



RESEARCH NOTE

RESEARCH AND DOCUMENTATION DIRECTORATE

Declarations by Member States under Article 55(1) of the
Convention implementing the Schengen Agreement

[...]

[...]

June 2022

[...]



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OVERVIEW

1. The Research and Documentation Directorate (RDD) has received a request for a research note on declarations made by Member States pursuant to Article 55(1) 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, which was signed in Schengen on 19 June 1990 and entered into force on 26 March 1995 ¹ ('the CISA').
2. As a preliminary point, it should be recalled that Article 54 of the CISA enshrines the *non bis in idem* principle in relations between the Contracting Parties to the CISA. Under that article, a person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.
3. However, Article 55(1) of the CISA provides that the Contracting Parties may, when ratifying, accepting or approving this Convention, declare ² that they are not bound by Article 54 of the CISA in three cases specified in that article, namely:
 - (a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;
 - (b) where the acts to which the foreign judgment relates constitute an offence against national security or other equally essential interests of that Contracting Party;
 - (c) where the acts to which the foreign judgment relates were committed by officials of that Contracting Party in violation of the duties of his or her office.
4. In that context, it should be noted that, in accordance with Article 139(1) of the CISA, the instruments of ratification, acceptance or approval had to be deposited with the Government of the Grand Duchy of Luxembourg, which had to notify all the Contracting Parties thereof.
5. In practice, in the absence of publication at EU level of all declarations under Article 55(1) of the CISA, ³ it is not easy to determine which Contracting Parties to the CISA made declarations under Article 55(1) thereof and the exact content of the declarations made.
6. The situation seems even less clear as regards the Member States which acceded to the European Union from 2004 onwards. Following the inclusion of the CISA into EU law by means of the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the Treaty

¹ OJ 2000 L 239, p. 19.

² The legal nature of those declarations, and in particular their classification as 'reservations' within the meaning of Article 2(1)(d) of the Vienna Convention on the Law of Treaties adopted in Vienna on 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331), may be the subject of debate. Since Article 137 of the CISA expressly provides that the CISA shall not be subject to reservations (save for those referred to in Article 60, which concerns extradition and not the *non bis in idem* principle), the concept used in Article 55, namely 'declarations', has been used in the present research note.

³ Furthermore, the Government of the Grand Duchy of Luxembourg, the depositary of that convention, does not appear to have published the declarations deposited with it on its government websites.

of Amsterdam,⁴ and in accordance with Article 8 of that Protocol,⁵ the 2003, 2005 and 2012 Treaties of Accession laid out that the provisions of the Schengen acquis integrated into the framework of the European Union, including the CISA, were binding and applied to the new Member States from the date of their accession.⁶ Questions arise as to the possibility for new Member States to make declarations, the time limit for doing so and the obligation to deposit them with the depositary.

7. Similar questions arise in relation to **Ireland**. That Member State did not sign the CISA before its integration into the EU legal framework and the CISA did not subsequently apply there despite the Protocol integrating the Schengen acquis into the framework of the European Union. However, since 2002 it has been participating in the provisions of Articles 54 to 58 of the CISA by virtue of Decision 2002/192.⁷
8. The present study thus seeks to verify the existence of declarations under Article 55(1) of the CISA made by the current Member States of the European Union and to present their content, references to their official publications, as well as information on their eventual withdrawal or invalidation by the national authorities.
9. For the purposes of the note, a preliminary overview of all 27 *national legal systems of the European Union* has identified *eight Member States* which had made declarations under Article 55(1) of the CISA, namely: **Austria, Denmark, Finland, France, Greece, Germany, Italy** and **Sweden**. It is thus apparent from the research conducted that neither Ireland nor the Member States which acceded to the European Union from 2004 made declarations under that article.
10. In most of the eight Member States concerned, the texts of those *declarations were published* in official journals and reports as an official government communication (**Austria, Finland, France, Germany, Sweden**), usually in parallel with the publication of the CISA (**Austria, Finland, France, Sweden**). In two Member States the text of the declaration is a special provision of the Law publishing or ratifying the CISA (**Greece, Italy**).
11. The only unsuccessful research was into whether any publication of the declaration has been made by Denmark in the official journals of that Member State.
12. The declarations from *six Member States were deposited with the depositary*, namely the Government of the Grand Duchy of Luxembourg (**Austria, Denmark, Finland, Germany, Greece, Sweden**). [...]⁸

⁴ OJ 1997 C 340, p. 93.

