dependent spouse has not yet reached retirement age depend exclusively on the income earned by the spouse from or in connection with work.

Although the effect of such legislation is that far more men than women qualify for the supplement, it corresponds to a legitimate objective of social policy, namely guaranteeing a couple, where one of the spouses has not yet reached pensionable age, an income equal to the social minimum which they will receive when they are both pensioners, involves supplements suitable and requisite for attaining that aim and is therefore justified by reasons unrelated to discrimination on grounds of sex.

REPORT FOR THE HEARING
in Case C-226/91 *

I — Facts and procedure

1. According to Article 2 of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24), the directive applies to the working population — including self-employed persons, employed persons whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment — and to retired or invalided workers.

According to Article 3, the directive applies to statutory schemes which provide protection against the following risks: sickness, invalidity, old age, accidents at work and occupational diseases, and unemployment.

Article 4(1) of the directive provides that:

'The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns ... the cal-

* Language of the case: Dutch.

culation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.'

2. In the Netherlands, the Algemene Ouderdomswet (General Law on old-age insurance, hereinafter referred to as the 'AOW'), which entered into force on 1 January 1957, established, for the benefit of residents and non-residents subject to income tax in respect of employment in the Netherlands, a general old-age pension scheme under which entitlement to an old-age pension is related to the periods of insurance completed. A person qualifies for a full pension if he completes a total insurance period of 50 years between his 15th and 65th birthdays.

Under the AOW in the version in force until 1 April 1985, a married woman was not independently entitled to an old-age pension. However, a married man who had reached the age of 65 was entitled to a married person's pension based on the insurance periods completed by himself and his spouse. For unmarried persons, the rate was 70% of the full pension for a married person. The old-age pension for a married man was calculated by reducing the full pension by 1% for each calendar year during which either of the spouses was not insured. For unmarried persons, the reduction was 2%.

With effect from 1 April 1985, the AOW was substantially amended with the principal purpose of implementing the principle of equal treatment of men and women, as provided for in Directive 79/7. Since that date, the pension rights of married men and women reaching the age of 65 have been determined separately. Thus, any married person is entitled, on reaching the age of 65, to an old-age pension amounting in the case of a full insurance record of 50 years, to 50% of the net minimum wage in force. Married pensioners whose dependent spouse has not reached the age of 65 are entitled to a supplement which is reduced by 2% for each calendar year in which the pensioner's spouse was not insured under the AOW. At the spouse's request, the supplement granted to the pensioner may be paid directly to the spouse.

Since 1 April 1988 the maximum pension of a married person whose spouse has not reached the age of 65 has been the same as that of an unmarried person, that is to say, 70% of the net minimum wage, while the maximum supplement he can receive for a dependent spouse under the age of 65 is equal to 30% of the minimum wage, in other words, the difference between the total of the maximum pensions of two spouses who are both entitled to a pension and the maximum pension for an unmarried person.

Until 1 April 1988 the supplements were paid regardless of any income received by the pensioner's spouse. Since 1 April 1988 the grant of the supplement and the amount thereof have depended on the spouse's income, unless the pensioner was

already in receipt of a pension under the AOW on 1 April 1985 or unless the pensioner's spouse was 60 or more years of age on 1 April 1988. If the spouse receives income from or in connection with employment or self-employment, the amount of such income is, in principle, deducted from the supplement, except, however, for such part of the income as does not exceed 15% of the gross minimum wage and for one-third of the amount in excess of that minimum.

3. Jan Molenbroek, the plaintiff in the main proceedings, was granted from 1 May 1990, when he reached the age of 65, a full married person's pension under the AOW, amounting to 70% of the net minimum salary. His spouse, who was younger, continued to receive an incapacity allowance. The Bestuur van de Sociale Verzekeringsbank, Amstelveen, the defendant in the main proceedings (hereinafter referred to as 'the SVB'), therefore deducted that income, within the allowed limits, from the supplement to which Molenbroek was entitled under the AOW, so that the supplement finally came to only 27.70% of the maximum supplement provided for.

4. Mr Molenbroek appealed against the SVB's decision concerning the supplement to the Raad van Beroep, Amsterdam, claiming in particular that the condition for entitlement to the full supplement constituted indirect discrimination on grounds of sex, which is unjustified, since the majority of those satisfying the condition are men. Consequently the condition was incompatible with Article 4(1) of Directive 79/7.

