

Protocol No 9

on road, rail and combined transport in Austria

PART I

DEFINITIONS

Article 1

For the purposes of this Protocol, the following definitions shall apply:

- (a) 'vehicle' shall be as defined in Article 2 of Regulation (EEC) No 881/92, as applied at the date of the signature of the Accession Treaty;
- (b) 'international carriage' shall be as defined in Article 2 of Regulation (EEC) No 881/92, as applied at the date of signature of the Accession Treaty;
- (c) 'transit traffic through Austria' shall mean traffic through Austrian territory from a departure point to a destination, both of which lie outside Austria;
- (d) 'heavy goods vehicle' shall mean any motor vehicle with a maximum authorized weight of over 7,5 tonnes registered in a Member State designed to carry goods or haul trailers, including semi-trailer tractor units, and trailers with a maximum authorized weight of over 7,5 tonnes and hauled by a motor vehicle registered in a Member State with a maximum authorized weight of 7,5 tonnes or less;
- (e) 'transit of goods by road through Austria' shall mean transit through Austria by heavy goods vehicles, regardless of whether they are laden or not;
- (f) 'combined transport' shall mean the carriage of goods by heavy goods vehicles or loading units which complete part of their journey by rail and either begin or end the journey by road, whereby transit traffic may under no circumstances cross Austrian territory on its way to or from a rail terminal by road alone;
- (g) 'bilateral journeys' shall mean international carriage on journeys undertaken by a vehicle where the point of departure or arrival is in Austria and the point of arrival or departure, respectively, is in another Member State and unladen journeys undertaken in conjunction with such journeys.

PART II

RAIL AND COMBINED TRANSPORT

Article 2

This Part shall apply to measures relating to the provision of rail and combined transport crossing the territory of Austria.

Article 3

The Community and the Member States concerned shall, within the framework of their respective competences, adopt and closely coordinate measures for the development and promotion of rail and combined transport for the trans-Alpine carriage of goods.

Article 4

When establishing the guidelines provided for in Article 129c of the EC Treaty, the Community shall ensure that the axes defined in Annex 1 form part of the trans-European networks for rail and combined transport and are furthermore identified as projects of common interest.

Article 5

The Community and the Member States concerned shall, within the framework of their respective competences, implement the measures listed in Annex 2.

Article 6

The Community and the Member States concerned shall use their best endeavours to develop and utilise the additional railway capacity referred to in Annex 3.

Article 7

The Community and the Member States concerned shall take measures to enhance the provision of rail and combined transport; where appropriate, and subject to other EC Treaty provisions, such measures shall be established in close consultation with railway companies and other railway service providers. Priority should be given to those measures set out in the Community's provisions on railways and combined transport. In implementing any measures, particular attention shall be attached to the competitiveness, effectiveness and cost transparency of rail and combined transport. In

particular, the Member States concerned shall endeavour to take such measures so as to ensure that prices for combined transport are competitive with those for other modes of transport. Any aid granted to these ends shall comply with Community rules.

Article 8

The Community and the Member States concerned shall, in the event of a serious disturbance in rail transit, such as a natural disaster, take all possible concerted action to maintain the flow of traffic. Priority shall be given to sensitive loads, such as perishable foods.

Article 9

The Commission, acting in accordance with the procedure laid down in Article 16, shall review the operation of this Part.

PART III

ROAD TRANSPORT

Article 10

This Part shall apply to the carriage of goods by road on journeys carried out within the territory of the Community.

Article 11

1. For journeys which involve transit of goods by road through Austria, the regime established for journeys on own account and for journeys for hire or reward under the First Council Directive of 23 July 1962 and Council Regulation (EEC) No 881/92 shall apply subject to the provisions of this Article.

