

LATEST DEVELOPMENTS OF THE FARMERS' SOCIAL SECURITY SCHEME IN POLAND

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Abstract. The main purpose of this paper is to analyze the latest legal changes to the farmers' social security scheme in Poland. The research was based on both national legal acts and draft laws that constitute an explicit base for the current and recent changes to the farmers' social security scheme. The author intends to identify fundamental legal amendments, indicate the direction followed by the domestic farmers' social security scheme, and evaluate the importance and consequences of recent legal developments. The research was based on the Act on the farmers' social security scheme of December 20, 1990, which also constitutes an explicit legal base for the national farmers' social security scheme, and on other legal acts and draft laws related to the issue discussed in this paper.

Keywords: farmers' social security scheme, legal framework, amendment, legal changes, farmer, Poland

INTRODUCTION

According to data from the Central Statistical Office, the total amount of old-age and disability pensions disbursed in 2014 by the Agricultural Social Security Fund (KRUS) to 1.2 million beneficiaries was PLN 16.64 billion, with an average amount of PLN 1,144.73 (GUS, 2016). The funds managed as a part of the farmers' social security scheme are also an important issue for the state budget itself. This is because the subsidy from the state budget has a dominant share in the revenue structure of the Agricultural Pension and Disability Fund

(Kosikowski, 2006)¹. What also should be noted is that in addition to old-age and disability pensions, KRUS also manages other funds covered by the farmers' social security scheme which are allocated to multiple benefits disbursed to millions of farming families, including sickness benefits, maternity benefits, funeral allowances, accident allowances and death grants. Therefore, it is reasonable to conclude that the national farmers' social security scheme (and its legal framework) are of extreme importance in financial, social and legal terms.

The legislator's current attitude towards the agricultural social security scheme, as expressed by the amendments implemented in 2016 and planned for 2017, is characterized by the intent to strengthen its legal separation from the general social security scheme. In addition to common changes affecting both competing schemes, there is a series of new regulations applicable only to agricultural social security, resulting in strengthening the formal and legal separation of this scheme and aimed at improving the situation of farming families as regards access to state aid under the family support policy. These legislative trends are reflected in multiple ways,

¹ In 2014, the farmers' Old-age and Disability Pension Fund recorded a revenue of PLN 19.5 billion. In the revenue structure, as much as PLN 16.1 billion was a subsidy from the state budget. At the same time, the revenue from contributions and other sources was PLN 1.5 billion and PLN 2 billion, respectively (GUS, 2015).

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including by the reforms of the maternity benefits or the definition and indexation of the basic farmer pension.

The purpose of this paper is to present and characterize the latest legal amendments related to the social security scheme for individual farmers in Poland. This paper identifies, highlights and presents the key amendments affecting the agricultural social security scheme, whether implemented in 2016 or becoming effective in 2017. Also, it presents the amendments in such areas as the new form of maternity benefits for farming families; autonomous principles of defining and indexing the basic farmer pension; or the new limitations of revenue from additional activity taken by individual farmers.

NEW PRINCIPLES FOR GRANTING AND PAYING MATERNITY BENEFITS FOR FARMING FAMILIES

The entry into force of the Act of July 24, 2015, amending the act on family benefits and certain other acts (Ustawa..., 2015)², significantly changed the national farmers' social security scheme, improving the socio-economic situation of many farming families. This was a breakthrough amendment, as reflected by a total redefinition of the principles for granting and paying maternity benefits to natural persons covered by the farmers' social security scheme. The previous, largely symbolic, social benefit was replaced with a comprehensive regulation which clearly corrects the national family support policy in relation to farming families.

Before taking a closer look at the essence of the relevant legal amendments, the mechanism for granting the farmers' maternity benefits applicable until the end of 2015 should be presented. Pursuant to the repealed provisions of Article 15 of the Act on the farmers' social security scheme (as worded before January 1 – Ustawa..., 2016a), the insured person was entitled to a maternity benefit under the provisions of the aforesaid Act in three cases:

- giving birth to a child,
- taking a child aged up to 7 (or up to 10, if a decision was made to defer compulsory schooling and an application for adoption was filed during that time) into care; or

- taking a child aged up to 7 (or up to 10, if a decision was made to defer compulsory schooling) into foster care (except for professional foster care).