⁵ Under that article: 'For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission'.

⁶ See, in that regard, by way of example, Article 3 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 17).

⁷ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ 2002 L 64, p. 20). The possibility of making such a request was provided for in Article 4 of the Protocol integrating the Schengen acquis into the framework of the European Union.

⁸ [...]

13. Under Article 55(3) of the CISA, a Contracting Party may at any time withdraw a declaration relating to one or more of the exceptions referred to in Article 1. In this regard, *none of the eight Member States has withdrawn its declaration* made under Article 55(1) of the CISA.
14. On the other hand, national courts in **Greece** and **Italy** have held that the declarations of those two Member States were no longer valid.
15. The Areios Pagos (Court of Cassation, Greece) delivered a judgment in which it held that the Greek declaration, in so far as it related to illicit trafficking in narcotic drugs and psychotropic substances, did not comply with Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter').
16. That reasoning relating to the Charter is also to be found in the judgment of the Italian court of first instance, namely the Tribunale di Milano (District Court, Milan, Italy). In addition, that court observed that the integration, by the Treaty of Amsterdam, of the CISA into the legal framework of EU law, did not concern any declarations made by the Member States. Consequently, in its view, those declarations should be regarded as no longer producing any effects.
17. The content and references to the declarations of the eight Member States are set out in summary tables in the following pages.

[...]

SUMMARY TABLES OF MEMBER STATES

GERMANY ⁹

Official publication of the declaration under Article 55(1) of the CISA

Act containing the text of the declaration:

Bekanntmachung über das Inkrafttreten des Übereinkommens zur Durchführung des Übereinkommens von Schengen vom 14. Juni 1985 zwischen den Regierungen der Staaten der Benelux-Wirtschaftsunion, der Bundesrepublik Deutschland und der Französischen Republik betreffend den schrittweisen Abbau der Kontrollen an den gemeinsamen Grenzen vom 20. April 1994

(Public communication of 20 April 1994 on the entry into force 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)

Published in:

Bundesgesetzblatt (Official Journal of the Federal Republic of Germany) of 26 May 1994

Reference:

BGBl. 1994 II, S. 631

Link:

https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl294s0631.pdf%27%5D_1652952673140

Remarks:

Text of the declaration contained in Paragraph 3 of the measure cited above

Text of the declaration under Article 55(1) of the CISA

The Federal Republic of Germany is not bound by Article 54 of the Convention,

- (a) where the acts to which the foreign judgment relates were committed, in whole or in part, in its territory;
- (b) where the acts to which the foreign judgment relates were covered by one of the following criminal provisions:
 - (aa) preparation for a war of aggression (Paragraph 80 of the StGB [*Strafgesetzbuch* – German Criminal Code]) and incitement to a war of aggression (Paragraph 80a of the StGB);

⁹ [...]

- (bb) high treason (Paragraphs 81 to 83 of the StGB);
- (cc) endangering the democratic rule of law (Paragraphs 84 to 90b of the StGB);
- (dd) sedition and endangering external security (Paragraphs 94 to 100a of the StGB);
- (ee) offences against national defence (Paragraphs 109 to 109k of the StGB);
- (ff) offences within the meaning of Paragraphs 129 ¹⁰ and 129a ¹¹ of the StGB;
- (gg) the offences referred to in Paragraph 129a, Article 1, points 1 to 3 of the StGB, if the internal security of the Federal Republic of Germany has been jeopardised by the act committed;
- (hh) offences covered by the law on foreign trade;
- (ii) offences covered by the law on the control of military weapons.

Pursuant to Article 54, the Federal Republic of Germany means by 'act' the history of the events as set out in the judgment to be recognised.

Deposit of the declaration with the Government of the Grand Duchy of Luxembourg

Yes.

Withdrawal of declaration by the Member State

No.

Invalidity of the declaration found by the national courts

Nothing to report.

¹⁰ Establishment of a criminal organisation.

¹¹ Establishment of a terrorist organisation.

