The Use of Helicopters for Leisure Purposes in the Alps

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Abstract
In mountain areas helicopters are used for the transport of tourists, panoramic and gastronomic flights and several sports activities such as heliskiing. Their use for tourist activities is subject of considerable criticism from a perspective of environmental protections as well as sports ethics. The legal regime governing these activities has, however, received rather scarce attention. The article discusses the provisions of the protocols of the Alpine Convention on this matter and assesses the national civil aviation laws and the environmental regulations on the use of helicopters for tourist activities. The last part addresses the contribution of the European Union by means of harmonisation of the national laws of its Member States.

Keywords
Airdrops, Aerodromes, Air Traffic, Alpine Convention, Civil Aviation Law, Helicopters, Heliskiing, Helisurfaces, Transport, Tourism.

1. Introduction
The Society „Swiss Eternity“ makes an exclusive offer: dispersing your ashes from a helicopter over the Aletsch glacier (a UNESCO world heritage site), the Matterhorn, the Mont Blanc Massif or in a more modest way over a mountain pasture. The offer includes pictures of the ceremony and a DVD presenting the place of dispersion. It is doubtful, whether such an activity can be considered as reasonable and ethically justifiable. From a legal point of view the question arises whether the activity is in contradiction to the protocols of the Alpine Convention: The contracting parties are obliged to limit or, if necessary, to prohibit airdrops in places other than aerodromes. In times of climate change, the sustainable development of mountain areas constitutes a major challenge. Sustainable development should be understood as protecting an entire living space, taking into account ecological, economic and social aspects. This global challenge must be solved by tackling individual problems.

The motorised activities in the Alps are rapidly expanding. Helicopters are not only used for rescue and aerial work, but also for leisure purposes such as panoramic flights and drop-off services at mountain restaurants or huts. In addition, heliskiing, helimountainbiking,
helisnowshoeing and heligolfing are widely advertised and even “helidispersion of ashes” is on offer as can be seen in a short film by Swiss Eternity. While the use of helicopters for rescue and aerial work is not questioned, their use for leisure purposes is subject to harsh controversy. Environmental pressure groups argue that such a use of helicopters causes unnecessary noise nuisance and CO$_2$-emissions. Economic actors counter that a diversification of the offer will attract tourists and create economical gains for whole regions. Furthermore, according to the latter, such leisure flights also constitute a means to access the mountains and thus an expression of everyone’s freedom.

Zeno, a Greek philosopher (335 BC-264 BC) once said: “The goal of life is living in agreement with nature”. The purpose of the Alpine Convention is to set a legal frame to achieve and ensure this goal of life. In the following sections, the provisions of the protocols of the Alpine Convention relating to this subject, the national civil aviation laws and the environmental regulations referring to the use of helicopters for tourist activities shall be analysed. Lastly, the scope and degree of harmonisation of these laws through the European Union (EU) shall also be addressed.

2. Alpine Convention

Article 16 Tourism Protocol obliges the contracting parties “to limit as much as possible or, where appropriate, to prohibit airdrops for sports purposes in places other than aerodromes”.

Article 12 (1) Transport Protocol relates more generally to transport: “The Contracting Parties undertake to reduce as far as possible the environmental damage caused by air traffic, including aircraft noise, without transferring it to other regions. Taking account of the objectives of this Protocol, they shall make efforts to limit or, where appropriate, prohibit airdrops in places other than aerodromes.”

Both provisions have no direct effect, since they do not provide precise and unconditional obligations. They merely oblige the national legislator or administration to substantiate its content. The articles imply that whenever a national administration uses its discretionary power, it should do so in a restrictive way.

Article 16 Tourism Protocol is limited to airdrops. However, the word “airdrop” is not defined by the protocols of the Alpine Convention. In everyday language the term is taken to mean “a delivery of an object or person out of an aircraft in flight”. The first sentence of Article 12 (1) Transport Protocol takes into account nuisances caused in general by airdrops and the use of helicopters and airplanes for instance when used for tourist flights or even aerial work.