If both parents were covered by the farmers' social security scheme, they were jointly entitled to the maternity benefit (a repealed provision of Article 15, Par. 1a of the Act). Thus, under the legal frameworks applicable until the end of 2015, the maternity benefit was not granted to a single beneficiary; generally, the eligible parents had to jointly apply for the payment (Orlewski and Słowiński, 2005).

The symbolic nature of the maternity benefit was reflected in particular by its relatively low amount and by its disbursement terms. Pursuant to the repealed provisions of Article 15, Para. 1 of the Act, the maternity benefit was only available as a one-off payment equal to four times the basic old-age pension. Considering the amount of the farmers' basic old-age pension in 2015 (PLN 880.45), it should be clearly concluded that this amount of the potential maternity benefit (PLN 3,521.80) was an unsatisfactory support for farming families compared to similar benefits provided for under the general social security scheme.

Insufficient social protection and financial support for farming families during parenthood forced the national legislator to adopt adequate legal solutions for a reasonable family support policy, as provided for in the amendment to the Act on the farmers' social security scheme. On January 1, 2016, the wording of the relevant legal act was extended with a comprehensive regulation on the principles for granting and disbursing maternity benefits for large families, as set forth in the new provisions of Articles 35a and 35b (Act..., 2016b). When presenting a characteristic of the new regulation, it should be noted first that the legislator was largely inspired by the regulations on maternity benefits for employees. The vast majority of solutions related to maternity benefits adopted under the Act on the farmers' social security scheme reflect the mechanisms implemented under the Labor Code (Article 177¹ and subsequent Articles of the Labor Code) (Ustawa..., 2016a).

The first changes are made in respect to the eligibility for maternity benefits. As provided for in Article 35a, Par. 1 of the Act, the maternity benefit shall only be granted to a person insured under the agricultural social security scheme who:

- 1) is a mother or a father to a child,

² The Act entered into force on January 1, 2016.

- 2) adopted a child aged up to 7 (or up to 10, if a decision was made to defer compulsory schooling),
- 3) took a child aged up to 7 (or up to 10, if a decision was made to defer compulsory schooling and an application for adoption was filed during that time) into care,
- 4) took a child aged up to 7 (or up to 10, if a decision was made to defer compulsory schooling) into foster care (except for professional foster care) (Ustawa..., 2016b).

Having in mind that the above scope of eligible beneficiaries of the agricultural maternity benefit is a reconstruction of general regulations adopted under the Labor Code³ (Ustawa..., 2016a), it should be emphasized first that the current regulation no longer provides for joint entitlements of the parents. Under the legal framework applicable from January 1, 2016, the agricultural maternity benefit is not granted to both parents jointly. This is because pursuant to Article 35a, Para. 1, item 1 of the Act, either the mother or the father shall be entitled to the maternity benefit (Ustawa..., 2016b). The use of the exclusive disjunction (“either ... or”) has simple consequences: currently, at a given time, only one of the parents may be the beneficiary of the maternity benefit.

When analyzing the eligibility scope defined pursuant to the amendment, it should also be emphasized that the mother's entitlement to the agricultural maternity benefit has precedence over that of the father. This results from the very wording of the relevant legal regulation: according to the subsequent provisions, an insured father shall be entitled to the maternity benefit only in the three following cases:

- the period where the maternity benefit is payable was reduced upon request of the child's mother having received the maternity benefit for at least 14 weeks following the child's birth date;
- death of the child's mother; or
- abandonment of the child by his/her mother (Article 35a, Para. 2 of the Act...) (Ustawa..., 2016b).

Therefore, as may be noticed, the child's father shall be generally entitled to the farmers' maternity benefit only if the child's mother waives her rights (reduces the period where the maternity benefit is payable or abandons the child) or if the exercise of her rights becomes impossible (death).

³ See the provisions of Articles 182⁴ and 183 of the Labor Code (Ustawa..., 2016) and other regulations.