AUSTRIA ¹²

Official publication of the declaration under Article 55(1) of the CISA

Act containing the text of the declaration:

Erklärungen der Republik Österreich zu dem am 19. Juni 1990 in Schengen unterzeichneten Übereinkommen zur Durchführung des Übereinkommens von Schengen vom 14. Juni 1985 zwischen den Regierungen der Staaten der Benelux-Wirtschaftsunion, der Bundesrepublik Deutschland und der Französischen Republik betreffend den schrittweisen Abbau der Kontrollen an den gemeinsamen Grenzen, dem die Italienische Republik, das Königreich Spanien und die Portugiesische Republik sowie die Griechische Republik jeweils mit den Übereinkommen vom 27. November 1990, vom 25. Juni 1991 und vom 6. November 1992 beigetreten sind

(Declarations by the Republic of Austria on 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 in Schengen on 19 June 1990, to which the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic acceded by the Agreements signed on 27 November 1990, 25 June 1991 and 6 November 1992, respectively)

Published in:

Bundesgesetzblatt (Federal Official Journal of the Republic of Austria) of 27 May 1997

Reference:

BGBL. III Nr. 90/1997

Link:

https://www.ris.bka.gv.at/Dokumente/BgblPdf/1997_90_3/1997_90_3.pdf ¹³

Remarks:

Declaration quoted above published as an annex to the publication of the CISA

Text of the declaration under Article 55(1) of the CISA

The Republic of Austria states that it is not bound by Article 54 of the CISA in the following cases:

1. where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;

¹² [...]

¹³ Pages 2048 to 2049.

2. where the acts to which the foreign judgment relates are to be classified as one of the following offences:
- (a) espionage relating to a commercial or industrial secret for the benefit of a foreign country [Paragraph 124 of the *Strafgesetzbuch* (Austrian Criminal Code, the 'StGB')];
 - (b) high treason and its preparation (Paragraphs 242 and 244 of the StGB);
 - (c) conspiracies against the State (Paragraph 246 of the StGB);
 - (d) denigration of the State or its symbols (Paragraph 248 of the StGB);
 - (e) attacks against bodies of supreme public authorities (Paragraphs 249 to 251 of the StGB);
 - (f) high treason (Paragraphs 252 to 258 of the StGB);
 - (g) offences against the Federal Armed Forces (Paragraphs 259 and 260 of the StGB);
 - (h) offences against a civil servant of the Republic of Austria in connection with or because of the performance of their duties (Paragraph 74(4) of the StGB);
 - (i) infringements under the *Außenhandelsgesetz* (Law on foreign trade); and
 - (j) offences under the *Kriegsmaterialgesetz* (Law on war material);
3. where the acts to which the foreign judgment relates were committed by a civil servant of the Republic of Austria (Paragraph 74(4) of the StGB), in breach of their obligations.

Deposit of the declaration with the Government of the Grand Duchy of Luxembourg

Yes.

Withdrawal of declaration by the Member State

No.

Invalidity of the declaration found by the national courts

Nothing to report.

DENMARK ¹⁴
Official publication of the declaration under Article 55(1) of the CISA
<p>Act containing the text of the declaration:</p> <p>Not found in the official journals. ¹⁵</p> <p>Remarks:</p> <p>Reference is made to the text of the declaration in a judgment of the Højesteret (Supreme Court, Denmark), namely the judgment of 28 October 2005 in Case 127/2005, published in Ugeskrift for Retsvæsen (Journal of legal affairs) No 2006.324.</p>
Text of the declaration under Article 55(1) of the CISA
<p>Denmark states that it is not bound by Article 54 of the CISA in the situations referred to in Article 55(1)(a) to (c). As regards the offences referred to in Article 55(1)(b), Denmark states that this declaration concerns the categories of offences covered, first, by Chapter 12 (offences relating to State independence and security) of the Criminal Law Code, then by Chapter 13 (Offences concerning the Constitution and central State institutions) of that Code, and finally by Chapter 14 (offences concerning public authorities) of the same Code, as well as any other offences falling within those categories. Denmark states that it will interpret Article 55(1)(b) as including the offences referred to in Paragraph 8(1) of the Criminal Law Code. ¹⁶</p>
Deposit of the declaration with the Government of the Grand Duchy of Luxembourg
<p>Yes.</p>
Withdrawal of declaration by the Member State
<p>No.</p>
Invalidity of the declaration found by the national courts
<p>Nothing to report.</p>

¹⁴ [...]

