



Non-exhaustive list of questions Chapter 2 – Freedom of movement for workers

Screening – Bilateral meeting with Croatia – 8 September 2006 Screening – Bilateral meeting with Turkey – 18 September 2006

National authorities are invited to provide answers to the below questions prior to the meeting to be held in Brussels in September 2006.

Some questions could alternatively be addressed at the occasion of the relevant presentation by the national authorities at the bilateral meeting.

(1) Access to labour market

Access to labour market

a) Are there any **work permit requirements** or similar restrictions for EU migrant workers? If so, will you **abolish** them?

There is neither special condition nor restriction for the work permit of EU migrant workers. Like other foreigners EU migrant workers also have to get work permit in order to work in Turkey.

There are no special restrictions for EU migrant workers. Contrarily, A more flexible work permit system is applied to them.

Work permits are regulated by Law No. 4817 on Work Permits of Foreigners. Article 8 (e) of the Law provides that work permit is given in “exceptional cases” to EU nationals, and his/her spouse and children who are not EU nationals. There are also obligations stemming from Decision No. 1/80 of the EC-Turkey Association Council Decision. Turkey, as sticking to commitment in the context of the international treaties, regulates the work permits of EU nationals and his/her spouse and their children who are not EU nationals according to the principles of Decision No. 1/80.

Work permits of EU citizens and his/her spouse and their children who are not EU citizens are given as independent from the time restrictions in the Law No. 4817. (Art. 8(e)).

Above mentioned, time restrictions are not available for EU nationals. This provides a right beyond the clauses in the articles 6 and 7 of Association Council Decision. In fact, Article 50 of Implementing Regulation on Work Permits of Foreigners of Law No. 4817 preserved the more favorable articles 6 and 7, in terms of access of these foreigners to labour market, as connected with the article 11 of the Decision.

In this context;

1- While giving work permit for a definite period,

An EU citizen worker who accessed to the regular labour market of Turkey;

- **After having 1 year of legal employment can renew its work permit to work with the same employer if there is a job vacancy.**
- **After having 3 years of legal employment have right to apply for job vacancies in the same occupation and to the employer who is chosen by worker himself/herself or other occupation which is recorded in the employment offices.**
- **After having 4 years of legal employment, he/ she has right to be hired in any job which is chosen by worker himself/herself.**

With the condition of residing in Turkey at least 5 years legally and uninterruptedly, work permit for a definite period can be given to spouses and children, worker has to take care of the foreign worker who comes to Turkey to work and bring them with himself/herself or afterwards.

2- Indefinite Work Permit:

At least 8 years of legally and uninterruptedly residence in Turkey or 6 years in total legal working conditions for getting the indefinite work permit is not applicable to EU nationals.

3- Work Permit for Self Employed:

At least 5 years of legally and uninterruptedly residence condition for getting work permit for self-employed is not applicable to EU nationals.

Turkey will fully align its national legislation with the EU legislation as the accession process is accomplished. Implementation process will begin simultaneously on the basis of reciprocity principle.

- b) **How will Croatia and Turkey be able to guarantee that there will be no discrimination on grounds of **nationality (direct or indirect) against migrant workers** in employment, pay and working conditions?**

In Turkey, there is no discriminatory practice based on nationality neither in implementation nor legislation against migrant workers in terms of hiring, wages, working conditions

Article 48 of Turkish Constitution provides that “All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political

opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights and the State is responsible to implement these rights. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”

However, the Article 16 of the Constitution provides that “fundamental rights and freedoms can be restricted for foreigners by Law in accordance with international law. As a matter of fact, in the last article of our Constitution it is stated that; “International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In case of contradiction between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws, due to different provisions on the same issue, the provisions of international agreements shall be considered.” In this way, it becomes impossible to see discriminatory clauses in the national legislation.

Following international agreements are also ratified by Turkey;

United Nations Conventions;

- UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (entry into force: 1 January 2005)**
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (entry into force: 1 January 2003)**
- International Covenant on Civil and Political Rights (entry into force: 1 January 2004)**
- International Covenant On Civil And Political Rights (entry into force: 1 January 2004)**

Council of Europe Conventions

- Convention for the Protection of Human Rights and Fundamental Freedoms (entry into force: 18 May 1954)**
- European Social Charter (entry into force: 24 December 1989)**
- The European Convention on the Legal Status of Migrant Workers (entry into force: 1 May 1983)**
- European Convention on Establishment (entry into force: 20 March 1990)**

International Labour Organization (ILO) Conventions

- C111 Discrimination (Employment and Occupation) Convention (entry into force: 1 August 1968)**

- C95 Protection of Wages Convention (entry into force: 29 March 1962)
- C100 Equal Remuneration Convention (entry into force: 1 August 1968)
- C 155 Occupational Safety and Health Convention (entry into force: 22 April 2006)

Moreover, Labour Law No. 4857 regulates the working conditions, rights and responsibilities, related to the working environment, of employers and employees who are employed with an employment agreement and there is no citizenship requirement in the Law. “Equal Treatment Principle” contained in the Labour Law is as follows;

“No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the business relation.”

Unless there are important reasons for differential treatment, the employer must not make any discrimination between a full-time and a part-time employee or an employee working under a fixed-term employment contract (contract made for a definite period) and one working under an open-ended employment contract (contract made for an indefinite period).

Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his (her) employment contract due to the employee’s sex or maternity.

Differential remuneration for similar jobs or for work of equal value is not permissible.

Application of special protective provisions due to the employee’s sex shall not justify paying him/her a lower wage.

If the employer breaches the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his/her four months’ wages plus other claims of which he/she has been deprived.

The burden of proof with regard to the violation of the above-mentioned provisions by the employer rests on the employee. However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer.”

c) Will Croatia and Turkey abide by the rulings of the European Court of Justice which provide that *only* those jobs which involve the **exercise of State power** or the **safeguarding of the general interests** of the State may be restricted to its own nationals?

Article 128 of the Turkish Constitution provides that “The fundamental and permanent functions required by the public services that the State, State economic enterprises and other public corporate bodies are assigned to perform, in accordance with principles of

general administration, shall be carried out by public servants and other public employees .

The qualifications of public servants and other public employees, procedures governing their appointments, duties and powers, their rights and responsibilities, salaries and allowances, and other manners related to their status shall be regulated by law."

In addition, Article 48 of the Civil Servants Law No. 657, which is entitled "Conditions" states "being a Turkish national" as a prerequisite for being public servant, foreign nationals cannot be employed as public servants as a rule.

Article 4 of the said Law, which regulates employment modalities of the civil servants provides that "Public services shall be carried out by public servants, staff working with a contract, temporary staff and workers." Among these, foreigners can be employed as staff working with a contract and temporary staff subject to certain conditions.

Upon accession necessary alignment with the EU acquis, including the rulings of the European Court of Justice, will be made.

d) How will Croatia and Turkey ensure that EU migrant workers have **equal access** to available employment?

Discrimination regarding employment, payment and working conditions on the ground of race against the family members of migrant workers is prohibited by Article 10 of the Constitution and Article 5 of the Labour Law as stated previously.

