men and their families;
- bridging old-age pensions and compensatory allowances for teachers;
- temporary capital old-age pensions

i.e. nearly 9.5 million people.

The act determined also the minimum guaranteed amounts of benefits as of March 2012. The minimum pensions resulting from incapacity for work amount to:
- PLN 799.18 – for persons completely incapable of work, i.e. approximately €190.
- PLN 613.38 – for persons partially incapable of work, i.e. approximately €146.

The minimum old-age pension and survivors' pension also amount to PLN 799.18, i.e. approximately €190.

VIII. Benefits in respect of sickness and maternity

As it has been already mentioned, contribution for sickness insurance is paid by an employee. This type of insurance entitles him to receive the following pecuniary benefits and allowances in respect of sickness and maternity:
- sickness allowance;
- rehabilitation benefit;
- compensatory allowance;
- maternity allowance;
- care allowance.

The right to sickness allowance is acquired after 30 days of uninterrupted sickness insurance, where the insured is covered by this insurance on a compulsory basis or after 90 days of uninterrupted sickness insurance, where a person is insured on a voluntary basis.
In general, a monthly sickness allowance amounts to 80% of the allowance assessment basis, i.e. the average employee's remuneration from the period including the last 12 months. There are exceptions to this rule – allowance payable due to hospitalisation amounts to 70% of the allowance assessment basis.
Yet, a monthly rate of the sickness allowance amounts to 100% of the allowance assessment basis, where incapacity for work or inability to perform work occurs in the period of pregnancy or results from undergoing necessary medical examinations provided for candidates for donors of cells, tissues and organs as well as from undergoing an operation of their taking.
The allowance in the full amount is also due where incapacity for work results from accident on the way to or from work.

Sickness allowance is due in the period of incapacity for work resulting from disease or inability to perform work, however, not longer than for 182 days; where incapacity for work results from tuberculosis or where it occurred in the period of pregnancy – not longer than for the period of 270 days.
Where after the termination of the period covered by the sickness allowance the insured is still incapable of work and there is a good prognosis with regard to restoration of his or her earning capacity, rehabilitation benefit may be granted by way of the decision issued by the certifying doctor of the Social Insurance Institution. It is payable within the period required for restoring capacity for work, however, not longer than for 12 months.
Rehabilitation benefit amounts to 90% of the sickness allowance assessment basis for the period of first three month, 75% of this basis for the remaining period, and where incapacity for work occurs in the period of pregnancy – 100% of this basis.
Because due to the disease, employee's capacity for work is reduced and it results in him receiving remuneration lower than the average remuneration constituting the assessment basis for sickness allowance, he may be awarded compensatory allowances. It is due to the insured who is an employee performing work at the company's or inter-company rehabilitation centre or at the employer at a dedicated position adjusted to the adaptation needs or training for specific work.

The maternity allowance is granted to an insured woman who within the period of sickness insurance or within the period of parental leave gave birth to a child. The allowance is also due to the insured who took a child under 7 to be brought up, and in the case of a child with regard to whom a decision on postponing school obligation was issued – under 10, or who took a child under 7, and in the case of a child with regard to whom a decision on postponing school obligation was issued – under 10, to be brought up in a foster family, excluding professional foster families.
A monthly maternity allowance amounts to 100% of the allowance assessment basis and is payable during the period determined by the provisions regarding employment, i.e. in the Labour Code.

The last benefit payable from social insurance in respect of sickness and maternity is care allowance.
It is payable to an insured person during a period of release from work due to the necessity of taking personal care of the healthy child under 8 years of age in the event of unforeseen closing of nursery, kindergarten or school which the child attends or due to childbirth or sickness of the insured person's spouse taking care of a child on an ongoing basis, where childbirth or sickness hinders such spouse from providing care.
The allowance is payable also due to the stay of the insured's spouse, taking care of a child under 14 or any other sick family member on an ongoing basis, in a residential medical care facility.
Family members, referred to above, are construed as: a spouse, parents, parents-in-law, grandparents, grandchildren, siblings and children under 14 – if they reside in the common household together with the insured during the provision of care.
Care allowance is payable during the period of release from work due to the need of taking personal care, however, for no longer than 60 days in a calendar year, where care is provided to children and 14 days in a calendar year, where care is provided to other family members.
A monthly care allowance amounts to 80% of the allowance assessment basis.

IX. Participation of trade unions in the lawmaking

The participation of trade unions in the lawmaking, or, more specifically, in expressing opinions on drafts of acts and regulations, was provided for in a number of acts.
One of the most important ones is an act of 2001 on Tripartite Commission for Socio-Economic Issues and Province Commissions for Social Dialogue. The act provided details regarding its fundamental task, namely, conducting social dialogue with regard to remuneration and social benefits as well as other social or economic matters, carrying out tasks determined in separate acts.
The act provides details regarding mode of participation on the part of social partners in works related to the national budget to expressing opinions on macroeconomic indicators, constituting basis for preparing a draft budget to expressing opinions on the draft itself. Separate acts, referred to before, ensure participation in the decision-making with regard to increasing remuneration in the national economy, including public sector, and minimum remuneration for work as well as indexation rate of pensions paid from the Social Security Fund.
The Commission is composed of representatives of the government, trade unions and employers' organisations.
The Commission appointed permanent problem teams, which express opinions on bills referred to them in accordance with competence regarding the subject matter. The following teams can be given as example:
- team for economic and labour market policy;
- team for labour law and collective bargaining;
- team for social insurance;
- team for budget, remuneration and social benefits.

That is all about theory. In practice, the level of social dialogue depends on the governmental side, which decides on its own which bill is to be referred to consultation in accordance with the procedure arising from the rules and regulations for works of the Commission and which one in accordance with procedures provided for in other acts, e.g. act on trade unions.
Because the Commission's activity is aimed at achieving and maintaining social peace, the government uses the Commission to legitimise its actions which result from the very participation of the social factor in the lawmaking. The influence of social partners on the law laid down is directly proportional to the government's intent regarding implementing law in the form proposed by the government itself.
Another legal act, pursuant to which the government should refer bills to consultation is act on trade unions. Trade unions are entitled to express opinion on the premises and bills and consultation documents of the European Union, which in particular applies to white papers, green papers and communications, as well as drafts of legal acts of the European Union - with regard to tasks covered by duties of trade unions They also have the right to apply for publishing or amending statutes or any other legal acts with regard to matters included in the tasks of trade unions. Applications regarding statutes are submitted by a trade union to member of parliament or bodies with the right of legislative initiative.

Under acts determining the mode in which the Parliament operates, participation of trade union experts in works conducted by legislative bodies, i.e. the Sejm and the Senate committees, is legitimate. Representatives of professional and social organisations as well as committee's experts and other people may participate in the sitting of the Sejm committee upon the invitation of the Cabinet. A similar regulation is valid in the case of the Senate; the chairman of the Sejm committee may request that opinions be drawn up as well as invite experts, representatives of various spheres and organisations interested in the subject of committee's work and other people to participate in the meetings.
In practice, the participation of trade unions' representatives, provided that they have been invited, amounts to presenting the stand taken by the organisation in the consultation process. Its standpoint is usually supported by members of the parliament or senators from the parliamentary opposition. The representatives of the nation elected from the lists of governing coalition usually cast votes in favour of the stand taken by the government.
The last and final form of exerting influence by trade unions on the already existing law, consists in a possibility to bring law suits to the Constitutional Tribunal with regard to legal acts.

The Constitutional Tribunal adjudicates in the following matters:
- the conformity of statutes and international agreements with the Constitution;
- the conformity of statutes with ratified international agreements whose ratification requires prior consent granted by statute;
- the conformity of legal provisions enacted by central State organs with the Constitution, ratified international agreements and statutes.

The right to bring law suits to the Constitutional Tribunal with regard to legal acts is granted to nation-wide bodies of trade unions and national authorities of employers' and professional organisations.

The future of
social security in Europe
shared knowledge and responsibilities

Social security system in Bulgaria

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1. Type of the social security system.

The Bulgarian social security system encompasses all 9 branches of social security laid down in the ILO Social Security Convention No 102. The system is mandatory and is regulated by law. Hence, within this meaning, the insurance system is a state one. In addition to it, however, there is voluntary insurance. The latter cannot replace state insurance; it is supplementary to it. Voluntary social security is applied with respect to pensions, as well as unemployment and occupational training and retraining. But in practice it is only the supplementary voluntary insurance for pensions that functions. While regulated in the legislation, this type of insurance has not yet been fully implemented. Both voluntary social insurance and mandatory supplementary social insurance are run by state-controlled private insurance companies. Hence, Bulgaria's social security system can be defined as a mixed one. Voluntary supplementary social insurance is individual and based on the funded pension principle.

2. Which of the systems is mandatory and which social groups does it cover?

Insurance for all risk branches indicated in the ILO Convention 102 is mandatory. This is valid with respect to everybody hired on the basis of an employment contract (both in the public and private sectors); the members of the boards of directors and supervision bodies of commercial companies, as well as public servants, including military and law-enforcement officers. As regards certain categories of individuals who operate on their own account and secure their social insurance, such as persons registered as self-employed (private consultants, lawyers, general practitioners).

3. Types of benefits included in the scope of voluntary insurance.

As indicated under item 1, in practice, voluntary insurance has so far functioned only in terms of supplementary voluntary pension insurance. The legislation contains provisions that allow making voluntary insurance arrangements for the following benefits: unemployment, professional training and retraining. These legal provisions have not yet been applied due to the lack of interest amongst businesses. Voluntary social security does, of course, provide old-age benefits to individuals who meet the retirement age requirements. Moreover, the insured person is entitled to make a one-time withdrawal of the funds from their individual notional account. In the event of death of either an insured person or a pensioner who has an account with a voluntary fund, their heirs, as indicated in the insurance contract, are entitled to receive the funds (or the remaining amount) from the relevant account.

4. Contingencies covered in the state and private social security systems.

The Bulgarian social security system covers the following contingencies: sickness and work incapacity (medical cares and sickness benefits); unemployment; accidents at work and occupational diseases; disability as a result of a general disease or an occupational accident; pre-natal, confinement and post-natal period; old age; death (survivors).

5. Institutions in charge of social security and the range of their competences.

The state social security system is run by the National Social Security Institute (NSSI). This NSSI is accountable to the National Assembly. The institute is a legal entity: it drafts, proposes and executes the state social security budget; ensures the payment of pension and short-term benefits; exercises control over the observance of the social security legislation related to its functions; manages an information system of all insured persons and the parameters of their insurance – insurance income and monthly status (payment of the contributions due), years of contribution, etc. The NSSI administers the following contingencies: sickness and work incapacity (cash benefits); accidents at work and occupational diseases; pre-natal, confinement and post-natal benefits; unemployment; disability; old-age pension benefits, and death (survivor benefits).
Medical care in the event of sickness and accidents is within the competences of the National Health Insurance Fund. Both institutions are public ones. They both have managing bodies whose structure is based on the tripartite principle: their members are representatives of nationally representative organizations of workers and employees, and of employers. As both trade unions and employers' organizations could be considered non-governmental ones, this means that non-governmental entities are involved in the activity or rather in the management of the social security system. Other NGOs (pensioners' organizations, journalists' unions, bar associations, etc.), however, do not perform any insurance-related functions; neither do they represent interests within the managing bodies of the social security system.
In terms of the involvement of private entities, there are pension funds which administer the supplementary mandatory and supplementary voluntary pension schemes. These are joint-stock companies with private equity. They are subject to control by the state via a special body – the Financial Supervision Commission.

6. Form of the social security system.

The Bulgarian social security system is of the Bismarck type (PAY AS YOU GO): it is based on the insured person's individual participation through the payment of insurance contributions. The general social protection framework in the country also includes a social assistance system. The latter relates to the delivery of a variety of social assistance programs and social service provision. This system is not funded through the payment of any contributions; it operates on the basis of national solidarity, i.e. allocations for programs targeting the most vulnerable groups of the society (the poor, the sick, the disabled, etc.) are made from the tax revenues into the state budget. The social security system ensures protection for all the insured persons (the individuals

who are employed and receive remuneration) in the event of materialization of the insurance contingency. The focus of the social assistance system is on programs for providing assistance and/or support to needy and vulnerable individuals. There are a variety of programs in place: cash aids to poor people; assistance to families with children (cash benefits per child); heating benefits during the winter season; special benefits for disabled persons; social services to children, elderly and sick people. By way of rule, any applicant under a cash benefit program – an individual or a family – is subject to a means-test for establishing their eligibility.

7. Payer of the social security contributions.

The employee and the employer share the payment of the insurance contributions in a 60% : 40% ratio (of course, the amount of the contribution due by the employee/worker is at their expense and is deducted from the monthly gross remuneration. The amount of the contribution due by the employer is at the expense of the expenditures of the undertaking.
In terms of civil servants (approx. 60,000), the entire amount of the insurance contributions is paid by the employer (a ministry/agency, a budget-funded institution). There has been, however, growing opposition to this, which could result in revising the current situation and changing the arrangements for civil servants, i.e. civil servants paying their share of the insurance contribution similar to any other employee.
Self-employed individuals (craftsmen, consultants-sole traders. lawyers, self-employed medical doctors, etc.) make the payment of the full amount of the insurance contributions at their own expense, in other words – both shares of the insurance contribution (these are the so-called self-insured individuals). They have the right to choose the income, ranging between a minimum and a maximum income level as set out in the law, on the basis of which the contributions are calculated.
The state (the state budget) makes an insurance payment in the amount of 12% into the Pension Fund of the state social security which suffers from a serious deficit. This contribution is mandatory for any insured person – both individuals with an employment contract and self-insured ones.
The local authorities (municipalities, regional governor's offices) do not have any special obligations. Their sole obligation, in their capacity of employers, is the payment of the insurance contributions for their staff.
Irrespective of the involvement of both the employer and the employee in the insurance contributions, it is the employer that bears the obligation in terms of calculating the contributions, deducting the amounts due from the monthly salaries and transferring the whole sum into the social security institution. Furthermore, the employer is responsible for correctly defining the contribution amounts, for regularly transferring them into the accounts of the relevant state social security funds, and for submitting the required information about the insured persons and their income.

8. Percentage share of individual payers (if more than one) – the personal contribution percentage of the total amount of the contribution.

40 percent – workers and employees (for pension: 44 percent)
60 percent – employers (for pension: 44 percent)
12 percent – the state for all insured persons into the Pension Fund

9. Types of contingencies covered by social insurance.

Social insurance is due for the following contingencies:
General Sickness and Maternity Fund: sickness and work incapacity, pre-natal, confinement and post-natal state;
Pension Fund: old-age pension and death;
Accidents at Work and Occupational Diseases Fund: accidents at work and occupational diseases;
Unemployment Fund: unemployment
National Health Insurance Fund: provision of health services (in kind)

10. Cases where social insurance is mandatory.

The following categories shall be ensured for all contingencies:
- workers and employees hired for more than 5 days per month, irrespective of the type of work and way of remuneration;
- civil servants;
- persons employed in the armed forces or under the Ministry of Interior Act;
- members of cooperatives who are paid for their work by the cooperative;
- persons at elected positions, including the ones in religious orders;
- persons registered as self-employed;
- persons employed on contracts of services;
- sole traders;
- registered agricultural farmers and tobacco growers.

The persons hired for a period of up to 5 working days/month shall be insured only for accidents at work and occupational diseases, and disability, old age and death (pensions).

11.Possibilities for prolonging the mandatory social insurance after the termination of the employment relationship.

In case an individual finds himself/herself in a state of temporary work incapacity within 30 days after the termination of the employment relationship, he/she shall be entitled to cash benefits for the incapacity period but not more than 30 calendar days. Under these circumstances individuals receiving pension benefits or benefits for losing their job shall not be entitled to such benefits.
Where a person is no longer engaged in gainful employment, he/she shall not be obliged to make social security payments, which means that he/she shall not be entitled to the relevant benefits. Such persons shall still have obligations only with respect to health insurance payments – unless they insured on other grounds or by the state as recipients of social welfare, pensioners, children, etc. – i.e. they shall make health insurance payments in the amount provided for by law.

12. Conditions to be met for the completion of the qualifying period.

– Pensions and retirement age

The completion of the qualifying period is conditional on the following:

(as of 1 January 2012)
Women – age: 60 years and 4 months; period of contribution: 34 years and 4 months
Women – age: 63 and 4 months; period of contribution: 37 years and 4 months
The age and the period of contribution are due to increase every year by 4 months till the following levels are reached: age – 63 years for women and 65 years for men; period of contribution - 37 years for women and 40 years for men.
The persons who work in a hazardous and high-risk working environment shall retire under alleviated conditions with respect to both age and the period of contribution.
Teachers are entitled to retire by three years earlier than the general retirement age. For that purpose the solidarity pension system includes a Teachers Pension Fund which is funded by means of a separate contribution (at the expense of the budget) in the amount of 3 percent for each active teacher in Bulgaria; teachers' early retirement benefits are paid out from this fund.

- Pension benefits for work incapacity

The completion of the qualification starts as from the date of disability, while for persons with an in-born sight impairment and for persons who have lost their sight prior to employment – as from the date of applying for pension benefits.
The completion of the qualifying period for disability pension benefits for insured persons who have a permanently reduced work capacity by 50% and over shall be conditional on the following contribution periods:
- up to the age of 20 and for persons with an in-born sight impairment and those who have lost their sight prior to employment – irrespective of the contribution period;
- up to the age of 25 – 1-year contribution period;
- up to the age of 30 – 3-year contribution period;
- above the age of 30 – 5-year contribution period.

Persons with an in-born disability and those who have acquired a disability prior to employment shall complete the qualifying period for disability pension benefits under the conditions of a 1-year contribution period.

