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

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. P.F. van der Heijden,
volgens besluit van het College voor Promoties
te verdedigen op dinsdag 16 juni 2009
klokke 11.15 uur

door

Willem Bastiaan van Bockel

geboren te Amsterdam in 1973

Promotiecommissie:

Promotor:	prof. dr. P.J. Slot
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	prof. dr. J.H.J. Bourgeois (Collège d'Europe, België)
	prof. dr. R.A. Lawson
	prof. mr. J.L. de Wijckerslooth

Lay-out: Anne-Marie Krens – Tekstbeeld – Oegstgeest

Druk: Ipskamp Drukkers, Amsterdam

ISBN 978-90-9024382-5

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'[1] 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

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

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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.e.	*id est* ('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

ne bis in idem	*ne bis in eadem re sit actio*
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 *acquis* into the framework of the European Union
SIS	Schengen Information System
TEU	Treaty on European Union
The Hague Progamme	Council doc. 16504/04, 13 December 2004, Strengthening Freedom, Security and Justice in the European Union
US	United States of America