¹⁵ [...]

¹⁶ These are offences that violate the independence, security or constitution of the Danish State, as well as offences against the public authorities of the Danish State and offences disrupting official State functions.

FINLAND ¹⁷
Official publication of the declaration under Article 55(1) of the CISA
<p>Act containing the text of the declaration:</p> <p>Ulkoasiainministeriön ilmoitus Schengenin säännöstön soveltamisesta, annettu Helsingissä 22 päivänä maaliskuuta 2001</p> <p>(Declaration by the Ministry of Foreign Affairs on the application of the Schengen acquis, made in Helsinki on 22 March 2001)</p> <p>Published in:</p> <p>Suomen säädöskokoelman kimussarja (Reports of Conventions and Agreements signed and ratified by Finland) of 30 March 2001</p> <p>Reference:</p> <p>Suomen säädöskokoelman sopimussarja, 2001, No 23</p> <p>Link:</p> <p>https://finlex.fi/fi/sopimukset/sopimussarja/2001/20010009.pdf</p> <p>https://finlex.fi/sv/sopimukset/sopimussarja/2001/20010009.pdf</p> <p>Remarks:</p> <p>Text of the declaration published in the introduction to the act cited above, which contains the publication of the text of the CISA</p>
Text of the declaration under Article 55(1) of the CISA
<p>Finland is not bound by the <i>non bis in idem</i> principle referred to in Article 54 in the cases provided for in Article 55(1) (a) to (c).</p>
Deposit of the declaration with the Government of the Grand Duchy of Luxembourg
<p>Yes.</p>
Withdrawal of declaration by the Member State
<p>No.</p>

¹⁷ [...]

Invalidity of the declaration found by the national courts
Nothing to report.

FRANCE ¹⁸
Official publication of the declaration under Article 55(1) of the CISA
<p>Act containing the text of the declaration:</p> <p>Déclarations du gouvernement de la République française – Déclaration pour l'application des articles 55 et 57 (Declarations by the Government of the French Republic – Declaration for the application of Articles 55 and 57)</p> <p>Published in:</p> <p>Journal Officiel de la République française (Official Journal of the French Republic) of 22 March 1995</p> <p>Reference:</p> <p>JORF (French Republic Official Journal) No 0069 of 22 March 1995</p> <p>Link:</p> <p>https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000001891105</p> <p>Remarks:</p> <p>Act cited above published as an annex to the decree publishing the CISA ^{19 20}</p>
Text of the declaration under Article 55(1) of the CISA
<p>Pursuant to Article 55(1) of the Convention, the Government of the French Republic declares that it is not bound by Article 54 in the cases mentioned in Article 55(1)(a) and (b).</p> <p>As regards Article 55(1)(b), the Government of the French Republic declares that it is not bound by Article 54 where the acts referred to in the foreign judgment relate to offences constituting interference with the fundamental interests of the Nation and punishable under Title I of Book IV of the Criminal Code, the falsification and counterfeiting of the State seal, coins, banknotes or public effects punishable by Articles 442-1, 443-1 and 444-1 of the Criminal Code and any crime or offence against French diplomatic or consular agents or premises.</p>

¹⁸ [...]

¹⁹ Décret No 95-304 du 21 mars 1995 portant publication de la convention d'application de l'Accord de Schengen, du 14 juin 1985, entre les gouvernements des États de l'Union économique Benelux, de la République fédérale d'Allemagne et de la République française relatif à la suppression graduelle des contrôles aux frontières communes, signée à Schengen le 19 juin 1990 (Decree No 95-304 of 21 March 1995 publishing 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 in Schengen on 19 June 1990) (<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000165861>).

²⁰ Page 4462 of the digitised paper version of the Official Journal; can be downloaded at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000719321>.

Deposit of the declaration with the Government of the Grand Duchy of Luxembourg
[...]. ²¹
Withdrawal of declaration by the Member State
No.
Invalidity of the declaration found by the national courts
Nothing to report.

