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## **The ne bis in idem principle in EU law : a conceptual and jurisprudential analysis**

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*The ne bis in idem principle in EU law*



The *ne bis in idem* principle in EU law  
*A conceptual and jurisprudential analysis*

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*For Janny, Cees and their children*



## Foreword

This dissertation is the result of two conversations. In the first, which took place in December of 2003, professor Piet Jan Slot pointed me in the direction of examining the adverse consequences of parallel enforcement in competition cases. The conversation which resulted in the specific subject of this thesis was with Eddy de Smijter in May of 2005. By then Regulation 1/2003 had entered into force, opening up the possibility of parallel application of EC competition law within the European Competition Network. Furthermore, a draft of the 'Green Paper on Conflicts of Jurisdiction and the Principle of *ne bis in idem* in Criminal Proceedings'<sup>1</sup> had just been prepared. The following years saw a rapid succession of ground breaking new cases on the *ne bis in idem*-principle, and I could not have come across this topic at a better time.

There are many other people to whom I owe thanks. Among them are my *promotor* Piet Jan Slot and my colleagues at the Europa Institute. I look back on a great time, and I thank you all for your friendship and support. Special thanks also to Christa Tobler and her partner Jacques for their kind hospitality, which made all the difference.

There are many others: my partner Françoise, my friends, my foster family. Last but certainly not least I want to thank Paul de Klerk, for everything.

Rome, 23 May 2009

Bastiaan van Bockel

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<sup>1</sup> Green Paper On Conflicts of Jurisdiction and the Principle of *ne bis in idem* in Criminal Proceedings, COM(2005) 696 final, Annex.





## Table of Contents

LIST OF ABBREVIATIONS	XV
1 SCOPE, RESEARCH QUESTIONS, AND METHODOLOGY	1
1.1 Introduction: the <i>ne bis in idem</i> principle	1
1.2 The problem: the <i>ne bis in idem</i> principle in the EU legal order	2
1.2.1 Introduction	2
1.2.2 Initiatives and proposals aimed at reinforcing the application of the <i>ne bis in idem</i> principle within the legal system of the EU	4
1.3 This study	6
1.3.1 Aim	6
1.3.2 Method	7
1.3.3 Scope	7
1.4 Set-up of the study	8
2 INTRODUCING THE PRINCIPLE OF <i>NE BIS IN IDEM</i> : SOURCES AND CONCEPTS	11
2.1 This chapter	11
2.2 Sources of the <i>ne bis in idem</i> principle in international instruments	12
2.2.1 Introduction	12
2.2.2 Article 14(7) ICCPR	14
2.2.3 Art. 4 Protocol 7 ECHR	16
2.2.4 Art. 50 of the Charter of Fundamental Rights of the European Union	18
2.2.5 Arts. 54 <i>et seq.</i> CISA	21
2.2.6 Issues arising out of the scope and wording of the provisions	25
2.3 <i>Rationale</i> of the <i>ne bis in idem</i> principle	28
2.3.1 General	28
2.3.2 Distinction between the functions of the principle	28
2.3.3 Some of the <i>rationale</i> underlying the guarantee as an individual's right	29
2.3.4 The interests of society as a whole	30
2.3.5 The problem of defining the <i>rationale</i> of the principle on the international level	31
2.4 Form and substance of the principle	33
2.4.1 The question of the principle's origins in Roman law	33
2.4.2 <i>Ne bis in idem</i> rules	33
2.4.2.1 Prohibition of double prosecution ('Erledigungsprinzip')	34
2.4.2.2 Prohibition of double punishment	35

2.4.2.3	The problem of defining the substance of the guarantee	36
2.5	Scope of application	40
2.5.1	Limitations to the objective scope of application of the principle	40
2.5.2	Internationalisation and 'territoriality'	42
2.5.3	Subjective scope of application	43
2.5.4	Scope of application of the provisions <i>ratione materiae</i>	44
2.6	Elements	45
2.6.1	The first trial: <i>bis</i>	45
2.6.2	The second trial: <i>idem</i>	48
2.6.3	The requirement of enforcement of the penalty	54
2.7	Exceptions	54
	<i>Provisional summary</i>	55
3	THE SUPRANATIONAL CONTEXT: THE CRIMINAL LAW DIMENSION OF THE EU	57
3.1	This chapter	57
3.2	Introduction: EU criminal law in the wider sense	57
3.3	Developments in enhanced cooperation	59
3.3.1	Introduction	59
3.3.2	The Maastricht and Amsterdam Treaties	60
3.3.3	The Lisbon Treaty	62
3.3.4	Mutual recognition in an Area of Freedom, Security and Justice	63
3.4	The Schengen <i>acquis</i>	65
3.4.1	Introduction	65
3.4.2	The integration of the Schengen <i>acquis</i> into the framework of the EU	65
3.4.3	The functioning of the Schengen <i>acquis</i> in the framework of the EU	67
3.5	The necessity of a <i>ne bis in idem</i> principle in the context of enhanced cooperation in criminal matters within the Union	68
3.5.1	Introduction	68
3.5.2	Art. 54 CISA	69
3.5.3	Further initiatives	70
3.5.4	Art. 54 CISA and mutual recognition	71
3.6	The additional necessity of coordinating criminal investigations and prosecutions	72
3.6.1	Introduction	72
3.6.2	Eurojust, the EJNI, and Europol	72
3.7	Summary findings	73
3.8	Harmonisation of criminal law	74
3.8.1	Introduction	74
3.8.2	EU competences	74
3.8.3	Competences of the Community	75

