In reply to a request from the Court of Justice to consider the possibility of treating separately each of the infringements, the Commission proposed a set of penalties in respect of the separate provisions which had been infringed, amounting to a total of EURO 32,800 per day.

The Court’s Advocate-General felt that the Commission’s proposal of a fine of EURO 24,600 was appropriate to the extent that it had made no manifest error of assessment or failure to observe the principles of proportionality and equal treatment.

Having considered the infringements individually and the relative importance of each one, the Advocate-General said that, since failure to fulfil two of the obligations in question resulted in a failure to fulfil the other two, the fine should be reduced to EURO 15,375 per day.

Although the EU judges will take this Opinion into account when making their final ruling in the coming weeks, they are not obliged to follow it.

It is interesting to note that this will be the first case in which the Court of Justice is to apply new provisions, introduced by the Treaty of Maastricht. These enable it to impose fines on a Member State which has failed to take the necessary measures to comply with a Judgment of the European Court, declaring that a Member State has failed to fulfil its obligations under Community law.

Many legal problems will be raised by the application of the new Maastricht provisions. In view of this, the Advocate-General has set out in his Opinion a detailed analysis of the principles involved, such as whether the penalties are criminal or administrative in nature and whether, where there are various discrete infringements, they should be separately assessed rather than assessed as a whole – thus allowing compliance to be partial or gradual and the penalty to be reduced accordingly.

In his analysis, the Advocate-General also outlines the limits of the discretion of the Court of Justice regarding the penalties proposed by the Commission. It is his opinion that judicial review must be restricted to verifying the facts, ascertaining whether a manifest error of assessment has been committed, and whether the principles of proportionality and equal treatment have been observed.

Canada

Approval of Environmental Protection Act

Following months of consideration in Parliament, the renewed Canadian Environmental Protection Act (CEPA) was finally given Royal Assent on 14 September 1999, and will come into force when proclaimed early in 2000.

The new CEPA provides for toxicity analysis of the 23,000 substances in use in the country, sets deadlines for controlling pollution caused by these substances, and provides for virtual elimination of the most dangerous among them.

An amount of $72 million will be allocated to implement the new CEPA, over and above the $40 million announced earlier this year for research on toxic substances that harm human health and the environment, for example by disrupting the endocrine system.

Where public participation is concerned, members of the public will now have the right to request investigations, and to sue if government failure to implement the renewed CEPA has serious effects on the environment. In addition, the new law allows Canada to respect its international commitments in environmental matters.

REFERENCES TO OTHER TOPICS

World Bank

Tibet Investigation

A controversial project to resettle 57,750 Chinese farmers in traditionally Tibetan land in Quinghai in western China, backed by a $160m World Bank loan approved in June 1999, caused a storm of controversy among pro-Tibetan and environmental groups. The International Campaign for Tibet (ICT) requested an inspection panel and the board of the World Bank agreed that it would not proceed without an official bank investigation. This will determine if Bank staff had followed its own rules and procedures in designing the scheme.

The ICT, based in the United States, says it takes no position on Tibetan independence but worries that the movement of more Chinese into the region will further dilute the native Tibetan and Mongolian cultures.