is established that such legislation does not lead to their being treated less favourably than full-time workers in a similar situation or, if there is such a difference in treatment, it is established that it is justified on objective grounds and does not go beyond what is necessary to attain the objectives thus pursued.

It is for the referring court to perform the necessary factual and legal investigation, particularly with regard to the applicable national law, in order to determine whether that is so in the case before it.

If the referring court were to conclude that the national legislation at issue is incompatible with Clause 4 of the Framework Agreement on part-time work annexed to Directive 97/81, Clause 5(1) thereof would have to be interpreted as precluding such legislation.

Judgment of the Court (Fifth Chamber) of 7 April 2011 — Commission v Luxembourg

(Case C-305/10)

(Failure of a Member State to fulfil obligations — Rail transport — Directive 2005/47/EC — Working conditions of mobile workers engaged in interoperable cross-border services in the railway sector — Agreement between sectoral social partners at European level — Failure to transpose within the prescribed period)

1. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 258 TFEU; Council Directive 2005/47) (see paras 8, 11-13)*

2. *Actions for failure to fulfil obligations — Right of the Commission to bring judicial proceedings — To be exercised at its discretion (Art. 258 TFEU) (see para. 9)*

Re:

Action for failure to fulfil obligations — Failure to adopt and/or notify, within the prescribed period, the laws, regulations and administrative provisions provided for by Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (OJ 2005 L 195, p. 15).

Operative part

The Court:

1. Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

Judgment of the Court (Seventh Chamber) of 7 April 2011 — Commission v Ireland

(Case C-431/10)

(Failure of a Member State to fulfil obligations — Directive 2005/85/EC — Right of asylum — Procedure for granting and withdrawing refugee status — Minimum standards — Failure to transpose provisions fully within the prescribed period)