Concerning the application of the provisions of Regulation 1408/71, I agree with your analysis. According to Article 4, the Regulation applies to all legislation concerning the different branches of social security including sickness and maternity benefits. The legislation providing the basic insurance as envisaged by the Dutch draft has to be considered as legislation within the meaning of Article 4. Moreover, according to Article 5, Members States must specify the legislation and schemes referred to in Article 4. For the Court of Justice, the fact that a Member State has specified a law in its declaration must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of Regulation 1408/71.

I also agree with you that health care companies offering the standard policy should be considered as competent bodies for the application of the Regulation. This should be reflected in the annexes of Regulation 574/72.

May I now turn to the issue of the compatibility of the reform of the Dutch system with Community legislation on insurance. The EU insurance Directives do not alter the freedom of a Member State to design its statutory social security regime and to decide how it will be organised. EU insurance legislation, and in particular the Third Non-Life Insurance Directive (Directive 92/49/EEC), simply provides that, where a Member State decides to open up coverage of a risk belonging to the statutory social security regime to private insurers, it has to accept that any Community insurance undertaking authorised in its home Member State may cover that risk on the basis of the freedom of establishment and the freedom to provide services.

Article 54 of the Third Non-Life Insurance Directive takes account of the particular situation of private health insurance serving as a partial or complete alternative to health cover provided by the statutory social security system. In my view, this proviso also covers the situation you are proposing namely, where a Member State decides to entirely assign the cover of statutory social security health insurance to private insurance undertakings which must conduct such activity at their own risk, following insurance techniques and on the basis of contractual relationships governed by private law. Such an approach would constitute a complete alternative to the statutory social security regime to which the Directive refers.

Because of the nature and social consequences of private health insurance contracts, which serve as a partial or complete alternative to the statutory social security regime, the Third Non-Life Insurance Directive allows a Member State to adopt specific legal provisions aimed at protecting the general good. To the extent that such requirements might restrict the freedom of establishment and the free provision of services, they must be objectively necessary and proportionate to the objective pursued.