

Other party to the proceedings: Commission of the European Communities (represented by: B. Doherty and S. Pardo Quintillán, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 28 June 2005 in Case T-158/03 *Industrias Químicas del Vallés v Commission* dismissing an action for annulment of Commission Decision 2003/308/EC of 2 May 2003 concerning the non-inclusion of metalaxyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant-protection products containing this active substance (OJ 2003 L 113, p. 8)

Operative part of the judgment

The Court:

- 1) Sets aside the judgment of the Court of First Instance of the European Communities of 28 June 2005 in Case T-158/03 *Industrias Químicas del Vallés v Commission*;
- 2) Annuls Commission Decision 2003/308/EC of 2 May 2003 concerning the non-inclusion of metalaxyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant-protection products containing this active substance;
- 3) Orders the Commission of the European Communities to pay the costs of the present proceedings and of the proceedings at first instance, including those relating to the proceedings for interim measures before both the Court of Justice and the Court of First Instance.

(¹) OJ C 271, 29.10.2005.

Judgment of the Court (Second Chamber) of 18 July 2007 (reference for a preliminary ruling from the Hof van Cassatie van België — Belgium) — Criminal proceedings against Norma Kraaijenbrink

(Case C-367/05) (¹)

(Convention implementing the Schengen Agreement — Article 54 — *Ne bis in idem* principle — Notion of ‘same acts’ — Different acts — Prosecution in two Contracting States — Acts linked together by the same criminal intention)

(2007/C 235/09)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Party in the main proceedings

Norma Kraaijenbrink

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 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 (OJ 2000 L 239, p. 19) — *Ne bis in idem* principle — Acts different but sharing a common intention and thus legally constituting a single act — Whether or not these are ‘the same acts’ for the purposes of Article 54 — Discovery, subsequent to conviction in one State, of other acts committed during the same period as the acts sanctioned and committed with the same criminal intention — Right to prosecute these additional acts in another State — Account to be taken of sentences already imposed in the first State

Operative part of the judgment

Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 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, signed on 19 June 1990 in Schengen (Luxembourg), must be interpreted as meaning that:

- the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
- different acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as ‘the same acts’ within the meaning of Article 54 of the Convention implementing the Schengen Agreement merely because the competent national court finds that those acts are linked together by the same criminal intention;
- it is for that national court to assess whether the degree of identity and connection between all the facts to be compared is such that it is possible, in the light of the said relevant abovementioned criterion, to find that they are ‘the same acts’ within the meaning of Article 54 of the Convention implementing the Schengen Agreement.

(¹) OJ C 48, 25.02.2007.