Article 16 Tourism Protocol refers to airdrops for sports activities. However, according to sentence 2 of Article 12 (1) Transport Protocol the limitation or prohibition is not restricted to sports activities. All sorts of airdrops – the airdrop of persons and objects for any kind of

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5 Note 2.
6 Preamble of the Alpine Convention.
7 Legal translations of the Protocols of the Alpine Convention are not referring to the English version available on the websites of the European Union and the Alpine Convention, which is incorrect at some points. The translations, which are those of the author, refer to the official versions in French, German, Italian and Slovenian.
8 Whether a provision of International Law has direct effect in the national law systems is left to the discretion of each contracting party (Karl Doehring, Völkerrecht, Heidelberg, 2004, para. 702; ECJ Case 104/81, Kupferberg, ECR 1982, 3641, para. 18; Vedder, in: Grabitz, EWGV (1986), Art. 228 EWGV para. 48). Usually it is necessary that the provision is sufficiently precise and unconditional. As to the conditions in European Union Law cf. ECJ Case 104/81, Kupferberg, ECR 1982, 3662, para. 23.
purpose and hence also the disposal of ashes – should be limited or prohibited. This distinction between Art. 16 Tourism Protocol and Art. 12 (1) Transport Protocol is important as long as the contracting parties have not yet ratified both protocols. The EU has only adopted the Tourism Protocol and therefore is bound to the less restrictive provisions of this protocol.

The limitation or prohibition of airdrops is restricted to “other places than aerodromes”. The protocols of the Alpine Convention do not provide for a definition of the term “aerodrome” (in the aeronautical language often used synonymously with the term “airfield”). Chapter 1.1. Annex 14 of the Chicago Convention defines an aerodrome as “a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft”. The same Annex 14 defines a heliport (in the aeronautical language often used synonymously with the term “helipad”) as “an aerodrome of a defined area on a structure intended to be used wholly or in part for the arrival, departure and surface movement of helicopters”. The French, Italian and German legal definitions of “aerodrome” (“aerodrome”, “aerodromo” and “Flugplatz”) correspond to the international definition. We retain from that definition that an aerodrome or heliport must be officially designated by the competent authorities.

3. National Legislation

The national civil aviation laws are the rules which regulate flights and air travel. They also cover the use of all kinds of aircrafts. In principle, these laws prohibit the landing of helicopters outside of aerodromes.

In some countries special rules regulate flights and transport with aircrafts in mountain areas. These norms are often part of the national environmental law. The following section addresses selected aspects of these different national regimes.

3.1. Switzerland

Switzerland is the only country where the specific rules on the use of helicopters in mountain areas are embedded in the civil aviation law rather than in domestic environmental law. According to Art. 8 (1) and (3) Luftfahrtgesetz (LFG – Swiss Civil Aviation Law) aircrafts can land and take off on aerodromes and designated “mountain landing places” (MLP). These places are by definition “specifically designated landing fields above 1’100 metres” (Art. 2 lit. n Ordonnance sur l’infrastructure aéronautique [OSIA – aeronautical infrastructure act]) used for instruction and sport purposes or for the transport of persons (Art. 54 (1) OSIA). The law limits the number of MLPs to 48 (Art. 8 (4) LFG and Art. 54 (3) OSIA). To date 42

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11 Convention on International Civil Aviation signed on December 7, 1944 in Chicago, Illinois.
12 The use of helicopters in mountain areas in Germany, Liechtenstein and Slovenia seems to be inexistent or on a much smaller scale than in the neighbouring countries Switzerland, Italy, Austria and France. For the national legislation of these countries see Jennifer Heuck, L’Utilisation des Hélicoptères à des fins de loisirs en montagne Grenoble, 2009, 88 ff.
13 SR 748.0.
14 SR 748.131.1
15 A new “landingfield-act” (“Aussenlandeverordnung/Ordonnance sur les atterrissages en campagne) is being worked out, and will soon be ready for public consultation.
MLPs have been designated.\(^{16}\) Landing outside these MLPs is only allowed under very restrictive conditions (Art. 55 ff. and Art. 50 ff. OSIA).\(^{17}\)

The question may be asked, whether MLPs fall under the definition of “aerodrome”: if not, whether Switzerland already\(^{18}\) fulfils the obligation as to limit or prohibit airdrops out of aircrafts outside airdromes.