2. Until 1 January 1998, the following provisions shall apply:

- (a) The total of NO_x emissions from heavy goods vehicles crossing Austria in transit shall be reduced by 60 % in the period between 1 January 1992 and 31 December 2003, according to the table in Annex 4.
- (b) The reductions in total NO_x emissions from heavy goods vehicles shall be administered according to an ecopoints system. Under that system any heavy goods vehicle crossing Austria in transit shall require a number of ecopoints equivalent to its NO_x emissions (authorized under the Conformity of Production (COP) value or type-approval value). The method of calculation and administration of such points is described in Annex 5.
- (c) If the number of transit journeys in any year exceeds the reference figure established for 1991 by more than 8 %, the Commission, acting in accordance

with the procedure laid down in Article 16, shall adopt appropriate measures in accordance with paragraph 3 of Annex 5.

- (d) Austria shall issue and make available in good time the ecopoints cards required for the administration of the ecopoints system, pursuant to Annex 5, for heavy goods vehicles crossing Austria in transit.
- (e) The ecopoints shall be distributed by the Commission among Member States in accordance with provisions to be established in accordance with paragraph 6.

3. Before 1 January 1998, the Council, on the basis of a report by the Commission, shall review the operation of provisions concerning transit of goods by road through Austria. The review shall take place in conformity with basic principles of Community law, such as the proper functioning of the internal market, in particular the free movement of goods and freedom to provide services, protection of the environment in the interest of the Community as a whole, and traffic safety. Unless the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, decides otherwise, the transitional period shall be extended to 1 January 2001, during which the provisions of paragraph 2 shall apply.

4. Before 1 January 2001, the Commission, in cooperation with the European Environment Agency, shall make a scientific study of the degree to which the objective concerning reduction of pollution set out in paragraph 2 (a) has been achieved. If the Commission concludes that this objective has been achieved on a sustainable basis, the provisions of paragraph 2 shall cease to apply on 1 January 2001. If the Commission concludes that this objective has not been achieved on a sustainable basis the Council, acting in accordance with Article 75 of the EC Treaty, may adopt measures, within a Community framework, which ensure equivalent protection of the environment, in particular a 60 % reduction of pollution. If the Council does not adopt such measures, the transitional period shall be automatically extended for a final period of three years, during which the provisions of paragraph 2 shall apply.

5. At the end of the transitional period, the 'acquis communautaire' in its entirety shall be applied.

6. The Commission, acting in accordance with the procedure laid down in Article 16, shall adopt detailed measures concerning the procedures relating to the ecopoints system, the distribution of ecopoints and technical questions concerning the application of this Article, which shall enter into force on the date of accession of Austria.

The measures referred to in the first subparagraph shall ensure that the factual situation for the present Member States resulting from the application of Council Regulation (EEC) No 3637/92 and of the Administrative

Arrangement, signed on 23 December 1992, setting the date of entry into force and the procedures for the introduction of the ecopoints system referred to in the Transit Agreement, is maintained. All necessary efforts shall be made to ensure that the share of ecopoints allocated to Greece takes sufficient account of Greek needs in this context.

Article 12

1. For international carriage of goods on journeys between Member States, the regime established under Council Regulation (EEC) No 881/92 shall apply subject to the provisions set out in this Article. These provisions shall be applicable until 31 December 1996.

2. For bilateral journeys, existing quotas shall be progressively liberalized and full freedom to provide transport services shall be effective as from 1 January 1997. A first stage of liberalization shall take effect on the date of accession of Austria, a second stage on 1 January 1996.

If necessary, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate measures to that effect.

3. The Council, acting in accordance with Article 75 of the Treaty, shall adopt appropriate and simple measures to prevent circumvention of the provisions of Article 11 by 1 January 1997 at the latest.

4. As long as the provisions of Article 11 (2) apply, the Member States, in the framework of their mutual cooperation, shall, if necessary, take measures compatible with the EC Treaty against misuse of the ecopoints system.

5. Hauliers with a Community authorization issued by the competent authorities in Austria shall not be entitled to carry out an international carriage of goods on journeys where neither loading nor unloading takes place in Austria. All such journeys involving transit through Austria shall, however, be subject to the provisions of Article 11 and also, with the exception of journeys between Germany and Italy, to existing quotas, which shall be subject to the provisions of paragraph 2 above.