Turkey will make its national legislation fully harmonized with the EU legislation as the accession process is accomplished. Implementation process will begin simultaneously on the basis of reciprocity principle.

e) Can Croatia and Turkey ensure that any **language requirements** are proportionate and non-discriminatory?

As laid down in Article 5 of the Labor Law, no discrimination based on language is permissible against foreigners neither in Turkish legislation nor in practice unless there are important reasons for different treatment related to the nature of the job or profession.

f) Will Croatian and Turkish **employment offices** give EU migrant workers the same assistance as that given to Croatians or Turks?

It is not possible in the present legal framework that EU immigrant workers who does not posses work permit can benefit from ISKUR services. However, foreigners who possess unlimited work permit by the Law No. 4817, or those who are indicated in the paragraphs (a), (b), (c), (d), (e) and (f) of Article 8 of the same Law (within the framework of the conditions of paragraph 1 of the same Article), in addition to foreign

workers who apply to get unemployment benefit according to the agreements based upon reciprocity in accordance with Article 46 of the Law No. 4447, can benefit from the services of the Organisation, providing that they register in the Organisation, and that they present the required documents proving their foreign national status.

On the other hand it is also possible for the foreign worker to follow the vacancies and apply for suitable jobs individually on the web site of ISKUR.

h) Can Croatia and Turkey ensure that EU migrant workers will be able to bring their family members as defined in the Directive 2004/38/EC regardless of nationality with them ?

Article 5 of the Law No. 4817 envisages that “Working permission for a definite period of time may be given also to the spouses and dependent children, who have come together with the foreigner or afterwards, on condition that they have resided with the foreigner legally and uninterruptedly for at least five years.”

Within the scope of the studies aiming at the reunification of families, the draft for amending Law prepared for eliminating any time condition by the exclusion from the text and abolishment of the above mentioned disposition is already at the agenda of the Turkish Grand National Assembly.

Administrative formalities

a) Can Croatia and Turkey ensure that EU migrant workers will not be asked for a visa upon entering the country?

Upon accession, Turkey will fully harmonize its legislation with the EU acquis and ensure that EU migrant workers will not be asked for a visa upon entering the country. This will be implemented simultaneously with the EU Member States and on the basis of reciprocity.

b) Can Croatia and Turkey ensure that third country national family members of EU migrant workers are accorded every facility for obtaining any visa necessary?

Upon accession, Turkey will fully harmonize its legislation with the EU acquis and ensure that third country national family members of EU migrant workers will be accorded every facility for obtaining any visa necessary. This will be implemented simultaneously with the EU Member States and on the basis of reciprocity.

c) Can Croatia and Turkey ensure that they will implement the new Residence Directive as regards registration formalities?

The procedures regarding the residence permits of foreigners are carried out under the Passport Law No. 5682 and Law on Residence and Travel of Aliens in Turkey No. 5683 and the Circular No. 63 dated 2004 on the residence permit. Circular No. 63 introduces conveniences regarding residence permit procedures, especially for the EU citizens and their third country national accompany.

According to the above-mentioned Circular No. 63:

- The EU citizens who apply for residence permits following the termination of validity of their visa in Turkey are given residence permits by the Provincial Police Departments of residence regardless of the type and duration of their visa for a period of 3 years at first and for a period of 5 years at second stage.
- Foreigners who reside in tourist regions of Turkey and who bought real estates in these regions, the ones who are present in Turkey with the intention of staying and residence, the ones who consider Turkey as a place of close relations for his/her private life depending on his/her own will or his/her family, the ones who made Turkey the centre of their life and social relations are given residence permits for five-year periods at their first residence permits and extension proceedings by the provincial police departments of residence regardless of the type of their visa.
- Residence permit of the EU citizens who have 3 years or more - residence permit is extended to 5 years by Provincial Police Department.
- In the event of the request for a shorter residence permit by the citizens of the EU, duration of permit is given by Provincial Police Department as much as demanded period.

By accession, Turkey will fully harmonize its legislation with the EU acquis. This will be implemented simultaneously with the EU Member States and on the basis of reciprocity.

Residence Rights

a) Can Turkey ensure that even **third country family** members will be granted residence rights of the same length of validity as the EU migrant worker?

Yes. Third country national family members of the EU citizen who has work permit in Turkey are given residence permit with the same durations as the citizen has. There is no restriction on the duration within the context of the Circular No. 63 on Residence Permit, and also, children and spouse of the EU citizen, regardless of their nationality are given residence permit as the EU citizen.

b) Can Turkey ensure that a migrant worker's right of residence permit will **not be withdrawn** solely on grounds of involuntary unemployment, illness or accident, as confirmed by the competent employment office?

In the framework of the legislation in force at the moment, a migrant worker's right of residence will not be withdrawn solely on grounds of involuntary unemployment, illness or accident.

c) Can Turkey ensure that they will grant **permanent residence permit** to all EU migrant workers who qualify?

The duration of residence permit is 5 year in accordance with Article 9 of the Law No. 5683 on Residence and Travel of the Foreigners in Turkey. Accordingly, permanent residence concept existing in the EU legislation does not in the Turkish legislation.

On the other hand, according to the Law No. 4817, a foreigner having unlimited work permit is given a five-year residence permit, however, at the end of the fifth year, the residence period is extended a further five-year, based on the unlimited work permit.

Upon accession, Turkey will make its national legislation fully harmonized with the EU legislation. Implementation phase will start simultaneously on the basis of reciprocity.

d) Can Turkey ensure that the **family members** of EU workers in the above categories will also have the right to **remain permanently**?

To the third country national family members of the EU citizen workers possessing work permit in Turkey, residence permits are issued with the same durations as the EU citizens and the residence permit of those having 5 years residence permit may be extended for further 5 years according to the Circular No. 63 and the Circular No.155.

Upon accession, Turkey will fully harmonize its legislation with the EU acquis.

Derived Rights Family Members

a) Can Turkey confirm that the spouse/partner and children under 21 will have the right to employment in Turkey without a work permit? Even if these **family members are from non-EU Member States**?

According to the Law No.4817, these persons are not required to get work permit separately.

The condition of having been resident legally and uninterrutedly at least 5 years defined by the Law is not applied to the EU citizens and their spouse and children even if these family members are from non-EU member states. (Art.8(e) of Law No. 4817)

The same provisions are applied to the third country family members of the EU citizens.

The requirements on which spouse and children under 21 will obtain the right to be employed in Turkey without a work permit and their third country spouse and children are going to be fulfilled upon accession.

b) Will the children of EU migrant workers have a right to equal treatment in education?

“Equal treatment” provision on registration and access to education is ensured by the “Implementing Regulation on Education of the Children of Migrant Workers’ Children”.

c) How will Turkey be able to guarantee that there will be no discrimination on grounds of **nationality (direct or indirect) against family members of EU migrant workers** in employment, pay and working conditions?