- MLPs are “specifically designated” by the Swiss authorities. Their official designation may lead to the conclusion that they must be considered as aerodromes: as such, the obligations of Art. 16 Tourism Protocol and Art. 12 (1) Sentence 2 Transport Protocol would not apply. However, MLPs are by definition “landingfields”. “Landingfields” are defined as “places for outside landing” (Art. 2 lit. q OSIA), “outside landing” is the “landing or take off outside an aerodrome” (Art. 2 lit. d OSIA). Since the landing takes place outside an aerodrome, the obligations of the Protocols of the Alpine Convention are applicable.

- It seems doubtful whether Switzerland would fulfil its obligation “to limit or, where appropriate, prohibit airdrops in places other than aerodromes” and “to reduce as far as possible the environmental damage caused by air traffic, including aircraft noise” prescribed by article 12 (1) Transport Protocol with its 42 MLPs above 1’100 metres. Furthermore, seven MLPs are located in the Jungfrau-Aletsch-Bietschhorn area\(^{19}\), which is a UNESCO world heritage site. Other MLPs are located in areas that are part of the federal inventory of landscapes, sites and monuments of national importance.\(^{20}\)

During the past years, considerable criticism has been raised because of the nuisance which heliskiing creates in these protected areas. For this reason the Federal Council mandated a general revaluation of MLPs to find out to what extent the heliskiing activities could be continued, taking into account the need to protect nature.\(^{21}\) The revaluation has proven to be a particularly difficult task even for stakeholders among themselves. As an example, the Swiss Alpine Club could not agree on an unanimous conclusion among its different sections.\(^{22}\)

It seems questionable that the ongoing revaluation will result in an improvement of the actual situation. It is an alarming signal that in the region Wallis-South-East the closure of one MLP (Unterrothorn) coincides with the “legalisation” of a new MLP (Trift), which has previously been used illegally.\(^{23}\) Moreover, only seasonal restrictions of flights are currently planned, but no maximum number of flights per day will be fixed.\(^{24}\)

Since Switzerland has not yet ratified the protocols of the Alpine Convention it is not bound by the individual provisions of the convention. Nevertheless, Switzerland is obliged to refrain

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\(^{16}\) Before designating a MLF the Federal Commission for the Protection of the Nature and Landscape, the Swiss Alpine Club and interested development societies are to be heard (Art. 54 (2) OSIA).

\(^{17}\) It seems that illegal airdrops for heliskiing are also observed outside the MLPs, Matthias Rohrer, Les atterrissages illégaux d’hélicoptères dans les Alpes Suisses, November 1998.

\(^{18}\) Switzerland has not yet ratified the Protocols of the Alpine Convention. See also below in the text.

\(^{19}\) Ebnefluh, Jungfraujoch, Langgletscher, Petersgrat, Kanderfin, Blümlisalp, Rosenegg West.


\(^{21}\) It is proposed to establish rules for specific flight routes, the restriction of the activity to certain periods of the day or the year and to establish so called “tranquility zones”.

\(^{22}\) “Zankapfel Heliskiing”, Die Alpen 3/2010, p. 27 et seq.


from acts which could undermine the object and purpose of the protocols as set out in Art. 18 Vienna Convention on the Law of Treaties.\textsuperscript{25}

3.2. Italy

According to Art. 699 and 700 Codice della navigazione (CDN – Italian Civil Aviation Law) aircrafts can land and take-off from airports and aerodromes. Take-off and landing on an elisuperfici (helisurface) is allowed under certain conditions (Art. 701 CDN). Some of these conditions are defined by the Decreto 1 febbraio 2006.\textsuperscript{26} In addition, rules decreed by the regions and local authorities need to be taken into account (Art. 701 CDN).