- Family benefits – survivor pension (eligibility conditions in the event of death of the head of the household, persons entitled to survivor benefits, the period of entitlement to such benefits).

The following individuals shall be entitled to survivor pension benefits:
- children – till turning 18, if they attend school/university – for the period of training but not later that the age of 26;
- survived spouse - 5 years before completing the age of retirement or prior to that age if the person has work incapacity;
- parents – if they have completed the retirement age and do not receive pension benefits.

13. Periods of contribution.

The period of contribution shall be the period during which contributions were paid or were due on remuneration received, accrued and not paid, as well remuneration not accrued (but not less than the minimum thresholds by economic activities and groups of staff) for full-time working hours. In the event of part-time work or lower remuneration, the period of contribution shall be proportionally recognized. The period of contribution for self-insured persons shall be recognized if the contributions due were paid.
The following shall be recognized as a period of contribution without payment of contributions:
- the period of paid and unpaid maternity leave;
- the period of paid and unpaid leave for temporary work incapacity and for the pre-natal, confinement and post-natal period;
- the period during which a mother out of work raised a child till the age of 3 (the state makes the payment for that period upon retirement);
- the unpaid leave of workers and employees up to 30 days per calendar year;
- the period during which a person was out of work due to unlawful preclusion or removal from work (in this case contributions are paid only by the employer);
- the period during which a person was out of work due to unlawful dismissal (in this case contributions are paid only by the employer);
- the period during which a person was out of work and received unemployment benefits;
- the period during which a worker/employee with sheltered employment did not work due to not being assigned any tasks in conformity with prescriptions from the medical authorities;
- the period during which a parent or spouse took care of a person with a 90% disability who is permanently dependent on the support from another (the state makes the payment for that period upon the person's retirement);
- the period of military conscription or peacetime alternative service (the state makes the payment for that period upon the person's retirement).

14. Eligibility conditions and calculation of the amount of benefits.

The eligibility conditions for old-age pensions, disability pensions and survivor pensions are indicated in the answer under item 12.
The base for calculating the old-age benefits is the insurance income for which contributions were paid. The insured persons are entitled to indicate the most advantageous 36 months for the period prior to 1 January 1997. As from 1 January 1997 till the point of retirement the insurance income by months is taken into consideration.
The formula used to calculate the old-age pension is: P = II x IPC x (1.1% PC),
Where **P** stands for the pension amount;
II stands for the average insurance income into the pension system for the last 12 months prior to retirement;
IPC stands for the individual pension coefficient whereby the average insurance income in the system is adjusted. This coefficient is calculated by means of a comparison between the income for which contributions were paid and the average income during the relevant years and/or months. This is a way to evaluate the person's contribution to the average insurance income in the system and to individualize the base for calculating the pension;
PI stands for the person's period of insurance in years/months/days. Each year of contribution ensures 1.1% of the income used for the purpose of calculation. As from 2017 this percentage will be 1.2%.
The legislation provides for a cap on the maximum pension amount. In addition, there is a minimum threshold of the pension amount, which is due where the above calculations result in a lower pension amount.
With disability pensions the principle of determining the pension amount is the same. What is specific in this case is that, where a person's age is lower than the retirement age, the difference between the person's factual age and the mandatory retirement age is added to the period of contribution as certified by documents. This difference is adjusted by means of a coefficient whose amount depends on the percentage of lost work capacity (e.g. in the event of a 90% loss of work capacity, the coefficient is 0.9%, i.e. if the age difference is 10 years, 9 years shall be added to the person's period of contribution in the formula for determining the pension amount).
There are minimum amounts of disability pensions which are also determined depending on the degree of the loss of work capacity.
The amount of **Survivor pensions** depends on the factual amount of the deceased person's pension. In the event of one survivor, the survivor pension is 50% of that amount; in the event of 2 survivors – 75%, and in the event of 3 or more – 100%. This type of pension also has a minimum threshold, which explains why, in the case of more survivors, the pensions of all the survivors may exceed the amount of the deceased person's pension.

15. Conditions for payment of benefits by types of pensions in case the person eligible for an old-age pension, a disability pension or a survivor pension takes up a job.

The Bulgarian legislation does not provide for any limitations with respect to the amount of pension benefits – old-age, disability or survivor – where the recipients have employment. Both the pension and the salary are received 100%. Pensioners who are employed are entitled to request a recalculation of their pension benefits on the basis of additional periods of contribution and income or only periods of contribution.

16. Conditions for the indexation of benefits.

The pensions issued by 31 December of the previous year shall be updated as of 1 July of the current year by a percentage that is the equivalent of 50% of the consumer commodity index for the previous year and 50% of the average insurance income in the state social security system.
Over the last three years this legal provision has not been applied.
The latest amendments to the legislation in early 2012 provide for changing the mechanism for the indexation of pension benefits – the updating and adjustment of pension benefits will take into consideration only the percentage of the consumer commodity index for the previous year.

17. Minimum and maximum amount of benefits.

The minimum amount of the old-age pension is 136.08 BGN (approx. 68 Euros) and the maximum one is 700 BGN (approx. 350 Euros), while the average pension as of 31 December 2011 is approx. 267-270 BGN (approx. 135 Euros).
The minimum amount of the old-age pension is expected to rise to 145 BGN (approx. 72 Euros) as from 1 June 2012; this, however, are but projections and declarations by the government.

18. One-time aid in the event of death.

The persons entitled to one-time aid in the event of death of an insured person are the spouse, children and parents. The aid is a flat sum for the above claimants and is in the amount of 540 BGN (approx. 270 Euros).

19. Grounds for registering an application for the various types of pension: old-age, disability, survivor, and one-time aid in the event of death.

The grounds for registering an application for issuing a pension are the eligibility conditions, as laid down in the law, and proved by means of documents attached to the application form in the original. The following are attached to the application for an **the old-age pension:** documents certifying the period of contribution; documents certifying both the gross remuneration for three consecutive years chosen by the applicant out of the last 15 years up to 1 January 1997 and the income on which contributions were paid till the retirement date. The persons who have an employment relationship are also required to attach a document certifying the termination of this relationship.
The following are attached to the application for a **disability pension:** documents certifying the period of contribution as indicated in regard of the old-age pension; a medical certificate for permanent work incapacity, including the medical documentation on the basis of which the certification was made.
As for the **survivor pension**, in case the deceased person was a pension recipient, a certificate of succession shall be attached to the application; where the children are aged above 18 the document to be attached shall certify that they are still in education; with respect to children, yet another declaration certifying that they were not adopted is needed. A surviving spouse who has not completed the required age and has work incapacity shall attach a document to certify this. Furthermore, he/she shall declare that he/she has not remarried.
Parents shall attach a declaration certifying that they do not receive personal pensions, and a document certifying parenthood.

20. Participation of the social partners, in particular the trade unions in the law-making process and the control over the observance of the pertinent legislation:

- **at the national level** (central and local administrative units)
At the national level the trade unions are involved in the management of the insurance system (the Supervision Board of the National Social Security Institute and the Supervision Board of the National Health Insurance Fund). These bodies address any issues regarding amendments to the legislation; they also examine and endorse the draft laws themselves, including laws on the annual budgets of the institutions. Furthermore, they have control functions with respect to the observance of the legislation and the execution of the budget. In addition, there is a National Council for Tripartite Cooperation at the national level: this is the forum for discussing any problems, legislative acts, strategies, and other documents related to employment and insurance relationships. The Council also discusses any acts submitted to the Parliament by the Government, as well as acts to be issued by the Government

- **at the EU level**
At the European Union level the trade unions participate in a number of advisory committees together with representatives of the national employer structures, the governments and the European Commission. This is the Advisory Council on Social Security which is convened once a year. By way of rule these sessions review: the annual activity of the Administrative Commission which addresses specific matters in terms of the implementation of Regulation No 883 (coordination of the social security systems); the case law of the Court of Justice of the EU and its landmark judgments on concrete cases. While the activity of the Council enables raising issues related to specific cases from the national practice, and raising concerns with representatives of the Commission, its focus is on information.

- **at the sector level**
At the sector level there are sector councils for tripartite cooperation which can also serve as a forum for tackling any insurance matters regarding either the sector as a whole or individual categories of insured persons in that sector. Any such matters are always on the agenda of the National Council for Tripartite Cooperation and other trade union forums at the national level. Nevertheless, as regards individual trade unions, for example the teachers' trade union – the teachers being a specific category of insured persons who are entitled to early retirement via the Teachers' Pension Fund – any issues related to this particular entitlement are addressed at the relevant sector council. Where, however, there are proposals or requests, the latter are put on the national agenda of the two bodies: the National Council for Tripartite Cooperation and the National Council of the NSSI.

21. Reforms of the pension system implemented over recent years and new ones proposed by the government.

Over the last three years the current government has implemented a very restrictive and even aggressive policy with respect to the pension system. The arguments used for that purpose are that the system has not been reformed and needs radical reforms in order to tackle the huge deficit. According to the government the only "recipe" for stabilizing the pension system is raising the retirement age and the period of contribution. Hence, in 2010 following a year of arguments, debates and a grand scandal, the government withdrew the proposed amendments to the pension legislation from the Parliament – this proposal envisaged a sharp increase in the retirement age for all categories of employed persons as from 1 January 2011, including those working in a high-risk and hazardous environment. Subsequently an agreement was signed among the social partners (on a tripartite basis) and a

number of measures aimed at stabilizing the system were identified: raising the pension insurance contribution by 1.8%; incriminating the failure to pay insurance contributions; increasing (from 1.1 % to 1.2%) the share of each year of contribution in the formula for determining the pension benefit amount as from 1 January 2017; raising the requirements in terms of the period of contribution by 4 months per year as from 1 January 2012 (an inevitable compromise for the sake of the other measures); raising the retirement age to reach the target in 2021.
Regardless of the agreement concluded and the items agreed upon being translated into legislation in 2011, the government, without negotiations and without consulting the trade unions, collided with its MPs and thus the final amendments to the requirements for completing the qualifying period were tabled in the Parliament. This happened in October by means of the final and transitional provisions of the draft law on the 2012 social security budget. This caused an outrage; we once again organized protest rallies; regrettably, no agreement was reached. The government, however, made a minor concession: the proposed raising of the retirement age and the period of contribution as from 1 January 2012 by 1 year per year till a 3-year increase is achieved was changed to lower the rate down to 4 months per year. Furthermore, the norm for the updating of pensions was modified: only the inflation rate for the previous year shall be taken into consideration (unlike the situation where two factors were accounted for: 50% of the inflation rate and 50% of the average income). The formula for calculating pensions was also changed - the increase from 1.1% to 1.2% as from 2017 of the share of the period of contribution in the formula shall be applied only with respect to new pensions. The development over the last two years has proved that the social dialogue in Bulgaria is formal and cannot serve as an efficient and secure mechanism for either solving problems or for the participation of trade unions in decision-making.

22. Forms and aspects of the social dialogue.

As indicated, the social dialogue in Bulgaria is carried out within the framework of National Council for Tripartite Cooperation (NCTC) and the relevant sector councils for social cooperation. There are a number of commissions set up with the NCTC in various areas: budget, finance, insurance relations, labor legislation, etc. These commissions consist of experts from the organizations represented in the Council. This dialogue is also established at the territorial level where the local authorities are involved together with the trade unions and the employers' organizations. There is, of course, a bilateral dialogue – between the trade unions and employers' structures at both the national and sector levels.
A form of trilateral social dialogue which is often used, in particular by the government, are the working groups on various issues.

23. Institutions of the social dialogue.

National Council for trilateral cooperation; sector councils for social cooperation; territorial councils for social cooperation; National Council for Social Inclusion; National Council for the Integration of Disabled Persons; National Employment Council and Territorial Employment Councils; National Council for Working Conditions.

24. Evaluation of the social dialogue and the impact of the social partners on the passed legislation:

- **the impact of trade unions**

If the social dialogue were to be evaluated in a single word, this word would not be "positive". Nevertheless, there are individual cases where the trade union expertise proves to be very reliable and helpful in tackling issues, in particular the ones related to labor and insurance relations. It turns out that almost any legislative act has been impacted by the intervention of the trade unions; however, it is not always that the trade unions succeed in achieving what they deem as relevant. This is in particular the case when financial resources need to be allocated.

- **the impact of employers**
By way of rule, the impact of employers' organizations has always been stronger on any government, as employers are involved in funding political parties and movements. Employers exercise the strongest influence with respect to fiscal rules; they usually lobby for bringing down their participation and responsibility in financing the social systems and in terms of labor and insurance rights. Luckily, they have not been successful in achieving (though they have struggled for a long time) the elimination of the minimum salary.

25. Current and potential role of trade unions in coordinating the social security schemes and its forms.

The role of trade unions in coordinating the social security schemes in the perspective of Regulation 883 and Regulation 579 of 2009 regarding its implementation has not been very efficient. As the implementation of regulations and coordination processes are an obligation of the member states, in particular of specific institutions therein, the trade unions are not left with a broad scope for action. Nevertheless, being representative social partners, they are able to participate in the social dialogue at the European level through the European Trade Union Confederation and its structures, as well as by means of personal participation in the relevant European advisory committees. The brand name of trade unions' activity and a basic obligation of theirs is ensuring education for workers and employees, and providing information about their rights and the terms and procedure for using these rights in the exercise of free movement and establishment. In this respect the trade unions could, by means of various forms of raising awareness, refer them to the relevant national institutions in relation to receiving the necessary documents and specific guidelines for action. Last but not least, the trade unions are also able to facilitate the interaction with the relevant institutions inasmuch as they have the necessary expertise and professional contacts with these institutions.
Another line of influence is by means of the participation of trade union experts in the relevant groups at the national level where the positions declared by the government representatives on specific issues addressed within the Administrative Commission are coordinated. The trade unions have the same opportunity during the sessions of the Advisory Committee on Social Security. These sessions are, regrettably, held only once a year and the agenda is very busy, the information volume is large, and there is little room for raising issues and asking questions.

Additional issues:

1. Evaluation of the coordination procedure from the point of view of the personnel

The coordination procedures laid down in the Regulation require commitment from the member states and the relevant national institutions. As indicated in the response to question 24, the trade unions play a role, firstly, in training and informing workers and employees about their rights and opportunities and, secondly, if needed, in providing assistance and support in the communication with the relevant national institutions.

2. Knowledge of the average worker/employee about his/her rights within the coordination system in the event of settling or taking up a job abroad.

By and large, workers/employees are not well familiar with the rules of coordination, in particular the details. It is, however, certain that most of them are well aware that only legal employment can safeguard protection and opportunities to avail themselves of the social security system in the country of residence.

3. List of the competent authorities and responsible institutions in relation to the implementation of the regulations of the European Union regarding the social security schemes in the relevant country.

The Minister of Labor and Social Policy is the competent authority at the national level – in charge of the development and implementation of the relevant policies.

The competent institutions in Bulgaria, under Regulation 883/2004, are:
The National Revenue Agency – in charge of determining the applicable legislation;
The National Social Security Institute – in charge of ensuring cash benefits for the insurance contingencies: sickness and maternity, work accidents and occupational diseases, unemployment, as well as pensions benefits for old age, survivor and disability, and cash aid in the event of death;
The Agency for Social Assistance – in charge of cask family benefits;
The National Health Insurance Fund – in charge of healthcare benefits in kind.

The future of
social security in Europe
shared knowledge and responsibilities

Social security system in Portugal

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1. Type of the social security system.

The Portuguese social security system is a fully public system, which consists of two main components:

- Solidarity, non-contributory system based on the principle of the solidarity of the whole society so as to ensure fundamental rights and equal opportunities to all citizens, it covers all inhabitants and is financed through taxes; and
- The social assistance system based on contributions, it covers workers and is financed through contributions paid by employees and their employers. Social assistance system is obligatory for all workers.

There is also a voluntary scheme – the so called voluntary social insurance. All the people not covered by any other obligatory social security scheme may benefit from it (Example: scholarship holders conducting scientific research, some sailors on board the foreign ships and persons not being in an employment relationship).
Registration to this scheme is carried out on the application submitted by those interested, on condition that they meet specific requirements.
Beneficiaries of this scheme are the ones who pay contributions.

2. Which of the systems is mandatory and which social groups does it cover?

Social assistance system is obligatory and it covers all the employees from all the sectors, including those employed in the public sector. For a long time they were covered by a special social security scheme, yet, nowadays, all of them are covered by one social security program.
Thus, the social assistance system consists of two programs: a program covering employees and a program covering the self-employed.

3. Types of benefits included in the scope of voluntary insurance.

Basic benefits attributed to the non-compulsory social insurance depend on the type of activity conducted by persons covered by it, but basic benefits are granted because of disability, old age and death – they may be also granted on the basis of other circumstances.

4. Contingencies covered in the state and private social security systems.

A public social security system, as regards the social assistance system, covers the following basic cases: sickness, parenthood, unemployment, occupational disease, disability, old age and death.

5. Institutions in charge of social security and the range of their competences.

Governmental institutions integrated with direct and indirect State's administration are major entities performing tasks as a part of social security system.

6. Form of the social security system.

Social security system, as regards social assistance system, is a contributory scheme based on the duty to pay contributions and on the principle of solidarity of all professions and generations. Since it is a contributory system, there is a mutual relationship between contributions and benefits.

7. Payer of the social security contributions.

Contributions for a social assistance system of the public social security scheme are compulsory in the case of employees – then, they are paid by employees and their employers, while in the program for the self-employed – only by the employees.

8. Percentage share of individual payers (if more than one) – the personal contribution percentage of the total amount of the contribution.