5. Taking the view that the dispute raised questions concerning the interpretation of that provision, the Raad van Beroep, Amsterdam, stayed the proceedings by order of 24 July 1991 and, pursuant to Article 177 of the EEC Treaty, referred the following questions to the Court of Justice of the European Communities for a preliminary ruling:

'1. Is Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 to be interpreted as precluding national legislation on old-age pensions which, regardless of sex, makes the award to a pensioner of a supplement, and the amount thereof, in respect of a spouse under the age of 65 depend exclusively on whether the younger spouse receives income from or in connection with work, if the effect of that legislation is that far more men than women qualify for the supplement?

2. a. Is Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 to be interpreted as precluding application of the legislation described in Question 1, the purpose of which is to guarantee a minimum income for pensioners with a younger dependent spouse, but which also results in a supplement being granted for the younger spouse who has no income from work, or very little, even if in

addition to a pension under the AOW the pensioner receives income of his own from or in connection with work, such as a supplementary occupational pension or investment income, in which case guaranteeing a minimum income is in principle unnecessary?

2. b. Can the application of the national legislation described in Question 1, the result of which is that far more men than women qualify for the supplement payable for the younger spouse, be justified under Directive 79/7 by the fact that the AOW is a basic minimum scheme, regardless of the fact that the supplement may also be paid when it is not essential in order to guarantee an adequate means of subsistence for the pensioner and the younger spouse?

3. In a case such as this, does a breach of Article 4(1) of Directive 79/7 have the result that pensioners with spouses under the age of 65 may always, regardless of any income received by the younger spouse from or in connection with work, claim the supplement (in full)?'

6. In its order for reference the Raad van Beroep notes first of all that it appears from the judgments of the Court of Justice in Cases 170/84 *Bilka* v *Weber von Hartz* [1986] ECR 1607, 30/85 *Teuling* v *Bedrijfsvereniging voor de Chemische Industrie* [1987] ECR 2497, 171/88 *Rinner-Kühn* [1989] ECR 2743 and C-102/88 *Ruzuis-Wilbrink* [1989] ECR 4311, that a provision which is formulated in terms that are neutral from the point of view of sex raises the presumption of (indirect) discrimination if it works to the disadvantage primarily of men only or women only. According to the same case-law, that presumption may be rebutted if the relevant Member State can demonstrate that the disputed provision is justified on grounds that do not involve any sex discrimination; that is the case if the aim of the pension has to be regarded as necessary in the context of the social policy of that Member State and if the means chosen to achieve that aim are necessary and appropriate.

The Raad van Beroep shares the view of the parties in the main proceedings according to which the relevant provisions of the AOW, which make entitlement to the supplement and the amount thereof dependent on the income of the pensioner's spouse, raise a presumption of indirect discrimination inasmuch as those who satisfy the conditions laid down therein are mostly men, so that supplements are more frequently granted to male pensioners than to female pensioners. The Raad van Beroep considers that it may be deduced from the *travaux préparatoires* relating to the Laws of 1985 and 1988, amending the AOW, that the purpose of the supplements scheme is to guarantee a minimum means of subsistence for persons with a dependent spouse and that that purpose

may be considered necessary in the context of the social policy of the Netherlands. As to whether the supplements scheme is appropriate and necessary in order to guarantee a person entitled to an old-age pension a minimum income, the Raad van Beroep points out that entitlement to the supplement and the amount thereof are determined not by the income of the pensioner himself, but only by that of the spouse, so that a supplement is granted to a pensioner with a high, or even a very high, income of his own, where the spouse has no income or only a very low one.

The Raad van Beroep goes on to explain that it is common ground between the parties to the main proceedings that the allowance under the AOW is a basic allowance and that the legislature sought to preserve it as such. Nevertheless, the Raad van Beroep raises the question whether, having regard to the purpose of the supplements scheme and to the fact that they depend on the spouse's income and consequently do not constitute basic allowances as regards that income, it may be argued that the supplements scheme has become independent of the basic allowance under the AOW.