Article 13

1. Until 31 December 1996, the provisions of Regulation (EEC) No 3118/93 shall not apply to hauliers with a Community authorization issued by the competent authorities in Austria for the operation of national road haulage services in other Member States.

2. During the same period, the provisions of Regulation (EEC) No 3118/93 shall not apply to hauliers with a Community authorization issued by the competent authorities in another Member State for the operation of national road haulage services in Austria.

Article 14

1. There shall be no controls at the borders between Austria and other Member States. However, in derogation from Regulations (EEC) No 4060/89 and (EEC) No 3912/92 and notwithstanding Article 153 of the Act of Accession, non-discriminatory physical controls requiring vehicles to halt in order solely to verify ecopoints issued under the provisions of Article 11, and transport authorizations referred to in Article 12, may be retained until 31 December 1996. Such controls shall not unduly slow down the normal flow of traffic.

2. To the extent necessary, any control methods including electronic systems applicable after 31 December 1996 and relating to the implementation of Article 11 shall be decided in accordance with the procedure laid down in Article 16.

Article 15

1. Austria may, in derogation from Article 7 (f) of Directive 93/89/EEC, apply, until 31 December 1995, user charges at a maximum level of ECU 3.750 per year including administrative costs and, until 31 December 1996, at a maximum level of ECU 2 500 per year including administrative costs.

2. If Austria makes use of the possibility mentioned in paragraph 1, it shall, in accordance with the first sentence of Article 7 (g) of Directive 93/89/EEC, apply until 31 December 1995 a user charge at a maximum level of ECU 18 per day, ECU 99 per week and ECU 375 per month including administrative costs and, until 31 December 1996, at a maximum level of ECU 12 per day, ECU 66 per week and ECU 250 per month including administrative costs.

3. Austria shall apply a reduction of 50 % to the rates of user charges mentioned in paragraphs 1 and 2 of this Article in favour of vehicles registered in Ireland and Portugal until 31 December 1996, and in Greece until 31 December 1997.

4. Until 31 December 1995 Italy may apply to vehicles registered in Austria a charge at a maximum level of ECU 6,5 per entrance including administrative costs and, until 31 December 1996, at a maximum level of ECU 3,5 per entrance including administrative costs. This charge shall be administered in a manner consistent with Article 7 (c) of Directive 93/89/EEC.

PART IV

GENERAL PROVISIONS

Article 16

1. The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. When reference is made to the procedure laid down in this Article, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the EC Treaty in the case of decisions which the Council is required to adopt on a

proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

4. If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

ANNEX 1

MAIN AXES FOR TRANSALPINE RAIL AND COMBINED TRANSPORT

referred to in Article 4 of the Protocol

1. The main European rail routes which run through Austrian territory and are relevant to transit traffic are as follows:

1.1. The Brenner route

Munich — Verona — Bologna

1.2. The Tauern route

Munich — Salzburg — Villach — Tarvisio — Udine/Rosenbach-Ljubljana

1.3. The Pyhrn — Schober Pass route

Regensburg — Graz — Spielfeld/Straß — Maribor

1.4. The Danube route

Nuremberg — Vienna — Nickelsdorf/Sopron/Bratislava

1.5. The Pontebbana route

Prague — Vienna — Trarvisio — Pontebba — Udine

2. The corresponding extensions and terminals form part of these main routes.

ANNEX 2**INFRASTRUCTURE MEASURES FOR RAIL AND COMBINED TRANSPORT**

referred to in Article 5 of the Protocol

(a) IN AUSTRIA:**1. Brenner route****1.1. Short-term measures:**

- measures affecting safety and operations,
- introduction of computer-assisted train monitoring,
- new block system arrangements,
- installation of points for track changes between stations,
- reconstruction of Wörgl Station,
- extensions to passing tracks in stations.

1.2. Long-term measures:

Such measures will be dependent on the decision to be taken regarding the construction of the Brenner base tunnel.

2. Tauern route**2.1. Short-term measures:**

- continuation of track-doubling,
- safety improvements.