Contributions for a welfare system of a public social security scheme in the program including employees are calculated on the basis of a contribution rate, referred to as a single social tax (Taxa Social Única).
Single social tax (TSU) is a global rate of the contribution, which is arranged in accordance with the substantive scope of the benefit granted, namely, in accordance with the costs related to the guaranteed social security in each case as a part of the general program.
The global contribution rate amounts to 34.75%, out of which 23.75% is covered by the employer and 11% by the employee.
Except for this rate, there are also other, lower ones, arranged in accordance with the scope of the security, the nature of the employing entity, specific situation of the beneficiary or employment policy.

9. Types of contingencies covered by social insurance.

Reasons entitling to benefits from the social assistance system of the public social security system in the program covering hired workers are the following: sickness, parenthood, unemployment, occupational disease, invalidity, old age and death.

10. Cases where social insurance is mandatory.

As it has been already stated above, registration in the social security system is compulsory for all employees.
Hired employees bound with the employer by an employment contract or a contract of a similar legal nature, are subject to a compulsory program covering hired employees of the social assistance system.
An employing entity is obliged to register employees in social insurance and to effect payments for relevant contributions.
Registration is made for life and it defines relation with the social security system.

11. Possibilities for prolonging the mandatory social insurance after the termination of the employment relationship.

Within the framework of the social assistance system of the public social security system, in the case of unemployment, an employee receiving unemployment benefit continues to be covered by the system ex officio; everything happens as if an employee continued paying his contributions by referring to the mechanism called "register of equivalent remuneration". This register is interrupted which means that the contribution period is also interrupted, when an employee ceases to receive unemployment benefit and has not taken up any job in the meantime. Register of equivalent remuneration operates in the same mode in the case of awarding other benefits due to sickness or parenthood.
Nevertheless, in the case of lack or insufficient amount of means, all citizens are entitled to receive benefits within the framework of the solidarity system, provided that they meet specific requirements. It means that in the case of unemployment, employees are entitled to apply for solidarity benefits.

12. Conditions to be met for the completion of the qualifying period.

There are various requirements with regard to granting specific pecuniary benefits from the program covering hired employees of the social assistance system within the framework of the social security system. There is no difference between the requirements applicable to women and men – they are identical.

• Conditions for granting sickness benefit:

a) Minimum period of employment for a consideration of 6 calendar months in a row or in total up to the date of the beginning of a sickness;
b) 12 days of gainful work along with registration of remuneration within 4 month directly preceding the incapacity; periods of equivalent registration and periods of receiving maternity allowances are regarded as counterpart to a gainful work in the case of illness which occurred within 60 days from the date of recovery after the previous sickness;
c) In the event of a temporary incapacity for work, incapacity certified in a proper way by a competent health care facility;
d) In the case of the self-employed or beneficiaries of any social insurance, a properly paid insurance until the third month directly preceding the month when the incapacity began.

• **Conditions for granting invalidity pension:**

a) Documenting the period of 5 years of contributions paid in the case of a relative invalidity; 3 years of contributions paid in the case of absolute invalidity
b) Verifying a permanent incapacity for work due to reasons other than accident at work or occupational disease identified and certified by the Incapacity Verification System (SVI).

In the scope of this protection, invalidity is construed as each situation leading to incapacity for work due to reasons other than occupational disease or accident at work, regarding a permanent physical, sensory or mental incapacity for work.
Invalidity may have relative or total nature.
Relative invalidity is construed as a condition in which a beneficiary, as a result of a permanent incapacity, is not able to earn more than one third of an average remuneration at his position, assuming that a beneficiary does not recover within the next 3 years to the extent which would allow him to earn more than 50% of an average remuneration at his position.
Total invalidity is construed as a condition in which a beneficiary is not able to perform work in a specified and permanent manner in any profession.
Documenting the contributory period is not required in the following cases:
- When a beneficiary completes the period of 1095 days of receiving benefit for contributions due to illness and he has had a permanent incapacity for work certified.
- When, as a result of verifying disability, he has been awarded relative invalidity pension

• **Conditions for awarding pension:**

a) Documenting 15 calendar years in a row or in total of work and contributory periods
b) Being 65 years of age without being entitled to early retirement

• **Conditions for awarding family benefits:**

In our social security system, family benefits are of universal nature, that is all the Portuguese citizens and foreigners living in the territory of Portugal, who meet the requirements for receiving family benefits, are entitled to them, regardless of profession or paying social security contributions.
Awarding family benefits depends, in the first place, on meeting the requirement regarding revenues, i.e. total revenues for the whole family may not exceed a specific amount, in accordance with the determined level of indicators indicated by law in the following manner:

1. Equal or lower than 0.5 IAS

2. Higher than 0.5 IAS and equal or lower than 1 IAS

3. Higher than 1 IAS and equal or lower than 1.5 IAS

IAS is a social support index (Indexante de Apoios Sociais), which is a reference value while awarding benefits and social support of a non-contributory nature; currently, this value amounts to €419.22.

Thus, families whose revenues exceed IAS 1.5 (currently, approximately €628), are not eligible for benefits.
The amount of income entitling to benefit is calculated by adding income (regardless of its nature and origin) of each member of a household and by dividing this amount by the number of children and teenagers eligible for family benefit, who belong to this household, plus one.
There are certain conditions for awarding each allowance, namely:
Prenatal child support - allowance awarded to a pregnant woman up to the thirteenth week of pregnancy; to be eligible for it, except from proving that the income of the household does not exceed the third level of the above mentioned index, there is a need to undergo a clinical test confirming stage of pregnancy and the number of children to be born.
Family allowance for children and youth - children and youth who belong to a household and whose remuneration does not exceed the 1.5-fold amount of IAS on condition that they meet the following requirements:

• They are born and alive
• They do not work
• Age of 16 or less, or over 16, but less than 24 in the case of studying.

13. Periods of contribution.

It has been already explained in the previous question why insurance periods, referred to as guarantee periods, always constitute requirement for awarding benefits, except for what regards family benefits, which are not dependent upon paying contributions.

14. Eligibility conditions and calculation of the amount of benefits.

The rules regarding allowances and amounts of benefits awarded by the social assistance system of the public social security system are as follows:

• **The amount of sickness benefit**

The amount of sickness benefit is calculated as a specific percentage of the beneficiary's remuneration.
The amount of remuneration (RR) is construed as a formula R/180, where R means total remuneration from 6 calendar months, which precede the second month preceding the beginning of incapacity for work.

The percentage is dependent upon time and nature of the sickness:

Less than 30 days	55%
Between 31 and 90 days	60%
Between 91 and 365 days	70%
Over 365 days	75%
In the case of tuberculosis	80%, up to two financially dependent family members 100%, over two financially dependent family members

The amounts expressed in percentage terms regarding benefit for short-term incapacity for work (up to 90 days) are increased by 5% in the case of beneficiaries whose reference remuneration amounts to EUR 500 or less, who live with 3 or more minor children or, in the case of children of lawful age, who are entitled to receive family allowance, or who are disabled.
The amount of sickness benefit may not be lower than 30% of the IAS index or 30% of remuneration if it is lower than the minimum level, or higher than the amount of net remuneration (calculated by reducing remuneration by the amount of social security contribution and amount of income tax for income tax from natural persons (IRS Imposto sobre o Rendimento das Pessoas Singulares)

• The amount of invalidity pension

The amount of invalidity pension is calculated in accordance with the same formula which is used to calculate the amount of old-age pension (see the next item), excluding development factor, which is used only where invalidity pension is succeeded by old-age pension, which starts as of the next month in relation to a month in which a beneficiary turns 65.
In the case of total invalidity pension, development factor is not applied, where, upon turning 65 by a beneficiary, a beneficiary have been receiving absolute invalidity allowance for over 20 years.
Beneficiaries receiving total invalidity pension are guaranteed a minimum amount of pension, which is equal to a minimum amount of relative invalidity pension and old-age pension corresponding to a 40-year of contributory period.

• The amount of old-age pension

Pension is calculated on the basis of the duration of beneficiary's contributory period, in accordance with the following formula:
Reference remuneration (RR) X Total calculation rate for old-age pension X Development factor

Where:

a) **Reference remuneration** – corresponds to total annual indexed remuneration from the whole insurance period multiplied by the number of calendar years of registered remuneration limited to 40.

Annual remuneration registered in social insurance and regarded as a basic one is updated by applying Index of prices for consumer goods and services (IPC), without habitation.
Where a number of calendar years exceeds 40 while calculating the amount of basic remuneration, the sum of 40 most favourable, indexed annual remuneration is taken into account.

b) **Total calculation rate for pension** corresponds to an annual calculation rate (which oscillates between 2.3%-2%) multiplied by a number of calendar years of registered remuneration relevant for calculation.

c) **Development factor** is obtained by dividing life expectancy for people of 65 (***EMV 2006***) by the amount of life expectancy for people of 65 verified in a year preceding the year of retiring (***EMV ano I -1***).

Life expectancy index for people of 65 is published for each year by the National Institute of Statistics.
In order to calculate a total calculation rate for pension, successive calendar years of contribution payment equal or higher than 120 days with remuneration registration are taken into consideration.

Total calculation rate is formed on the basis of the number of beneficiary's insurance years in accordance with the following rules:

a) 20 years or more of remuneration registration
- annual rate – 2% per each calendar year relevant for calculation
- total rate – 2% multiplied by the number of calendar years relevant for calculation, with a minimum limitation of 30%

b) 21 or more years of remuneration registration
- annual rate – it oscillates between 2% and 2.3% per each calendar year relevant for calculation in accordance with the amount of a corresponding basis remuneration,

in accordance with the following table:

Components	Basis remuneration	Rate (%)
1ª	up to 1,1 IAS	2,30
2ª	Higher than 1,1 IAS do 2 IAS	2,25
3ª	Higher than 2 IAS do 4 IAS	2,20
4ª	Higher than 4 IAS do 8 IAS	2,10
5ª	Higher than 8 IAS	2,00

Pensions have minimum amounts which differ depending on the years of beneficiary's insurance period. These values are usually updated every year.

The amount of family benefits

The amount of prenatal child support differs depending on the level of a household's basis remuneration and the number of conceived children and it corresponds to the amount of family allowance for children and youth awarded in the first 12 months of life.

This support is due from the month following the one in which a woman is in the 13th week of pregnancy and is awarded every month, including the month when the child is born.

The amount of family allowance for children and youth differs depending on the level of the household income, total size and number of children who form it. For children between 12 and 36 months of age, the amount is doubled, or even tripled, together with the birth of the second or third child correspondingly.

The amount of family allowance is increased by 20% when a child or a teenager becomes a part of a one-parent family. In the case of one-parent families, i.e. a household consisting of one parent or main line ascendant with bonds of consanguinity or sideline relative up to the second degree This increase refers also to prenatal family support on condition that a beneficiary lives on her own or a household consists of persons who are eligible for family allowances for children and youth in a one-parent family.

The amount of family allowance for disabled children and youth is also subsidized, while its amount depends on age.

15. Conditions for payment of benefits by types of pensions in case the person eligible for an old-age pension, a disability pension or a survivor pension takes up a job.

These rules vary depending on benefits, i.e.:

Sickness allowance – maximum period for which sickness benefit is awarded amounts to 1095 days. In the event of incapacity for work due to tuberculosis, sickness allowance has is not limited in time.

The allowance is due from the fourth day of incapacity for work, excluding tuberculosis, hospitalisation and sickness which began during receiving maternity allowance, when the allowance is paid from the first day of incapacity for work.

Sickness allowance is suspended:
- When maternity, paternity and adoption allowance is awarded;
- In the case of leaving place of residence without doctor's consent
- Where there are no medical tests results whose delivery may be required from a beneficiary
- Where a Commission for verifying incapacity for work does not confirm further incapacity for work

Sickness allowance expires:
- After the expiry of the incapacity for work date indicated in a relevant certification
- During the period of incapacity for work, when competent health care facilities or Commission for verifying incapacity for work does not recognize further incapacity for work or when a beneficiary assumes work
- When a beneficiary fails to provide a substantial justification for leaving place of residence or for lack of medical examination to which he may be summoned

Invalidity pension

Total invalidity pension may not be combined with income obtained from work performed. Violating this rule entices deprivation of right to allowance for a relevant period of activity; it may also entice returning unduly paid benefits and imposing relevant sanctions.
Relative invalidity pension may be combined with income obtained from work performed, but only in a way limited by requirements depending on the profession.
In the case of combining relative invalidity pension and income obtained from work that a beneficiary used to perform before receiving disability degree certificate, what applies when accumulating income is a specific limit of 100% of basis remuneration, which was used to determining the amount of pension awarded; in the case of combination with income obtained from work or activity other than the one that a beneficiary used to perform before, income aggregation limit amounts to the value of a proven basis remuneration, which is dependent upon the number of aggregation years. Where a sum of invalidity allowance and income obtained from work performed exceeds determined limits, the resultant amount is decreased by the part which exceeds limits set.

Invalidity pension is suspended:

- In the event of failure to notify a social security institution (Centro Nacional de Pensões) about professional activity and income or other pension received by a beneficiary;
- In the event of unjustified absence at a medical examination whose aim is to verify disability and failure to deliver medical documentation;

Invalidity pension expires:

- In the event of failure to notify a social security institution (Centro Nacional de Pensões) about professional activity and income or other pension received by a beneficiary;
- In the event of unjustified absence at a medical examination whose aim is to verify disability and failure to deliver medical documentation;

Old-age pensions

Awarding old-age pension may be accelerated or delayed.
Early retirement may lead to decreasing the amount of old-age pension by applying reduction index to the amount of old-age pension calculated in terms of waiting years; in the case of deferring and, what is enticed by that, prolonging professional activity, the amount of old-age pension is subject to a bonus (increase).
Early retirement is possible on condition that a beneficiary is at least 55 years old and is able to prove a 30-year contributory period. For the period of 3 years, counting from the date of awarding, it is prohibited to aggregate early retirement awarded in a flexible program with income obtained from professional activity regarding any position, in the same enterprise or professional group, where a beneficiary worked before applying for old-age pension. In these circumstances, aggregation of pension and income obtained from work entices deprivation of right to pension during a given period, as well as the need to return unduly received benefits and being subject to penalties provided for by law.
Pensionable age may be reduced also in other exceptional circumstances, on separate terms and conditions, namely, in the event of professional activity which is detrimental to health and which requires effort, in the case of protective measures aimed at protecting business activity or enterprise and long-term forced unemployment.

A beneficiary over 65 and with at least 15 years of registered remuneration, who decided to continue conducting professional activity, is entitled to a bonus whereby the amount of his old-age pension is increased. This bonus is calculated by applying a bonus index, which results from multiplying a monthly rate (variable depending on the number of years covered by the insurance period) by the number of months with paid employment from the period between the month of turning 65 and a month marking the beginning of receiving pension, limited to 70 years of age.

Family benefits

Receiving family benefits ceases when the requirements needed to award them are not met, i.e. when beneficiaries' households cease to meet financial requirements. Beneficiaries may be deprived of the right to receive benefits or they may notice increase or decrease in their value. The right to receive a prenatal child support expiries upon the birth of a child, while the right to receive family allowance for children and youth expires when they reach a specific age, have no proof documenting pursuing education or when they are over 16 and become involved in gainful work.

16. Conditions for the indexation of benefits.

Pension may be calculated again, where a beneficiary continues gainful work with remuneration registered in his social security system.

17. Minimum and maximum amount of benefits.

This matter has already been discussed in item 14, while enumerating amounts of particular benefits.

18. One-time aid in the event of death.

Within the framework of a program incorporating hired workers, a family of a deceased beneficiary is awarded a death grant, amounting to a six-fold average monthly remuneration from two most favourable years from the last five years included in the remuneration registration, of a minimum amount of six-fold amount of IAS; documented insurance guarantee period is not required in this case. The maximum amount of grant may not exceed a sixfold amount of Social Support Index (Portuguese: Indexante de Apoios Sociais; the equivalent of a minimum monthly remuneration), i.e. in accordance with currently binding rates, it may not exceed the amount of EUR 2515.32.
In the absence of family members entitled to receive funeral grant, a person who presents documents confirming the fact of covering the costs of the funeral is reimbursed for the costs regarding the organisation of the funeral; this amount may not exceed the amount of the funeral grant not awarded and a fourfold amount of the Social Support Index, i.e. EUR 1676.88.
Within the framework of family allowances, which, as it was explained before, do not depend on contributions, a funeral grant may be awarded – it is a one-time benefit awarded to a person who documents covering costs of the funeral of any household member or any person residing in the territory of Portugal, exclusively in the case of the deceased who was not covered by the insurance program on the basis of which a benefit of this kind might be awarded.

19. Grounds for registering an application for the various types of pension: old-age, disability, survivor, and one-time aid in the event of death.

Upon applying for benefits – sickness benefit, invalidity pension, old-age pension or other benefits – by presenting required and relevant documents or by authorising social security institutions to access documents stored by other entities, applicants have to prove that they meet all the requirements needed to acknowledge their right to receive a specific benefit. Law determined specific documents to be submitted by an applicant in the case of each benefit. For instance, to prove income obtained by a household, it is usually required to present tax returns for fiscal purposes, however, other documents, such as account statements, may be required as well. In the case of family allowances, in order to receive, for instance, prenatal child support, women need to present certification of pregnancy, stage of pregnancy and the number of children conceived by delivering medical test results. To apply for supplement for families and small children, birth certificates of children need to be presented, and when children reach school age, presenting a document confirming annual

registration at school is required. In the case of sickness allowance, what needs to be presented are medical certificate of health, incapacity for work and, in the case of invalidity pension, proving incapacity for work by a competent health care body in accordance with legal provisions is required.