The period where the agricultural maternity benefit (if any) is payable was also subject to change. The one-off payment equal to four times the farmers' basic old-age pension was replaced with a transparent legal mechanism which considerably extends the period where the farmers' maternity benefit is payable and makes that period dependent upon the number of children born, adopted or taken into care at the same time. As provided for in Article 35a, Para. 3 of the Act, from January 1, 2016, the maternity benefit is payable for a period of 52 weeks (for one child), 65 weeks (for two children), 67 weeks (for three children), 69 weeks (for four children) and 71 weeks (for five or more children) (Ustawa..., 2016b). It cannot be ignored that the new form of the regulation for the period where the agricultural maternity benefit is payable is much more favorable to farming families compared to the legal framework applicable until the end of 2015. Furthermore, the availability period of the agricultural maternity benefit, defined as above, is much more advantageous in formal terms than the mechanisms adopted under the Labor Code (Ustawa..., 2016a) which are intended for other occupational groups. This is because pursuant to the Act on the farmers' social security scheme, the beneficiary is entitled to the maternity benefit to a full extent based on only one application (Article 35b, Para. 2 of the Act...) (Ustawa..., 2016b). Meanwhile, the model approach assumes that the employee's maternity benefit will require two applications to be filed: first, the maternity leave application and then the parental leave application⁴. What should also be noted is that irrespective of the number of children born, adopted or taken into care in the same time, only one farmers' maternity benefit is payable (Article 35a, Para. 5 of the Act...) (Ustawa..., 2016b).

The amount of the benefit was also changed. As provided for in the new regulation of Article 35b, Para. 1 of the Act (2016b), the amount of the farmers' maternity

⁴ Pursuant to Article 180, Section 1, item 1 of the Labor Code (Ustawa..., 2016a), when giving birth to one child, the employee is entitled to 20 weeks of maternity leave, and the maternity benefit is payable in that period. Having exercised this right, pursuant to Article 182^{4a}, Section 1, item 1 of the Labor Code (Ustawa..., 2016a), the employee may file another application for 32 weeks of parental leave (in the case of one child); the maternity benefit is payable in that period. As may be noted, in the case of the general maternity benefit, two applications need to be filed in order to be eligible for the allowance during a 52-week period.

benefit is equal to that of the parental benefit referred to in the Act of November 28, 2003 on family benefits (Ustawa..., 2016e). Based on that reference, it may be concluded that the monthly amount of the maternity benefit for eligible members of farming families is PLN 1,000 (Article 17c, Para. 5 of the Act...) (Ustawa..., 2016d). Considering the previous total amount of that benefit (PLN 3,521.80), it should be clearly concluded that the current regulation, in force as of the beginning of 2016, significantly improves the economic situation of farming families with new children.

Finally, it is to be noted that the current regulation makes it impossible to receive the farmers' maternity benefit while receiving similar benefits provided for in the Labor Code (Ustawa..., 2016a). The farmers' maternity benefit will not be payable to persons insured under the farmers' social security scheme if one of the parents or caretakers receives social benefits under separate regulations, including without limitation the Labor Code (maternity or parental leave etc.) (Article 35b, Para. 6, item 1 of the Act...) (Ustawa..., 2016b). This is a reasonable solution because a social benefit serving a specific purpose should be payable for a child born, adopted or taken into care, rather than in function of the number of eligible persons. Therefore, upon occurrence of a specific event, only one social benefit should be payable.

NEW INDEXATION PRINCIPLES FOR BASIC FARMER PENSIONS

On March 1, 2017, in the register of legal acts shaping the farmers' social security scheme, a significant change will be made to the method of determining the amount of basic old-age and disability pensions for farmers. It will affect a large part of persons insured under the farmers' social security scheme. Pursuant to the latest amendment to the Act on the farmers' social security scheme (Ustawa..., 2016i), the basic (i.e. minimum) farmer pension will be subject to new indexation principles which directly strengthen the legal separation and specifics of the agricultural social security scheme. The basic pillar of the new indexation principles are the two key changes: the new statutory definition of the basic farmer pension; and a more direct regulation of the pension indexation principles instead of the previous system largely based on references to relevant provisions of other normative

acts⁵. According to the current legislator, the previous agricultural social security scheme based on strong links with the employee social security scheme was an irrational and inadequate solution, especially as regards determining the amount of the minimum (basic) farmer pension by blindly referring to that of the employee pension; the absence of a direct definition and principles of indexation based on the Act on the farmers' social security scheme; or determining the amount of the farmers' pension contributions based on the minimum employee pension (Uzasadnienie..., 2016). The legislator believes that the functioning of separate parallel social security schemes within a single legal system requires the implementation of legal instruments and mechanisms at the legislative level in order to guarantee the separate specifics of both schemes while not broadly and blindly referring to the solutions offered by the competitive social security system (Prusinowski, 2014).