2.2. Medium-term measures:

- ad hoc line improvements,
- increase in section maximum speed,
 - shortening of block (signal) sections,
 - continuation of track-doubling.

3. Pyhrn-Schober route**3.1. Short-term measures:**

- removal of the night-running ban on the Pyhrn section,
- removal of the night-running ban on the Hieflau section,
- construction of the Traun-Marchtrenk curve.

3.2. Medium-term measures:

- station upgrading and conversions,

- improvement of safety systems,
- shortening of block (signal) sections,
- removal of level crossings,
- selective track doubling.

3.3. *Long-term measures:*

- continuation of track-doubling on the entire Passau — Spielfeld/Straß section,
- reconstruction of St Michael — Bruck section.

4. **Danube route**

Measures to increase the capacity on the Vienna — Wels section.

(b) IN GERMANY:

1. *Short-term measures:*

- combined transport terminals at Munich-Riem and Duisburg Port,
- upgrading of the Munich — Rosenheim — Kufstein section; in particular: reserved tracks for the S-Bahn (urban railway) between Zorneding and Grafing,
- shortening of block sections (improvement of division into sections) between Grafing and Rosenheim and between Rosenheim and Kiefersfelden,
- construction of passing tracks (e.g. between the stations at Großkarolinenfeld, Raubling and Fischbach),
- construction of rail-free access for platforms at Großkarolinenfeld Station, and
- track layout changes at Rosenheim Station and further measures at the following stations: Aßling, Ostermünchen, Brannenburg, Oberaudorf and Kiefersfelden.

2. *Medium-term measures (up to the end of 1998, subject to planning permission):*

- upgrading of the Munich — Mühldorf — Freilassing corridor.

(c) IN ITALY:

Brenner:

- the widening of tunnels on the Brenner — Verona line in order to permit the carriage of heavy goods vehicles with a corner height of 4 metres in accompanied or unaccompanied combined transport,
- the upgrading of the Verona-Quadrante Europa intermodal centre,
- above ground track reinforcement and construction of new substations,
- the implementation of further technical measures (automatic block and two-way working on the busy stretches leading to the stations of Verona, Trento, Bolzano and Brenner) in order to increase capacity and further improve safety.

(d) IN THE NETHERLANDS:

Construction of a rail service centre in the Rotterdam conurbation.

Railway link for goods transport (Betuwe line)

Definitions:

- 'short-term' means available from the end of 1995;
- 'medium-term' means available from the end of 1997;
- 'long-term' means available
- on the Pyhrn-Schober route from the end of the year 2000;
 - on the Brenner route from the end of 2010.

ANNEX 3**RAILWAY CAPACITY**

referred to in Article 6 of the Protocol

1. AUSTRIAN RAILWAYS' ADDITIONAL CAPACITY FOR CARRIAGE OF GOODS IN TRANSIT THROUGH AUSTRIA

Route	Additional capacity: transit goods trains/day (in both directions)			
	Immediate (1.1.1995)	Short term (1996)	Medium term (1998)	Long term (2000 and beyond)
Brenner axis	70 ⁽¹⁾	—	50 ⁽²⁾	200 ⁽¹⁾
Tauern axis	4	50 ⁽⁴⁾	—	—
Pyhrn-Schober axis	11	22	60	—
Danube axis (Passau/Salzburg — Vienna)	—	—	—	200
Budapest — Vienna	—	40 ⁽⁵⁾	—	—
Bratislava — Vienna	—	—	80 ⁽⁶⁾	—
Prague — Vienna	— ⁽⁷⁾	—	—	—
Pontebba via Tarvisio	—	—	30	—

⁽¹⁾ Already partially realized.⁽²⁾ 2000.⁽³⁾ Availability of 200 additional trains depends on the building of the Brenner base tunnel and on feeder lines in neighbouring states being upgraded.⁽⁴⁾ Including the need for capacity in East-West transit.⁽⁵⁾ 1995.⁽⁶⁾ 1999.⁽⁷⁾ 50 trains/day free capacity.**2. POTENTIAL CAPACITY INCREASE IN CONSIGNMENTS OR TONNES***Immediately:*

Since 1 December 1989 Austria has introduced 39 more goods and combined transport trains into Brenner transit.