7. The Raad van Beroep's order was received at the Court Registry on 10 September 1991.

8. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted on 6 January 1992 by Jan Molenbroek, the plaintiff in the main proceedings, represented by L. Andringa of the Amsterdam Bar; the Bestuur van de Sociale Verzekeringsbank, Amstelveen, the defendant in the main proceedings, represented by E. H. Pijnacker Hordijk of the Amsterdam Bar, and G. R. J. de Groot of the Hague Bar; the Kingdom of the Netherlands, represented by T. P. Hofstee, acting Secretary General at the Ministry of Foreign Affairs; and the Commission of the European Communities, represented by K. Banks and B. M. P. Smulders, of the Legal Service, acting as Agents.

9. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

10. By decision of 13 May 1992, pursuant to Article 95(1) and (2) of the Rules of Procedure, the Court assigned the case to the Second Chamber.

II — Written observations submitted by the parties

A — *Question 1*

1. *Mr Molenbroek* observes *in limine* that it is principally men who qualify for a supplement under the AOW. On the one hand, married men are, as a general rule, older than their spouses and, on the other, only a tiny minority of spouses under 65 married to men receiving pensions under the AOW work. Since the majority of married women

in this category have no income or only a very low one, married men entitled to an old-age pension generally receive a supplement. Furthermore, those women who do work often work part-time and are paid less. Consequently, the grant of a supplement based on the income of the spouse often discourages married women, who have no good reason for continuing to work, from doing so. Married women rarely qualify for a supplement, even where they are older than their husbands, since the husband very often has income from work.

Mr Molenbroek further argues that the fact that the grant of a supplement and the amount thereof depend exclusively on the income earned by the younger spouse from or in connection with employment means that far more men than women qualify for a supplement. If, for the purposes of granting the supplement and calculating the amount, the supplementary income of the pensioner were taken into account, men would in most cases not be entitled to a supplement or, in any case, their entitlement would be reduced. Even if, in such a case, the number of men who continued to qualify for the supplement were significantly higher than the number of women entitled thereto, such entitlement would be limited to those for whom the supplement was necessary in order to guarantee a minimum income.

Consequently, Mr Molenbroek considers that Article 4(1) of Directive 79/7 precludes a supplements scheme which does not take account of the income of the pensioner and depends exclusively on the personal income of the spouse.

2. The *SVB* considers that in its first question the national court seeks to ascertain whether a national rule such as the one at issue in the main proceedings may be incompatible with Article 4 of the directive solely because, in practice, a considerably higher number of men than women is likely to obtain the supplement provided for. According to the SVB, it suffices to point out in this connection that, according to the case-law cited by the national court, the mere fact that a considerably higher number of men than women may be entitled to a given social security benefit is not in any way decisive for the purpose of determining whether there is discrimination prohibited by Article 4(1) of Directive 79/7, but merely raises a presumption of discrimination entailing solely a reversal of the onus of proof, so that in a situation of that kind it is for the Member State to prove that there is no unlawful discrimination on grounds of sex. Accordingly, the first question should be answered in the negative on that ground alone.

The SVB goes on to add, however, that in the present case this situation is due, first of all, to the simple fact that married men are generally some years older than their spouses and, secondly, to the fact that, even where the woman reaches pensionable age first, her husband has, far more often than not,

income of his own which precludes the grant of a supplement. Even if, according to the case-law of the Court, particularly the judgment in Case C-229/89 (*Commission* v *Belgium* [1991] ECR I-2205, paragraphs 17 and 18), the second explanation is not of itself sufficient to rebut the presumption of unlawful discrimination, the same does not apply to the first explanation. According to the SVB, the fact that men are generally older than their wives by a few years has nothing to do with the state of the labour market or with other social relationships and consequently cannot give rise to the presumption that rules which work to the specific advantage of married persons with younger spouses may constitute as such discrimination on grounds of sex which is prohibited by Community law.

That is so particularly since, in a case such as this, it may be asked which category of persons must be regarded as qualifying for the supplement. Even if, in formal terms, the supplement can be claimed by the pensioner it is intended essentially for the younger spouse and is an advance on the pension which the latter will receive later. Furthermore, if the younger spouse so wishes, he or she may be paid the supplement direct. Generally the spouse is a woman in such cases. Moreover, since the aim of the supplement is to guarantee that the total income of the couple is at least equal to the sum of the benefits which the spouses can claim together, when they have both reached the age of 65, it cannot be argued that its purpose is to confer an advantage on the older spouse. Finally, the supplement does not depend exclusively on the income of the younger spouse, but also on the latter's insurance record, given that the supplement is reduced by the number of years during which he or she was not insured. Consequently, there can be no presumption of discrimination based on sex, or of unfavourable treatment of married women, and the first question should be answered in the negative.