²¹ [...] It should be noted, in that regard, that the work before the Senate during the examination of a proposal for a resolution of the Greek Presidency in 2003, concerning the adoption by the Council of a draft framework decision on the application of the *non bis in idem* principle in the context of the mutual recognition of decisions in criminal matters, stated [...] that 'the French Government "forgot" to forward the declaration [under Article 55(1) of the CISA] to the depositary [...], that is, to the Government of Luxembourg, as indicated in Council Document No 13281/1/03 of 17 October 2003' (<https://www.senat.fr/ue/pac/E2236.html>).

GREECE ²²
Official publication of the declaration under Article 55(1) of the CISA
<p>Act containing the text of the declaration:</p> <p>Nomos 2514/1997, Symfonia Schengen (katargisi elegxon sta synora klp), FEK A'140/27.6.1997 [Law 2514/1997, Schengen Agreement (abolition of border controls and so forth)]</p> <p>Published in:</p> <p>Fyllo Efimeridas Kyverniseos (Official Journal of the Hellenic Republic) of 27 June 1997</p> <p>Reference:</p> <p>FEK A'140/27.6.1997</p> <p>Link:</p> <p>https://0076.syzefxis.gov.gr/wp-content/uploads/2019/08/154_Nomos_2514_1997.pdf ²³</p> <p>Remarks:</p> <p>Text of the declaration published in Article 3 of the Act cited above</p>
Text of the declaration under Article 55(1) of the CISA
<p>Article 3: Declaration under Article 55 of the Convention</p> <p>The Hellenic Republic declares, pursuant to Article 55 of the Schengen Implementation Convention, that it is not bound by Article 54 thereof in the following cases:</p> <ol style="list-style-type: none"> 1. Where the acts which were the subject of a foreign judgment took place in whole or in part on Greek territory. This exception shall not apply if the relevant acts took place partly in the territory of the convicting Contracting Party. 2. Where the criminal offence which was the subject of a foreign judgment was committed by an official of the Greek State in breach of his or her duties. 3. Where the acts which were the subject of a foreign judgment constitute the following criminal offences provided for by Greek criminal law: <ol style="list-style-type: none"> (a) attack on the political system (Articles 134 to 137 D. of the Criminal Code). (b) betrayal of the country (Articles 138 to 152 of the Criminal Code),

²² [...]

²³ Page 6177. For an unofficial publication see: <https://www.lawspot.gr/nomikes-plirofories/nomothesia/nomos-2514-1997>.

(c)	offences against political bodies and the government (Articles 157 to 160 of the Criminal Code),
(d)	offences against the President of the Republic (Article 168 of the Criminal Code),
(e)	offences related to military service and the conscription obligation (Articles 202 to 206 of the Criminal Code),
(f)	piracy (Article 215 of the Public Maritime Law Code),
(g)	currency related offences (Articles 207 to 215 of the Criminal Code),
(h)	illicit trafficking in narcotic drugs and psychotropic substances,
(i)	breach of the legislation on the protection of the country's cultural antiques and cultural heritage.
4. In the case of an offence for which international conventions signed and ratified by the Greek State provide for the application of Greek criminal laws.	

Deposit of the declaration with the Government of the Grand Duchy of Luxembourg

Yes.

Withdrawal of declaration by the Member State

No.

Invalidity of the declaration found by the national courts

By judgment 1/2011 of 9 June 2011, the Ordinary Criminal Assembly of the Areios Pagos (Court of Cassation, Greece) held, first, that the *non bis in idem* principle is a rule of primary legislation and that Article 50 of the Charter is a clear provision with direct effect. Therefore, the Court of Cassation stated that the declaration made by Greece is no longer valid. In particular, the Court of Cassation considered that the declarations made by the Member States had ceased to be valid ('έπαυσαν να ισχύουν') because Article 50 of the Charter does not provide for the possibility of derogating from the *non bis in idem* principle by means of exceptions such as those listed in Article 55 of the CISA.

Secondly, the national supreme court recalled that, in accordance with Article 52(1) of the Charter, 'any limitation on the exercise of the rights and freedoms recognised by it must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.' It then held that the inapplicability of the *non bis in idem* principle to offences connected with illegal drug trafficking, laid down in Article 8 of the Greek Criminal Code, read in conjunction with Article 9, paragraphs 2) thereof, was not a necessary limitation and did not effectively meet objectives in the public interest. Given the identity of the legal values and cultures of the Member States of the European Union, the prosecution and imposition of a

criminal penalty for that offence, in light of Greek laws and current national conceptions, are not necessary and cannot be regarded as an objective of general interest recognised by the European Union.