Heliskiing is provided at a large scale in the Valle d’Aosta. The following remarks refer to specific regulations that are implemented in that region.

Art. 1 (1) and (2) regional law no. 15 mars 4, 1998\textsuperscript{27} provides the general principle that “for the purpose of the protection of the environment, also from an acoustic point of view, the landing and departure of motor-aircrafts is prohibited in parcs, protected nature sites and areas for the protection of the fauna (...). It is also prohibited to overfly these areas at an altitude below 500 m of the ground. Similar prohibitions are in force for all areas above an altitude of 1’500 m in the region.”\textsuperscript{28}

Annex A of the law (Art. 1 (2), Art. 2 (1) Law no. 15) mentions exceptions for seven areas: Courmayeur; Gressoney-La Trinité d’Ayas; La Thuile; Ollomont, Valgrisenche; Arvier Et La Thuile; Valtournenche et Doues. Every area is subdivided into several parts. Taken together there are 47 spots where skiers can be dropped-off by helicopters from the period of December 20th to May 15th (Art. 3.6 Law no. 15) between 7 am and 4 pm (Art. 3.3 Law no. 15). The communities and the operating helicopter society\textsuperscript{29} can agree by convention to prohibit heliskiing on other days during periods of high affluence of backcountry alpine skiing (Art. 3.2 e Law no. 15). The downhill slopes are defined in advance. If the descent passes through a protected site for the fauna or a site where the animal population is in mating season, the itinerary must be defined in cooperation with the competent forest guard of the territory (Art. 3.5 Law no. 15).

The situation is similar to that in Switzerland. The designated zones for airdrops are elisuperfici (helisurfaces). By definition they are not an aerodrome:\textsuperscript{30} therefore the provisions of the protocols of the Alpine Convention apply. Again, permitting airdrops on more than 40 different spots seems inappropriate for the limitation of airdrops and the nuisance caused by the use of helicopters in mountain areas.


\textsuperscript{26} Decreto 1 febbraio 2006, Norme di attuazione legge 2 aprile 1968, no. 518, concernente la liberalizzazione dell’uso delle aree di atterraggio (GU n. 106 del 9-5-2006).

\textsuperscript{27} Loi régionale no. 15 du 4 mars 1988 portant réglementation des activités de vol alpin visant à la sauvegarde du milieu, Bulletin officiel de la région autonome du Vallée d’Aoste no. 7 du 25 mars 1988, last updated by the regional law no. 1 of January 20\textsuperscript{28}h, 2005 (Bulletin officiel de la Region autonome Vallée d’Aoste no. 6 du 8 février 2005).

\textsuperscript{28} “Dans un souci de protection de l’environnement, y compris du point de vue acoustique, l’atterrissage et le décollage des aéronefs à moteur sont interdits dans les parcs, les espaces naturels protégés et les aires de protection de la faune (...). Il est également interdit de survoler les zones susdites à une altitude de moins de 500 m du sol. Des interdictions semblables sont en vigueur dans la partie restante de la Région pour toutes les zones situées à une altitude dépassant 1500 m”.

\textsuperscript{29} For security reasons in principle only one helicopter society is allowed to operate per community (Art. 2.4 Law no. 15).

\textsuperscript{30} Art. 1 Nr. 2 Decreto 1 febbraio 2006.
Italy – like Switzerland – did not yet ratify the protocols of the Alpine Convention. However, as a Member State of the European Union Italy is bound to the Tourism Protocol via Art. 216 (2) TFEU, because the Tourism Protocol has been ratified by the European Union.

3.3. Austria

According to § 9 (1) Luftfahrtgesetz (LFG – Austrian civil aviation law) aircrafts are allowed to land on airfields only. An exception is however made in § 9 (2) LFG: The Landeshauptmann can issue a permission for helicopters to land outside an airfield, if there is no conflict with public interest. In case of a conflict the permission can still be issued if the public interest for landing prevails. The permission is limited in time and, if necessary, has to be subject to further requirements. If the conditions for the permit are no longer fulfilled, or if the additional requirements are not met, the permit must be revoked.