20. Participation of the social partners, in particular the trade unions in the law-making process and the control over the observance of the pertinent legislation:

Pursuant to constitutional and legal norms in Portugal, trade unions have right to participate in the legislation process regarding labour law, which is usually exercised by expressing opinions on bills and legal suggestions proposed; another right consists in listening to employees' representatives. This right was legally extended over employers' organisations.
With reference to legislation regarding social security, except from the purely technical and legal point of view, respecting the rules of participation was a gradual practice of consecutive governments.
By all means, regulations regarding social security are usually discussed by way of a social dialogue and social partners are asked to comment on these issues.

21. Reforms of the pension system implemented over recent years and new ones proposed by the government.

The first substantial reform regarding our old-age pension system was introduced in 2005 when the formula used for calculating the amount of old-age pensions was changed. Before that time, old-age pensions were calculated on the basis of registered remuneration in the period of 10 most favourable years out of the last 15 years. Later, old-age pensions started being calculated on the basis of registered remuneration during the entire insurance period of beneficiaries. Moreover, at that time, a transitory program was established with a view to respect the rights acquired by beneficiaries of a social security system.
The second reform was introduced in 2009, when a new component was included in the mode of calculating old-age pensions – a sustainability factor which refers to considering life expectancy in calculating the amount of old-age pensions. Sustainability factor is a result of a formula, which establishes a relation with life expectancy at 65 in 2006 and life expectancy at 65 in a year preceding retirement, in accordance with the data published by the National Institute of Statistics.
The reform was introduced in the name of sustainability of the public social security system and it is reflected in a substantial and growing reduction regarding the amounts of old-age pensions awarded together with the increase in the life expectancy.

22-25.

- **Forms and aspects of the social dialogue**
- **Institutions of the social dialogue**
- **Evaluation of the social dialogue and the impact of the social partners on the passed legislation**

- **Current and potential role of trade unions in coordinating the social security schemes and its forms**

Social dialogue in Portugal has many levels; currently, it is very weakened due to governmentalisation of many bodies of participation and consultation. CGTP-IN has already condemned this situation many times, calling for a serious social dialogue.

Economic and Social Council constitutes an exception from these practices; in the Constitution of the Portuguese Republic it is defined as "the body with responsibility for consultation and collaboration in the economic and social policy domain, [which] shall take part in drafting the Major Options and the economic and social development plans, and shall exercise such other functions as may be allocated to it by law."
This body is obliged to express opinions on the matter of Major Planning Options (Grandes Opções do Plano), National Budget and State Treasury and it is entitled to express opinions, conduct research on its own initiative with regard to various problems, which lie in the scope of its tasks.
Next to trade union confederations, employers and government, a wide range of the society's representatives participates in this body.
Permanent Committee for Social Dialogue (CPCS), tripartite body (trade unions, employers and government), emerges from Economic and Social Council.
By way of agreements – **except for CGTP-IN** – CPCS has recently sanctioned austerity politics imposed by Troika and government on employees and society.
Our current evaluation of the social dialogue is very negative, the more so that the government imposes its policy favouring big groups of interests, both economic and financial, and which places employees, pensioners and other non-monopolistic groups at a disadvantage.
Objections raised by employees and trade unions to which they belong, including CGTP-IN, with regard to this policy, find their expression in various forms of fight, strikes, demonstrations and concentrations.
There are also other bodies of participation on the industry level – educational, health care, social security policies etc. – where trade union and employers' confederations as well as social institutions are integrated.

On the social security level there are institutions, which, as a result of governmental decisions, became inoperative. CGTP-IN lodged a complaint with regard to this matter to competent political bodies, yet, those institutions remain inoperative:

- Conselho de Gestão do Instituto de Gestão Financeira da Segurança Social;

(Council of the Institute for the Financial Management of the Social Security System) and there are also:
- Conselho Consultivo do Instituto de Gestão de Fundos e Capitalização da Segurança Social (Advisory Council of the Institute for Welfare Funds Management);
- Conselho Consultivo da Caixa Geral de Aposentações (Advisory Council of the General Pension Fund).

In the times of current right-wing government, actions on the level of institutions responsible for coordinating social security system do not exist. Intervention on the part of CGTP-IN consists in making suggestions on the level of various bodies.
For instance, we are convinced that the recent increase in a minimum amount of old-age pension can be attributed to the intervention on the part of CGTP-IN in the National Assembly.

CGTP-IN pays great attention to collective recruitment, both on the level of diverse business activity and on the level of a company.
In the field of social security (complementary system) there are a few matters to be negotiated with employers, in particular with regard to complementary benefits in respect of old age, sickness, industrial accident and occupational diseases.

Additional issues:
1. Information available on procedures regarding the coordination of social security systems is scarce. An average employee has little knowledge in this respect. However, certain information can be found on the Internet, in particular on the site of the Portugal Social Security, from which you can be redirected to other European sites devoted to the subject regarding coordination of social security systems.
2. Previously discussed
3. In Portugal, the National Institute of Social Security (o Instituto de Segurança Social), a central body dealing with social security, provides services on the central (in Lisbon) and regional level in all 18 districts of the country.
A function of a linking body with regard to executing EU provisions on coordination of the social security systems in the country is fulfilled by the Directorate General for Social Security (Direcção Geral da Segurança Social), which is a department of the Ministry of Solidarity and Social Security (Ministério da Solidariedade e Segurança Social).

European Community rules on the coordination of social security systems regarding pension schemes

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1. What is the purpose of Union coordination and how does it work?

Each Member State of the European Union has its own social security system – it is not the same for all members of the Union. Persons employed and self-employed, those receiving old-age or disability pension, students, tourists traveling within the borders of the European Union – they all face many problems concerning social security systems. The main issues for workers seeking employment outside their homeland concern old-age, invalidity and survivor's pensions: what are pension rights of those who for a period of time were employed outside their homelands? Should their families be entitled to survivor's pension? To which system should they pay their social security contributions? In what language and where should they apply for benefits? The aim of Union rules regarding social security systems is to provide those who execute the right to free movement of persons within the European Union (those employed and insured in more than one Member State, or moving from one Member State to another) with benefits equal to those offered to citizens who their entire lives lived and worked in their homelands. Without the rules coordinating social security systems the citizens of Member States are left without proper protection in this matter.

Social security systems of particular countries are coordinated by the following Union decrees: Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. The above mentioned regulations came in force on 1 May 2010 and replaced Regulation No 1408/71 and Regulation No 574/72.

The aim of new regulations was to simplify and abridge extensive Regulation No 1408/71 and Regulation No 574/72, and to account for new social and economic conditions in Member States.

New Regulation No 883/2004 and Regulation No 987/2009, similarly to Regulation No 1408/71 and Regulation No 574/72, anticipate that pension rights will be granted to every person insured in a given country. A person who migrates in search for work from one Member State to another should be able to obtain pension rights in each of these states, provided that one meets state's requirements. Union regulations aim to make it easier for persons migrating in search for work within the EU to meet these requirements.

2. To which countries do the Union regulations apply?
- Member States of the European Union and dependencies, overseas countries, and autonomous territories;
- members of the European Economic Area (Iceland, Liechtenstein, and Norway)
- Switzerland

3. To whom do the Union regulations apply?
On grounds of residence:
- citizens of one of the Member States of the EU, EEA, or Switzerland;

Example: a Bulgarian citizen who worked 10 years in Bulgaria and 10 years in Great Britain and applies for old-age pension.

- stateless persons or refugees residing in one of the Member States;
- family members of the above mentioned persons;
- living relatives if the above mentioned persons have deceased (regardless of the nationality of the living relatives);

Example: a wife and children of a Polish citizen, who have Russian citizenship and apply for survivor's pension

- living relatives of a deceased person who was not a citizen of the European Union, but worked in a Member State, provided that the relatives are citizens of the European Union, stateless persons, or refugees residing in one of the Member States.

Example: a Portuguese citizen, a South African citizen's widow, who applies for survivor's pension

On grounds of employment:
- professionals (employees, persons employed on the basis of civil law contracts, and self-employed persons);
- persons who worked and were insured in Poland and another Member State, or
- persons who live in one Member State and receive a pension from another.

4. What benefits do the Union regulations provide?
The Union regulations regard social security benefits, especially:
- old-age benefits;
- invalidity benefits;
- death grants;
- benefits in respect of accidents at work and occupational diseases.

The Union regulations apply to all national regulations concerning social security. It means that each involved party, should such a need arise, may appeal to the Union regulations. One must remember, however, that in order to be sure whether a given benefit comes under the Union regulations, one must address a competent institution.
The Union regulations on social security do not regard tax issues. Taxation of benefits is regulated by bilateral agreements. Information on tax issues is to be obtained from tax institutions of each country.
The aim of the Union regulations is not to replace national legislations with one, unified system. The Union regulations coordinate systems without interfering in their national characteristics. Each country involved in the coordination decides freely, in accordance with proper legislation, who is insured and on what grounds, what benefits one should be granted and how high a pension contribution should be in order for one to be entitled to benefits. The Union regulations become a "skeleton" thanks to which national legislations work together: they introduce shared rules abided by national social security institutions, law courts and tribunals during the application of national laws. As a result, legal measures should eliminate situations unfavourable in terms of social security for persons migrating within the European Union. The goal is for a person who worked in various Member States or moved from one Member State to another to have equal social security benefits to those offered to a person who lived and worked in only one Member State. The Union regulations concerning pensions deal only with "international cases" – they indicate how pensions should be established if a person is insured in at least two Member States (or if a person is a resident of at least two Member States, for some countries grant old-age pensions only to their residents), or if a person was insured in one Member State and lives in another.
To achieve this goal the Union regulations have introduced three main coordinating rules.

5. What are the rules coordinating pensions introduced by Regulation (EC) No 883/2004?

1) The principle of equal treatment – according to the principle of equal treatment, persons included in the Union coordination of social security systems are subject to the same obligations and enjoy the same benefits under the legislation of a given Member State as the nationals of that State. The Union law prohibits discrimination of such persons both in terms of access to social security in any Member State and drawing a pension provided by the legislation of a given country.
Example: a Bulgarian citizen applies for a Polish disability pension. He has the same right to this pension as a Polish citizen applying for it.

2) The principle of assimilation (aggregation) of insurance or residence periods, applied while establishing the right to benefits – in case when the legislation of a given country requires a particular length of insurance or residence period for social benefits to be granted, the institution of that country takes into consideration also the periods spent in other countries (unless they overlap). If a person applying for a pension has been insured in a Member State for less than a year (or has been a resident for less than a year) and that country's law states that period to be too short for a pension, the Member State's institutions do not grant a pension. That period will be considered by another Member State while calculating the benefits. It means that if one worked in a given Member State for a period of time shorter than a year, one should not expect that State to grant them a pension, unless internal law of that country states otherwise.
Example: a Polish citizen applies for an old-age pension on the basis of Polish (15 years) and Portuguese (10 years) insurance periods. The citizen was born before 1 January 1949, which means that she has to prove a 20-years-long insurance period. Considering only her Polish working experience, she does not meet the criteria. But after adding up Polish and Portuguese insurance periods, she may be granted a Polish old-age pension.

3) The principle of retention of rights and exportability of benefits within the European Union – benefits acquired in one Member State cannot be changed – in particular, they cannot be lowered, suspended or rescinded on the grounds that a person is a resident in a country other than the one obliged to grant a pension. It means that a pension cannot be lowered nor suspended on the grounds that a pensioner is a resident of a Member State different than the one that granted the pension. Pensioners have the right to a pension regardless of the Member State they currently live in.
Example: a Portuguese old-age pensioner who lives in Ireland receives his pension under the Portuguese legislation. The pension is sent by a Portuguese institution to the pensioner's Irish bank account.

4) The principle of levelling of some safeguarded events and circumstances – social security institutions of each Member State are required to take into consideration events and circumstances that entitle one to be granted benefits (for example the death of a pensioner or his family member, establishment, prolongation, and termination of employment) even if they took place on the territory of another Member State.
Example: after the death of a Bulgarian citizen who lived in France, his family may apply for the same benefits as if the deceased lived in Bulgaria.

6. Benefits

1) Old-age pension

General principles
In order to obtain an old-age pension in one of the above mentioned countries, one needs to meet all the requirements necessary to be allowed a pension in a given country. The application filed in one country is tantamount to the same application filed in other countries the applicant was insured.
A person insured in at least two Member States is entitled to a pension from all of these countries. Each country establishes benefits in accordance with national law. As a result, the applicant receives benefits from all the countries he was insured in. Each country pays benefits to the pensioner's account in the country of his residence.
A person who was employed in only one Member State, but lives in another, receives a pension from the country where one was insured.

Insurance period shorter than a year
Should a person applying for a pension from more than one Member State have worked in one (or few) of them for a period of time shorter than a year, and the legislation of that country does not provide any benefits, the rule of adding up periods does not apply. The period is added to the work experience in the country where the person have worked longer than a year.
Example: a Polish citizen, born before 1 January 1949, worked 21 years in Poland, and 9 months in Slovakia. The citizen is not entitled to a Slovakian pension. However, a Polish institution should take that period into consideration while calculating benefits.

Aggregation of periods and calculating benefits
When insurance periods are longer than a year and the applicant does not meet the

requirements for a pension in a given country, it is necessary to add up insurance periods in order for the applicant to gain benefits. In such a case benefits are partial, which means that each country calculates and pays benefits on the basis of the insurance period in that country. Firstly, a theoretical pension is calculated – benefits one would gain if insured only in that country. Then, the actual pension is calculated – a part of the theoretical pension proportionate to the insurance period.
Example: a woman born before 1 January 1949, insured in Poland (10 years) and Portugal (10 years) applies for an old-age pension. The Polish and Portuguese insurance institutions establish her entitlement to a pension in accordance with their national legislations and, should such a need arise, apply the rule of aggregation of periods. It this case the institutions calculate the benefits that should be granted if the insured worked for 20 years in only one country. Then they calculate the pension proportionate to their own insurance periods, which would be 10 years. If the theoretical pension equals 1000 PLN, then the actual pension would equal 500 PLN. Thus: 1000 x 10/20 = 500.
If the applicant meets the criteria necessary to receive a pension in a given country, and has insurance periods in another Member State, then the institution calculates the benefits in two ways. Firstly, it calculates the benefits considering only the insurance periods from that country. Then, it calculates the proportionate benefits, taking into consideration foreign insurance periods. Both sums are compared and the applicant is granted an advantageous pension.
Example: a woman born before 1 January 1949, insured in Bulgaria (10 years) and Poland (20 years), applies for an old-age pension. Polish and Bulgarian institutions establish her right to the pension in accordance with their national legislations. According to the Polish law the woman is entitled to a Polish pension solely on the basis of the Polish insurance period (for she worked for 20 years). That is why the Polish institution will calculate her pension for the 20 years of work first, and then calculate the benefits by adding up insurance periods (20 + 10 = 30) and establishing the partial benefits for the 20 years of work in Poland. After comparing the two sums, the applicant will receive the advantageous pension.
If the legislation in a given country does not require a particular length of insurance period to grant a pension, insurance periods are not added up.
The rules applied to establishing old-age pensions are general and apply to other benefits as well.

2) Invalidity pension

General principles
In addition to the above mentioned rules (the principle of aggregation of periods, calculating benefits taking into consideration foreign insurance periods, considering periods shorter than a year), in case of an invalidity pension one needs to mention the exceptional character of this benefit as seen against the background of European regulations.
Because regulations of particular Member States differ from each other as regards invalidity pensions, Union regulations on social security differentiate the situation of the insured from different Member States who apply for a pension.
In some European countries (Italy, Estonia, Great Britain, Finland, Latvia, Greece, Ireland, Sweden) invalidity pension schemes do not make an invalidity pension conditional upon a period of employment. In those cases a person may apply for a pension only in one country. In other cases an applicant, similarly as in case of old-age pensions, is entitled to a pension from each country one was insured in.

The amount of invalidity pension of a person entitled to such a benefit from more than one Member State is calculated through the application of the principle of aggregation of periods. Therefore if an applicant was insured in more than one Member State, the right to a pension is examined by the institutions in all those countries.
Example: a man who worked in Bulgaria and Portugal applies for an invalidity pension. The institutions in both countries examine his right to the pension in accordance with their national legislations. If the applicant has to prove his length of employment, the institutions apply the principle of aggregation of periods. On those grounds the partial benefits for that system are being calculated.
In some Member States invalidity pension schemes follow a rule: the invalidity has to occur during the insurance period or during a strictly defined period after its termination. If the applicant was insured in more than one Member State, and the inability occurred on the territory of one of them, other countries are required to treat it as if it occurred within their own borders. It means that when establishing right to a pension, national institutions have to take into consideration the invalidity that occurred in other country. The invalidity is established by the authorities of a country examining the application for a pension.

Establishing invalidity
The evaluation of invalidity, its proportion, permanence, or predicted duration and the date of occurrence – in other words the circumstances deciding whether a pension should be granted – is conducted by the proper authorities of a given country in accordance with its legislation. If the applicant is a resident of another Member State, the authorities give a ruling based on a medical opinion issued by the proper authorities in the country of residence, or on a documentation provided by the applicant. The authorities of the country where a person applies for a pension are bound by the rulings of the authorities of other Member States. The documentation or the medical opinion should be submitted in its original language. The institution to which a person applies for a pension may commission the institution in the country the person resides in to conduct a medical examination or provide medical documentation necessary to evaluate the invalidity.
A person who worked in only one Member States, but resides in another, is granted a pension by the institution of the country one was insured in.

3) Survivor's pension

General principles
As in the case of invalidity pension, general principles of granting a pension apply to survivor's pension as well (the principle of aggregation of periods, calculating benefits taking into consideration foreign insurance periods, considering periods shorter than a year).