Consequently, the Court of Cassation upheld the ground of appeal alleging infringement of the *res judicata* principle put forward by the applicants, who had already been convicted by the Corte d'appello di Roma (Court of Appeal, Rome, Italy) for the same narcotics offence [ΟΛΑΠ (Ποιν.) 1/2011 [Α΄ Τακτική], ΕλλΔνη, 5/2011, p. 1498; ΠράξΛόγΠΔ, 2/2011, p. 254. Also available on Sakkoulas-online].

That approach reversed the case-law of Court of Cassation, which until that judgment accepted the validity of declarations made under Article 55(1) of the CISA and applied the exceptions for which they provided by rejecting the pleas alleging infringement of the *non bis in idem* principle, and infringement of the *res judicata* principle connected to the existence of a criminal conviction by a foreign court.

Following that judgment, a derogation from Article 50 of the Charter, such as that provided for in Article 8 of the Greek Criminal Code, requiring the application of Greek criminal laws to acts committed abroad, is no longer conceivable. However, the lower courts do not seem to have a consistent position on this issue. Thus, for example, by Decision 1762/2015 of 2015, the Efetio Athinon (Court of Appeal Criminal Chamber, Athens, Greece) accepted the validity of the Greek declaration in the context of drug trafficking committed by a person already convicted of that offence by a Swiss court.

Official publication of the declaration under Article 55(1) of the CISA

Act containing the text of the declaration:

Legge 30 settembre 1993, No 388 Ratifica ed esecuzione: a) del protocollo di adesione del Governo della Repubblica italiana all'accordo di Schengen del 14 giugno 1985 tra i governi degli Stati dell'Unione economica del Benelux, della Repubblica federale di Germania e della Repubblica francese relativo all'eliminazione graduale dei controlli alle frontiere comuni, con due dichiarazioni comuni; b) dell'accordo di adesione della Repubblica italiana alla convenzione del 19 giugno 1990 di applicazione del summenzionato accordo di Schengen, con allegate due dichiarazioni unilaterali dell'Italia e della Francia, nonché la convenzione, il relativo atto finale, con annessi l'atto finale, il processo verbale e la dichiarazione comune dei Ministri e Segretari di Stato firmati in occasione della firma della citata convenzione del 1990, e la dichiarazione comune relativa agli articoli 2 e 3 dell'accordo di adesione summenzionato; c) dell'accordo tra il Governo della Repubblica italiana ed il Governo della Repubblica francese relativo agli articoli 2 e 3 dell'accordo di cui alla lettera b); tutti atti firmati a Parigi il 27 novembre 1990

[Law No. 388 of 30 September 1993 ratifying and executing: a) the Protocol on the accession of the Government of the Italian Republic to 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, together with two joint declarations; b) the Agreement, signed on 19 June 1990, on accession of the Italian Republic to the Convention implementing the Schengen Agreement, together with two unilateral declarations by Italy and France, and the Convention, its final act, the minutes and joint declaration by the ministers and secretaries of state signed on the occasion of the signature of the 1990 Convention and the Joint Declaration on Articles 2 and 3 of the mentioned accession agreement; c) the Agreement between the Government of the Italian Republic and the Government of the French Republic concerning Articles 2 and 3 of the Agreement referred to in subparagraph (b) above; all acts signed in Paris on 27 November 1990]

Published in:

Gazzetta Ufficiale della Repubblica Italiana (Official Journal of the Italian Republic) of 2 October 1993

Reference:

GU n.232 del 02-10-1993 – Suppl. Ordinario n. 93

Link:

<https://www.normattiva.it/eli/id/1993/10/02/093G0461/CONSOLIDATED/20220512>

Remarks:

Text of the declaration published in Article 7 of the Act cited above

Text of the declaration under Article 55(1) of the CISA

Article 7

1. Article 54 of the [CISA] shall not apply in the cases referred to in Article 55(1) (a) to (c) of that Convention.

2. Under Article 55(1)(b) of the [CISA], offences against the state are offences against national security or other equally essential interests of the State.

Deposit of the declaration with the Government of the Grand Duchy of Luxembourg

[...].²⁵

Withdrawal of declaration by the Member State

Nothing to report.