Any discrimination on grounds of nationality against the family members of EU migrant workers in the field of employment, payment and working conditions will not be allowed as clearly stated both in Article 10 of the Turkish Constitution and in Article 5 of the Labour Law.

Equal treatment, tax and social advantages, trade union rights, housing rights

a) Will EU migrant workers and their family members enjoy the same "**tax and social advantages**" as well as vocational training as national workers?

In Turkish legislation, national workers and foreigner workers are subject to the same rights in terms of vocational training and social and tax advantages.

b) Will EU migrant workers and their family members enjoy the same **trade union rights**?

Foreigner workers can be a member of the trade unions and have voting rights. However, being a founding member of a trade union requires to be Turkish citizen according to Article 5 of the Trade Unions Law No. 2821.

The condition of being Turkish citizen for the trade union's founder membership is planned to be altered in conformity with the European Social Charter and the fundamental provisions of the EU on free movements of labour.

c) Will EU migrant workers enjoy the same **housing rights** as national workers?

Any discrimination on grounds of nationality against the migrant workers in the field of employment, payment and working conditions, including housing, will not be allowed as clearly stated in both Article 10 of the Turkish Constitution and in Article 5 of the Labour Law.

Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

Introduction

Council Directive 98/49/EC of 29 June 1998¹ came into force in the Member States the 25th July 1998 and Member States had to adopt the necessary measures for its application at the latest 36 months following the date of its entry into force.

Members States have already adopted and transmitted to the Commission the measures for the implementation of Directive 98/49/EC. It is important to notice that old and new² Member States have the obligation to adopt implementing measures even they estimate that supplementary pension schemes within the meaning of Directive 98/49/EC4 (Articles 1 and 3) do not exist in their country.

The Court gave a clear ruling on the implementation of provisions on supplementary pension schemes in the context of Directive 80/987/EEC and the obligations arising from this Directive for the Member States (points 34 and 35). In its judgment of 2 February 1989 in Case 22/87, Commission v. Italy (ECR 1989 p. 143). the Court held:

"In response to the Commission's complaint concerning the lack of any Italian legal provision implementing the obligation deriving from Article 8 of the directive, whereby the Member States must protect employees' entitlement to old-age and survivors' benefits under supplementary company or inter-company pension schemes outside the statutory social security schemes, the Italian Government points out that such supplementary schemes are almost non-existent in Italy. It need merely be stated in that regard that fact cannot justify the failure to discharge the obligation imposed by Article 8 of the Directive".

This Case law was more recently confirmed in the judgment of the Court of 14 December 2000. Case C-457/98.,(Commission of the European Communities v Hellenic Republic. Failure to fulfil obligations under Directive 96/97/EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Failure to transpose. ECR. 2000, p. I-11481).

In order to have as far as possible a complete, clear and updated picture of the situation of the implementation of the Directive in the old Member States and in the new Member States presentation by the Commission of the report ³on the implementation of Directive 98/49/EC t a questionnaire has been drawn up and sent to Governments and to (..) stakeholders involved in this area i.e. employers' organizations and trade unions, and to the members of the Pensions Forum

In this questionnaire there were also more specific questions (contained at the end of this questionnaire) addressed to stakeholders involved other than governments the area of supplementary pension are VII.

¹ L. 209 of 25 July 1998 p.46

² The new Member States from the 1st May 2004

³ COM(2006) 22 final of 26.01.2006

This questionnaire is now adapted for Croatia and Turkey.

This questionnaire will allow the Commission to have updated information and to clarify certain points regarding its implementation from both candidate countries.

In each of the areas covered by the Directive, the replies must cover the private sector, including the self-employed, public sector and the semi-public sector (semi-public bodies, public or nationalized undertakings, etc...) in so far as workers of the public sector are covered by supplementary schemes to a statutory scheme of social security.

Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community sets out certain rights and obligations for members of supplementary pension schemes.

This Directive constitutes a first, but very important, step on removing obstacles to free movement relating to supplementary pensions. recital 4).

The Directive was adopted on the basis of Article 51 of the Treaty (new Article 42 EC), which seemed to be the most appropriate legal basis in order to take account of the characteristics and the diversity of supplementary schemes within and between the Member States.

The principal provisions could be summarised as follows:

-A person who leaves a scheme because he moves to another Member State must not be treated differently to a person who leaves the scheme but remains in the Member States, as far as his/her vested rights are concerned, (**Article 4**).

According to Article 3 d) of the above Directive "vested pension rights " means any entitlement to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme and, where applicable by national legislation.

-Member States should take the necessary measures to ensure that benefits under supplementary pension schemes are paid to members and former members thereof as well as others holding entitlement under such schemes in all Member States, given that all restrictions on the free movement of payments and capital are prohibited under Article 56 EC ex-Article 73b of the Treaty (**Article 5**)

- A person posted to another Member State must be allowed to continue to make contributions to the scheme in his "home" Member State, (**Article 6**). To this end and in order to facilitate the exercise of the right to free movement, national regulations should, where necessary, be adjusted in order to enable contributions to continue to be made to a supplementary pension scheme established in one Member State by or on behalf of workers who are posted to another Member State in accordance with Title II of Regulation (EEC) No 1408/71

-Workers exercising their right to free movement should be adequately informed by employers, trustees or others responsible for the management of supplementary pension schemes, particularly with regard to the choices and alternatives available to them (**Article 7**)

The Directive does not cover, however, what is often called "portability" of supplementary pensions even if this can have a serious effect on worker mobility.

I. Objective and scope

1. Introductory remark

The aim of Council Directive 98/49/EC is to protect the rights of members of supplementary pension schemes who move from one Member State to another, thereby contributing to the removal of obstacles to the free movement of employed and self-employed persons within the Community. Such protection refers to pension rights under both voluntary and compulsory supplementary pension schemes, with the exception of schemes covered by Regulation (EEC) No 1408/71

They must communicate to the Commission the text of laws, regulations and administrative provisions which they adopt in this field,

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States. They shall inform the Commission of the national authorities to be contacted regarding the application of this Directive.

Questions addressed to governments:

- *How you intend to implement Directive 98/49/EC?*

In order to implement Directive 98/49/EC, it is required to enact a specific law or an amendment to an existing law in Turkish legal system. At present, it should be stressed that we do not have any occupational pension schemes in Turkey as envisaged by the Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community.

In Turkey we only have second-pillar type pension schemes regulated by specific laws. There are second pillar-type pension schemes with mandatory participation which involves two institutions required by their specific laws and with voluntary participation which are formed as so-called “Vakıf and Sandık”, i.e. foundations and provident funds.

Turkish private pension system is based on the regulation and supervision of third pillar-type individual pension schemes. There is a pending proposal for the amendment of Law on No. 4632 Individual Pensions Saving and Investment System brought before the Parliament which entails a legal framework for the imposition of vesting schedules for the employer contributions in the group pension schemes and granting the participants in the second pillar-type voluntary pension schemes (foundations/provident funds) the right to transfer their pension accumulations to the personal private pension system.

During accession process, by taking into consideration the developments in the EU and with the involvement of the social partners, a horizontal framework legislation will be prepared.