The wording of the provision suggests that in principle the permit must be issued. The burden of proof, whether the issue of a permit could be in conflict with public interests, lies upon the authority issuing the permit. According to the case law of the Austrian Administrative Court (Verwaltungsgerichtshof) “in areas of recreation interests for the protection of the environment and tourist interests can be considered as important public interests”.

The Austrian Länder apply their discretion very restrictively. The Land Tirol, which initially had 24 landing spots (and was asked for additional 36 permissions) explicitly prohibited the use of helicopters for the transport of persons for tourist activities, unless the transport is taking place between aerodromes. Today, only the Land Vorarlberg allows airdrops of skiers at two points, the “Mehlsack” and the “Schneeäli-Orgelscharte”. In 2004, the authorisation for one of the two existing landing spots for heliskiing in Vorarlberg was withdrawn, because the ski-descend passed through a Natura 2000 site. One year later, in 2005, a new landing spot was approved close to the old site. The political party “Die Grünen” invoked that by allowing a new landing spot, Austria would not limit, but on the contrary extend the activity of airdrops, without considering environmental aspects. This was in their view a breach of Art. 16 Tourism Protocol and Art. 12 (1) Transport Protocol. The administrative authority, however, did not follow this contention. In its decision the nuisance caused by the landing spot is considered to be insignificant, since the activity is limited to one valley only. Additionally, the activity is allowed during certain hours only; it is also prohibited during weekends and official holidays. Therefore it should not be considered to be in conflict with public interests.

Two remarks can be made concerning this particular case:

- The authorisation for one of the heliskiing spots was revoked with the aim to limit the nuisances that are caused by backcountry alpine skiers. It therefore would be unsuitable to justify the abolishment with reference to Art. 16 Tourism Protocol and Art. 12 (1) Transport Protocol, because the objective of the authorities was apparently

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31 According to § 58 LFG airfields are land- or waterfields, designated for a permanent landing and take-off of aircrafts.
32 In case of a landing and taking-off on land, when the person entitled to dispose over the land has agreed to the issuing of the permit (§ 9 (4) LFG).
34 This is the result of a study conducted by the Umweltdachverband and CIPRA Österreich.
35 § 5 Abs. 1 lit. b Tiroler Naturschutzgesetz 2005: “die Verwendung von Hubschraubern zur Beförderung von Personen für touristische Zwecke, ausgenommen zwischen Flugplätzen”.
36 The activity counts approximately 900 flights per season (Vorarlberger Nachrichten, Samstag/Sonntag, 11./12. November 2006.
not to reduce the nuisance caused by the helicopters but to reduce the nuisance caused by the skiers.

- The existing heliskiing landing spots are outside aerodromes. The party “Die Grünen” therefore correctly invoked that the Land Vorarlberg is not restricting but actually extending the activity in clear contradiction to what is allowed by the protocols of the Alpine Convention. The fact that a landingfield existed nearby does not justify the new authorisation.

3.4. France

Heliskiing is prohibited in France. However, other helicopter activities and tourist flights, and the drop-off at mountain restaurants seem to be much en vogue. Skiers also call for a helicopter to pick them up, once they have reached a bottom of a valley after an “hors-piste” ski descent.


As a particularity, French law – in contrast to Swiss, Italian and Austrian law –, has a distinctive provision on “airdrops of passengers” embedded in the Code de l’Environnement (Environmental Code). Article L. 363-1 of the French Environmental Code provides: “In mountain areas, the airdrop of passengers for leisure purposes by an aircraft is prohibited, unless at an aerodrome indicated on a list by the authorities.”

At first sight, the wording seems to be very similar to the wording of the protocols of the Alpine Convention. However, certain aspects and differences should be highlighted:

- The prohibition is limited to “mountain areas” and does not apply to the entire French territory. The French Law defines mountain areas in an administrative rather than geographical way. The law covers the scope of the Alpine convention.
- The French law prohibits the airdrop of passengers only. Art. 16 Tourism Protocol and Art. 12 (1) Sentence 2 Transport Protocol also applies to airdrops of material. Therefore, the French law does not meet all requirements of the Alpine Convention.
- Also, Art. L. 363-1 of the Environmental Code prohibits the airdrops only, if they are provided “for leisure purposes”.