Invalidity of the declaration found by the national courts

In the judgment of 6 July 2011, Walz, RG 12396/927, the Tribunale di Milano (District Court, Milan, Italy) ruled that Article 7 does not apply from the integration of the CISA into EU law by means of the Treaty of Amsterdam. In so far as that integration did not concern any declarations made by the Member States, those declarations, in the absence of express renewal, had to be regarded as no longer producing any effects.

The court pointed out that, within the European Union, where it is intended to pursue the objective of developing an area of freedom, security and justice, in which freedom of movement of persons is ensured, the *non bis in idem* principle must be applied in a particularly broad manner in order to ensure that a person, by exercising his or her right to freedom of movement, is not prosecuted for the same facts in several Member States.

It thus recalled that, with the entry into force of the Treaty of Lisbon, the Charter acquired a binding legal value equal to that of the Treaties, under Article 6(1) TEU. In addition, Article 50 of the Charter enshrines the *non bis in idem* principle without providing for exceptions such as those provided for in Article 55 CISA.

According to the court, the *non bis in idem* principle is a fundamental right of European citizens and Article 50 of the Charter is directly applicable. Therefore, derogations from the *non bis in idem* principle are no longer allowed.

²⁵ [...]

SWEDEN ²⁶

Official publication of the declaration under Article 55(1) of the CISA

Act containing the text of the declaration:

Avtal om Sveriges anslutning till tillämpningskonventionen till Schengenavtalet den 14 juni 1985 om gradvis avskaffande av kontroller vid de gemensamma gränserna, undertecknad i Schengen den 19 juni 1990 jämte slutakt, Protokoll om Sveriges regerings anslutning till avtalet om gradvis avskaffande av kontroller vid de gemensamma gränserna, undertecknat i Schengen den 14 juni 1985 och Samarbetsavtal mellan Belgien, Tyskland, Frankrike, Luxemburg, Nederländerna, Italien, Spanien, Portugal, Grekland, Österrike, Danmark, Finland och Sverige, som är avtalsslutande parter i Schengenavtalet och Schengenkonventionen och Island och Norge om gradvis avskaffande av personkontroller vid de gemensamma gränserna. Luxemburg den 19 december 1996

(Swedish Accession Agreement to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990 and the Final Act, Protocol on the Accession of the Swedish Government and to the Cooperation Agreement between Belgium, Germany, France, Luxembourg, the Netherlands, Italy, Spain and Portugal, Greece, Austria, Denmark, Finland and Sweden, Contracting Parties to the Schengen Agreement and to the Schengen Convention, and Iceland and Norway on the progressive abolition of checks on persons at their common borders. Luxembourg, 19 December 1996)

Published in:

Sveriges internationella överenskommelser (Swedish Treaty Series) of 1 January 1998

Reference:

SÖ 1998:49

Link:

<https://www.regeringen.se/49c84d/contentassets/9e79f43fb652470cbcfb2473c37e7227/avtal-om-sveriges-anslutning-till-tillampningskonventionen-till-schengenavtalet-den-14-juni-1985-om-gradvis-avskaffande-av-kontroller-vid-de-gemensamma-granserna-undertecknad-i-schengen-den-19-juni-1990-jamte-slutakt-protokoll-om-sveriges-regerings> ²⁷

²⁶ [...]

²⁷ Pages 1 and 2.

Remarks:

Text of the declaration published in the introduction to the act cited above, which contains the publication of the text of the CISA

Text of the declaration under Article 55(1) of the CISA

Sweden also states that, in accordance with Article 55(1)(a), it is not bound by Article 54 if the offence on which the foreign judgment was based was committed in whole or in part on Swedish territory. However, this exception does not apply if the act in question was partly committed in the territory of the Contracting Party where the judgment was delivered. Finally, Sweden states that, in accordance with Article 55(1)(b), it is not bound by Article 54 if the offence on which the foreign judgment was based is an act against the security of Sweden or against another equally significant act constituting a criminal offence against Sweden's interests. This exception includes any offence committed against Sweden, a Swedish local authority, another Swedish community, or a Swedish public body.

Deposit of the declaration with the Government of the Grand Duchy of Luxembourg

Yes.

Withdrawal of declaration by the Member State

No.

Invalidity of the declaration found by the national courts

Nothing to report.