From the Editors

This issue of *REALaw* shows, once again, that it is beneficial to our understanding of administrative law to consider the mutual (top-down and bottom-up) relation between EU and national administrative law. As was announced in the editorial for the second issue of *REALaw* in 2009, which doubled as a monograph in the European Administrative Law Series (nr. 3), the first two articles in the issue lying before you are a result of the First REALaw Research Forum that took place in Groningen on 3 June 2009.

The first contribution is by the hand of *Sacha Prechal*. 'Competence Creep and General Principles of Law' is concerned with the extension of EU competences by applying general principles of law. Competence creep is defined in rather broad terms. Both positive intervention by the EU institutions and negative limits to Member State's action fall within the idea of competence creep since both could be perceived as a loss of sovereign powers by Member States. Prechal discusses the circumstances under which general principles of law apply to Member State's actions, the effect of these principles on the procedural autonomy of the Member States, the creation of positive obligations through general principles of law, and the review of national measures in the light of these principles. Although Member States have in the past explicitly confirmed competence creep in some cases, the possibility of creeping competences through the EU Charter of Fundamental Rights was controversial. In any case Prechal emphasises the need for a clear, predictable and (for the outside world) comprehensible 'doctrine' of what the scope of EU law actually means and when a matter actually falls within this scope.

The second article, which was also presented at the First REALaw Research Forum, is 'The "*Costanzo* Obligation" and the Principle of National Institutional Autonomy: Supervision as a Bridge to Close the Gap?' by *Maartje Verhoeven*. The starting point of this article is a paradox that consists of the obligation for all public authorities to solve conflicts between European and National law in favour of European law (the '*Costanzo* obligation') and the principle that implies that European law is not concerned with the internal organizational structure of the Member States (the principle of institutional autonomy). The Question is whether the Member States can use and have used the possibilities of supervision by the central government to solve the aforementioned paradox. In comparing the national administrative law of The Netherlands, France and Germany on this issue, Verhoeven's research is a good example of the advantages of a comparative approach.

Françoise Comte's contribution on European agencies, titled '2008 Commission Communication "European Agencies – the Way Forward": What is the Follow-Up Since Then?', deals with the significant role agencies play in European Union governance today. Agencies have become part of

the institutional landscape of the Union. As a result, it has become increasingly important to have clarity about their role, and about the mechanisms to ensure the accountability of these public bodies. This is particularly true for the so-called regulatory agencies. The 2008 Commission Communication concentrates on these agencies in stating the need for clarification and a common approach. Comte assesses the follow-up given to this communication and gives an analysis of the Commission's goal to re-launch the inter-institutional debate.

In his case law analysis 'European restrictions on the application of national provisions concerning access to documents in cases with a European dimension', *Ton Duijkersloot* focuses on the *Tierschütz* judgment of the ECJ, which deals with the possibility for Member States to rely on national rules on access to documents. Can Member States still invoke exceptions to disclosure provided for by national law in cases where a document originating from that Member State is in the possession of a European institution that is requested to provide the document? In light of the ECJ decision in *Tierschutz*, it seems that the question must be answered in the negative. Duijkersloot deals with this possibility of there being some leeway and the problems that arise from that assessment.

In the Current Developments section *Johan van Haersolte* offers insight into a long-standing cooperation between at least 30 of the highest administrative courts in several Member States. In 'A Wheel Within a Wheel: The Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union', Haersolte explains why all legal researchers and practitioners should take notice of the colloquia, the case law and the databases on the website of this association (www.juradmin.eu).

This issue of *REALaw* finishes with two reviews of recent doctorate theses. In the first review *Mariolina Eliantonio's* 'Europeanisation of Administrative Justice? – The Influence of the ECJ's Case Law in Italy, Germany and England' is discussed by *Tim Corthaut*. The second review is written by *Mariolina Eliantonio* and she comments on *Andrea Keessen's* 'European Administrative Decisions: How the EU Regulates Products on the Internal Market'.

The editors, Groningen & Utrecht