An element of major importance for the amendment under consideration is the redefinition of the basic farmer pension (i.e. the minimum pension) which loosens the links between the two systems. Pursuant to the previous wording of Article 6, item 7 of the Act on the farmers' social security scheme (Ustawa..., 2016b), the amount of the basic farmer pension was equal to that of the minimum monthly pension provided for in relevant regulations, i.e. the Act of December 17, 1998 on old-age and disability pensions from the Social Security Fund (Ustawa..., 2016d). Thus, the previous farmers' social security scheme did not include any separate provisions defining the basic pension or its indexation principles, whereas the amount of the basic farmer pension reflected that of employee pensions. This way of defining the amount and indexation of the basic farmer pension actually meant the absence of an independent, dedicated engine for determining the value of this social benefit

⁵ Under the legal framework applicable by the end of February 2017, the indexation principles for the basic farmer pension were entirely defined by a direct reference to the provisions of the Act of December 17, 1998 on old-age and disability pensions from the Social Insurance Fund (Ustawa..., 2016c). Such farmers' social benefits as pensions, survivor's pensions, work incapacity pensions, sickness benefits, one-off social compensations, increase of social benefits, or even the pension contribution amount, were directly determined by the amount of the basic pension which, in turn, was calculated based on the mechanisms applicable to the employees' social security scheme (rather than to the farmers' social security scheme) (Uzasadnienie..., 2016).

for the farming population. Therefore, as the indexation of the farmer pension was based on general mechanisms intended for employees, the specific nature and separateness of the agricultural social security scheme could not be fully taken into account. As a consequence, some of the needs of the farming community could not be addressed (Uzasadnienie..., 2016).

From March 1, 2017, the amount of the basic farmer pension will not be the same as the minimum employee pension. This is because in accordance with the new definition of the basic farmer pension, its value will be the statutorily defined base amount⁶ multiplied by an adequate index (Article 3, item 1 of the Act...) (Ustawa..., 2016i). The amount of the basic farmer pension for the year concerned will be determined only after the indexation process is complete. However, it should be emphasized that as regards the issues discussed above, the farmers' and employees' social security schemes remain interrelated to a certain extent. Note that upon the entry into force of the amendment, the level of the basic farmer pension will be calculated in two steps: first, by determining the base amount, taking into account the minimum employee pension specified pursuant to the Act on old-age and disability pensions from the Social Security Fund (Ustawa..., 2016d); afterwards, by applying adequate indexation mechanisms provided for in the Act on the farmers' social security scheme (Article 3, items 1 and 3 of the Act...) (Ustawa..., 2016i). Therefore, the minimum employee pension will no longer determine the amount of the basic farmer pension. Instead, it will serve as the basis (base amount) which will need to be processed with the use of subsequent indexation mechanisms. Thus, while the links between the social security schemes are weaker, they have not been fully eliminated.

In light of the new regulations (to the formal and procedural extent), each time the indexed amount of the old-age or disability pension is recalculated, the insured person will need to be notified thereof. Also, the President of KRUS will be required to announce the new applicable value of the basic farmer pension in the Official Journal of the Republic of Poland no later than 7 business days prior to the next indexation day (Article 3, item 3 of the Act...) (Ustawa..., 2016i).

⁶ Pursuant to the proposed wording of Article 6, Para. 7 of the Act... (Ustawa..., 2016a): PLN 882.56 – Article 3, Item 1 of the Act (Ustawa..., 2016h).