3. The *Netherlands Government* also considers that the mere fact that a higher number of men than women qualify for a supplement is not sufficient to render the rules in question incompatible with Directive 79/7. On the assumption that is the case, it is due to two factors, namely the fact that more men than women are married to a younger spouse and the fact that more men than women in the sixty to sixty-five age bracket work. In the Netherlands, of pensioners whose spouses are less than 65 years of age, 87% are men and 13% are women. The over-representation of men in that group of pensioners is merely the result of the objective factor of the age difference between spouses, the husband often being older than the wife, and does not therefore mean that the Netherlands scheme is incompatible with Directive 79/7.

Furthermore, in the Netherlands, in the 60 to 65 age bracket, 27% of all men work, compared with 10% of women. It follows that men's earnings, more often than those of women, may lead to the reduction of the supplement granted in addition to the pension of the older spouse.

Finally, it is only if a greater proportion of male than of female pensioners whose spouse is less than 65 years old qualified for a supplement that the assumption in the first question would be relevant.

Moreover, account should be taken of the fact that the AOW distinguishes between pensioners and recipients of the supplement, which can be paid directly to the spouse. Moreover, the fact that the supplement is intended primarily to guarantee a minimum income for the pensioner's spouse explains why regard is had not to the income of the pensioner but to the income of the latter's spouse.

According to the Commission, therefore, there are too many objective grounds capable of justifying the different practical consequences of the application to men and women of the Netherlands rules on supplements for it to be concluded without more that the rules are discriminatory.

B — *Question 2 (Parts (a) and (b))*

4. According to the *Commission*, it follows from the case-law of the Court referred to above that there is no discrimination within the meaning of Article 4(1) of Directive 79/7 if objective factors explain the fact that a considerably higher number of men than women benefit from an advantage conferred by national law. The AOW does not formally draw any distinction between men and women for the purposes of granting the supplement; the distinction observed between male and female recipients is merely the result, in the first place, of the fact that in the Netherlands the older spouse is generally the man and, secondly, of the fact that the woman's income from work is generally lower than that of her husband.

1. According to *Mr Molenbroek*, it appears from the judgment in *Teuling*, above, that a presumption of discrimination within the meaning of Article 4 of Directive 79/7 arises where a system of benefits provides for supplements for dependants to which a considerably smaller proportion of women than of men are entitled. Such unequal treatment can be justified only if it is proven that the supplements correspond to the greater burdens borne by beneficiaries with a dependent spouse or child by comparison with single persons and that they are such as to ensure an adequate minimum means of subsistence for the category of beneficiaries concerned

and are necessary to that end. In the present case, particularly strict conditions should govern the burden of proof to be discharged in this regard because indirect discrimination, as introduced in the AOW from 1 April 1988, altered the previous supplements scheme which disregarded income criteria and was therefore more in keeping with the principle of equal treatment, or at least was incompatible with it only to a lesser extent.

Mr Molenbroek also denies that the unequal treatment in question can be justified on the ground that the allowance paid under the AOW is a basic allowance by comparison with supplementary pension. First, the objective of preserving its character by not taking into account the pensioner's income is only a secondary objective which can never be sufficient to rebut the presumption of indirect discrimination. Secondly, to argue that pensioners do not benefit directly from the grant of the supplement because in its absence their supplementary pension would be greater is tantamount to acknowledging that the means employed are not necessary.

It also follows from the judgment in *Bilka*, above, that there must be a reasonable balance between the means chosen and the objective pursued and that indirect discrimination must not go beyond what is necessary to achieve the objective of the rules, as is the case only where the objective pursued cannot be achieved by less far-reaching means.

2. The *SVB* states first of all that, having regard to the observations which it submitted in relation to Question 1, there is no need to answer Question 2.

According to Mr Molenbroek, the supplement granted under the AOW is not always necessary to guarantee a minimum means of subsistence, since account is taken neither of the pensioner's income nor of the spouse's income other than that earned from or in connection with employment. Nor is the supplement always adequate in order to ensure a minimum means of subsistence since, where the number of insurance periods is insufficient, the pensioner receives neither a full pension nor a full supplement.

