

The future ratification of the Transport Protocol by the Community signifies that the TP would become integral part of Community law<sup>81</sup>. Consequently, the Protocol shares some of the key characteristics of Community law, in particular its supremacy over domestic law. This eventuality will be examined in a first part, whereas in a second section, the legal conflicts arising as long as the Community is not party to the Transport Protocol will be the centre of attention.

#### **4.1.1. Transport Protocol as future part of Community law**

According to Article 300(7) EC, international agreements concluded by the Community shall be binding on the institutions of the Community as well as on the Member States<sup>82</sup>. Hence, from the point of view of Community law, we can establish the following hierarchical order: primary Community law (Treaties) – international agreements (TP) – secondary Community law – national law of the Member States of the Community<sup>83</sup>. Consequently, existing positions and policies of the Community, which are in conformity with the Transport Protocol but have not yet been established in a legally binding form, will be 'upgraded' by the adoption of the Protocol. Concretely, we can mention, for example, the internalising of external costs<sup>84</sup> or the modal shift of freight traffic from road to rail<sup>85</sup>, which are both mentioned in a White Paper of the Commission and in the Transport Protocol. Contrary to the legally binding Transport Protocol, the Commission's White Papers are part of the informal measures of the Commission. They have a programmatic nature and serve information purposes in the decision shaping process before the adoption of a new legally binding measure. As such, White Papers do not have any legally binding effect<sup>86</sup>.

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<sup>81</sup> Judgment of 30 April 1974, in case 181/73, *Haegeman v. Belgium*, [1974] ECR I-449.

<sup>82</sup> See J. SCHWARZE (ed.), *EU-Kommentar*, Nomos Verlagsgesellschaft, Baden-Baden 2000, § 30 on Article 281 EC, p.2256.

<sup>83</sup> D. SIMON, *Le système juridique communautaire*, 3<sup>rd</sup> ed., PUF, Paris 2001, p.348.

<sup>84</sup> See *White Paper on a European transport policy for 2010: time to decide*, COM (2001) 370 final, p.70, as well as Article 14 TP.

<sup>85</sup> See *White Paper on a European transport policy for 2010: time to decide*, COM (2001) 370 final, p.26, as well as Article 1(1)(a) TP.

<sup>86</sup> See *supra*, note 83, p.336.