

Press and Information Division

PRESS RELEASE No 70/03

11 September 2003

Judgment in Case C-445/00

Republic of Austria v Council of the European Union

**THE ECOPOINTS REGULATION 2000 IS TO REMAIN IN FORCE SAVE FOR
THE PROVISION INTRODUCING A PRINCIPLE THAT REDUCTIONS IN
ECOPOINTS BE SPREAD OVER SEVERAL YEARS**

Although the Court has also annulled the provision by which the reduction in ecopoints made as a result of excess journeys in 1999 was spread over the years 2000 to 2003, it held that its effects are to be regarded as definitive.

The Act of Accession of Austria to the Community includes a **protocol** which lays down special rules for the transit of goods by road through Austria.

Essentially, it provides for a mechanism for reducing total NO_x (nitrogen oxide) emissions under which any heavy goods vehicle crossing Austria requires a number of ecopoints equivalent to its level of NO_x emissions. The ecopoints are administered by the Commission, which distributes them among the Member States.

During the period from 1 January 1992 to 31 December 2003, the total of NO_x emissions from heavy goods vehicles crossing Austria is to be reduced progressively by 60%. *The Protocol therefore fixes an ever decreasing number of ecopoints for each year of that period.* If in any year the number of journeys exceeds the 1991 figure by more than 8%, the Commission is to take measures. Under the Protocol, those measures, which reduce the number of ecopoints and therefore the number of transit journeys, are to be applied *to the following year.*

The statistics drawn up in September 2000 showed that, in 1999, traffic had increased by 14.57% of the 1991 figure. According to the Commission and the Council, if the reduction in ecopoints had been applied to 2000, all transit of heavy goods vehicles through Austria would have had to be prohibited in the last quarter of 2000.

In order to avoid a situation in which the reduction made necessary by the increase in traffic in 1999 had to be applied to 2000 alone, a Council **Regulation** of September staggered the reduction over four years, from 2000 to 2003 (30% of the reduction in 2000, 2001 and 2002 and 10% in 2003).

The new Regulation provides in a general manner that any future reduction consequent upon excess journeys should be spread in a similar way.

On 4 December 2000, the Republic of Austria applied to the Court of Justice of the European Communities for annulment of the Council Regulation introducing the new rules governing the ecopoints system.

First of all, the Court finds that no essential procedural requirements had been infringed during the formal adoption procedure and, as a result, the regulation is not to be annulled in its entirety.

The Court holds that **the contested Regulation** is invalid in so far as, contrary to the provisions of the Protocol, it **introduces a principle that reductions in ecopoints made as a result of the threshold being exceeded must be spread over several years**; the Court points out that protocols to an act of accession are provisions of primary law which cannot be amended by a mere regulation.

Consequently, **the Court has annulled the provision made in that regard in the Regulation.**

With respect to **the provision made in the Regulation for the spreading over the years 2000 to 2003 of the ecopoints reduction made as a result of the excess journeys in 1999**, the Court finds that definitive statistics were not provided by the Austrian authorities until September 2000. Given that late transmission, only the last quarter of 2000 remained within which to make the reductions resulting from the excess journeys in 1999. That would have had the effect of stopping practically all transit traffic of goods by road through Austria for several months, which would have been contrary to the fundamental principles of Community law, in particular the free movement of goods.

The Court concludes that, in those circumstances, the Council was entitled under the Protocol to spread the reduction in ecopoints over the remaining months of 2000 and the "following year", that is to say, the whole of 2001. However, it was inconsistent with the Protocol to spread the reduction over the four years from 2000 to 2003. **The Court has therefore annulled the provision made in the Regulation for the spreading of the reduction over the years 2000 to 2003. Nevertheless**, because of the need for legal certainty, the Court has decided that **the effects of the relevant article of the Regulation are to be regarded as definitive.**

With respect to **the provision made in the Regulation for the distribution of the reduction in question between the Member States**, the Court stated that this provision is vitiated by the same illegality as that providing – contrary to the Protocol – that the reduction is to be spread over the years 2000 to 2003 (see above). Consequently, **the Court has annulled that**

¹ Council Regulation No 2012/2000 of 21 September 2000 (OJ 2000 L 241, p. 18)

provision of the Regulation but has decided that, because of the need for legal certainty, **its effects are likewise to be regarded as definitive.**

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Available languages: DE, EN, FR, ES, IT, NL.

The full text of the judgment can be found on the internet (www.curia.eu.int).

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

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