

addition, the target of a 60% reduction of NO<sub>x</sub> emissions was not achieved. Even if the emissions per vehicle have decreased, this was offset by the growth rate of road transport<sup>143</sup>. Therefore, "its environmental benefit for the persons living along the Brenner motorway must have remained limited."<sup>144</sup> Second, the attempt to limit the number of heavy goods vehicles driving through the Austrian Alps was unsuccessful.

This is illustrated not only by the case *Austria v. Council*<sup>145</sup>, currently pending at the European Court of Justice, but as well by the fact that in the context of the actual negotiations for a prolongation of the ecopoint system, the Council proposes to abolish any limitation of the number of transit journeys<sup>146</sup>.

The facts of the case *Austria v. Council* date back to 1999. When the number of transit journeys exceeded the limits foreseen by the ecopoints system by 25%, Austria would have had the right to ban all transit of the last quarter of the year 2000. In order to avoid this, the Council decided, subject to opposition on the part of Austria, to amend the regulation, which divided the ecopoints between the different Member States<sup>147</sup>, by spreading the reduced number of transit journeys over four years. Austria brought action before the Court, asking for annulment of the regulation in question. So far, the Court has not yet rendered its judgement. However, according to Advocate General Mischo's opinion<sup>148</sup>, the Community was wrong in preventing Austria from restricting the number of transits for 2000<sup>149</sup>.

The current ecopoint system will last till the end of 2003. For the past months, negotiations on a prolongation of the system have attempted to find a compromise for a transitional system applicable until the already mentioned generalised European system for infrastructure pricing will enter into force. At the last Transport Council end of March 2003, the Ministers rejected the proposal by the European Parliament "which

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<sup>143</sup> See *supra*, note 7, p.28.

<sup>144</sup> See *supra*, note 134, p.109.

<sup>145</sup> See Opinion of Advocate General Mischo, delivered on 13 February 2003, in case C-445/00, *Austria v. Council* (not yet reported).

<sup>146</sup> Press release regarding the Council meeting of 31 December 2002, available at: [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=PRES/02/415|0|RAPID&lg=EN&display=](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=PRES/02/415|0|RAPID&lg=EN&display=).

<sup>147</sup> Council Regulation 2012/2000/EC, of 21 September 2000 amending Annex 4 to Protocol No 9 to the 1994 Act of Accession and Regulation 3298/94/EC with regard to the system of ecopoints for heavy goods vehicles transiting through Austria, OJ L 241, 26 September 2000, p.18.

<sup>148</sup> See *supra*, note 145.

<sup>149</sup> For a first comment on this opinion, see "Ecopoints victory brings no joy to Austria", (2003) 116 T&E Bulletin 1.