

**Judgment of the Court (Second Chamber) of 19 April 2007
(Reference for a preliminary ruling from the Tribunal Supremo, Spain) — Asociación Nacional de Empresas Forestales (ASEMFO) v Transformación Agraria SA, Administración del Estado**

(Case C-295/05) ⁽¹⁾

(Reference for a preliminary ruling — Admissibility — Article 86(1) EC — No independent effect — Factors permitting material which enables the Court to give a useful answer to the questions referred — Directives 92/50/EEC, 93/36/EEC and 93/37/EEC — National legislation enabling a public undertaking to perform operations on the direct instructions of the public authorities without being subject to the general rules for the award of public procurement contracts — Internal management structure — Conditions — The public authority must exercise over a distinct entity a control similar to that which it exercises over its own departments — The distinct entity must carry out the essential part of its activities with the public authority or authorities which control it)

(2007/C 96/15)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación Nacional de Empresas Forestales (ASEMFO)

Defendants: Transformación Agraria SA, Administración del Estado

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 86(1) EC and Directives 93/36/EEC, 93/37/EEC, 97/52/EC, 2001/78/EC and 2004/18/EC coordinating procedures for the award of public supply, works, and service contracts — Compatibility of a national law granting to a public undertaking a legal regime which allows it to execute public works outside the procedures provided for the award of public contracts

Operative part of the judgment

Council Directives 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts and 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts do not preclude a body of rules such as that governing

Tragsa, which enables it, as a public undertaking acting as an instrument and technical service of several public authorities, to execute operations without being subject to the regime laid down by those directives, since, first, the public authorities concerned exercise over that undertaking a control similar to that which they exercise over their own departments, and, second, such an undertaking carries out the essential part of its activities with those same authorities.

⁽¹⁾ OJ C 257, 15.10.2005.

**Judgment of the Court (First Chamber) of 19 April 2007
(reference for a preliminary ruling from the High Court of Ireland — Ireland) — Elaine Farrell v Alan Whitty, Minister for the Environment, Ireland, Attorney General, Motor Insurers' Bureau of Ireland (MIBI)**

(Case C-356/05) ⁽¹⁾

(Compulsory insurance for civil liability in respect of motor vehicles — Directives 72/166/EEC, 84/5/EEC and 90/232/EEC — Injuries to the passengers of a vehicle — Part of a vehicle not adapted for the carriage of seated passengers)

(2007/C 96/16)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Elaine Farrell

Defendants: Alan Whitty, Minister for the Environment, Ireland, Attorney General, and Motor Insurers' Bureau of Ireland (MIBI)

Re:

Preliminary ruling — High Court of Ireland — Interpretation of Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33) — Persons travelling as passengers in a part of a vehicle which is not intended for the carriage of passengers and is not equipped with seating for that purpose — National legislation which does not make such persons subject to compulsory insurance in the event of an accident

Operative part of the judgment

1. Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles is to be interpreted as precluding national legislation whereby compulsory motor vehicle liability insurance does not cover liability in respect of personal injuries to persons travelling in a part of a motor vehicle which has not been designed and constructed with seating accommodation for passengers.
2. Article 1 of Third Directive 90/232 satisfies all the conditions necessary for it to produce direct effect and accordingly confers rights upon which individuals may rely directly before the national courts. However, it is for the national court to determine whether that provision may be relied upon against a body such as the Motor Insurers' Bureau of Ireland.

(¹) OJ C 315, 10.12.2005.

Judgment of the Court (First Chamber) of 19 April 2007
(reference for a preliminary ruling from the Cour d'appel de Bruxelles, (Belgium)) — De Landtsheer Emmanuel SA v Comité Interprofessionnel du Vin de Champagne and Veuve Clicquot Ponsardin SA

(Case C-381/05) (¹)

(Directives 84/450/EEC and 97/55/EC — Comparative advertising — Identifying a competitor or the goods or services offered by a competitor — Goods or services satisfying the same needs or with the same purpose — Reference to designations of origin)

(2007/C 96/17)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellant: De Landtsheer Emmanuel SA

Respondents: Comité Interprofessionnel du Vin de Champagne and Veuve Clicquot Ponsardin SA

Re:

Reference for a preliminary ruling — Cour d'appel de Bruxelles (Brussels Court of Appeal) — Interpretation of Article 2(2a) and Article 3a(b) of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and

administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17), as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ 1997 L 290, p. 18) — Comparative advertising — Identification of a competitor or of the goods or services offered by a competitor — Use for advertising a beer of terms referring to characteristics of sparkling wines and, more specifically, Champagne

Operative part of the judgment

1. Article 2(2a) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, is to be interpreted as meaning that a reference in an advertisement to a type of product and not to a specific undertaking or product can be considered to be comparative advertising where it is possible to identify that undertaking or the goods that it offers as being actually referred to by the advertisement. The fact that a number of the advertiser's competitors or the goods or services that they offer may be identified as being in fact referred to by the advertisement is of no relevance for the purpose of recognising the comparative nature of the advertising.
2. The existence of a competitive relationship between the advertiser and the undertaking identified in the advertisement cannot be established independently of the goods or services offered by that undertaking.

In order to determine whether there is a competitive relationship between the advertiser and the undertaking identified in the advertisement, it is necessary to consider:

- the current state of the market and consumer habits and how they might evolve,
- the part of the Community territory in which the advertising is disseminated, without, however, excluding, where appropriate, the effects which the evolution of consumer habits seen in other Member States may have on the national market at issue, and
- the particular characteristics of the product which the advertiser seeks to promote and the image which it wishes to impart to it.

The criteria for establishing the existence of a competitive relationship within the meaning of Article 2(2a) of Directive 84/450, as amended by Directive 97/55, are not identical to those for determining whether the comparison fulfils the condition in Article 3a(1)(b) of the same directive.

3. Advertising which refers to a type of product without thereby identifying a competitor or the goods which it offers is not impermissible with regard to Article 3a(1) of Directive 84/450, as amended by Directive 97/55. The conditions governing whether such advertising is permissible must be assessed in the light of other provisions of national law or, where appropriate, of Community law, irrespective of the fact that that could mean a lower level of protection for consumers or competing undertakings.