

Press and Information Division

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Judgment of the Court of Justice in Case C-356/01

*Republic of Austria v Commission of the European Communities*

**AUSTRIA'S ACTION CHALLENGING THE DISTRIBUTION OF ECOPOINTS FOR  
2001 IS DISMISSED**

*The 'declaration principle', according to which a journey can be counted as a transit journey solely on the basis of the setting of the ecotag when a heavy goods vehicle enters Austria has no foundation in Community rules*

The Act of Accession of Austria to the Community includes a Protocol establishing special rules for the traffic of goods by road through Austria. It essentially provides for a mechanism aimed at reducing total NO<sub>x</sub> (nitrogen oxide) emissions, under which each heavy goods vehicle requires a certain number of ecopoints, representing its NO<sub>x</sub> emission level, in order to transit through Austria. The ecopoints are managed by the European Commission, which distributes them to the Member States.

Between 1 January 1992 and 31 December 2003, the total NO<sub>x</sub> emissions from heavy goods vehicles transiting through Austria are to be gradually reduced by 60%. Accordingly, *the Protocol fixes a certain number of points for each year in this period*, a figure which is gradually reduced. If, in the course of a year, the number of journeys exceeds the 1991 figure by more than 8%, the Commission must take measures for the *following year*, by which it reduces the number of ecopoints and, consequently, the number of transit journeys.

In 1996, the Commission introduced an electronic monitoring system based on the use of an electronic device, referred to as the 'ecotag', fitted to the motor vehicle which enables the automatic debiting of ecopoints, the technical specifications of which are laid down in a 1994 regulation. The system is operated by means of an infrastructure provided and managed by the Austrian authorities.

For vehicles making '*bilateral journeys*', the ecotags must be set, prior to entering Austrian territory, in such a way as to show that a non-transit journey is being made. Bilateral journeys

are international carriage on journeys undertaken by a vehicle where the point of departure is in Austria and the point of arrival is in another Member State, and vice versa.

In April 2001, Austria sent the Commission its statistics for the year 2000, which indicated an excess number of journeys. Other Member States expressed reservations about the number of journeys declared, stating that they did not believe that all the journeys had actually been made.

Finally, in July 2001, the Commission decided not to apply the 108% rule for 2001 and that it would distribute all of the remaining ecopoints for 2001.

Austria brought an action against the Commission.

Austria maintained that it was not required to prove that a transit journey had indeed been effected and that it was not a journey falsely declared as a transit journey. Accordingly, having regard to the declaration principle, it was required to include in the ecopoints statistics, as transits, the 147 202 journeys contested by the other Member States. That figure included 92 816 journeys for which there is no data on departure and 54 386 where both entry and departure were effected at the same border point. The Commission argued, on the other hand, that only transit journeys actually made should be taken into account.

The question is thus whether these disputed journeys should be counted among the transit journeys in order to determine whether the reference value for 1991 was exceeded by more than 8% during the year 2000.

The Court finds that it is clear from the Protocol that classification of a journey as **'transit traffic'** depends on both the departure point and the destination of the heavy goods vehicles in question, since both those points must be outside Austrian territory. This means that proof must be given not only of the entry of the heavy goods vehicle into Austrian territory, but also of its departure.

According to the 1994 regulation, this task **falls to the Austrian authorities**. They are also required to make available the necessary information both to a designated authority in the Member State where the vehicle is registered and to the Commission.

If the driver provides **inexact information** due to the ecotag being incorrectly set on his heavy goods vehicle, **it is for the Austrian authorities**, who are responsible under Community law for managing the system, **to correct those errors**.

**The declaration principle alleged by the Austrian Government, according to which a journey can be counted as a transit journey solely on the basis of the setting of the ecotag when the heavy goods vehicle enters Austrian territory, is without foundation in the relevant Community provisions.**

Since Austria has not provided any evidence establishing that the disputed journeys were actually transit journeys through Austrian territory, its action against the Commission has been dismissed.

**N.B.** There are two other cases pending before the Court concerning the distribution of ecopoints for 2002 (C-296/02) and 2003 (C-393/03).

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*Available languages: DE, EN, FR, IT.*

*The full text of the judgment can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int)).*

*In principle it will be available from midday CET on the day of delivery.*

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