In conclusion, it should be stated that we are not able to comment further on the questionnaire in the absence of a legislative instrument for supplementary pension schemes.

- . By a general legislation (framework legislation, other specific legislation,)?
- . By specific measures?
- . By collective agreements between social partners?
- . By other provisions?

Please enclose all the relevant texts and the references

- Are there any new proposals which directly or indirectly concern the application of the present Directive? What form do they take?

- . A general draft law?
- . Specific proposals for the various sectors covered?
- . Collective agreements between social partners?
- . Other provisions?

If so, please enclose the texts.

2. Scope of the Directive

a). Personal scope

Under Article 2 the Directive shall apply to members of supplementary pension schemes and others holding entitlement under such schemes (i.e. members of families or others) who have acquired or are in the process of acquiring rights in one or more Member States.

Questions addressed to governments

- Have already legal measures been adopted to ensure the safeguarding of supplementary pension rights of persons moving to another country? -Does your legislation specify the persons holding entitlement under the supplementary pension schemes and if so who are these persons?

- Are the survivor spouses and children included?

b). Material scope

In article 1 purpose and scope the Directive defines the supplementary pension schemes covered by its scope. Are covered (..) both voluntary and compulsory supplementary pension schemes for employed and self-employed persons with the exception of schemes covered by Regulation (EEC) No 1408/71 .

This implies that no pension or benefit should be subject to both the provisions of this Directive and those of Regulations (EEC) No 1408/71 and (EEC) No 574/72, and therefore any supplementary pension scheme which comes within the scope of those Regulations, because a Member State has made a declaration to that effect under Article 1(j) of Regulation (EEC) No 1408/71, cannot be subject to the provisions of this Directive;

Questions addressed to governments:

- *How does your legislation will(..) ensure that both voluntary and compulsory supplementary pension schemes for employed and self-employed persons could be covered by the legislation implementing this Directive?*
- *Are there any supplementary pension schemes within the meaning of Articles 1 and 3b) which could be covered by Regulations 1408/71 and 574/72?*
- *Do you intend for a specific scheme to make a declaration in accordance with Article 1 (j) of Regulation (EEC) No 1408/71, in order to include that scheme under the scope of regulation 1408/71?*

II Definitions

In Article 3 the Directive contains some definitions:

- (a) 'supplementary pension' means retirement pensions and, where provided for by the rules of a supplementary pension scheme established in conformity with national legislation and practice, invalidity and survivors' benefits, intended to supplement or replace those provided in respect of the same contingencies by statutory social security schemes;
- (b) 'supplementary pension scheme' means any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or pay-as-you-go scheme agreed by one or more branches or sectors, funded scheme or pension promise backed by book reserves, or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons;
- (c) 'pension rights' means any benefits to which scheme members and others holding entitlement are entitled under the rules of a supplementary pension scheme and, where applicable, under national legislation;
- (d) 'vested pension rights' means any entitlement to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme and, where applicable, under national legislation;
- (e) 'posted worker' means a person who is posted to work in another Member State and who under the terms of Title II of Regulation (EEC) No 1408/71 continues to be subject to the legislation of the Member State of origin, and 'posting' shall be construed accordingly;
- (f) 'contribution' means any payment made or deemed to have been made to a supplementary pension scheme.

Questions addressed to governments:

- *Does your legislation contain the above definitions of Article 3? Please provide the necessary references.*
- *Are there any legal requirements for the vesting of pension rights?*

Are pension promises backed by book reserves considered included in the definition of "vested pension rights"?

- Do the regulations take account of persons holding entitlement and are they entitled under the rules of a supplementary pension scheme and, where applicable, under national legislation?

- Who are these persons? The dependants, spouse, children, others?

III Measures for safeguarding the supplementary pension rights of workers moving within the Community

1. Equality of treatment as regards preservation of pension rights

According to Article 4 of the Directive Member States shall take the necessary measures for the preservation of vested rights of members who cease to make contributions to a supplementary pension scheme when moving to another Member State, and for other persons holding entitlements (dependants, members of family...) under the rules of the supplementary pension scheme. The aim is that full preservation of vested rights is guaranteed for members who cease to make contributions to a supplementary pension scheme as a consequence of moving from one Member State to another at least to the same extent as for members ceasing to make contributions to the scheme but remaining within the Member State in question. This provision reflects a basic principle of Community law, deriving from Article 39 of the Treaty, namely that a worker making use of his or her right of free movement shall not be treated less favourably than a worker remaining within the Member State of origin. This means that a worker who ceases to make contributions to a supplementary pension scheme as a consequence of going to work for another employer in another Member State should not lose the rights already acquired in this scheme which he or she would have preserved had he or she changed employer while remaining in the same Member State.

Questions addressed to governments:

- Have legal measures been adopted to ensure the equal preservation of vested rights for persons moving cross border as for persons moving within the country ?

- How are the vested rights preserved? Are there any specific rules established by legislation; collective agreements, by the scheme?

2. Cross border payments

Article 5 of Directive 98/49/EC aims to ensure that Member States will take the necessary measures to guarantee that in all Member States of the European Union benefits under supplementary pension schemes are paid to members of such schemes or to others holding entitlement under such schemes, (their dependants, members of their families or survivors) net of any taxes and transaction charges which may be applicable. This principle applies in all cases where a member of a supplementary pension scheme has moved from one Member State to another, for whatever reason. This provision, however, is not intended to prevent the taxation of benefits in the Member State in which the supplementary pension scheme is established or transaction charges. This being so, it means that taxes and transaction charges **can be** deducted before a payment is made to another country but other similar deductions are not permitted in the country of destination (the country where the scheme member or the person holding entitlement receive the benefit)

This Article recalls also a very important principle of Community law, namely the free movement of capital (Article 56 EC ex-Article 73b of the Treaty).

Questions addressed to governments:

- Have specific legal measures been adopted to ensure the cross border payments in other countries? - What does your legislation provide with regard to taxes and transaction charges for cross border payment and to which extent?

3. Contributions to supplementary pension schemes by and on behalf of posted workers

Article 6 concerns the posted workers within the meaning of Article 3(e) which refers to Title II of Regulation 1408/71/EEC.

Posted workers expect to return to their Member State of origin without a break in the building-up of their pension rights. Consequently, they and their employers often prefer to continue to make contributions to the supplementary pension scheme in the Member State of origin during the posting. The aim of this Article on this specific point is to enable this to take place and to align the rights of a worker under a supplementary pension scheme with the rights which workers have in relation to statutory social security schemes under Regulation 1408/71.

Article 14(1)(a) of Regulation 1408/71 provides that a person employed in the territory of a Member State by an undertaking to which he or she is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the Member State of origin, provided that the anticipated duration of that work does not exceed one year. By virtue of Article 14(1)(b), this period can be extended by another year if the host Member State agrees to it. By virtue of Article 17 of Regulation 1408/71, however, two or more Member States may agree to a posting which lasts for more than two years. On the initiative of the Advisory Committee on Social Security for Migrant Workers, composed of the social partners and government representatives, in 1984 the Administrative Commission on Social Security for Migrant Workers adopted Recommendation No.16⁴. This aims to promote the use of Article 17 in the case of postings of workers with special knowledge or skills, or in order to meet specific objectives of the undertaking which employs them, on condition that the worker consents. Without saying so explicitly, the Recommendation is aimed particularly at workers in multinational companies.