3.9	EC competition law	76
3.9.1	Introduction	76
3.9.2	The nature of competition law	77
3.9.3	The 'single market imperative'	80
3.10	The enforcement of EC competition law	81
3.10.1	Introduction	81
3.10.2	Regulation 17/62	82
3.10.3	Developments that led to the modernisation of the system of enforcement of EC competition law	86
3.10.4	Modernisation and decentralisation through Regulation 1/2003	88
3.10.5	The regulation of the relationship between the Treaty provisions and national competition laws in art. 3 of Regulation 1/2003	89
3.10.6	Concurrent jurisdiction and the allocation of cases	94
3.10.7	The absence of a <i>ne bis in idem</i> provision from Regulation 1/2003	97
3.10.8	Fining in EC competition law: fines imposed by the European Commission	100
3.10.9	Fining in EC competition law: fines imposed by NCA's	104
3.10.10	Leniency	106
3.10.11	Settlements in EC competition law	108
3.10.12	'Criminalization' of competition law?	110
3.10.13	Private damages	111
3.11	The international dimension of EC competition law	113
3.11.1	Introduction	113
3.11.2	Extraterritoriality	114
3.11.3	Convergence	114
3.11.4	Multilateral initiatives	116
3.11.5	Bilateral cooperation agreements between the US and the EU	121
4	THE CASE LAW OF THE EUROPEAN COURT OF JUSTICE ON THE <i>NE BIS IN IDEM</i> PRINCIPLE	127
4.1	This chapter	127
4.2	The role of the case law of the European Court of Human Rights in the case law of the the European Court of Justice	127
4.3	The substance of the prohibitions	129
4.3.1	Introduction	129
4.3.2	The substance of the <i>ne bis in idem</i> principle in the case law of the European Court of Justice	131
4.4	<i>Rationale</i> of the guarantees	137
4.4.1	Introduction	137
4.4.2	The <i>rationale</i> of the <i>Anrechnungsprinzip</i> in the case law of the European Court of Justice	138
4.4.3	The <i>rationale</i> of the <i>Erledigungsprinzip</i> in the case law of the European Court of Justice	139

4.5	Objective scope of application of the guarantees	141
4.5.1	Introduction	141
4.5.2	The case law of the European Court of Justice concerning the objective scope of application of the <i>Anrechnungsprinzip</i> in Community law	142
4.5.3	The case law of the European Court of Justice concerning the objective scope of application of the <i>Erledigungsprinzip</i> in Community law	149
4.6	Subjective scope of application of the guarantees	153
4.6.1	Introduction	153
4.6.2	The subjective scope of application of the guarantees in the case law of the European Court of Justice	154
4.7	Scope of application <i>ratione materiae</i> of the guarantees	155
4.7.1	Introduction	155
4.7.2	The case law of the European Court of Justice concerning the scope of application <i>ratione materiae</i> of the guarantees	156
4.8	Scope of application <i>ratione temporis</i> of the guarantees	161
4.8.1	Introduction	161
4.8.2	The case law of the European Court of Justice concerning the scope of application <i>ratione temporis</i> of the guarantees	161
4.9	Finality ( <i>res iudicata</i> )	163
4.9.1	Introduction	163
4.9.2	The case law of the European Court of Justice concerning the finality of the outcome of proceedings	165
4.10	' <i>Idem</i> ': the same act or offence	170
4.10.1	Introduction	170
4.10.2	The case law of the European Court of Justice concerning the interpretation of the element of <i>idem</i>	172
4.10.3	The requirement of enforcement of the penalty	181
4.10.4	The case law of the European Court of Justice concerning the requirement of enforcement of the penalty	181
	<i>Provisional summary</i>	182
5	THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE <i>NE BIS IN IDEM</i> PRINCIPLE IN ART 4 OF PROTOCOL 7 ECHR	185
5.1	This chapter	185
5.2	The substance of the rules contained in art. 4P7 ECHR	185
5.2.1	Introduction	185
5.2.2	The substance of the <i>ne bis in idem</i> principle in the case law of the European Court of Human Rights	186
5.3	The <i>rationale</i> of the guarantees laid down in art. 4P7 ECHR	189
5.3.1	Introduction	189
5.3.2	The case law of the European Court of Human Rights concerning the <i>rationale</i> of the guarantees laid down in art. 4P7 ECHR	189

