

- (c) In the alternative, breach of the AIT's right to an effective remedy guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

provisions on administrative measures in fiscal matters, such as cooperation between tax authorities enabling or facilitating the collection of tax, are not specifically covered by that provision. The directive and the regulation have therefore been adopted in breach of essential procedural requirements and of the EC Treaty.

(<sup>1</sup>) OJ L 264, 15.10.2003, p. 23.

**Action brought on 23 December 2003 by the European Parliament against the Council of the European Union**

(Case C-548/03)

(2004/C 47/39)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 23 December 2003 by the European Parliament, represented by C. Pennera and A. Neergaard, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

- annul Council Directive 2003/93/EC amending Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation (<sup>1</sup>);
- maintain the effects of the annulled directive until the European Parliament and the Council have adopted, on the appropriate legal basis, new legislation;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

Directive 2003/93/EC and Regulation (EC) No 1798/03 should be annulled because they should have been based on Article 95 EC and not on Article 93 EC. The difference in legal basis is not merely formal, but directly affects the European Parliament's prerogatives. Indeed, according to Article 93 EC the Council acts unanimously after merely consulting the Parliament, whereas, under Article 95 EC, the co-decision procedure applies.

According to the field of application determined by the Treaty, for provisions which have as their object improvement of the conditions for the establishment and functioning of the internal market, the general rule is Article 95 EC. Article 93 EC provides otherwise in relation to indirect taxation, in derogation, as *lex specialis*, from Article 95 EC. The ancillary

**Action brought on 23 December 2003 by the European Parliament against the Council of the European Union**

(Case C-549/03)

(2004/C 47/40)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 23 December 2003 by the European Parliament, represented by C. Pennera and A. Neergaard, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

- annul Council Regulation No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 (<sup>1</sup>);
- maintain the effects of the annulled regulation until the European Parliament and the Council have adopted, on the appropriate legal basis, new legislation;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The pleas in law and main arguments relied upon are identical to those in Case C-548/03.

(<sup>1</sup>) OJ L 264, 15.10.2003, p. 1.