In comparison with Art. 16 Tourism Protocol the article of the Environmental Code implies a restriction and an extension: a restriction because airdrops for all leisure purposes are prohibited, even those which are not for sport activities; an extension for professional sports activities, because these are exempted from the prohibition.

The scope of Art. 12 (1) 2 Transport Protocol is larger, because the prohibition is not limited to airdrops for leisure purposes.
- Aircrafts are exceptionally allowed to airdrop passengers in mountain areas, if the airdrop is done on an officially designated aerodrome. In contrast to Switzerland and

39 For a detail analysis of the French Legal System concerning the use of helicopters in mountain areas for leisure purposes see: Heuck (note 12) passim.

40 In principle, helisurfaces can be used without previous authorisation. Their use is subject to certain conditions: They need to be identified in advance by the pilot and the landing necessitates a previous permission by the owner of the land, where the landing will take place (Art. 12 Arrêté du 6 mai 1995 relatif aux aérodromes et autres emplacements, JO no. 108 du 7 mai 1995, page 7522).


42 “Dans les zones de montagne, les déposes de passagers à des fins de loisirs par aéronefs sont interdites, sauf sur les aérodromes dont la liste est fixée par l’autorité administrative”.

43 The administrative definition of the French “zone de montagne” has been the basis to define the scope of the Alpine Convention for the French territory.
Italy dropping-off passengers from a helicopter – but not the landing of the helicopter – outside an aerodrome is always contrary to French law.

4. Harmonisation by the European Union

Specific rules on the use of aircrafts for leisure purposes in mountain regions do not (yet) exist in EU law. The disparities between the national legal systems and the different levels of protection raise the question whether the EU can make a contribution to reduce the nuisance caused by helicopters in mountain areas by means of harmonisation. As preliminary issue, it has to be clarified whether the use of helicopters in the mountains is an issue of “tourism” (Art. 195 TFEU)\(^{45}\), “transport” (Art. 90 TFEU)\(^{46}\) or “environmental protection” (Art. 191 TFEU)\(^{47}\).

The clarification is important, since the competence for the areas of “transport” and “environment” is shared between the European Union and the Member States (Art. 4 TFEU). In areas of shared competence, the Member States can exercise their competence to the extent that the Union has not exercised its competence (Art. 2 (2) TFEU). The area of “tourism”, however, remains as an exclusive competence with the Member States. The Union can only carry out actions to support, coordinate or supplement the actions of the Member States (Art. 6 TFEU)\(^{48}\).

The choice of the legal basis for a measure may not depend simply on an institution’s conviction: it must be based on objective factors that are amenable to judicial review\(^{49}\). These factors include in particular the aim and content of the measure.\(^{50}\) It therefore is necessary to analyse the aim and objective of the provisions of the Tourism Protocol and the Transport Protocol in detail. Arguably, the regulations on the use of helicopters for leisure purposes in the Alps are a matter of environmental protection (Art. 191 TFEU). Although the existence of a Tourism Protocol might suggest that the contracting parties intended to safeguard the economic development of peripheral alpine regions, Art. 1 of the Protocol leaves no doubt that it can only be achieved by protecting the unique environment of the Alps: “The objective of this Protocol is to contribute to the sustainable development in the Alpine Region (...) by encouraging environmentally-friendly tourism through specific measures and recommendations which take the interests of both the local population and tourists into account”. Art. 9 Tourism Protocol further says: “The Contracting Parties shall ensure that the tourism development is adapted to the specific environment and available resources of the area or region concerned”.

It can be concluded that the contracting parties support the development of the tourism-branch by protecting the environment and establishing an eco-friendly tourism – an idea which is contradicted by the transport of tourists with helicopters.