Exceptions
When applying for a pension for a child of a deceased who was insured in at least two Member States, one of which did not provide survivor's pension for children, but only a special allowance (Great Britain, for example), institutions of other countries where the deceased was insured examine the application according to general rules, not as it was stated in Regulation No 1408/71. According to Regulation No

1408/71, if the deceased was subject to the legislation which did not provide survivor's pension for orphans, but only a special allowance, survivor's pension from another Member State is treated as a so-called "orphan's pension", which means that the pension may be suspended or diminished to the amount paid by another Member State, and the applicant will be receiving a so-called compensatory allowance. According to Regulation No 883/2004, a survivor's pension for an orphan is neither suspended nor diminished.
Applications for a survivor's pension are examined by the institutions of all the Member States the deceased was insured in.

4) Benefits in respect of accidents at work and occupational diseases

General principles
A person who was insured in a Member State is allowed benefits in respect of accidents at work and occupational diseases only in that country, even if the accident or occupational disease occurred in another country.
Examples: a Bulgarian citizen working in Portugal is entitled to a Portuguese pension, for the accident occurred while he was insured in Portugal.
A British employee, transferred to Poland, but insured in Great Britain, becomes a victim of a work-related injury. He is entitled to a British pension.

Principle applied to persons insured in at least two Member States
If a person, who becomes a victim of a work-related injury or suffers from an occupational disease, was insured in more than one Member State, then he is entitled to a pension only from the country where the injury or disease took place.
Example: a Portuguese citizen was employed in Portugal, then in Great Britain, and finally in Bulgaria. While in Bulgaria, he becomes a victim of a work-related injury. He is entitled only to a Bulgarian pension

Principle applied to employees working consecutively in different Member States, in conditions contributing to occupational diseases.
Special principles apply when a person, working consecutively in more than one Member States in conditions contributing to occupational diseases, is diagnosed with such a disease. The right to benefits in that case is examined only by the institution of the last country where the applicant was employed in conditions that might have caused the disease. If the applicant does not meet the national criteria to be granted a pension, then his application is passed on to the next country where he was employed in conditions that might have caused the disease.
Example: a Polish citizen worked as a steelworker in Poland, France, and Portugal. While employed in Portugal, he was diagnosed with an occupational disease. A Portuguese institution should decide about his right to a pension.

5) Death grant

Death grant may be granted only by one Member State. In case of a pensioner's death, or a member of a pensioner's family, the death grant is paid by the institution of a country where the pensioned received a pension, even if the pensioner was a resident of, or deceased in another Member State.
If the pensioner is entitled to a pension from more than one Member State (includ-

ing the country of residence), then in case of his or his family member's death the death grant is paid by the institution of a country in which they happened to reside at the time of death.
Example: a Polish citizen residing in Bulgaria was entitled to a pension from Poland, Bulgaria, and Hungary. At the time of death he happened to be in the country of his residence. The death grant is paid by the Bulgarian institution.

7. What are the procedures as regards pensions subject to the Union coordination?

Applying for benefits
Application for pensions based on current Regulation No 1408/71 and new Regulation No 883/2004 are examined by proper institutions. A proper institution is an insurance institution in a given Member State, entitled to making decisions concerning a given application.
According to the general rule the application is always submitted to an insurance institution in the country of one's residence.
If an applicant is both a resident and a citizen of a given country, and has both national and foreign insurance periods – the application should be submitted to an insurance institution in the country of one's residence.
If an applicant is a resident of a country where he has no insurance period, but has foreign insurance periods – the application may be submitted both to an insurance institution in the country of one's residence and an institution in a country where one was insured.
When applying to an insurance institution for a pension on the grounds of insurance periods from at least two Member States, one must submit a complete record of his employment, listing all countries of employment or countries where one was subject to national law on grounds of residence (it mainly concerns Scandinavian countries, where one's benefits depend on residence). In case of a deceased person, the institution examines his insurance or residence periods.

Proceedings
After the application for a pension is submitted to a social security institution in one of Member States, proceedings are initiated in all Member States one was insured in. The date of the application is binding for all the institutions, if the application lists insurance period in a given country. Proceedings take place parallel, and institutions cooperate, exchanging information necessary to decide about the right to benefits.
Each insurance institution decides about the right to benefits in accordance with proper legislation, establishes the amount of benefits, and pays them.
After the conclusion of proceedings, a coordinating institution (the institution in the country of residence, where the application was submitted on the basis of national and foreign insurance periods) delivers to the interested party a report listing all decisions made by the involved institutions. The report gives the applicant access to the decisions on grounds of Regulation No 987/2009. According to the regulation, if the decisions made by the institutions influence each other resulting in an unfavourable pension, the applicant has the right to appeal for his application to be examined again by the involved institutions within the time limit set in national legislation followed by a given institution. The proceedings are initiated on the day

when an institution receives a summary. The applicant is informed about the decision in writing.
Transfer of benefits
At the request of the involved party, a pension may be transferred to a place of residence in another Member State.

8. Union Regulation No 883/2004 and 987/2009 in context of international agreements

Union regulations as regards the coordination of social security systems replace international bilateral treaties on social security that used to be signed between Member States. The treaties are no longer applied, replaced by the above mentioned regulations. Nevertheless, some articles of international treaties remain in force. These are:
- in case of Bulgaria:
• Article 28(1)(b) of the convention on social security of 17 December 1997 (maintenance of conventions concluded between Bulgaria and the former German Democratic Republic for persons who received a pension before 1996);
• Article 38(3) of the convention on social security between Bulgaria and Austria of 14 April 2005 (recognition of security periods concluded before 27 November 1961); the article is applied to persons subject to the convention;
• Article 32(2) of the convention on social security between Bulgaria and Slovenia of 18 December 1957 (recognition of security periods concluded before 31 December 1957).
- in case of Poland:
• treaty on old-age and accident insurance between Poland and Germany of 9 October 1957, in accordance with Article 27(2-4) on social security of 8 December 1990 (persons who became residents of Poland or Germany prior to 1 January 1991 and have not changed their country of residence, retain their legal status in accordance with the 1975 treaty);
• Article 27(5) and Article 28(2) of the treaty on social security of 8 December 1990 (maintenance of right to pension granted on the basis of the 1957 treaty between Poland and the former German Democratic Republic; recognition of concluded insurance periods of Polish employees on the basis of the 1988 agreement between the former German Democratic Republic and Poland);
• Article 33 of the treaty on social security between Poland and Austria of 7 September 1998 regarding persons insured in Poland prior to 27 November 1961; insurance periods are treated in certain cases as Austrian entitling to Austrian pensions.
- in case of Portugal:
• Article 22 of the general convention between Portugal and Spain of 11 June 1969 (transferring unemployment benefits). This option is valid for two years after this regulation comes in force.
• treaty with Luxemburg of 10 March 1997 (on the recognition of decisions made by the institutions of one of the parties and concerning a degree of invalidity of persons applying from a pension from another country).

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PROBLEM	BULGARIA	POLAND	PORTUGAL
Type of social security system	- national and private; - compulsory and voluntary	- national and private; - compulsory and voluntary	- national; - compulsory and voluntary
Compulsory system and groups that belong to it	- system based on contributions (all employed, self-employed, farmers, and uniformed services)	- system based on contributions (all employed, self-employed, and farmers)	- system based on contributions (all employed and self-employed) - system based on taxes (persons who do not belong to any of the above mentioned groups and need support)
Voluntary insurance	voluntary old-age insurance	III pillar including old age pensions	voluntary social insurance – old-age pensions, invalidity pensions, survivor's pensions
Risks national and private systems protect against	- national system – old age, invalidity, sickness, maternity, accidents at work and occupational diseases, unemployment, death; - private system – old age	- national system – old age, incapacity for work, sickness, maternity, accidents at work and occupational diseases, unemployment, bankruptcy of an employer, death, death of a breadwinner; - private system – old age	old age, invalidity, sickness, maternity, accidents at work and occupational diseases, unemployment, death
Institutions that carry out the tasks of social security systems	- government institutions; - private institutions	- government institutions; - private institutions	- government institutions
Form of social security system	insurance	insurance-security	insurance-security
Payer of social security contributions	employee, employer, and the government	employee and employer	employee and employer
Percentage of particular payers' contribution	employer: 60% of contribution, employee: 40% of contribution, government: 12% transferred to the "Old-age pensions"	employer: from 19,48 to 22,14%, employee: 22,71%	the amount of contribution: 34,75%; employer: 23,75%, employee: 11%
Types of risks covered by contributions	sickness, maternity, invalidity, old age, death, occupational disease, accidents at work, unemployment health protection	sickness, maternity, invalidity, old age, death, occupational disease, accidents at work, unemployment health protection	old age, invalidity, sickness, maternity, accidents at work and occupational diseases, unemployment, death,
Situations with obligatory insurance	employment on the basis of employment contract or civil law contract, or conducting business activity; employment in uniformed services or registering agricultural activity	employment or conducting business activity; registering agricultural activity	employment on the basis of employment contract or civil law contract, or conducting business activity

PROBLEM	BULGARIA	POLAND	PORTUGAL
Possibility to continue obligatory insurance after the termination of employment	yes	yes	yes
Requirements entitling to old-age pension	Women: insurance periods – 34 years and 4 months; age – 60	Women (born before 1949): insurance periods – 20 years; age – 60 Women (born after 1949): age - 60	Women: insurance periods – 15 years; age - 65
	Men: insurance periods – 37 years and 4 months; age - 63	Men (born before 1949): insurance periods – 25; age – 65 Men (born after 1949): age- 65	Men: insurance periods – 15 years; age – 65
Requirements entitling to invalidity pension	Women and men: insurance periods conditional on the age when the invalidity occurred (until the age of 20 – from the day of application as regards blind persons; after the age of 20 – 1 year; between the age of 25 and 30 – 3 years; older than 30 – 5 years;) - certified incapacity	Women and men: insurance periods conditional on the age when the invalidity occurred (until the age of 20 – 1 year; between the age of 20 and 22 – 2 years; between the age of 22 and 25 – 3 years; between the age of 25 and 30 – 4 years; older than 30 – 5 years); - certified incapacity for work	Women and men – partial incapacity for work: 5 years of insurance periods; certified incapacity for work; - complete incapacity for work: 3 years of insurance periods; certified incapacity for work
Requirements entitling to survivor's pension	Entitled persons: spouses (5 years before reaching retirement age or in case of certified invalidity); - children (before the age of 18 or until the age of 26 in case of children who continue schooling); - parents (after reaching retirement age, without their own old-age benefits)	Entitled persons: - children (also adopted and children of a spouse from another marriage); before the age of 16 or until the age of 25 in case of children who continue schooling; regardless of age in case of children incapable of work) - grandchildren, siblings, and other children taken to be brought up (if they meet the same requirements as other children, were taken to be brought up at least a year before the insured's death, and if they are not entitled to a pension after their parents or the parents cannot support them); - spouses (also ex-spouses) after reaching the age of 50 or if incapable of work; if entitled to a maintenance from an ex-spouse; - parents (if the deceased supported them and if they meet the same requirements as widowers and widows)	Entitled persons: - spouses and ex-spouses; - cohabitees (when in a relationship for at least 2 years); - children (also adopted, before the age of 18 or until the age of 27 if without an insurance; regardless of age in case of invalidity); - parents (if the deceased supported them and neither the deceased's spouse nor children are entitled to a pension) Insurance periods: 3 years of contributory periods
Insurance periods – contributory and non-contributory	Contributory and non-contributory periods	Contributory and non-contributory periods	Contributory periods
Factors considered while calculating the amount of old-age pensions	- average income of the insured for the period of 12 months before the retirement; - the ratio of the insured's income to the average income in that period; - insurance period	According to the rules applied to persons born before 1949: - average salary in the country; - average income of the insured for a given period of 10 years; - insurance period; - average life expectancy According to the rules applied to person born after 1949: - the amount of contributions; - insurance periods; - average life expectancy	- the income during the insurance periods; - insurance period; - average life expectancy

PROBLEM	BULGARIA	POLAND	PORTUGAL
Factors considered while calculating the amount of invalidity pensions	According to the rules applied while calculating old-age pensions plus the invalidity factor	According to the rules applied while calculating old-age pensions for persons born before 1949	According to the rules applied while calculating old-age pensions
Factors considered while calculating the amount of survivor's pensions	- the amount of benefits the deceased was entitled to; - the number of persons entitled to a survivor's pension	- the amount of benefits the deceased was entitled to; - the number of persons entitled to a survivor's pension	- the amount of benefits the deceased was entitled to
The rules applied to old-age pensions payment	The payment is neither suspended nor reduced due to the income obtained	- the payment is suspended in case if the applicant did not terminate employment prior to the acquisition of the right to old-age pension; the payment is suspended if the applicant's income exceeded 130% of an average monthly salary; - the amount of benefits is reduced if the applicant's income exceeded 70% of an average monthly salary but was lower than 130% of an average monthly salary	- the payment is suspended if the insured retires early and during the following period of 3 years becomes employed in the same line of business (or by the same employer) as before the retirement
The rules applied to invalidity pensions payment	The payment is neither suspended nor reduced due to the income obtained	- the right to a pension expires when any of the requirements entitling to a pension ceases to exist; when the period for which the pension was granted ends; when the entitled person dies; - the amount of benefits is reduced when the income of the insured exceeds 70% of an average monthly salary; - the payment is suspended when the income of the insured exceeds 130% of an average monthly salary	- the payment is suspended if the insured fails to inform the insurance institution about the employment or the right to another benefit; if the insured fails to undergo a medical examination or fails to provide the required documentation; - the payment of a pension as a result of complete incapacity for work is revoked if the insured obtains employment; - the pension as a result of partial incapacity for work is reduced if the insured's income exceeds a given limit
The rules applied to survivor's pension payment	The payment is neither suspended nor reduced due to the income obtained	- the payment is suspended when the income of the insured exceeds 130% of an average monthly salary; - the amount of benefits is reduced when the income of the insured exceeds 70% of an average monthly salary;	The right to benefits expires when the requirements entitling to a pension cease to exist
Funeral grant	Entitled persons: - spouses; - children; - parents; - amount: 540 BGN (about 279 EUR)	Entitled persons: - family members or any other person who covered the cost of burial; - amount: 4000 PLN (about 1000 EUR)	Entitled persons: - a person who covered the cost of burial; - amount: six times the salary from the two most favourable years out of the last five years

PROBLEM	BULGARIA		POLAND	PORTUGAL
Evidentiary measures submitted in the course of proceedings regarding the right to benefits	Submitted documents should be original, Old-age pension: documents confirming insurance; documents confirming salary for the period of 3 years out of the last 15 years until 1 January 1997, and confirming salary from that date onwards; confirmation of the termination of the last employment. Invalidity pension: in addition to the already mentioned documents a medical documentation should be included; Survivor's pension: the already mentioned documentation plus the documents confirming the right to pension (for example, the confirmation of age, ongoing schooling, kinship, invalidity)		Submitted documents should be original, or certified copies. The documents confirm the right to a given benefit. Old-age pension: application with attachments (questionnaire on contributory and non-contributory insurance periods, documents confirming the completion of contributory and non-contributory insurance periods, confirmation of income issued by the employer, or an insurance card); Invalidity pension: application with attachments (questionnaire on contributory and non-contributory insurance periods, documents confirming the completion of contributory and non-contributory insurance periods, confirmation of income issued by the employer, or an insurance card, health certificate, occupational history, accident chart – if the accident took place at work or on the way to work); Survivor's pension: application with attachments (confirmation of the insured's death, confirmation of the applicant's birth, abridged copy of marriage certificate, if the applicant is a widow/widower, health certificate if the right to pension is conditional on the applicant's incapacity for work, confirmation of schooling – if the child is older than 16, confirmation of being a member of a joint marital property regime, or a document on awarding the child maintenance on the basis of court ruling or settlement, confirmation of no income or of the amount of income. If the deceased was not entitled to a pension, the applicant should provide a document confirming the deceased's date of birth and death, questionnaire on his contributory and non-contributory insurance periods, documents confirming the completion of contributory and non-contributory insurance periods, confirmation of income issued by the employer, or an insurance card)	Submitted documents should be original, or certified copies. The documents confirm the right to a given benefit.
Institutions of social dialogue	National Council for Tripartite Cooperation; trade cooperation councils for social dialogue; territorial councils for social dialogue; National Council for Social Integration; National Council for the Integration of Persons with a Disability; National Council of Employment and territorial councils for employment; National Council for working conditions		Tripartite Commission for Socio-Economic Issues, Tripartite trade teams, and Province Commissions for Social Dialogue	Economic and Social Council, and Permanent Committee for Social Dialogue

Social security systems presented in the study protect against main insurance risks (old age, incapacity for work, sickness, death of a breadwinner, occupational diseases and accidents at work, death). The systems implement particular legal acts regulating social security issues. In Bulgaria, as well as in Poland and Portugal, the implementation of social security legislation has been entrusted to insurance institutions that operate both on central and regional levels. The social security institutions are given a certain degree of autonomy, but are under supervision of government institutions.

Crucial differences between the systems concern especially their forms and organizations. The major difference lies in the participation of private forms of insurance and the relation between the benefits and contributions. The systems differ as regards the relation between contributions and the right to benefits: in Bulgaria there is a strong correlation between contributions and the right to benefits, while in Portugal the stress is put mostly on security. Even though each of the systems provides voluntary insurances, their range differs significantly: the Portuguese system broadens the range of voluntary insurances and provides voluntary insurances against the three main risks – old age, incapacity for work, and death of a breadwinner.

The second important element is the definition of a payer of **social security contributions** in each of the systems. Especially important is the Bulgarian system, where, apart from the employee and employer, also the government pays contributions.