The objective of Article 6 is to cover the maximum number of posted workers who contribute to supplementary pension schemes. By its decision 181 of 13 December 2000, O.J. L 329 of 14.12.2001 the Administrative Commission on Social Security for Migrant Workers specifies the conditions of posting in order to avoid for workers, employers and social security Institutions administrative complications.

The second paragraph of Article 6 specifies that when contributions continue to be made by or on behalf of a worker to a supplementary pension scheme in his or her Member State of origin, the Host Member State shall recognize this as equivalent to membership of a supplementary pension scheme in that State. In these circumstances, the host Member State will not be able to compel membership of a compulsory scheme established in its territory.

⁴ "Recommendation No 16 of 12 December 1984 concerning the conclusion of agreements pursuant to Article 17 of Council Regulation (EEC) No 1408/701", OJ C 273, 24.10.1985

This provision is in line with the case-law of the Court of Justice. In its judgment in the case *Guiot*⁵, the Court held that Articles 59 and 60 of the Treaty preclude a Member State from requiring an undertaking established in another Member State and temporarily carrying out work in the first-mentioned Member State to pay employer's contributions in respect of loyalty stamps and bad-weather stamps with respect to workers assigned to carry out that work, where that undertaking is already liable for comparable contributions, with respect to the same workers and for the same period of work, in the State where it is established.. With its latest Case law⁶ the Court confirmed this rule.... In its Judgment of 23 November 1999, in case *Arblade e.a.*, C-369/96 et C-376/96 the Court clarified that Articles 59 of the Treaty (now, *after amendment, Article 49 EC*) and 60 of the Treaty (now *Article 50 EC*) preclude a Member State from requiring - even by way of public-order legislation - an undertaking established in another Member State, operating in the construction sector and temporarily carrying out work in the first State, to pay, in respect of each worker deployed, employers' contributions to schemes such as the 'timbres-intempéries' and 'timbres-fidélité' schemes, and to issue to each of such workers an individual record, where the undertaking in question is already subject, in the Member State in which it is established, to obligations which are essentially comparable, as regards their objective of safeguarding the interests of workers, and which relate to the same workers and the same periods of activity.

Questions addressed to governments:

- Does your legislation permit in a more general context the cross border affiliation?

4. Information to scheme members

According to Article 7 of Directive 98/49/EC. Member States shall take measures to ensure that employers, trustees or others responsible for the management of supplementary pension schemes provide adequate information to scheme members about their supplementary pension benefit rights. They must be given the means to assess the implications as regards their pension if they move to a new job in another Member State, and should be provided with complete information about the possible alternatives and choices. This could be for example, an information on the transfer value with which they will be credited if they decide to transfer their pension rights (provided that this is possible under the scheme concerned), and the possible agreements existing between Member States, and about the pension benefit amount they would receive if their rights were to be preserved within the same scheme.

Such information shall at least correspond to information given to scheme members in respect of whom contributions cease to be made but who remain within the same Member State.

Questions for governments:

- Please describe the information requirements in this field.

⁵ to *Guiot*, Case C-272/94, judgment of 28 March 1996, ECR p. I-1905

⁶ Judgement of 15 June 2000, in case *Sehrer*, C-302/98, ECR. p. I-4585

Judgement of 26 January 1999, in case *Terhoeve*, C-18/95, ECR. p. I-345

Judgement of 23 November 1999, in case *Arblade e.a.*, C-369/96 et C-376/96, ECR. p. I-8453

IV. Final Provisions

1. Retroactivity

Article 8 of Directive 98/49/EC authorises Member States to provide that the provisions of Article 6 on posted workers shall apply only to postings that commence on or after 25th July 2001. It implies an obligation for the Member State to notify this to the Commission.

Questions addressed to governments:

- Does your government intend to make use of this clause?

2. Judicial protection

In article 9, there is a standard clause on judicial protection to be introduced by Member States into their national legal system by adopting measures necessary to enable all persons who consider themselves wronged by failure to apply the provisions of Directive 98/49/EC to pursue their claims by judicial process after possible recourse to other competent authorities.

Questions addressed to governments:

-Is there at present, any judicial protection and in which courts?

- Is this right individual?

- May it be exercised collectively?

VI. Questions addressed to governments and to stakeholders

- What could be the improvements that you would propose (legislative or other measures) at national level?

VII Questions addressed to stakeholders (Social partners, representatives of supplementary pension schemes...)

- What is your overall assessment on the possible impact of Directive 98/49/EC on protection of workers rights?

Preservation of vested rights

- Does discrimination still exist for the preservation of supplementary pension rights between members of a supplementary pension scheme moving to another country and members remaining within the same Member State?

- Please indicate the most frequent problems occurred in relation with preservation of rights.

Cross border payments

- What are the most frequent problems occurred relating to cross-border payments
- Do the scheme members and the persons holding entitlement still face problems of double taxation and/or double transaction charges? Please give concrete examples.

Contributions to supplementary pension schemes by and on behalf of posted workers

- *Do the members of a supplementary pension scheme have the possibility to remain affiliated to the previous scheme in the home country,*
- *How does it work in practice in your country?*

- *What are the more frequent problems occurred by posted workers in this field?*

Information to scheme members

- *Do you feel that the necessary legal measures have already been taken in order to ensure the adequate information for scheme members ?*
- *How does it work in practice?*
Please give concrete examples of the kind of information provided by schemes managers.

- *What would you propose in order to improve and make effective this information?*

Judicial Protection

- *May trade unions or representatives of supplementary pension schemes exercise the right on judicial protection on behalf of the person discriminated against?*

- *Have actions been taken?*

- *Please give the main details of the cases and any decisions that have been handed down.*

(2) EURES

IT related issues

For participation in EURES the most important requirement is that the Public Employment Service disposes of a national level database and website where all national job vacancies are displayed. In addition, EURES actors need to dispose of an adequate work station with internet connection.

With regard to the database/IT infrastructure the following questions are the most pertinent:

1. Is there a dedicated IT unit?

Department of Labour Force Information Services is the main services unit that carries out IT services (Law on Establishment of Turkish Employment Organization; No. 4904, Art. 9)

2. Are IT operating systems up to date with regard to hardware and software?

Operating systems are up to date. Necessary work and investments have been carried out continuously in order to bring the operating systems up to date with regard to hardware and software.

3. Is the IT system networked to all offices and linked to a central database?

At present, IT system operates online on a single network with local and central databases at 104 offices in 81 provinces.

Efforts towards establishing a new system in the framework of e-transformation project are going on. This newly designed system is planned to work on a single network and use a single central database.

