

Moreover, according to Article 8(2) TP, the provisions of the Transport Protocol have no retroactive effect. This means that they do not affect infrastructure projects, which have already been decided or for which the need has already been recognised by law. During the negotiations, some parties tried to push through the idea of an assessment procedure in order to examine the compatibility of already decided projects with the Transport Protocol as well¹⁰⁶. However, these attempts did not succeed. Therefore, as of the date of reference, which is 30 October 2000, the date of acceptance of the Transport Protocol, the contracting parties have only had to specify these projects in a separate list. The application of the different exceptions in political day-to-day life will show whether the derogation from the general prohibition remains exceptional or becomes the rule.

Article 11 TP is certainly the most controversial provision of the Transport Protocol. It is mainly responsible for the ups and downs of the more than ten years long negotiations of the Protocol¹⁰⁷. Especially the Community tried again and again to water down the content of the prohibition and to enlarge the scope of the exceptions¹⁰⁸. But as it has been emphasized by HABLACHER, if "the Alpine Convention shall have an added value compared to the existing international agreements, this passage of the Transport Protocol [Article 11] will have to be formulated in a restrictive manner." (own translation)¹⁰⁹

This prohibition of any new high-capacity transAlpine motorway implies as of the Community's adherence to the Transport Protocol, it will not be possible any more to co-finance such infrastructure projects in the context of the TEN-T. There are still two big Member States, Italy and France, which have not yet ratified the Transport Protocol. Should they want to build new infrastructures falling under the Transport Protocol, they could not hope to be supported financially by Community means.

¹⁰⁶ R. GSCHÖPF, "Nach EU-Eklat: Verkehrsprotokoll der Alpenkonvention in Endbegutachtung", (1999) 10+11 *EUropa-Info* 10.

¹⁰⁷ For further details, see *supra*, 3.2. Ups and downs of the history of the Transport Protocol, p.14.

¹⁰⁸ P. HABLACHER, "Die Alpenkonvention und ihr Verkehrsprotokoll", in Transitforum Austria Tirol (ed.), *Am Brenner für die Alpen. Tatort Brenner*. Vol. 2, Innsbruck 2000.

¹⁰⁹ See *supra*, note 108.