We encounter institutional social dialogue involving employers, trade unions representatives, and the government in all the three systems. The dialogue is conducted in various forms determined by national legislations on social security. It must be stressed, however, that in all three cases the dialogue is conducted on two levels – central and regional. The central level is responsible for the discussion and verification of the projects of legal solutions, and the supervision of the implementation of the legislation in force. Trade union representatives' role is restricted by the position and will of the government, which decides about the range of cooperation with social partners. The marginalization of trade unions is a common problem as regards social dialogue, regardless of legal solutions regulating the dialogue. Trade union representatives from all the three countries point out the marginalization of trade unions' role. The main tool for shaping national legislation, when it comes to trade unions, is the presentation of their position regarding the proposed solutions. What is more, trade union members point out the discrepancies between the influence parties of social dialogue have on legal solutions. Trade unions are given much less power in that respect than employers. Trade union representatives claim that the main problem of social dialogue in its current form is the privileged position of employers.

Trade unions in Poland, Bulgaria, and Portugal face various propositions of changes in social security systems. In case of Portugal and Poland, the main issue discussed with social partners concerns the increase of retirement age and the limitation of old-age benefits of certain professional groups. Similar issues are also discussed in Portugal, where already in 2009 a reform was conducted, making future old-age benefits dependant on average life expectancy. Another important issue discussed in Portugal concerns accidents at work and occupational diseases, and non-registered employment.

Even though the shape and implementation of Union regulations on social security systems is mainly outside trade unions' influence, union members indicate various ways in which these regulations may be made more efficient. Trade union representatives take part in social dialogue that takes place on the level of European institutions. Therefore they may voice their concerns at European context and thus shape future solutions.

Another area, where trade unions may play an important part, is educational activity. Trade unions may inform employees about their rights, available solutions and procedures. It is especially important in context of open markets and labour mobility within the European Union. Trade unions may (and should) serve as a practical guide for those willing to exercise privileges granted them by the Union regulations on social security. That role may be fulfilled through:

- providing educational and informational materials;
- organizing training courses for trade union representatives (courses for leaders in particular trades, companies, etc.);
- establishing institutionalized forms of consulting for employees.

Trade union representatives point out the low level of knowledge of employees as regards European solutions to social security issues. And even though trade unions' ability to shape legal reality is limited both when it comes to national and European level, they play an important part through educational and awareness activities offered to employees, which results in their improved labour market situation.

The future of
social security in Europe
shared knowledge and responsibilities

Legal issues arising from implementation of Regulation (EC) No 883/2004 of the European Parliament and the Council of 29 April 2004 on coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004

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Introduction

The coordination of social security systems subject to Regulation 883/2004 and Implementing Regulation 987/2009 constitutes and important tool in realising the principle of freedom of movement for persons. Facilitating the freedom of movement within the territories of the European Union contributes to the development of the concept of the European Union citizenship[1]Therefore, it is worthwhile to investigate the practical problems arising from the implementation of the new regulations so that, in situations arising doubts as to the implementation of the regulations on coordination of the project between the partner countries as well as between them and the other member states, conclusions drawn from there could be used for the improvement of the countries and the regulations on coordination.

1. Preliminary issues

Social security systems in particular member states of the European Union are autonomous[2]. European integration in this area is realised through the coordination of the national social security systems, which constitutes the basic instrument for realisation of the freedom of movement of persons. The purpose of coordination (not harmonisation, unification) is not to establish a uniform social security system and leave substantive issues to the internal regulations of the members states[3]. It assumes the preservation of distinctiveness and the respect for the particular traits of the national legislation concerning social security at the same time contributing to improving the standards of living and the employment conditions of mobile workers[4]. Coordination thus allows for the coexistence of social security systems without limiting the rights of the persons enjoying the right of free movement[5]. Article 48 of the Treaty on the Functioning of the European Union (TFEU) obliging the Council to adopt the measures required for establishing freedom of movement for workers

1 Y. Jorens, J-P. Lhernould, European Report 2011. *Report prepared as part of the TRESS project– Training and reporting on European Social Security, coordinated by Ghent University, p. 4.*

2 G. Uścińska, *Koordynacja systemów zabezpieczenia społecznego jako instrument rozwoju swobody przepływu osób. Nowe regulacje unijne, Polityka Społeczna 11-12/2010, p. 1.*

3 See ECJ ruling C-352/06.

4 See the preamble to Regulation No 883/2004.

5 G. Uścińska, *Koordynacja systemów zabezpieczenia społecznego, op. cit., p. 1*

constitutes the legal basis for the rules of coordination of the social security system. As far as the cross-border dimension is concerned, Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 constitutes the fundamental European Law on social security[6]. Entered into force on 1 May 2010 substituting the then binding Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71[7].

Pursuant to Article 288 TFEU, the regulation shall have general application, be binding in its entirety and directly applicable in all Member States. As a result, and following the promulgation of the Regulation in the European Union, an individual can, in the main proceedings and before administrative authorities or before the courts, rely directly on the Regulation[8].

Entering into force on the 1 May 2010, the new rules on coordination did not entirely repeal Regulation No 1408/71 and Regulation No 574/72. A transition period of maximum 10 years is predicted for the provisions of Title II of Regulation No 1408/72, i.e. concerning the establishment of the legislation applicable. Pursuant to Article 87(8) of Regulation No 883/2004, the provisions of Title II are still applicable in the transition period unless an application of rules defined by the new regulation is decided upon[9]. EP/Council Regulation No 1231/2010, extending the application of Regulation 883/2004 to nationals of a third country who are covered by these regulations solely on the ground of their nationality, entered into force on 1 January 2011.

A large number of claims pending before the courts and administrative authorities refers to law situation from before 1 May 2010. One should, therefore, bear in mind that the then-in-force provisions of Regulations 1408/71 and 574/72 will be applied in such cases. Moreover, entering into forces of new provisions does not render obsolete the national and Community case-law established before the aforementioned date. Many considerations of the regulations duplicates the former regulation standards; the solutions based on corresponding provisions thus remain in force and valid[10].

The coordination of the social security system is based on the Member States following a number of rules established in the regulations. It is, first and foremost, the **rule of equal treatment**, expressed in Article 4 of Regulation No 883/2004, according to which inhabitants of the territories of one of the Member States, subject to the provisions of the regulation, are entitled to the same benefits and subject to the same obligations under the legislation of each Member State as the citizens of that country. Article 5 provides **the principle of equal treatment of benefits, income, facts or events**. Article 5 (a) of the basic Regulation provides that whenever the receipt of social security benefits and other income has certain legal effects under the legislation of a competent Member State has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State (the so called taking into consideration of benefits and income). Article 5 (b) states that certain facts and events taking place within the territories of another Member State are to be treated as if they took place within in the competent Member State (the so called taking into consideration of facts and events). Article 6 stipulates the **principle of aggregation of insurance, employment or residence periods**, ending of which qualifies for the acquisition, retention or recovery of the right to benefits. The article referred to tantamounts to a situation in which the competent authority of the given Member State, whose legislation conditions the acquisition of the rights on the expiry of these periods, should aggregate, to the extent required, the periods completed in other countries of the EU and recognise them as completed within the territories of that Member State[11]. Article 11 of Regulation No 883/2004, on the other hand, is a conflict-of-law rule which provides that it is possible to be subject to the legislation of only one single Member State (the **principle of application of one Member State legislation**)[12]. Regulation No 883/2004 eliminates the exceptions to that rule , which were provided for in the previous legal position. Thus the professionally active are subject to the legislation of the State of employment (the principle *lex loci labori*), and the professionally inactive are subject to the legislation of the State of residence (*lex loci domicilii*). **The principle of the protection of rights acquired or in the process of being acquired**, also called the priciple of benefit transfer , comes down to repeal of the pronciples concerning residence as decisive in granting benefits. Pursuant to Article 7 of the Regulation, cash benefits due under the legislation of one or more Member States are not to be decreased, changed, suspended, terminated or confiscated due to the fact that the beneficiaries or their family members reside in a different Member State.

2. Social security models in Europe on the example of Poland, Bulgaria and Portugal

Two models of building social security systems were predominant in Europe after World War II[13]. Part of the countries chose to follow the insurance model initiated by Otto von Bismarck in the German Reich, others were based on the social provisions model, referring to social welfare institutions developed in the Anglo-Saxon model. It is believed that the above typology does not give justice to the complexity of the present day social security systems; the models of social policy with the respective social security systems are thus becoming more popular: the continen-

6 Respectively: basic regulation and implementing regulation.

7 G. Uścińska, *Koordynacja…, op. cit., p. 1.*

8 For more details see: S. Biernat, *Prawo Unii Europejskiej. Zagadnienia systemowe, ed. J. Barcz, Wydawnictwo Prawo i Praktyka Gospodarcza, Warszawa 2003, p. 252.*

9 See: G. Uścińska, *Nowe regulacje w zakresie koordynacji systemów zabezpieczenia społecznego, Polityka Społeczna 10/2010, p. 4.*

10 T. Bińczycka-Majewska, *Koordynacja systemów zabezpieczenia społecznego w UE na progu XXI wieku, in: Prawo pracy w świetle procesów integracji europejskiej. Księga jubileuszowa Profesor Marii Matey-Tyrowicz, ed. J. Wratny, M. B. Rycak, Warszawa 2011, p. 264.*

11 Comp. G. Uścińska, *Koordynacja…, op. cit., p. 3*

12 Comp. I . Boruta, *Prawo Unii Europejskiej. Prawo materialne i polityki, ed. J. Barcz, Wydawnictwo Prawo i Praktyka Gospodarcza, Warszawa 2003, p. 71.*

13 See: I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne systemu zabezpieczenia społecznego, LexisNexis, Warszawa 2009, p. 25.*

tal model (Germany, Italy, Austria, Belgium, Luxemburg), the Anglo-Saxon model (Great Britain, Ireland), the Nordic or Scandinavian model (Sweden, Denmark, Finland, the Netherlands) and the Mediterranean model (also called rudimentary or elementary), characteristic for the countries of Southern Europe, i.e. Spain, Portugal and Greece[14]. a Western European model of social policy was distinguished in 2004, after the European Union extended onto the countries of the former Eastern Bloc[15]. Academic literature points out that the Southern European model, including that of Portugal, is characterised be a relatively poorly developed social policy, selectivity of programmmes addressed to specific social groups, large part of which was only recently entitled to social security. The level of security provided for particular groups is characterised by high differentiation. Local communities and non-governmental organisations, on which governmental institutions conferred the rights to decide on social security, play an important role here[16]. Under-funding of social welfare, which does not play any important role in the social security system, is also a characteristic element of this model.

Social security schemes in countries of the former Eastern Bloc were characterised by the policy of certainty of work and pay as the foundation of the system of social safety of citizens[17]. Although the social policy model functioning today is varied, some processes of changes are common for the Central and Eastern European countries and result in similar solutions concerning social security[18]. First of all, the "socialist promises of social safety" are no longer employed, which allows for a gradual limiting of the extent of the statutory schemes on behalf of selective and targeted schemes. The access to social benefits is subject to increasingly stricter criteria while their amount decreased significantly. Another tendency is for the public authorities to cede part of their power in social policy to commercial entities. There are two noticeable tendencies in the area of social insurance: a decrease in vertical redistribution and resignation from the redistributory mechanisms on behalf of individual foresight. An important change is the emergence of a market of private insurance and services, supplementary to or replacing the public insurances managed and financed by state entities.

The present social security scheme in Poland and Bulgaria is based on the insurance model focused around nine social risks as defined and with the order set out by ILO Convention No. 102 laying down minimum standards for social security. The right to social security is a fundamental, constitutional right of the citizens of Bulgaria[19]. Social protection in Bulgaria includes the standard contributory social insurance scheme, non-contributory social security schemes and social assistance including a

14 For more details see: W. Anioł, *Europejska polityka społeczna. Implikacje dla Polski, Aspra-JR, Warszawa 2003, p.194.*

15 See: M. Księżopolski, *Polska polityka społeczna na tle modeli występujących w Europie, w: Europa socjalna. Iluzja czy rzeczywistość? eds. W. Anioł, M. Duszczyk, P. Zawadzki, Oficyna Wydawnicza ASPRA-JR, Warszawa 2011, p. 262.*

16 See: W. Anioł, *Europejska polityka społeczna…, op. cit., M. Księżopolski, Polska polityka społeczna…, op. cit., p. 262 .*

17 See: W. Anioł, *Europejska polityka społeczna…, op. cit. 196.*

18 See: M. Księżopolski, *Polska polityka społeczna…, op. cit., p. 266.*

19 For more details on social security in Bulgaria see: K. Sredkova, *Individualisation of social security rihgts in Bulgaria, Wydanie specjalne Polityki Społecznej Inndividualisation of social rights. Social rihgts: Individual or derived? Warszawa 2010.*

social services scheme[20]. Non-contributory social security scheme includes among others: social pension, invalidity pension, Armed Forces invalidity pension, special merit pension. It is administrated by the National Social Security Institute (NSSI)[21]. In Poland, apart from the insurance scheme, there is also family benefits, social assistance benefits and unemployment benefits[22].

Social security scheme in Portugal is based on the principle of universality[23]. The social protection it provides is accessible to everyone. It includes three systems: the citizenship social protection system, the insurance system and the complementary system. The insurance system comprises the universal social security scheme (mandatory for employed and self-employed persons) and the voluntary social insurance scheme which covers persons qualified for work who are not covered by a mandatory scheme[24].

3. Coordination of the social security schemes in Poland, Bulgaria and Portugal

In Poland the Community provisions concerning the coordination of the social security schemes entered into force with the day of its accession to the European Union and replaced, within the scope ratione materiae and ratione personae, the bilateral international agreements between Poland and other Member States[25]. The accession of Bulgaria to the European Union on 1 January 2007 replaced, within the scope ratione materiae and ratione personae, the agreement between the Republic of Poland and the Republic of Bulgaria of 9 June 2005 concerning social security (Dz. U. No. 92, item 637) along with the Administrative Arrangement on the application of that Agreement[26]. It should be remembered, however, that the social security bilateral agreements between Poland and other countries remain in force for all the rights granted on their basis[27]. Moreover, in accordance with the case-law of the Court of Justice, if the employee is entitled to certain rights on the basis of the social security Convention between the contracting parties and these rights are more beneficial for him than the rights arising from the Community provisions, then the rights resulting from the Convention are XXX, whilst any limitations of these rights are incompatible with Article 39 and 42 EC (the so called principle of benefit)[28].

20 http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Bulgaria_pl.pdf, download date: 9 February 2012.

21 See: K. Sredkova, *Individualisation of social security rihgts…, op. cit., p. 32.*

22 http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Poland_pl.pdf, download date: 9 February 2012.

23 http://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Portugal_pl.pdf, download date: 9 February 2012.

24 Ibidem.

25 I. Kryśpiak, *Koordynacja wspólnotowa emerytur i rent, Polityka Społeczna No. 11-12/2008, p. 37.*

26 That one had replaced the then binding Agreement for cooperation in the area of social policy signed on 12 July 1961 by the People's Republic of Poland and the People's Republic of Bulgaria. http://www.zus.pl/default.asp?p=4&id=1272, download date: 7 February 2012.

27 http://www.mpips.gov.pl/koordynacja-systemow-zabezpieczenia-spolecznego/umowy-miedzynarodowe-o-zabezpieczeniu-spolecznym/, download date: 13 February 2012.

28 Ibidem.

Undoubtedly, implementing the Community regulations concerning the coordination of the social security scheme within the Polish legal order was most significant in relation to the citizens employed in other Member States with which Poland had not entered into bilateral agreements on social security before 1 May 2004[29], including the citizens employed in Portugal. As a consequence of there being no provisions regulating the subject, the migrating employees might not have been granted the rights to particular benefits, including pension benefits.

The following institutions responsible for implementing the provisions on coordination can be distinguished on the basis of Regulation 883/2004 and the implementing regulation:[30] **competent authority**, which is the Prime Minister, the ministers or other bodies responsible for the social security schemes of each of the States. In Poland the competent authority constitutes the Ministry of Labour and Social Policy and the Ministry of Health. In Bulgaria it is also the Ministry of Labour and Social Policy and the Ministry of Health[31]. In Portugal the Ministry of Labour and Social Solidarity and the Ministry of Health are responsible for coordinating the national social security policy[32]. The **liaison bodies** constitute institutions to which every other Member State institution and other entities can refer to with issues concerning coordination of the social security schemes. There are five liaision bodies in Poland including the Central Offices of: Social Insurance Institution (ZUS), Agricultural Social Insurance Fund (KRUS) and National Health Fund (NFZ). In Bulgaria they are among others: National Social Security Institute (NOI) and the National Health Insurance Fund (NZOK) [33]. In Portugal liaision bodies comprise the Social Security Institute (ISS) and the Health System Central Administration (ACSS)[34]. **Competent institutions** are institutions laying down the law and providing benefits payment. Generally the payments are provided by a number of entities, depending on the benefit the person concerned is requesting[35].

29 I. Kryśpiak, *Koordynacja…, op. cit., p. 40.*

30 For more details see: L. Adamska, J. Knyżewska, G. Sypniewska, *Koordynacja systemów zabezpieczenia społecznego/ przepisy z wprowadzeniem, Gaskor Sp. z o.o., Wrocław 2010, p. 1151.*

31 www.mlsp.government.bg, www.mh.government.bg

32 www.mtss.gov.pt, www.min-saude.pt

33 www.nssi.bg , www.nhif.bg

34 www.seg-social.pt, geral@acss.min-saude.pt

35 a list of competent institutions in Poland can be found here: http://www.mpips.gov.pl/koordynacja-systemow-zabezpieczenia-spolecznego/unia-europejska/instytucje-udzielajace-wyjasnien-w-sprawach-koordynacji-systemow-zabezpieczenia-spolecznego-w-ue/instytucja-wlasciwa/.
A list of these and other institutions coordinating the benefits of the social security scheme can be found on the European Commission website - for Bulgaria: http://ec.europa.eu/employment_social/social-security-directory/Browse.seam?country=BG&langId=en&actionMethod=mainIndex.xhtml%3ABrowseController.init&cid=533831#H, for Portugal: http://ec.europa.eu/employment_social/social-security-directory/Browse.seam?country=PT&langId=en&actionMethod=mainIndex.xhtml%3ABrowseController.init&cid=533831.