4. What job coding system is used (ISCO, NACE)?

The coding system called ISCO 88 is used. The occupations classified according to this coding system are included in Turkish Occupational Dictionary and matching procedures are carried out according to this system. ISIC rev. 3 system is used in the classification of economic activities.

In new system to be designed in the framework of e-transformation project, ISCO 88 will continue to be used for occupations, and NACE coding system for economic activities.

5. Is information on registrants available on IT systems at national level as well as regional and is it disaggregated by age group, education level, length of unemployment?

The data on registered persons are accessible both at regional and local level as from the date of registration to the ISKUR (Turkish Employment Organization). This data is disaggregated by age group, educational level and length of unemployment (waiting period as registered unemployed to the ISKUR).

In addition for the IT infrastructure at office level:

1. Do PES public offices have good self-service facilities?

Within the framework of the Active Labour Market Project (ALMP) implemented during 2003-2006, the self-service areas have been established at the pilot offices in 8 provinces and model offices in 20 provinces. Dissemination of the best practices of these offices to other offices is going on.

2. Are self-service computers available to Jobseekers?

Following the establishment of the self-service areas, self-service computers for job seekers were distributed to these areas. Currently, services are provided at 35 offices in 28 provinces with 16 self-service computers and 75 kiosks.

3. If not is there a plan to improve such resources with an appropriate budget allocated?

It is planned that available services will be extended to remaining offices in 2007.

4. What percentage of offices have actually been modernised?

30 % of the ISKUR's offices were modernized physically (renovated or newly built) in the last 3 years. As regards IT infrastructure, about 100 % of the network, about 60% of the hardware and 90% of the software systems are modernized. New developments are followed continuously.

5. Are computers available to all front-line staff?

All staff have computers.

6. Are PES public offices sufficiently accessible from disadvantaged areas?

ISKUR provides its services at 104 offices in 81 provincial offices nation-wide. Thus, all areas are equal in having access to ISKUR.

Vacancies

1. Please describe the way in which you handle vacancies in your country? Do you have a coordinated approach at national or regional level?

Public institutions have to inform ISKUR about their vacancies and employ persons from the registrations of ISKUR in Turkey. This requirement is not applied to private sector, so entrepreneurs can recruit staff by means of private employment agencies, newspaper advertisements, internet and direct applications.

ISKUR's local offices cooperates in the matching process. In addition, there is a voluntary cooperation between ISKUR and other employment services (private employment offices, internet etc.).

2. Is there any centralised database of vacancies and job applications? Is it accessible via a website (intranet or internet)?

There is centralized database of job applications and vacancies. It is accessible for unemployed by intranet or internet under current system.

Unemployed will be able to register as unemployed to ISKUR website by themselves and employers will access to labour force fitting to their needs or have matching services in electronic form by the beginning of 2007.

3. Please describe how you clear vacancies and applications?

The vacancies in public sector institutions are cleared by ISKUR according to the labour force demands of these institutions. ISKUR sends these institutions the score list of candidates who have taken the examination held centrally.

As regards private sector, the selection process with regard to labour force demands classified as ordinary, handicapped, ex-convicts and terror-stricken is made according to the the dates of registrations among active enrollments. If there are not enough job seekers registered in ISKUR's inventory classified as active enrollments, the same procedure is applied for passive enrollments. If particular criteria exists in the demand, ISKUR, having found these appropriate, may consider this criteria exclusively for this demand when it finds them appropriate and justifiable.

Job seekers determined following this process are invited to the ISKUR. Explanatory information about the job and employer is given to the job seeker. Their suitability to the job is controlled. The ones who possess required qualifications and wish to go to the interview are sent to the employer.

Whether or not the job seekers are employed is recorded and followed by the ISKUR.

4. Do you have any counselling system in place that supports the geographical and professional mobility (advise how to find a job, how to upgrade one's skills, how to acquire new ones, how to re-train).

ISKUR has career-building centres in 43 local offices and 18 of these offices have employment services where employment, guidance and counselling services are provided in order to make occupational career to unemployed people.

5. Any specific policy vis-à-vis underprivileged/special needs groups concerning filling in of vacancies?

Within the framework of the Article 30 of the Labour Law No. 4857; the enterprises, which have more than 50 employees, have to employ 6 % disadvantaged people such as disabled, ex-convicts, and people adversely affected by terrorism. Moreover, the quota system is applied 0,1% to the youth who grew up in orphanage within the framework of the Law No. 3413.

Furthermore, some projects such as the Active Labour Market Project have been implemented in order to increase employability of these groups through vocational training and counselling services.

6. Do you work directly with employers? How?

In determining vacancies and monitoring labour market, periodic information is taken from businesses, work places are visited, and direct contact and dialogue with employers is established.

Employers will be able to benefit from the services provided by ISKUR's website from the beginning of 2007.

7. How do you fund these activities (if relevant)?

These activities are financed by ISKUR budget, grants and/or loans provided from national and international institutions.

Labour Market and Mobility

1. Do you collect statistics on the internal and external mobility in your country? Do you collect statistics in the cross border regions/do you collect statistics on commuting?

Statistics on internal and external mobility in Turkey are collected by TUIK by using ISKUR's and EUROSTAT's statistics.

Most of the statistics which are produced by TUIK are published according to urban/rural classification. (Urban area: Residential area whose population is 20 001 and above. Rural area: Residential area whose population is 20 000 and below)

2. Do you follow the changes in the labour market and update the fluctuations (shortages and surpluses of workers in specific sectors).

Changes and general tendencies in the labour market are followed by means of Household Labour Force Survey results which have been published by TUIK since 1988. These surveys are based on ILO's and EUROSTAT standards.

It is possible to have access to news letters and periodic results which are published in Turkish and English from TUIK's website. <http://www.tuik.gov.tr/VeriBilgi.do>

3. Do you map trends in the labour market?

The data concerning labour market are followed continuously on a monthly basis through the household labour surveys since 2000.

The data on the labour demand are obtained from the records of ISKUR. On the other hand, the projects at the level of province and region have been applied and these efforts will be extended nation-wide (Active Labour Market Project /ALMP, Vocational Development Project/MEGEP, Generalizing Working Life Project, Konya-Karaman Project, ILO-Kocaeli Project).

4. Do you have updated information on living and working conditions in your country?

The statistics in this field are produced by MoLSS, ISKUR, Social Security Institution, TUIK.

MoLSS publishes statistical results of inspections in workplaces made by Labour Inspection Board.

ISKUR publishes monthly statistical bulletins and annals of statistics, by classifying registered labour force into various categories.

Social Security Institution publishes statistics annually on work accidents and occupational diseases based on the result of inspections in workplaces made by Insurance Inspection Board.

Household labour force surveys provides up to date information about working conditions of employed people. By these surveys, it is possible to obtain detailed information about economic activities, occupations, employment positions, working hours, working types (full-time, part-time, permanent, temporary) of employed persons.

In order to compile more comprehensive information relating to living conditions as well as income distribution, relative poverty, absolute poverty and social exclusion, "Survey on Distribution of Income and Living Conditions" has been implemented since 2005. This survey is based on the standards of EUROSTAT.