In the short term:

Short-term expansion will more than double rail capacity for transit through Austria. From 1996 onwards, depending on the combined transport technology used, there will, in addition, be an increase in annual combined transport capacity of up to 1,8 million consignments or up to 33 million tonnes.

In the medium term:

By 1998 this capacity will be expanded by a further 10 million tonnes a year through additional selective two-track development and safety and operating improvements on the transit routes.

In the long term:

The Pyhrn-Schober route will be upgraded to two-track running. A Brenner base tunnel should further improve capacity on the Brenner route to as many as 400 trains a day. Depending on the technology chosen, the newly created combined rail transport capacity could rise to 60 to 89 million tonnes a year after 2010.

Definitions:

- 'immediately': means available from 1 January 1995.
- 'in the short term': means available from the end of 1995.
- 'in the medium term': means available from the end of 1997.
- 'in the long term': means available
- on the Pyhrn-Schober route from the end of the year 2000,
 - on the Brenner route from the end of 2010.

*ANNEX 4**referred to in Article 11 (2) (a) of the Protocol*

Year	Percentage of ecopoints	Ecopoints for Austria and existing Member States
(1)	(2)	(3)
1991 base	100,0 %	23 306 580
1995	71,7 %	16 710 818
1996	65,0 %	15 149 277
1997	59,1 %	13 774 189
1998	54,8 %	12 772 006
1999	51,9 %	12 096 115
2000	49,8 %	11 606 677
2001	48,5 %	11 303 691
2002	44,8 %	10 441 348
2003	40,0 %	9 322 632

The figures in column 3 shall be adapted in accordance with the procedure laid down in Article 16 to take account of transit journeys by heavy goods vehicles registered in Finland, Norway and Sweden, based on indicative values for the respective countries calculated on the basis of the number of transit journeys in 1991 and a standard value of NO_x emission of 15,8 grammes NO_x/kWh.

ANNEX 5

CALCULATION AND ADMINISTRATION OF ECOPOINTS

referred to in Article 11 (2) (b) of the Protocol

1. The following documents shall be submitted for each heavy goods vehicle each time it travels through Austria (in either direction):

- (a) a document showing the COP value for NO_x emissions from the vehicle in question;
- (b) a valid ecopoints card issued by the competent authority.

Concerning (a):

in the case of heavy goods vehicles registered after 1 October 1990, the document showing the COP value shall be a certificate issued by the appropriate authority giving details of an official COP value for NO_x emissions or the type-approval certificate showing the date of registration and value established for type-approval purposes. In the latter case, the COP value shall be the type-approval increased by 10 %. Once such a value has been determined for a vehicle it cannot be changed during the vehicle's life.

In the case of vehicles registered before 1 October 1990 and vehicles for which no certificate has been submitted, a COP value of 15,8 g/kWh shall be set.

Concerning (b):

the ecopoints card shall contain a certain number of points and shall be endorsed as follows on the basis of the COP value for the vehicles in question:

1. each g/kWh NO_x emission corresponding to the value shown in the document referred to in 1 (a) shall count as one point:
2. NO_x emission values shall be rounded up to the next full point when they are to a decimal place of 0,5 or more, otherwise they shall be rounded down.
2. The Commission, acting in accordance with the procedures laid down in Article 16, shall at threemonth intervals calculate the number of journeys and the average NO_x value of the heavy goods vehicles detailed for each nationality.
3. If Article 11 (2) (c) applies, the number of ecopoints for the following year shall be established as follows:

The quarterly average NO_x emission values for lorries in the current year, calculated in accordance with paragraph 2 above, will be extrapolated to produce the average NO_x emission value anticipated for the following year. The forecast value, multiplied by 0,0658 and by the number of ecopoints for 1991 set out in Annex 4, will be the number of ecopoints for the year in question.