The next part of the amendment discussed in this paper is about the principles for the indexation of old-age and disability pensions under the farmers' social security scheme. In the Act, the regulations on the directives and procedure for the indexation of old-age and disability pensions for farmers will be considerably extended, as reflected by the new provisions of Article 48, Para. 2a and 2b and Article 48a of the Act (Ustawa..., 2016b) (Jankowska, Jędrasik-Jankowska, 2011). First, it should be noted that the new regulation provides for a new, highly important principle that the established amount of the farmer pension shall be increased ex officio if lower than the basic pension (Article 3, item 2a of the Act...) (Ustawa..., 2016i). From March 1, 2017, in such cases, the amount of the farmer pension will be automatically increased (ex officio) to the minimum level of the farmer pension specified each year pursuant to the provisions of the Act⁷. A similar principle is also supposed to be applicable to the process of determining the amount of farmer pensions (Article 3, item 3 of the Act...) (Ustawa..., 2016i). Moreover, the amendment defines the indexation of the basic pension as *multiply that amount by the index specified under the pension rules* (Article 3, item 3 of the Act...) (Ustawa..., 2016i). Also defined is the indexation of the old-age and disability pensions (other than the basic pension) for farmers: it consists in multiplying the indexed amount of the basic pension by the benefit index defined in Article 48, Para. 1 of the Act on the farmers' social security scheme (Article 3, Para. 3 of the Act...) (Ustawa..., 2016i). Note also that the new regulation makes it absolutely compulsory to perform the annual indexation of old-age and disability pensions within the designated timeframes (Article 3, item 3 of the Act...) (Ustawa..., 2016i).

In summary, the presented amendments to the farmers' social security scheme, especially as regards defining the basic farmer pension and indexation principles, should be considered of key importance. From March 1,

⁷ However, what should be noted in this context, is that in 2017, new exceptional principles will be applied in order to determine the basic (minimum) farmer pension. Pursuant to the reference to the amended Article 85 of the Act on old-age and disability pensions from the Social Insurance Fund, from March 1, 2017, the minimum monthly farmer pension will be PLN 1,000 (Article 1, item 1 of the Act, with reference to Article 5, Para. 4 of the Act...) (Ustawa..., 2016h). In turn, from 2018, the minimum amount of the farmers' social benefits will be determined on an independent basis.

2017, the value of many benefits depending on the level of the basic farmer pension will be calculated based on new, more specific principles which are appropriate for the farmers' social security scheme. What also should be noted is that loosening the financial links between the farmers' and employees' schemes (by considerably extending the indexation regulations directly in the Act on the farmers' social security scheme) will strengthen the separateness of the two social systems. In particular, it will enable a more objective and customized calculation of the amounts of specific benefits.

OTHER CHANGES TO THE FARMERS' SOCIAL SECURITY SCHEME

The new legal regulations have also brought some other, less extensive changes to the farmers' social security scheme in Poland. On an overall basis, they also deliver immediate advantages to the beneficiaries.

December 14, 2016 marked the entry into force of the amendment to the Act on the social security scheme, changing the time limit for the pension authorities (including KRUS) to request repayment of a wrongly granted benefit. Pursuant to the new provision of Article 84, Para. 7a of the Act on the social security scheme (Ustawa..., 2016c), in the case of benefits wrongly obtained under the social security scheme, the pension authority may not issue a decision specifying the amount of wrongly obtained benefits (i.e. a decision giving rise to the repayment of amounts unduly paid) after 5 years following the last day of the period to which the wrongly obtained benefits relate. Furthermore, as provided for in Article 2, Para. 2 of the amending Act (Ustawa..., 2016f), any and all procedures on this matter which do not result in issuing the relevant decision within the above timeframes shall be necessarily cancelled. The amendment also enables the application of a new provision on the procedure of appeal from decisions setting the amounts of benefits received, interest and procedure costs which are not resolved prior to the effective date of the aforesaid change (Article 2, Para. 3 of the Act...) (Ustawa..., 2016f). Thus, the retroactivity of regulations is favorable to the beneficiaries of the social security scheme. Also, two generally positive effects of the amendment are noticeable: the clear deadline for issuing the decision should, on one hand, discipline the pension authorities so they take measures against excessively long procedures and, on the other,

reduce the uncertainties of citizens regarding benefits they obtained.