5.4	The scope of application <i>ratione materiae</i> of art. 4P7 ECHR	190
5.4.1	Introduction	190
5.4.2	The case law of the European Court of Human Rights concerning the scope of application <i>ratione materiae</i> of art. 4P7 ECHR	191
5.5	The scope of application <i>ratione temporis</i> of art. 4P7 ECHR	195
5.5.1	Introduction	195
5.5.2	The case law of the European Court of Human Rights concerning the scope of application <i>ratione temporis</i> of the guarantees	195
5.6	Finality	196
5.6.1	Introduction	196
5.6.2	The case law of the European Court of Human Rights concerning the finality of the outcome of the first proceedings	197
5.7	<i>Idem</i>	203
5.7.1	Introduction	203
5.7.2	The case law of the European Court of Human Rights concerning the interpretation of 'the same offence' in art. 4P7 ECHR	204
5.8	Exceptions	214
5.8.1	Introduction	214
5.8.2	The case law of the European Court of Human Rights concerning art. 4(2)P7 ECHR	214
	<i>Provisional summary</i>	215
6	ANALYSIS: THE <i>NE BIS IN IDEM</i> PRINCIPLE IN THE LEGAL ORDER OF THE EU	217
6.1	This chapter	217
6.2	A single <i>ne bis in idem</i> principle within the EU legal order?	217
6.2.1	General	217
6.2.2	Evidence from the case law	218
6.2.3	What if the Charter becomes legally binding?	220
6.2.4	Findings: a single, autonomous, and uniformly applicable general principle of Community law	221
6.3	The substance of the <i>ne bis in idem</i> principle	221
6.3.1	Introduction	221
6.3.2	Analysis	222
6.3.3	Findings	223
6.4	Objective scope of application of the guarantees in Community law	225
6.4.1	Introduction	225
6.4.2	Analysis	226
6.4.3	Findings	230
6.5	Subjective scope of application of the guarantees	231
6.5.1	Introduction	231
6.5.2	Analysis	231
6.5.3	Findings	233

6.6	The scope of application <i>ratione materiae</i> of the guarantees	233
6.6.1	Introduction	233
6.6.2	Analysis	234
6.6.3	Findings	234
6.7	The scope of application <i>ratione temporis</i> of the guarantees	235
6.7.1	Introduction	235
6.7.2	Analysis	235
6.7.3	Findings	236
6.8	Finality ( <i>res iudicata</i> )	236
6.8.1	Introduction	236
6.8.2	Analysis	237
6.8.3	Findings	240
6.9	<i>Idem</i> (the same)	242
6.9.1	Introduction	242
6.9.2	Analysis	243
6.9.3	Findings	245
6.10	The requirement of enforcement	246
6.10.1	Introduction	246
6.10.2	Analysis	246
6.10.3	Findings	247
6.11	Exceptions	247
6.11.1	Introduction	247
6.11.2	Analysis	247
6.11.3	Findings	248
7	CONCLUSIONS	249
	SAMENVATTING	255
	LITERATURE	261
	CASE LAW	275
	CURRICULUM VITAE	289

## List of abbreviations

Appl. No.	Application number
Art.	Article
1991 Agreement	Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws – Exchange of interpretative letters with the Government of the United States of America
1998 Agreement	Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws
AFSJ	Area of Freedom, Security and Justice
The Charter	Charter of Fundamental Rights of the European Union
CFI	Court of First Instance
CIA	Central Intelligence Agency
CISA	Convention of 19 June 1990 implementing the Schengen Agreement
CoE	Council of Europe
c.p.	'concerted practice' within the meaning of art. 81 EC
EC	(Treaty establishing the) European Community
ECJ	European Court of Justice
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECMR	European Community Merger Regulation
ECSC	(Treaty establishing the) European Coal and Steel Community
ECR	European Court Reports
ECtHR	European Court of Human Rights
EEA	European Economic Area
EU	European Union
Europol Convention	Convention of 26 July 1995 on the establishment of a European Police Office
FDEAW	Framework Decision on the European Arrest Warrant
GPCL	General principles of Community Law
<i>i.e.</i>	<i>id est</i> ('that is')
JHA	Justice and Home Affairs
Lisbon Treaty	Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, [2007] OJ C350/1



<i>ne bis in idem</i>	<i>ne bis in eadem re sit actio</i>
NGO	non-governmental organization
n.y.r.	not yet reported in ECR
p.	page
pp.	pages
para.	paragraph
pnt.	point
4P7 ECHR	Article 4 of the seventh Protocol of the ECHR
Regulation 17/62	Council Regulation (EEC) No 17/62 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty
Regulation 1/2003	Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty
Schengen Agreement	Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (1985)
Schengen Protocol	Protocol integrating the Schengen <i>acquis</i> into the framework of the European Union
SIS	Schengen Information System
TEU	Treaty on European Union
The Hague Programme	Council doc. 16504/04, 13 December 2004, Strengthening Freedom, Security and Justice in the European Union
US	United States of America