From these different resources, up to date data concerning living and working conditions are able to be collected.

5. Do you have a free counselling service for foreigners who come to your country for work purposes?

Relevant departments of ISKUR and MoLSS (Department of Work Permit for Foreigners) provide the needed counselling service without charge.

6. Any service for your own nationals returning from abroad for their re-integration into the labour market?

The great majority of nationals returning permanently from abroad to our country is the ones who completed the active working life and who were awarded pension by the long-term insurance. The services provided to these people are predominantly oriented towards protection of social security.

In the past years, many projects were implemented for spouse and children staying in Turkey of our nationals returning permanently from abroad and these projects aimed at vocational training, solving the problem of adaptation and reintegration of them into the labour market.

Turkish nationals returning permanently from abroad to and participating actively in labour market have benefited from all facilities under the same conditions as the nationals resident in Turkey.

Staff and Human Resources Development

1. How well is your PES staff (both centrally and in the regions) prepared to: draft projects, plan budgets. What are their linguistic capacities?

In recent years, the ISKUR's staff have gained much experience and knowledge in the fields of project designing and budget preparation thanks to the World Bank projects, ILO projects, projects implemented in different countries (in Germany and Sweden), EU-funded projects, European Training Foundation-funded projects and projects in the framework of National Observatory. In addition to these, by continuous training and newly recruited personnel the capacity of the ISKUR is improving progressively.

The foreign language competency is around 5%.

Quality Monitoring

1. How do you monitor the quality and quantity of the services provided by the public employment services?

In line with the ISO 9000 quality certificate that was given to the ISKUR by Turkish Standardization Institute, ISKUR works in a dedicated manner bearing the

philosophy of planning, implementation, monitoring, assessment and improvement and customer satisfaction is measured periodically.

On the other hand, the services provided by the institution are assessed and analysed with performance inspection carried out by independent auditing institutions and by internal and external inspectors.

(3) COORDINATION OF SOCIAL SECURITY SYSTEMS

A. Scope of Coordination⁷:

1. Personal Scope

a) Does your social security legislation clearly define employed persons/self employed persons and members of the family?

The social security legislation applied in Turkey clearly defines employed persons/self-employed persons and the members of the family.

Definition of Employed Person

i) **“Those who are employed by one or more employers depending on a employment contract in private or public sector is accepted as an insured according to this Law.” (Law No.506, Art. 2) "The family members are; spouse, children, and mother and father whom the insured is responsible to take care of." (Law No.506, Art. 106)**

Definition of Self-Employed Person

ii) **"Those who are working for their own account and without any contracts with an employer is accepted as insured according to this Law." (Law No.1479, Art. 24) "The family members are; spouse, children, and mother and father whom the insured is responsible to take care of. "**

Definition of Civil Servant

iii) **“Those who are working in public entities as a civil servant are considered as insured.” (Law No.5434, Art. 12) "The family members are; spouse, children, and mother and father who may benefit from pensions as survivors."(Law No.5434, Art. 67)**

⁷ Ref. Council Regulation 1408/71 and 574/72

2. Material Scope:

a) Regulation 1408/71 will apply to the social security branches mentioned in Article 4: are all these branches covered by your legislation?

All the insurance branches mentioned in Regulation 1408/71, with the exception of family benefits, are covered for employed persons by the Social Insurance Institution (SSK).

All the insurance branches, with the exception of family benefits, unemployment insurance, maternity insurance and occupational diseases/work accidents, are covered for the self-employed by the BAG-KUR. However, in case of maternity, the health care expenditures are financed via sickness insurance. Upon the invalidity of the insured due to work accident, the invalidity pension is granted to the insured, and in case of death of the insured, death pension is granted to the survivors.

All the insurance branches, with the exception of family benefits and unemployment insurance, are covered for civil servants by the Retirement Fund. However, the civil servants actively working are paid allowances for unemployed spouse and up to two children by their institutions. In addition, their institutions pay full salary (without any deduction) to the civil servants for the period of maternal leave in case of maternity. Upon the death of the insured due to work accident, the death pensions are granted to the survivors.

According to the Social Insurances and the General Health Insurance Law which will be in force on 1 January 2007, all the insurance branches, with the exception of the family benefits, will be applicable to all insured persons. However, the unemployment insurance will continue to cover only those who are working with an employment contract.

b) As regards Article 5, can you list the legislation and social security schemes covered by the regulation?

The Social Security System in Turkey consists of three regimes;

- **the general regime**
- **regime for civil servants**
- **regime for the self-employed**

The social protection legislation in Turkey is based on contributory and non-contributory systems.

CONTRIBUTORY SYSTEM

- **Social Security Institution Law No. 5502**
- **Social Insurance and General Health Insurance Law No. 5510 will enter into force on 1 January 2007**
- **During the transitional period, certain Articles of the Laws mentioned below will remain in force in order to protect vested rights of the currently insureds:**
 - **Social Insurance Law No. 506,**
 - **Social Insurance Law For Agricultural Employees No. 2925,**
 - **Social Insurance Law No. 1479 (for craftsmen, artisans and other self-employed),**
 - **Social Insurance Law No. 2926 (for self-employed in agricultural sector),**
 - **Law on Retirement Fund No. 5434 (for civil servants)**
- **Law on Unemployment Insurance No. 4447.**

NON-CONTRIBUTORY SYSTEM

- **Law on Social Assistance and Solidarity Fund No. 3294**
- **Law on Awarding Pension to the Elderly People (65 years old and over) No. 2022**
- **General Directorate for Social Services and Child Protection Law No. 2828**
- **Law on Issuance of Green Cards for the Citizens who are Incapable to Pay for Health Care Services No. 3816**

c) Is there a clear distinction between social security benefits and social assistance as provided for by the Regulation?

There is a distinction between social security benefits and social assistance system in Turkey. The social security benefits are granted via the contributory system. In this case, the benefits are based on the employment relationship and the number of days of contribution. On the other hand, the social assistance is financed from the non-contributory system and depends on the income level.

The social security reform envisages to introduce a means-tested social assistance system which aims to be objective in granting the public resources allocated for social assistance and to render the system accessible by all who are in need. The benefit from the social assistance system will be defined as a right for all qualified persons.

d) Are there special regimes for war victims?

There are special arrangements for those who have directly joined war. According to Law on Retirement Fund No. 5434, invalidity pension to the war victims and death pension to their survivors in case of death are granted.

e) Please provide a list of your bilateral social security conventions.

