

This would thus be the solution to the current discussion between the Commission and Germany on the compatibility of the planned road tolls for German highways⁹⁵.

Another scenario can be imagined: A country ratifies the Transport Protocol and then accedes to the Community. This could theoretically happen, with different probabilities, in the cases of Liechtenstein, Monaco, Slovenia or Switzerland. In the case of a conflict between the Transport Protocol and Community law, Article 307(1) EC states that the obligations arising from international agreements concluded before the date of accession of a Member State "shall not be affected by the provisions of this [EC] Treaty." Nevertheless, according to Article 307(2) EC, the new Member States would be obliged to "take all appropriate steps to eliminate the incompatibilities established." Consequently, measures based on the Transport Protocol would prevail over Community law only in exceptional cases and for a transitional period of time⁹⁶. However, the precise scope of the obligation to eliminate existing incompatibilities between Community law and prior agreements has still not been clarified in the jurisprudence of the Court and in literature, one can find different opinions thereto⁹⁷. However, the possibility of a denunciation of the Alpine Convention and its Protocols has expressly be foreseen by these documents⁹⁸.

4.2. Influences on the trans-European Transport Networks

The concept of trans-European Transport Networks (TEN-T) emerged at the end of the 1980s in view of the completion of the Single Market. The Treaty of Maastricht then inserted a provision, Article 154(1) EC, obliging the Community to "contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures."

Community law and the general rules and principles of customary international public law. The Transport Protocol is not part of these rules but is an ordinary contractual agreement of public international law.

⁹⁵ "EU attackiert deutsche Lastwagenmaut. Kommissarin Loyola de Palacio prüft Verfahren gegen rot-grünes Prestigeprojekt", *Frankfurter Allgemeine Zeitung*, 21 February 2003, p.13. For further details, see *infra*, 4.3. Influences on the Community policy on infrastructure pricing, p.32.

⁹⁶ See *supra*, note 83, p.311.

⁹⁷ See R. CHURCHILL and N. FOSTER, "European Community law and prior Treaty obligations of Member States: The Spanish Fishermen's cases", [1987] *International and Comparative Law Quarterly* 504; as well as J. KLABBERS, "Moribund on the fourth of July? The Court of Justice on prior agreements of the Member States", (2001) 26 *ELRev* 187.

⁹⁸ Article 13 AC and Article 23 TP.