

Case C-23/05

Commission of the European Communities

v

Grand Duchy of Luxembourg

(Failure to fulfil obligations — Directive 2000/34/CE — Working conditions — Organisation of working time — Failure to transpose within the prescribed period)

Judgment of the Court (Sixth Chamber), 27 October 2005 I - 9537

Summary of the Judgment

Actions for failure to fulfil obligations — Pre-litigation procedure — Formal notice — Condition — Prior failure by a Member State to fulfil an obligation imposed on it — Observations of that State — Essential procedural requirement — Formal notice relating to failure to transpose a directive before expiry of the time-limit for implementation — Not permissible

(Art. 226 EC)

In order for a letter of formal notice to be issued, a prior failure by the Member State concerned to fulfil an obligation owed by it must be alleged. The opportunity for that Member State to submit its observations constitutes an essential guarantee required by the Treaty and amounts to an essential procedural requirement in proceedings relating to the finding of a failure on the part of a Member State. The letter of formal notice

cannot therefore relate to failure to transpose a directive in respect of which the time-limit for implementation had not yet expired.

(see para. 7)