4. Implementation aspects of the security scheme coordination in the European Union, the EEA countries and Switzerland

The purpose of Regulation 883/2004 and the implementing regulation was to simplify and update the provisions concerning coordination of the social security scheme[36]. Supplementary aims were also pointed out: limiting the number of exceptions and empowering individuals through, among others, payment of temporary benefits and temporary application of law[37]. Article 6 of the implementing regulation states that where there is a difference of views between Member States concerning the determination of the legislation applicable in the given case, a temporary order of precedence is drawn up in accordance with paragraph 2 of the article referred to.

1.1. Problems in applying basic principles

A. The principle of equal treatment

The principle of equal treatment does not, in essence, raise concerns as to its practical implementation in the Member States. Nonetheless, there is a provision pointed out in Bulgaria according to which the citizens of the European Union residing within the territory of the Republic of Bulgaria are subject to the same rights and duties as the citizens of Bulgaria, with the exception of those who are required to hold Bulgarian citizenship[38]. In accordance with the case-law of the European Court of Justice (currently the Court of Justice of the EU) any discrimination on the ground of nationality or indirect discrimination eventually producing the same effect is prohibited[39].

The principle of equal treatment is set out in Polish legislation. Article 2(1) of the Act of 13 November 1998 concerning the social insurance scheme states: "the Act stipulates equal treatment of all insured persons regardless of their sex, racial or ethnic origin, nationality, marital status or family status".

In other Member States it is pointed out that the risk of indirect discrimination may regard benefits due on the basis of place of residence. It is commonly believed that there are at the moment no grounds for making the right to certain social security benefits dependent on the place of residence of the person concerned in the country which provides the payment of the benefits[40]. Nevertheless, the place of residence is taken into consideration in cases of the benefits category connected with the economic and social situation of the concerned persons (the so called special, non-contributory cash benefits, Article 70).

36 See the preamble to Regulation No 883/2004.

37 See: R. Marczak, *Nowe przepisy WE koordynujące systemy zabezpieczenia społecznego. Seminarium międzynarodowe IPiSS, Polityka Społeczna 3/2011, p. 35.*

38 Y. Jorens, J-P. Lhernould, *European Report 2011…, op. cit., p. 15.*

39 For more details see: G. Uścińska, Koordynacja…, op. cit., p. 2

40 Comp. G. Uścińska, *Nowe regulacje…, op.cit., p. 3, see recital 16 in the preamble to the Regulation No. 883/2004.*

B. The principle of equal treatment of benefits, income, facts or events.

In practice, the application of the above principle raises many doubts and legal problems. (It is worth mentioning that it isthe product of the ECJ case-law. It has no equivalent in the previous legal position, which does not mean that it was not, in practice, applied in cases of certain benefits). The preamble to Regulation 883/2004 provides that the principle of taking into consideration of facts and events shall not produce unjustified results or lead to overlapping of benefits of the same kind for the same period (recital 12). A question arises as to the degree of the negative effect which the said principle may have on the situation of the migrating employees, and whether it stands in opposition to the provisions of the Regulation, which aims to raise the standard of living of those persons and the conditions of employment[41]. First of all, the application of the said principle may result in a situation in which a person employed and insured in one Member State is refused a pro-rata benefit in a country in which granting such benefit depends on the lack of activity and the status of an insured person[42]. On the other hand, not applying the principle may lead to a situation in which means-tested benefits is granted to concerned persons despite the fact that in the second Member State their income exceeds the amount that entitles to the benefit in the first country.

The principle of taking into consideration of benefits and income, stipulated in Article 5 (a) of Regulation 883/2004 can be applied in practice in the following intances:

- when the right to the benefit depends on the particular legal situation of the beneficiary, e.g. on receiving another benefit (the right to early retirement depends on the receiving the unemployment benefit);
- requirements for being accepted into a higher education institution are fulfilled when the person concerned is or was a student in another Member State;
- a given benefit is granted only when the payment of another is suspended or when the period of payment ends (e.g. the payment of the retirement benefit is suspended for the period of receiving invalidity benefit; unemployment benefit is suspended when incapacity benefit is being paid). Receiving benefits from another Member State should be taken into consideration when establishing the rights to benefits in the concerned country;
- person employed in country A simultaneously receives retirement benefit from country B . Pursuant to its legislation, country A pays contributions for the persons receiving pension. The question arises whether country A is in this case obliged to pay the contributions for an employed person. The answer is: yes. It should be kept in mind that pursuant to Article 11 (3a) of Regulation 883/2004 country A is responsible for paying the contributions as long as the concerned person remains employed or self-employed in that country;
- granting benefits is dependent on receiving income in a given Member State. The income received in another country is treated as one received in that State.

41 See: Jorens Y.(ed.), Robert S.(ed.), Garcia de Cortzar C., Spiegel B., Straban G., *Think Thank Report 2010. Analysis of selected concepts of the regulatory framework and practical consequences on the social security coordination, - Training and reporting on European Social Security Project, coordinated by Ghent University, p.. 11.*

42 Ibidem.

The principle of assimilation of facts and events, stipulated by Article 5 (b) of the basic regulation, can find application when being eligible to the right to a social security benefit depends on:

- the requirement of graduating from a higher education institution in the country, being registered as unemployed or with a level of recognised disability;
- professional activity entitling to a certain benefit, which finds application in cases of being employed in another Member State;

In Poland the most common problems in that group include receiving benefits from more than one country and receiving benefits while being employed (especially unemployment benefits)[43].

The application of the principle of assimilation of facts and events does not mean an automatic assimilation of facts and events by the Member States. The assimilation takes place when granting invalidity benefits depends on a certain level od disability. Taking into consideration the differences in the systems defining the levels of disability in different Member States, recognising periods of invalidity in a Member State with different levels of invalidity than the competent country does not seem appropriate[44].

Exceptions to the principle

Exceptions to the principle of assimilation of facts and events are explicitly provided for in Regulation 883/2004[45].It concerns especially those cases in which the calculation of cash benefits is based on the average income or average contributions taken into consideration solely by the legislation of that Member State (Article 21 (2); Article 36 (3); Article 56 (1) c; Article 60 (3)). If, for example, the amount of pension is calculated on the basis of income from the best 5 years, the income received in another country may be not taken into consideration.

C. The principle of aggregation of periods of insurance, employment and residence

The principle of aggregating periods does not, in essence, cause problems or misunderstandings[46]. With the Administrative Commission Decision No H6 of 16 December 2010, concerning the application of certain rules referring to aggregating periods in accordance with Article 6 of Regulation (EC) No 883/2004 concerning the coordination of social security scheme, doubts connected with its interpretation were resolved by the Member States. Up to that point the way of defining the periods in particular countries was questionable: "are the periods recognised in another country to be treated in accordance with the legislation of that country or in accordance with own legislation"[47]. Paragraph 2 of the said Decision stipulates that all the periods for the relevant contingency completed under the legislation of another

43 See: G. Uścińska, *National Report. Poland, Warszawa 2011,Report prepared as part of the TRESS project– Training and reporting on European Social Security, coordinated by Ghent University.*

44 See: *Think Thank Report 2010. Analysis of selected concepts…, op. cit., p. 15.*

45 See: *Think Thank Report 2010. Analysis of selected concepts…, op. cit., p. 12.*

46 See: *European Report 2011, op. cit., p. 18.*

47 See: R. Marczak, *Nowe przepisy WE koordynujące systemy zabezpieczenia społecznego…, op. cit., p. 37.*

Member State shall be taken into account solely by applying the principle of aggregation of periods as laid down in Articles 6 of Regulation (EC) No 883/2004 and 12 of Regulation (EC) No 987/2009. The principle of aggregation requires that periods communicated by other Member States shall be aggregated without questioning their quality. It is further declared, however, that Member States retain – having applied the principle of aggregation under point 2 – the jurisdiction to determine their other conditions for granting social security benefits taking into account Article 5 of the basic regulation.

For the purposes of the application of Regulation No 883/2004 in the above mentioned Administrative Commission Decision it has been assumed that the principle covers aggregating periods which are, in accordance with the national legislation, recognised both for the purpose of qualifying for the benefit and increasing its amount[48].

Establishing the relation between the principle and the principle of the assimilation of benefits, income, facts and events poses another problem[49]. Recital 10 of the preamble to the basic regulation emphasizes that the principle of assimilation of facts and events should not interfere with the principle of aggregation of periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with the periods completed under the legislation of the concerned Member State. Periods completed under the legislation of another Member State shall therefore be taken into account solely on application of the principle of aggregation of periods.

Experts point out that the principle of aggregation of periods is essentially the same as the principle of assimilation of facts and events but it obligates the competent country to recognise all the periods completed in another country without comparing with periods completed in that country, whilst the application of principle of assimilation requires that all facts and events be identical with those in the country applying the principle[50]. The principle of aggregation of periods should therefore have priority over the principle of assimilation of facts and events.

It should also be mentioned that the coordination of early retirement benefits was covered by a new regulation. The principle of aggregation of periods of insurance, however, finds no application here due to the selectivity with which this group of benefits appears in the Member States pension security schemes[51].

D. The principle of application of one Member State legislation

Pursuant to Article 11 (1) of Regulation No 883/2004, persons to whom this regulation applies are subject to legislation of only one Member State. The principle was also stipulated in Regulation No 1408/71 (Article 13 (1)), which provided for certain exceptions to the general principle. The legislation now in force does not allow for those exceptions thus reinforcing the principle of only one legislation applicable[52].

The basic principle expressed in paragraph 3 of the Article provides that persons employed and self-employed within a Member State is subject to the legislation

48 It should be mentioned, however, that at this point the Administrative Commission Decision raises many doubts among the Member States.

49 Y. Jorens, *European Report 2010, Report prepared as part of the TRESS project– Training and reporting on European Social Security, coordinated by Ghent University, p. 15.*

50 *Think Thank Report 2010…, op. cit., p. 13.*

51 Present among others in Poland, Bulgaria and Portugal.

52 See: G. Uścińska, *Koordynacja…, op. cit., p. 2*

of that State. Consequently, the principle of *lex loci laboris* is maintained[53]. At this point it should be mentioned that within the scope ratione personae of the regulation fall not only persons working on the basis of a contract of employment, but also those those employed the basis of a contract of mandate or other contract for services to which, according to the Civil Code, apply the provisions of the contract of mandate[54].

In general, the principle of lex loci laboris is correctly implemented in the Member States. Nevertheless, experts draw attention to the difficulties that may arise in cases of women on maternity leave. A conflict between countries is possible with regard to the concerned legislation. A question arises as to whether a woman employed in country A and later residing in country B while on maternity leave is subject to the legislation of the country of employment or of the country in which she spends her maternity leave.

A similar problem concerns a mother (or father) on parental leave who formally remain in an employment relationship but do not work or receive payment. If a father (or mother) is employed in another Member State, its legislation should be applied. The State may argument, however, that the child remains with the mother (or father) in the other country, which is formally the country of employment of the parent and thus the legislation of that country is the competent legislation. The problem has been raised by the competent authorities in Poland[55]

A lack of rules concerning teleworking is also pointed out[56].

The general principle of place of employment is supplied with special rules. The first concerns **posted workers**. It is regulated by Article 12 (1) of Regulation No 883/2004 (and the Administrative Commission Decision No A2 concerning the posting of workers). Pursuant to its provisions, it is the legislation of the country from which territory the employee was posted to the territory of another Member State whish is applied, regardless the fact that the work is conducted within the territory of another Member State[57]. Regulation No 883/2004 and Regulation No 987/2009 introduced amendments to the provisions on the posting of workers. The new rules, including among others the maximum period of posting, the possibility of applying a transitory period, new criteria for posting stipulated in Regulation No 987/2009 and the Administrative Commission Decision, are perceived as a beneficial contribution to the social security coordination scheme[58]. Nonetheless, certain situations may result in practical problems. It concerns, among other things, the difficulties in proving "a substantial part of the employer's activity" being based in the country of origin (Article 14 (2) of Regulation 987/2009), as well as, in cases of the self-employed, difficulties in providing evidence for conducting business activity for a period of time before that person decided to be posted as well as in any period

53 Ibidem.

54 See: T. Major, B. Pawłowska, *Ubezpieczenie społeczne migrujących pracowników oraz osób prowadzących działalność gospodarczą,* http://www.legalis.pl/, download date: 31 January 2012.

55 See: *European Report 2011, op. cit., p. 21.*

56 Ibidem.

57 For more details see: T. Major, B. Pawłowska, *Zabezpieczenia społeczne w UE według nowych zasad, Praca i Zabezpieczenie Społeczne 5/2010, p. 17.*

58 For more details see: T. Major, B. Pawłowska, *Zabezpieczenia społeczne w UE według nowych zasad, op. cit., p. 18; T. Major, B. Pawłowska, Ubezpieczenie społeczne migrujących pracowników…, op. cit., ibidem.*

of conducting temporary business activity in another Member State (Article 14 (3) of Regulation No 987/2009). What arouses doubts, however, is the question of providing evidence for "similarities" in conducting activity in the country posted to to the activity which the self-employed person conducts in the concerned country (Article 14 (4) of Regulation No 987/2009).

In Poland the provisions on posting are broadly applied, which is reflected widely in the case law, including that of the Supreme Court (Sąd Najwyższy) and Supreme Administrative Court (Naczelny Sąd Administracyjny). The subject of the case law were the questions concerning temporary employees posted to another Member State. In the judgement of 5 May 2010 (case file No. II UK 319/09) the Supreme Court expressed the view that, apart from the formal relationship of employment between the employee and the posting undertaking and being subject to employment law of the posting country regarding type of work contracts, decisions as to the type of activity conducted, payments and dismissal of employees, the decision on being subject to the legislation of the country posting temporary employees, employed only for the purpose of being posted to another Member State of the European Union, is dependent primarily on whether the temporary employment undertaking also conducts an ordinary (usual) activity recognisable by the posting country in which it has residence and not limited to conducting administrative tasks related to the management of the undertaking.

Applicable provisions, as they stand now, allow for posting of workers employed only for the purpose of being posted if that worker is, immediately before the posting, subject to the legislation of the Member State of the residence of the employer. What is important, the new provisions do not require that the workers be insured by the posting employer. Is is sufficient if they are subject to the legislation of the posting country (e.g. as an unemployed person, pensioner or student)[59].

The second exception to the principle of application of the legislation of the country in which the work is performed concerns persons empployed in two or more Member States. In the given case **the applicable legislation is that of the country of residence or of the country of residence of the undertaking employing the worker** (Article 13 of Regulation 883/2004).

Overall, apart form a few reported problems related to the application of that conflict-of-law relu, the new provisions are successfuly implemented[60].

A problem with the so called "pretended wrok" should be pointed out. Representatives of the competent institutions point to cases of manipulation with the competent legislation which arise from employment in two or more Member States[61]. One of the practices Polish experts draw attention to is pretended work, which serves as means to evasion of the obligation of being subject to social insurance under Polish legislation.

The requirement to demonstrate "carrying out work simultaneously in more than one country" also presents some difficulties. The definitions of what is "carrying out work simultaneously" found in Regulation No 987/2009 are, in opinions of experts, not precise enough and consequently more and more discrepancies appear between the foreign employers and the Social Insurance Institution (ZUS) concerning the interpretation of that concept. A question arises, for example, whether persons working 4-6 months in one country and moving to perform work in another country are subject to the provisions of Article 13 (1) or Article 12 (1) of Regulation 883/2004. It is recommended for the Administrative Commission to take steps to make the concept more precise[62].

In practice the distinction between "carrying out work simultaneously" and "posting" is also problematic. Experts claim that the scope of the definition of those concepts can overlap, thus the subsequent difficulties in classifying them[63].

59 T. Major, B. Pawłowska, *Ubezpieczenia społeczne pracowników migrujących w UE w świetle orzecznictwa Sądu Najwyższego, Praca i Zabezpieczenie Społeczne, 10/2010, p. 33.*

60 See: *European Report 2011, op. cit., p 26.*

61 See: *National Report, Poland 2011.*

62 Ibidem.

63 See: *European Report, 2011, op. cit., p. 27.*

64 See: *National Report. Poland 2011.*

65 *European Report, 2011, op. cit., p.38.*

1.2. Problems connected with particular categories of benefits

A. Benefits in kind - occasional medical care

Experts report cases in which a foreign benefactor does not respect the EHIC European Health Insurance Card), issued by a proper institution, as a document confirming the right to benefits necessary from the medical point of view. It should be stressed that EHIC is a document of general application in countries under the system of coordination; it contains standard information and its parameters were defined in the Administrative Commission for the Coordination of Social Security Systems Decision S2 of 12 June 2009 regarding the technical specifications of the European Health Insurance Card (2010/C/106/09). The cards issued by particular countries may vary slightly from each other, e.g. presence of a microprocessor is a characteristic feature of cards issued by German institution. Lack of the microprocessor does not attest to the fact that the card is invalid; its presence merely indicates that the information on the card is placed there in the digital version[64].

B. Old-age and retirement benefits

What remains an important issue is the possibility of deducing the contributions of pensioners residing on the territory of one Member State and receiving old-age and retirement benefits from another Member State; as stipulated by Article 30 of Regulation No 883/2004. To this day there are countries which have not created any legal basis allowing for such a procedure[65].