In the alternative, it considers that the supplements scheme set up by the AOW is justified on grounds that do not involve any discrimination based on sex, as defined by the Court in the abovementioned cases, inasmuch as it is an integral part of the social policy of the Netherlands and constitutes an adequate and necessary measure in order to achieve the objective pursued. The objective of the AOW is to provide basic insurance guaranteeing a minimum income, and the supplements mechanism is essential to the achievement of that objective, since without it situations could arise where the total

income of a married couple is below the minimum income, where only one of the spouses has reached pensionable age while the other is not yet entitled to a pension and has no earnings or only limited income from work. If income which the pensioner received from other sources were taken into consideration, it would call in question the nature of the AOW as a basic insurance scheme and, furthermore, would be the source of indirect discrimination against men, since it would mainly be male pensioners, who to a greater extent than women have income available other than that payable under the AOW, to have the supplement they receive for their dependent spouse reduced.

Furthermore, disregarding part of the spouse's income from work is an appropriate and necessary measure in order to prevent younger spouses who have some, albeit limited, earned income of their own from being excessively deterred from continuing to work; that is also a legitimate objective for a Member State to pursue in the context of its social policy.

Finally, the AOW's role as a basic insurance scheme implies that insured persons should be entitled to take additional measures to guard against the hardships of old age. If the spouse's unearned income were taken into consideration for the purpose of calculating the supplement, this would in fact be likely to prevent the spouse from taking such additional measures.

The SVB further notes that it would be inconsistent to grant the plaintiff the maximum supplement on the ground that neither his own income nor his spouse's unearned income have been taken into account in order to determine the amount of the supplement.

The SVB therefore proposes that the Court answer Questions 2(a) and (b) as follows:

'Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 is to be interpreted as not precluding the application of national legislation concerning old-age insurance which provides — regardless of sex — for the grant to pensioners of a supplement in respect of a dependent spouse who has not yet reached pensionable age and which, for the purpose of determining the amount of the supplement, does not take into account whether the pensioner has other sources of income available or whether the spouse has income other than income from work.'

3. The *Netherlands Government* considers that the supplements scheme provided for by the AOW serves a necessary social-policy objective within budgetary limits. Moreover, the rules of the system are appropriate for the attainment of that objective and are necessary to that end.

The method chosen, which consists of a supplement together with a review of income, allows married couples where one of the spouses has not yet reached the age of 65 to spend their old age together. The supplement

also permits certain persons, as long as pensions are awarded to men and women in cases in which it was not and is not clear that the younger spouse (more often the woman) has his or her own income, to enjoy a level of income equal to the minimum means of subsistence. Moreover, by taking into account only the younger spouse's income from work in order to set the supplement, the tendency for men and women to maintain their independence is respected, as anyone under the age of 65 is considered capable of earning sufficient income in order to provide for his own needs.

The fact that the pensioner's income is not considered when the supplement is set and that, consequently, the total income of the pensioner and his or her spouse in certain cases exceeds the minimum level, in particular because of the supplement, does not in any way lessen the need for the means chosen, having regard to the objective pursued. The pension, including the supplement paid under the AOW, must be considered necessary having regard to the AOW's nature as a basic insurance scheme intended to ensure a minimum income even in cases where a person's own means are sufficient, as long as the allowance itself under the AOW does not exceed the minimum means of subsistence. In that context, it should also be borne in mind that in the Netherlands a supplementary old-age pension covers only the loss of income in excess of the minimum means of subsistence and that, consequently, without the retention of the minimum guarantee constituted by the allowance under the AOW, the foundations of the Netherlands pension scheme would be undermined.

Accordingly, the Netherlands Government proposes that the Court answer the first and second questions as follows:

'Article 4 of Council Directive 79/7/EEC does not preclude national legislation in the field of old-age insurance which provides, regardless of sex, for the grant to pensioners of a supplement for a dependent spouse who has not yet reached retirement age where, for the purpose of fixing the amount of the supplement, other income of the pensioner is disregarded, while account is taken of the income earned by the spouse from or in connection with employment.'