Another modification affecting the persons covered by the farmers' social security scheme is the ability to engage into additional business activities without the risk of being excluded from the agricultural social security scheme. Pursuant to previous provisions of the Act on the farmers' social security scheme (Ustawa..., 2016b), it was allowed to engage into such activities⁸ provided that they generated a monthly revenue not in excess of half of the minimum wage (Article 5b, Para. 1 of the Act in its previous wording) (Ustawa..., 2016b). Therefore, the previous levels of revenue from the farmers' additional business activities which provided them with guaranteed social security coverage did not encourage them to engage into any additional legal business and were a significant complication for small services delivered by the farmers (Kuzniar, 2009; Rzemek, 2014). The current change, though not revolutionary, increases the acceptable revenue limit. Pursuant to the new wording of Article 5, Para. 1 of the Act (Ustawa..., 2016b), the acceptable revenue from additional business activities cannot exceed, on a monthly basis, the minimum wage if the farmer or his/her household member wants to remain covered by agricultural social security. This is a step in the right direction which may contribute to the recovery of the market for small services delivered by farming families, while enabling the beneficiaries of the agricultural system to earn supplemental incomes and possibly contributing to improved social status of the farmers.

Finally, another change is worth being mentioned which affects the farmers covered by the security scheme: the important issue of the minimum age for commencing pension rights. Pursuant to the Act of November 16, 2016 on the amendment to the Act on old-age and disability pensions from the Social Security Fund (Ustawa..., 2016h), as of October 1, 2017,

⁸ It should be clearly emphasized that the additional business activity covered by the mechanisms provided for in Article 5b of the Act on the farmer's social security scheme (Ustawa..., 2016a) extends only to the activity of appointed members of supervisory boards and to the delivery of services under agreements referred to in Article 6, Para. 1, item 4 of the Act of October 13, 1998 on the social security scheme (Ustawa..., 2016c) (i.e. an agency agreement, contract of mandate or another service agreement governed by the provisions applicable to contracts of mandate). To that extent, the amendment does not include any modifications.

the national legislator decided to reinstate the minimum age applicable until the end of 2012, i.e. 65 years for men and 60 years for women. This amendment will be applicable to persons covered either by the employees' pension scheme or the farmers' pension scheme. Note also that changing the minimum age for commencing pension rights does not entail any concurrent system changes concerning contributions to, or management of, the farmers' social funds.

SUMMARY

From the perspective of the beneficiaries of the agricultural social security scheme, the entire scope of changes presented in this paper (implemented in 2016 and planned for 2017) is a positive development. In light of the amendments discussed above, it may be concluded that the national legislator, on one hand, is committed to strengthen the legal separateness of the farmers' social security scheme and, on the other, endeavors to implement increasingly stronger social guarantees for farming families. There is no doubt that the implementation of the comprehensive regulation for the maternity benefit in a form similar to that of the corresponding employee benefits, the adequate increase of revenue limits for acceptable additional business activities of the farmers and their families, or even the clear specification of the deadline for issuing the decision requesting the return of wrongly obtained benefits, may contribute to improving the economic situation of many farming families. Meanwhile, the measurable extension of the regulation on defining and indexing the basic farmer pension pursuant to the Act on the farmers' social security scheme seems to prove that the national legislator, despite the popular requests to unify the agricultural and employee schemes, tries to go in the opposite direction by strengthening the legal separateness of the agricultural social security system. According to the legislator, strengthening the legal separateness of these schemes may contribute to take better account of specific interests of farmers and their families as regards defining the amounts of old-age and disability pensions (Uzasadnienie..., 2016).

Note also that these changes will have measurable financial and economic effects. In the long run, it is not reasonable to increase the operating costs of the agricultural social security scheme (e.g. by reducing the minimum age for commencing pension rights while maintaining the symbolic amount of contributions by

beneficiaries) which, compared to the general social security scheme, is largely subsidized from the state budget. While strengthening the financial support for farming families in the early motherhood period does not raise major concerns and is a welcome improvement, the strict reinstatement of the minimum age for commencing pension rights in force prior to 2013 without implementing any system changes regarding contributions to, and management of, the farmers' social funds may have measurable adverse effects in the future. It seems that the national legislator should implement such comprehensive legal solutions for the farmer's social security scheme which will serve the interests of both current and future generations of the Polish farming population.

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