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\(^{44}\) No specific list has been established. To anticipate a total paralysis of the air traffic in mountain areas the Direction de l’Aviation Civile Sud Est refers to the list of aerodromes and helistations of the Service de l’Information Aéronautique for the French territory. Tourists can be dropped-off on an aerodrome or a helistation, as long as these infrastructures are not reserved for special purposes such as rescue for instance.

\(^{45}\) As an offer by the tourist sector.

\(^{46}\) As part of the civil aviation laws.

\(^{47}\) In order to reduce the nuisance caused by the helicopters for the environment.

\(^{48}\) According to Article 195 (1) TFEU the Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of the Union undertakings in that sector. To that end, the Union’s action shall be aimed at: (a) encouraging the creation of a favourable environment for the development of undertakings in this sector; promoting cooperation between the Member States, particularly by the exchange of good practice.

\(^{49}\) ECJ Case 45/86 Commission v Council, ECR 1987, 1493, para. 11.

\(^{50}\) ECJ Case 300/89, Titandioxid, ECR 1991, I-2867, para. 10.
As to the air-traffic, Art. 12 (1) Transport Protocol is even clearer: “The Contracting Parties undertake to reduce as far as possible the environmental damage caused by air traffic, including aircraft noise, without transferring it to other regions”.

The obligations of Art. 16 Tourism Protocol and Art. 12 Transport Protocol aim at preserving, protecting and improving the quality of the environment. Arguably, the EU can therefore exercise its competence only on the legal basis of Art. 191 TFEU.

As an additional step, when adopting a directive or a regulation, the European Union must respect the principle of subsidiarity (Art 5 TUE). The Union should act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central, regional or local level. Considering the scale of the proposed action, it can be reasonably be assumed that the objectives may be better achieved at Union level.

National laws should be harmonised to ensure a uniform application of the rules established by the protocols of the Alpine Convention. In the instant case, the Member States, contracting parties of the Alpine Convention and (partly) its protocols have adopted different rules on landing and take-off of helicopters and the airdrop of passengers. As has been shown in the previous discussion, these national rules remain in most cases below the level of protection foreseen by the protocols of the Alpine Convention. Therefore a need to act arises for the EU as a contracting party bound to the obligations of the protocols.

The Tourism Protocols and the Transport Protocol establish a certain level of protection in their provisions. The EU can take even more restrictive action to protect the environment. Thereby the Member States margin of manoeuvre they enjoyed under the provisions of the protocols would be limited. Still, on the legal basis of Art. 192 TFEU Member States can maintain or introduce even more stringent protective measures than the ones provided for by European law, as long as they are compatible with the Treaty and are notified to the Commission (Art. 193 TFEU).

So far, the European Union has only ratified the Tourism Protocol. The ratification of the Transport Protocol has come to a hold. Therefore, the possibility for the EU to harmonise rules of its Member States only exists in relation to the less restrictive Art. 16 Tourism Protocol.

5. Conclusion

The existence of a legal instrument on national level does not necessarily mean that the use of helicopters in mountain areas meets environmental requirements set by the Alpine Convention. It seems that countries have different perceptions about the term “to limit as much as possible”, and this mainly due to differences of economic pressures. In Switzerland and Italy the laws are too permissive and clearly not adapted to the challenges in mountain areas. The French national law goes in certain points beyond the obligations established by the protocols of the Alpine Convention. Even if the requirements of the Alpine Convention are met from a legal point of view, it is necessary that these requirements are effectively implemented. The breach of a legal rule ought to be pursued.

The EU can play an important role for the harmonisation of the national laws of its Member States, which are also contracting parties of the Alpine Convention. There is a pressing need to find a solution to restrict the activity of helicopters for leisure purposes in the Alps. However, a solution which would not be carried by all the Alpine countries seems more than unsatisfactory. Cooperation between the contracting parties of the Alpine Convention is therefore essential, which applies both to Member States and non-Member States of the EU.


52 Especially due to the fact, that Italy is not willing to ratify the Transport Protocol.
The Alpine Convention is the predestined platform to re-establish by legal means the tranquillity in the mountains, which both men and animals are searching for.