COUNTRY NAME	DATE OF SIGNATURE	ENTRY INTO FORCE
01. THE UNITED KINGDOM	09.09.1959	01.06.1961
02. GERMANY	30.04.1964	01.11.1965
03. THE NETHERLANDS	05.04.1966	01.02.1968
04. BELGIUM	04.07.1966	01.05.1968
05. AUSTRIA	12.10.1966	01.10.1969
06. SWITZERLAND	01.05.1969	01.01.1972
07. FRANCE	20.01.1972	01.08.1973
08. LIBYA	13.09.1984	01.09.1985
09. DENMARK	22.01.1976	01.02.1978
10. SWEDEN	30.06.1978	01.05.1981
11. NORWAY	20.07.1978	01.06.1981
12. TURKISH REPUBLIC OF NORTHERN CYPRUS	09.03.1987	01.12.1988
13. MACEDONIA	06.07.1998	01.07.2000
14. AZERBAIJAN	17.07.1998	09.08.2001
15. ROMANIA	06.07.1999	01.03.2003
16. GEORGIA	11.12.1998	20.11.2003
17. CANADA	19.06.1998	01.01.2005
18. QUEBEC	15.10.1998	01.01.2005
19. THE CZECH REPUBLIC	28.06.2001	01.01.2005
20. BOSNIA-HERZEGOVINA	26.07.2002	01.09.2004
21. ALBANIA	14.07.1998	01.05.2005
22. LUXEMBOURG	07.07.2000	01.06.2006

B. The Main Principles of Coordination

3. Equal Treatment

a) Are there any examples in your social security legislation where non-nationals are treated less favourable than nationals?

Foreigners are treated on the same ground as the Turkish nationals benefit from the Social Security System.

However, unemployment insurance branch can only be applied to those nationals whose country has a bilateral social security agreement with Turkey, due to the reciprocity clause in the relevant Law (Law No. 4447)

4. Determination of the applicable legislation:

a) Are your social security schemes based on the principle of *lex loci laboris* or are they based on residence?

Turkish social security legislation has adopted the *lex loci laboris* principle.

b) Do you have rules and administrative structures applicable in the case of posting of workers?

Posted workers coming from the countries, which have a bilateral agreement with Turkey or coming from countries which are party to European Convention on Social Security, are covered by their national social security legislation.

Those coming from other countries continue to be covered by their national legislation provided they inform relevant Turkish authority that they are insured in their home country.

The provisional work and stay of Turkish workers and the self-employed in countries which Turkey has signed bilateral social security agreements are governed by the provisions of the agreements. For the workers working in countries which have not

signed bilateral agreements with Turkey, special measures (the collective/group insurance; voluntary insurance; mandatory insurance) in the relevant laws are applied.

According to the Social Insurances and the General Health Insurance Law which will be enter into force on 1 January 2007, those who work in the countries which have not bilateral agreements with Turkey will also be accepted as posted workers.

Currently, SSK and BAG-KUR are the responsible institutions in charge on this matter. As of January 2007, the Social Security Institution will be the sole authority.

5. Aggregation of Periods:

a) Do you have any experience with applying the principle of aggregation of periods in your relations with other countries? Which administrative structures are responsible for this?

Turkey has signed 22 bilateral social security agreements, first of which is with the United Kingdom dating back to 1961. The SSK, the Retirement Fund and BAG-KUR, including their local units, are responsible for implementation of these agreements for over 45 years experience.

The application in brief is as follows. The period of insurance is communicated to the competent institutions of the country, with which Turkey has bilateral agreement via the official documents (formulas) for aggregation of the periods.

The period of insurance is taken into account in the acquirement of social security benefits and the calculation of pensions by the Turkish and foreign institutions.

b) What are the waiting periods for entitlement to benefits equivalent to those covered by the scope of the EC Regulation?

	SSK	RETIREMENT FUND	BAG-KUR	NEW REGIME (Law No. 5510)
Sickness	90 days, 120 days for spouse and children	No waiting period	240 days for the first time insured, 120 days for reinsured	30 days of general health insurance contribution in the year preceding the request
Maternity	90 days	No waiting period	n.a. ***	<u>Sickness</u> No waiting period <u>Temporary Incapacity Payment</u> At least 90 days contribution during the year preceding the birth
Work Accident	No waiting period	No waiting period	n.a. ***	No waiting period
Occupational Disease	No s waiting period	No waiting period	n.a. ***	No waiting period
Invalidity	5 years	10 years	5 years	-At least 10 years insured status, payment of average 180 days of premiums for invalidity, old age and death insurances for each year of insurance Or -For those insured who need the care of someone else; at least 5 years insured status and payment of a total of 900 days of invalidity, old age and death insurances contribution
Old Age	20 F -25 M (year) (7200-9000 days contribution)	20 F -25 M (year) (7200-9000 days contribution)	25 (year) (9000 days contribution)	<u>For those who will first join the regime*</u> -Workers With Employment Contracts; Female 58, male 60 age and 7100 days contribution** - Self-Employed and Civil Servant; Female 58, male 60 age and 9000 days contribution
Death	5 years	10 years	5 years	At least 5 years insured status and a total of 900 days of invalidity, old age and death insurances contribution

* Beginning with the year 2036, the qualifying age for retirement will rise gradually depending on the life expectancy.

** The number of contribution days will rise gradually for the workers with employment contract to 9000 days.

*** In case of invalidity and death due to work accident and occupational disease, the invalidity and death pensions are granted. In case of maternity, health care expenditures are financed via sickness insurance.

6. Export of Benefits

a) Do you have any experience with applying the principle of export of benefits in your relations with other countries? Which administrative structures are responsible for this? Does your legislation include residence clauses?

Turkey with vast experience of 45 years in bilateral social security agreements implement the provisions in regards to the export of benefits. The responsible institutions are the SSK, BAG-KUR and the Retirement Fund.

The transfer of pensions is carried out in accordance with the Communiqué No. 32 of Central Bank of Turkey upon request of the concerned.

The implementation of health benefits depend upon the provisions of bilateral agreements and are granted on behalf of Turkey to the concerned by the institutions of the countries, with which Turkey has signed a bilateral agreement.

In case of a health expenditure for treatment made in one of the countries, with which Turkey has no bilateral agreement, the expenditures are reimbursed to the concerned according to the tariffs applicable in Turkey.

C. Coordination of different categories of benefits:

7. Do you expect to encounter any difficulties in applying the provisions of the various chapters of the Regulation (sickness and maternity, invalidity, old age and death, unemployment, family benefits, etc.)?

It is estimated that there will be some extra burdens related with administrative capacity and implementation regarding:

- **occupational diseases/work accidents and maternity insurance branches which will be introduced by 2007 for the self-employed,**
- **the introduction of family benefits insurance.**

D. Administrative Capacity

8. Which administrative structures will be responsible for applying the coordination rules for the various chapters of the Regulation (sickness and maternity, invalidity, old age and death, unemployment, family benefits, etc.) ?

Currently SSK, Retirement Fund, BAG-KUR are responsible for the implementation of the branches listed in the Regulation 1408/71.

The Social Security Institution (established by Law No. 5502, which came into force 20 May 2006) will be the sole authority to regulate the whole system after a transitional period of 3 years.

(4) EUROPEAN HEALTH INSURANCE CARD

9. Do you intend to introduce a national Health Insurance Card prior to accession?

Efforts towards introducing a national health insurance card are underway and is estimated to be finalized soon.

The card is planned to be in usage by the end of 2008.