From the Editors

Is European administrative law capable of surviving the credit crunch? As we all know, the principle of legality is one of the cornerstones of any legal order based on the rule of law. The concept of a European/national shared legal order is particularly visible in the area of state aid law. And it is precisely in that area of law where the rule of law and the principle of legality are under pressure. It is just a matter of weeks ago that the French Industry Minister, Luc Chatel, announced that production of some Clio cars would transfer from Slovenia to a Renault assembly plant at Flins, just west of Paris. 'Today, the Renault group will announce that it will repatriate the production of a vehicle that was until now made outside France to the Flins plant, which will be extra output for that factory,' Chatel said. Paul Krugman (Princeton), published an opinion in the New York Times of 16 March called 'A Continent Adrift', and argues: 'Europe's economic and monetary integration has run too far ahead of its political institutions. The economies of Europe's many nations are almost as tightly linked as the economies of America's many states – and most of Europe shares a common currency. But unlike America, Europe doesn't have the kind of continent wide institutions needed to deal with a continent wide crisis.' And: 'there's no government in a position to take responsibility for the European economy as a whole. What Europe has, instead, are national governments, each of which is reluctant to run up large debts to finance a stimulus that will convey many if not most of its benefits to voters in other countries.' The EU Competition Commissioner Neelie Kroes said that she was surprised by the French comments. 'If this is the case, it is illegal aid', and that there can be no doubt that the Commission will not be 'soft on competition'. Time will tell us how solid the rule of law is in our shared legal order.

On the issue of the enforcement of European state aid law, *Paul Adriaanse*, in the case law section of *REALaw*, touches upon important issues. His analysis deals with the judgment of 12 February 2008 of the European Court of Justice in the *CELF/SIDE* case. According to the Court, Community law requires a national court to order appropriate measures to remedy the consequences of unlawful State aid. However, Community law does not impose an obligation of full recovery of unlawful aid in the event that the Commission subsequently declares the aid in question compatible with the common market. *Adriaanse* questions whether the approach of the Court is really appropriate to remedy the consequences of unlawful State aid. It is his argument that the Court's judgment could have negative effects on the effectiveness of the enforcement of European State aid law.

Furthermore, in this issue of *REALaw Sikora* analyzes the process of identification of administrative practice as a distinct subject matter of infringement proceedings (Article 226 EC) and seeks to set out a general framework for understanding this concept, as opposed to a 'regulatory'

or 'legislative' breach. Her analysis demonstrates that the infringement proceedings concerning administrative practice contain a number of particularities, which have bearing on traditional procedural concepts underlying the application of Article 226 EC.

Sarmiento's article analyzes the Report on the Preliminary Reference Procedure prepared by the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU on 2008. It explores the proposals submitted by the higher national administrative courts, and develops the main points of the Report in a critical light.

Dimitrakopoulos discusses the interesting question whether an illegal Community act necessarily implies a case of maladministration, in the sense of Article 195 EC. Although the European Ombudsman has indicated that illegality necessarily implies maladministration *Dimitrakopoulos* shows that this principle does not appear to be absolute.

The final contribution in the articles section comes from *Simone White who* examines the right of access to the file forms as a part of defence rights in EC law. Two divergent approaches are discussed, one in the areas of competition law and the other regarding the protection of the financial interests of the European Union. The author observes certain incongruities in present practice and argues for a common approach at EC level.

Dacian C. Dragoş & Bogdana Neamţu illustrate how European law has influenced some core concepts of Romanian administrative law. In particular the authors welcome the willingness of the Romanian Highest Court to go on the path of voluntary Europeanisation. They argue that unity of treatment between national law and European law will benefit, in time, from such initiatives.

Sharon Turner gives a critical analysis of the ECJ's judgment in Case C-215/06 *Commission* v. *Ireland*. She demonstrates that this case is important for two reasons. First, it casts Ireland's commitment to facilitating development and its disregard for both modern standards of environmental governance and the rule of Community law into sharp relief. Secondly, the judgment raises important questions about the efficacy of the European Commission's approach to the enforcement of Community law on the environment.

Finally, this issue of *REALaw* concludes with two book reviews.

The editors, Groningen & Utrecht