Another issue raising doubts is the question of which country should cover the costs of the medical treatment of pensioners and which state should pay the contributions. The above ambiguity arose under the following factual circumstances. A pensioner residing in the territory of country A and receiving pension from country B requests sickness benefit from the insurance fund of country B. As a consequence, a contention between the two countries arises concerning the issue which country is obliged to cover the costs of the treatment of the pensioner.

C. Invalidity benefits

In practice, the provisions regulating the coordination of the invalidity benefits

raise many doubts as to their interpretation. One of the most frequently reported problems is the lack of clarity concerning the obligation of covering the costs of the procedure determining the invalidity of the frontier workers[66]. A question arises whether it is the duty of the institution of residence or, perhaps, the institution of employment. The relation between Article 87 and Article 49 of Regulation No 987/2009 is particularly unclear.

Problems with coordination invalidity benefits originate in the large differentiation of the risk protection systems against disability in Member States[67]. There are type A countries in which the amount of the invalidity benefit is independent of the length of the period of insurance; and type B countries in which– *a contrario* – the amount received is dependent on the length of the insurance period. The legislation of the Republic of Poland as well as that of Bulgaria and Portugal concerning invalidity benefits are those of type B, thus the provisions specified in chapter 5 of the "Old-age and survivors' pensions" from Title III of Regulation No 883/2004 apply.

The differentiations of the criteria entitling to invalidity benefits, i.e. the question whether the conditions are laid down in a restrictive or non-restrictive manner, may also have a negative impact on the migrating workers. What is more, in certain legal systems the difference between sickness benefits and invalidity pension is blurry, which may influence the legal situation of migrating workers[68].

Important issues are related to medical documentation for the purpose of medical assessment of incapacity for work caused by damage to health. Polish pension body recognises foreign medical documentation as well as diagnostic interviews and examinations conducted in the area of a different Member State performed in cooperation effort with an institution of another Member State. Documentation drawn up in one of the authentic languages of other Member States cannot be rejected by ZUS (the Social Insurance Institution) on the grounds of being drawn up in a language other than Polish. ZUS also cannot demand from the interested person to deliver a translation of such documents. **Medical certificates acquired in foreign countries**, however, **are not binding for a Polish institution** in establishing the entitlement to Polish invalidity benefits. ZUS can commission an institution of another Member State, in which the person interested in receiving Polish pension resides, to perform medical examination or deliver medical documentation for the purpose of assessing the person's incapacity for work[69].

Connected with the above are problems with mutual recognition of the Member States of the decisions regarding the degree of invalidity (Article 46 of Regulation 883/2004). Poland as well as Portugal and Bulgaria are not mentioned in the Annex VII to the basic regulation, thus institutions of those countries must each time make their own assessment of the degree of disability. A decision made by an institution of a given Member State is not binding for an institution of another interested Member State[70].

At this stage, it is also worth making a reference to problems regarding a member state's obligation to bear costs of medical examinations for the purposes of determining short-term incapacity for work. There are cases, where Polish medical certificates issued in accordance with Article 27(8) of the executive regulation are not recognised by the competent institutions of some Member States. Then, E116 form is issued, yet, an institution applying for this additional document refuses to reimburse the costs of issuing it, despite the fact that the costs incurred by the Social Insurance Institution (ZUS) with regard to such examination as well as those borne in the course of conducting additional activities of administrative nature required for this examination are subject to reimbursement under Article 87(6) of Regulation 987/2009[71].

66 Ibidem, p. 47.

67 See: G. Uścińska, H. Zalewska, *Zabezpieczenie społeczne w Polsce. Problemy do rozwiązania w najbliższej przyszłości, ed. G. Uścińska, IPiSS, Warsaw 2008, p. 93.*

68 For more details see: *European Report 2011, op.cit., p.14.*

69 See: *National Report. Poland, 2011.*

70 See: *European Report 2011, op. cit., p. 48.*

D. Family benefits

Difficulties with the application of the provisions of the regulations concerning family benefits are related primarily to the aggregation of family benefits, even though the applicable anti-aggregation provisions preclude receiving benefits of the same type for one and the same period of insurance. The provisions of Article 68 of Regulation 883/2004 may pose interpretative problems. The question arises whether the said provision is to be interpreted according to Title II of the basic regulation or perhaps on the basis of national legislation concerning family benefits. The above issue refers particularly to countries in which family benefit systems rely on residency criteria. The interpretation of the article in accordance with the legislation of a Member State may lead to a change of the competent country[72].

Posting employees may in practice result in difficulties in the application of the provisions on coordination of family benefits. Some Member States refuse the criterion of "legal stay"employees posted to perform work in their territories the right to family benefits on account of not fulfilling the criterion of "legal stay" within the territory of the country[73].

Other difficulties arise as to defining the right to a differential supplement. Institutions of some of the Member States, such as Great Britain, compare the total amount of the family benefits granted; others, e.g. Germany, compare particular types of benefits. In some countries (Austria, Germany) it is the multitude of institutions dealing with family benefits that creates additional difficulty, which makes arriving at the total amount of benefits impossible[74].

Case law of the Court of Justice of the European Union on the matters regarding the coordination of social security scheme

Cases regarding the coordination of social security system between partner states of the project and their citizens have not been examined by the Court of Justice of the European Union yet. However, the issues of social security regarding the said countries on the cross-border level do appear in the court calendar of the Court of Justice. From the Polish viewpoint, with respect to the coordination of the social security system, the rulings rendered by CJEU in the cases of Nerkowska (C-499/06), Rüffler (C-544/07), Filipiak (C-314/08), Tomaszewska (C-440/09) seem extremely significant. In Bulgaria, cases examined by the Court regarded Georgiew (C-250/09)

71 See: *National Report, 2011.*

72 For more detail see*: European Report 2011, op. cit., p. 58.*

73 Ibidem, p. 61

74 National Report. Poland, 2011.

and Elchinow (C-173/09). Portugal, in turn, appeared before the Court of Justice due to transgressions with regard to obligations of a member state (C-307/07, C-255/09).
The judgement rendered by the Court of Justice in the case of Nerkowska (C-499/06) is particularly important from a practical point of view, because the Court refers to the concept of the European Union citizenship which currently becomes more and more significant. Moreover, the consequence of the jurisprudence manifested in this judgement may result in transferring to other Members States other special non-contributory benefits whose payment is limited in the current legal system to the territory of a state which administers and finances them (Article 70 of regulation No. 883/2004).
In this judgement, the Court held that a Member State cannot refuse its nationals the payment of a benefit granted to civilian victims of war or repression solely because they are not resident in the territory of that State. In the case on the basis of which this ruling was rendered, the branch of the Polish Social Insurance Institution refused H. Nerkowska, a Polish national residing permanently in Germany, the payment of a previously recognised disability pension for the damage to her health which she suffered as a deportee, justifying this decision by the fact that her place of residence is located outside the territory of the Republic of Poland. H. Nerkowska challenged this decision. In the course of proceedings, the Regional Court turned to the Court of Justice with a question whether the freedom of movement and residence within the territory of Member States granted under the EC Treaty hinders national regulations, including the Polish ones, limiting the payment of benefits for civilian victims of war or repression to the requirement regarding residence in the territory of this state. In the beginning, the Court of Justice pointed out that conditions for awarding benefits at issue fall within the competence of Member States. However, Member States must exercise that competence in accordance with Community law, in particular with the Treaty provisions concerning the freedom accorded to every citizen of the Union to move and reside freely within the territory of the Member States. Nevertheless, the opportunities offered by these provisions of the Community law with regard to freedom of movement cannot be fully effective, if the national legislation places the nationals of the Member State at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State. Such restriction is capable of being justified solely by objective considerations of public interest and when such restriction is proportionate in the light of the objective pursued, especially where there is a wish to ensure that there is a connection between the society and the recipient of a benefit and the necessity to verify that the recipient continues to satisfy the conditions for the grant of that benefit. In the opinion of the Court of Justice, these premises do not exist in the factual circumstances.
Thus, the Court of Justice held that the requirement of residence, like the one provided for by the Polish law, is disproportionate, since it goes beyond what is necessary to achieve the aim of the restriction in question. Mentioning the question referred to for a preliminary ruling by a Polish court, the Court of Justice held that the community law is to be interpreted as precluding legislation such as Polish legislation, referred to in this case.
In another case, the Court of Justice took a stand with regard to the refusal of the Polish tax authorities to grant U. Rüffler, a German national residing in Poland, a reduction of income tax by the amount of health insurance contributions paid in another Member State, although such a reduction is granted to a taxpayer whose

health insurance contributions are paid in Poland (C-544/07). The Polish tax authorities refused to grant his application on the ground that Article 27b of the Law on income tax provides for the possibility of reducing the income tax only by the amount of health insurance contributions paid pursuant to the Polish Law on publicly-financed healthcare. The justification was that Mr Rüffler does not pay health insurance contributions in Poland. Upon examination with regard to the referral for preliminary ruling regarding the compatibility of the Polish law refusing to grant the defendant a reduction of income tax by the amount of health insurance contributions paid in another Member State, the Court of Justice held in the beginning that Mr Rüffler's situation must, accordingly, be examined in the light of the principle of the right conferred by Article 18 EC on every citizen of the European Union to move and reside freely within the territory of the Member States (which was not stated by the national court in the question referred to the Court of Justice). Having regard for the above, it is necessary to establish whether legislation such as that at issue in the main proceedings introduces, as between Community nationals in the same situation, a difference of treatment unfavourable to those who have exercised their right to move freely and whether, if established, such a difference of treatment can in certain circumstances be justified. Referring to the above, the CJEU held that the taxation of the income of the EU nationals, residents of the same Member State, should be carried out in accordance with the same principles and, consequently, on the basis of the same tax advantages, that is, the right to a reduction of income tax by the amount of health insurance contributions paid. To conclude, **legislation such as that at issue in the main proceedings, amounts to a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union, which is not objectively justified.**
With regard to the reference made in the context of proceedings between Zakład Ubezpieczeń Społecznych Oddział w Nowym Sączu (Social Security Institution – Nowy Sącz Branch) and Stanisława Tomaszewska (C-499/09) concerning the account to be taken of the period of contribution which S. Tomaszewska completed in another Member State and the detailed rules for determining the minimum period required under Polish law for acquisition of entitlement to a retirement pension, the Court of Justice held that in the determination of the minimum insurance period required under national law for the acquisition of entitlement to a retirement pension by a migrant worker, the competent institution of the Member State concerned must take into consideration, for the purposes of determining the limit which non-contribution periods may not exceed in relation to contribution periods, as provided for under that Member State's legislation, all insurance periods completed in the course of the migrant worker's career, including those completed in other Member State. So as to receive retirement pension in Poland, non-contribution periods shall be taken into account up to a maximum of one third of the proven contribution periods. Although the contribution periods completed in another Member State are recognised by the Social Insurance Institution and are added to the total of all the contribution periods completed in Poland, they were not, considering the legal status preceding the rendition of the judgement in question, taken into consideration for the purpose of determining the one-third maximum limit. The Court deemed the above solution incompliant with Article 45 of Regulation No 1408/71 and held **that the contribution periods completed by S. Tomaszewska in any other Member State must be treated in the same way as the contribution periods completed in Poland and must, therefore, be included in the calculation for determining**

the one-third limit which non-contribution periods may not exceed in relation to contribution periods.

Case C-173/09 was referred to the Court of Justice of the European Union for a preliminary ruling by Administratiwen syd Sofijagrad (Administrative Court in Sophia) in proceedings between G. Elchinov and the Natsionalna zdravnoosiguritelna kasa (national social security fund; 'NZOK') concerning its refusal to authorise him to receive hospital treatment in Germany on the ground, inter alia, that the conditions for grant of such authorisation laid down in the Article 22 of Regulation No 1408/71 were not met, since that treatment was not one of the benefits provided for by the Bulgarian legislation and reimbursed by NZOK. In the course of proceedings, Administrative Court in Sophia made a reference for a preliminary ruling to the Court of Justice seeking clarification with regard to the interpretation of Articles 49 EC and 22 of Regulation (EEC) No 1408/71. Higher court had doubts as for the extent of the power of Member States to make reimbursement in respect of hospital treatment given in another Member State subject to prior authorisation. The Court of Justice held that **a national rule excluding, in all cases, payment for hospital treatment given in another Member State without prior authorisation constitutes an unjustified restriction on the freedom to provide services**. According to settled case-law, medical services provided for consideration fall within the scope of the provisions on the freedom to provide services, including situations where care is provided in a hospital environment. It was also held that the freedom to provide services includes the freedom for the recipients of services, including persons in need of medical treatment, to go to another Member State in order to receive those services there (recital 37). Moreover, a national rule excluding, in all cases, payment for hospital treatment given without prior authorisation is not justified by the imperatives indicated in the Treaty and it does not satisfy the requirement of proportionality. Furthermore, referring to rulings in other cases (Case Smits and Peerbooms, paragraph 82,90; Case Müller-Fauré and van Riet, paragraph 83-85; and Watts), the Court held that the system of prior authorisation must be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily (recital 44). Having regard for the above justification, the **Court of Justice held that Articles 49 EC and 22 of Regulation No 1408/71 preclude legislation of a Member State which excludes, in all cases, reimbursement in respect of hospital treatment given in another Member State without prior authorisation**.Moreover, the Court took a stand with regard to the legal presumption referred to in the order for reference on the basis of which the applicant was refused. According to this, if the hospital treatment under consideration cannot be given in Bulgaria, it is appropriate to presume that that treatment is not included in the medical treatment reimbursed by NZOK and, conversely, if such treatment is reimbursed by NZOK, it may be presumed that it can be given in Bulgaria. The Court held that the authorisation regarding hospital treatment in another Member State may not be refused on the basis of the presumption at issue. In the Court's opinion, the authorisation cannot be refused where the treatment in question is among the benefits provided for under the legislation of the Member State, but that legislation does not expressly and precisely stipulate the method of treatment applied, and it is established, taking into consideration all the relevant medical factors and the available scientific data, that the treatment method in question corresponds to types of treatment included in that list.

It is worth mentioning that the provision of Article 22 of Regulation No. 1408/71 was repeated in Article 20 of Regulation 883/2004 pursuant to which the insured going to another Member State with a view to be provided with in kind benefits, he applies for authorisation of a competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition.

The action brought by the European Commission regarded the Portugal's failure to fulfil obligations under Article 49 of EC by **not making provision in any measure of national law for the reimbursement of non-hospital medical expenses incurred in another Member State, other than in the circumstances specified in Council Regulation No 1408/71 of 14 June 1971 and making such reimbursement subject to prior authorisation.** Decree-Law No 177/92 governing medical care abroad for persons insured under Portugal's national health system includes provision regarding exclusively highly specialised medical care abroad. It transpires that, other than in the circumstances specified in Regulation No 1408/71, there is no provision under Portuguese law for reimbursement in respect of non-hospital care not covered by Decree-Law No 177/92. Moreover, the Portuguese Republic admitted at the hearing, that there is no provision for reimbursement of those non-hospital medical expenses incurred in another Member State in respect of a consultation with a general practitioner or dentist, for example.

Summary

Issues related to practical application of new regulations concerning coordination presented in this study may serve as a point of reference for questions arising in this matter. Despite simplification and modernisation of the regulations at issue, many provisions still raise problems in terms of interpretation. As regards relations between Poland and Bulgaria, what should be borne in mind is a bilateral agreement of 2005 between these two countries on social security as well as the principle of benefit resulting from the new legal environment, which, on certain conditions, gives priority to the provisions of the agreement. Moreover, attention should be paid to diverse traditions which laid foundations for security systems in the countries at hand, which holds particularly true in the case of the universal, as a matter of principle, nature of benefits in Portugal and the insurance one in Poland and Bulgaria.

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The future of
social security in Europe
shared knowledge and responsibilities

Conclusion

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The Union coordination of social security systems is a chance for many employees who migrate within the European Union, European Economic Area, and Switzerland in search for employment. It allows to keep social security even when changing the country of residence. Therefore it is an important tool for European integration and making the most of opportunities offered to employees by European labour market.

Legal solutions that regulate the coordination, and procedures that serve their implementation are under constant scrutiny in context of changing external circumstances. A good example may be the ongoing work on EESSI (Electronic Exchange of Social Security Information system). The aim of the project is to enhance the security rights of citizens through the computerization of the implementation of EU law as regards the coordination of social security systems. Thanks to the project, all the information that used to be exchanged on paper (around 2000 E forms in different language versions) is to be processed electronically.

The goal of the electronic exchange of information is to:

- simplify and speed up the process of decision making as regards calculation and payment of social benefits;
- allow more effective data verification;
- allow more flexible and user-friendly interface between different systems;
- provide accurate storage of statistical data on the exchange of information in Europe.

Taking into consideration those examples one must stress that the solutions applied to Union coordination may and should be facilitated. Trade unions should be allowed a part in that process, for they represent the main interested party making use of the rights the coordination entitles to – employees.

As it has already been pointed out, trade unions may operate on two levels. Firstly, **they have the right to give their opinion on the projects of legal solutions and voice their concerns at European context.** Secondly, **they may engage in educational and informational activity targeted at employees** (for example, they may organize raining courses, informational campaigns, or distribute informational materials). Thirdly, **they may form institutionalized structures that offer counsel on social security issues.**

Trade unions' educational activity is especially important in context of problems encountered by trade unions as a partner of social dialogue. Informing employees about their rights is often the only form of shaping social reality. It is also trade unions' response to the approaching changes.

The manual is one of the educational tools, provided by trade unions. Its aim is both to provide information on national and European legislation, and become a practical guide for employees.
The list of institutions implementing Union regulations on social security may be found on the internet webpage: http://ec.europa.eu/employment_social/social-security-directory/welcome.seam?langId=pl&cid=18115. The institutions in Switzerland are listed on the page: http://www.zus.pl/files/Szwajcaria%20-%20istytucje%20lacznikowe.pdf

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