4. The *Commission* notes first of all that the supplement is awarded to the spouse of a person entitled to a pension under the AOW. It points out that usually such pensioners receive a supplementary benefit. In its view, since the allowance, including the supplement, paid under the AOW is in the nature of a basic allowance, it may be considered reasonable and, from a Community-law point of view, justified to take no account, in fixing its amount, of supplementary benefits of any kind.

Consequently, the Commission considers that the supplements scheme, as applied under the AOW, meets the requirements of Article 4(1) of Directive 79/7, as interpreted

by the Court, and that the judgment of the Court in *Commission* v *Belgium*, above, is particularly relevant to this case; according to paragraph 22 of that judgment 'those principles and objectives form part of a social policy which in the current state of Community law is a matter for the Member States which enjoy a reasonable margin of discretion as regards both the nature of the protective measures and the detailed arrangements for their implementation (judgment in *Hofmann* v *Barmer Ersatzkasse* [1984] ECR 3047, paragraph 27)'.

Moreover, under a scheme of that kind there would not be any discrimination either against couples in receipt of pensions where both spouses were aged 65 or against unmarried persons. For neither of those categories of persons would the allowance paid under the AOW depend on income received from another source. The plaintiff proposes therefore that there should be a return to the supplements scheme as it stood between 1 April 1985 and 1 April 1988.

C — *Question 3*

2. *SVB* points out first of all that, having regard to the answer proposed to Questions 1 and 2, the Court need not consider Question 3.

1. *Mr Molenbroek* observes that it follows from the judgment in *Ruzius-Wilbrink*, above, that in a case of indirect discrimination the members of the group discriminated against must be treated in the same manner and have the same rules applied to them as the other recipients, since, where Directive 79/7 has not been correctly implemented, those rules remain the only valid frame of reference. In his view, a system in which the supplement is independent of the income not only of the pensioner but also of the spouse would allow the objective pursued to be more easily achieved. In this way the supplements scheme would provide a guarantee in cases where the income is below the minimum means of subsistence, would preserve the AOW's character as a basic allowance and would as far as possible avoid indirect discrimination. The plaintiff acknowledges that under such a scheme the fact that the pensioner's income would not be taken into account would not remove all discrimination, but it would make it less flagrant because the income of the younger spouse would not be taken into account either.

As regards the application of the Court's decision in *Ruzius-Wilbrink*, above, it is necessary to consider first which group is to be regarded as the group discriminated against, since it is the younger spouses who are the beneficiaries of the supplements scheme and not the pensioners. Furthermore, the present case does not involve unequal treatment of different groups, since the supplements scheme is applied in the same way to all insured persons.

Moreover, if the maximum supplement had to be granted to all pensioners with a dependent spouse regardless of the latter's income, the supplement would no longer have the aim of guaranteeing an income equal to the minimum income in cases where the pensioner has a dependent younger spouse who has no income of his or her own and would thus become a kind of automatic 'premium' for pensioners living with their spouse. Such

an approach would have enormous consequences for the budget and would also lead to absurd results and actual discrimination. Thus, on the one hand, there would be an increase in the number of cases where a supplement was granted even though it was unnecessary and, on the other hand, a pensioner whose younger spouse was not dependent on him would receive a higher supplement than an unmarried pensioner.

3. The *Netherlands Government* considers that, having regard to the explanations it has given and the answers it has proposed in connection with Questions 1 and 2, it is not necessary for the Court to answer Question 3.

4. The *Commission* considers that, having regard to the answers to be given to Questions 1 and 2, Question 3 is otiose. Should the Court disagree, the Commission points out that it is doubtful that the national court can reasonably have considered it necessary for the Court to answer the questions submitted in order to decide the dispute before it. It is questionable whether a male plaintiff has a legitimate interest in relying upon a Community-law provision which, by his own admission, is intended specifically to protect the interests of women.

Having regard to all the considerations which it has set out, the Commission proposes that the Court should answer the questions submitted for a preliminary ruling by the national court as follows:

'Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 is to be interpreted as not precluding national legislation on old-age pensions providing for a basic allowance which, regardless of sex, makes the award to a pensioner of a supplement in respect of a spouse under the age of 65 depend exclusively on whether the younger spouse receives income from or in connection with employment, even if the effect of that legislation is that a much larger number of men than women qualify for the supplement.'

F. A. Schockweiler
Judge-Rapporteur