From the Editors

The editors are very pleased to be able to present the first 'real' issue of *REALaw*. In the 2007 'Zero Issue' *REALaw* was announced as a journal which reviews the relationship between European and national administrative law, combining both a top-down (the consequences Community law has for general administrative law and its principles within the Member States) as well as a bottom-up approach (the influence of national administrative law on the development of a European adminstrative law). Indeed, one could even say that this journal is essentially about legal developments in administrative law in which European law and national law influence one another. This first issue is a reflection of this concept.

Schuurmans article shows that fact-finding is invariably a part of administrative decision-making. In administrative law procedures the courts in general refrain from repeating this fact-finding process but, instead, review the fact-finding procedure. Her contribution seeks to examine the requirements placed by the Community courts on the national courts' reading of the facts in matters involving EC law. In this context, a parallel is drawn with the standards upheld by the Community courts as regards their own review of facts, in the context of direct appeals against decisions taken by the Community institutions. It examines to what extent this review by the Community courts follows or contrasts with the review performed in Dutch administrative law courts.

In his contribution to this issue *Jans* considers to what extent European law invites – or requires – inapplicability of the so called 'speciality principle' in Dutch administrative law. He concentrates on the question of to what extent an administrative authority considering whether or not to grant a permit is permitted, or required, to take public interests into account other than those of the permit system in question, and specifically those based on European law. More particularly he discusses whether an administrative authority is permitted, or even required, to refuse a permit or other decision on the grounds that it is contrary to European law obligations, even when the objectives of the applicable European law are broader than the assessment framework laid down by the national legislation on which the decision is based.

Bobek captures some of the first cases and issues the national application of European law poses to administrative authorities in the new Member States, with examples being drawn from the Czech Republic, Slovakia and Poland. Firstly, it puts the enlargement-process into the proper perspective of gradual approximation and *de facto* gradual legal accession. Secondly, instances in which national authorities have directly applied European law over conflicting national law are given, i.e. moments in which the administrative authorities appear to have accepted the new 'Master of European Law'. Thirdly, some instances of refusal are discussed. The final part of his contri-

bution introduces more complex scenarios and the potential for conflicts between the two loyalties of administrative authorities.

The case analysis section of this issue starts with a comprehensive analysis of *Engström* on the *Van der Weerd* case. She addresses the question of when national courts must raise Community law issues on their own motion under the principle of effectiveness. Her article also examines what are the different interests that must be balanced under the "procedural rule of reason" when deciding whether an issue must be raised by the Court *ex officio* or not. It examines the Court of Justice's case law delivered in the past as well as the *Van der Weerd* case with an aim to discern some guidelines or trends as to how such different interests should be balanced, an analysis which shows that there is still a great deal of legal uncertainty as to when national courts must raise Community law issues on their own motion and that it appears futile to seek tendencies and trends in the Court's case law on effectiveness. The article argues that the Court's ruling in *Van der Weerd*, showing deference to the national procedural autonomy, fits well into the general approach of the recent years where the Court seeks to avoid overly drastic incursions into the national procedural landscape and merely ensures a minimum common level of judicial protection.

Ortlep & Verhoeven concentrate on the Dutch Council of State's struggle in applying the *Marks & Spencer* case law of the Court of Justice. This case law, which fits in with the growing importance of the effectiveness of EC law, implies that directly effective provisions of a directive can be invoked before a national court after having been correctly transposed into national legislation, if this national legislation is not applied or applied incorrectly. The Dutch Council of State has been struggling with the position of European directives after their transposition into national law, and for a while stated that a directive could only be invoked before a national court in case of insufficient or incorrect transposition. It has recently changed its course and adopted a new approach, which is clearly more in line with *Marks & Spencer* This first issue concludes with a book review by *Ponce*.

Finally, the editors are pleased to announce that the *REALaw* website (www.realaw.eu) is now fully operational, providing online access to *REALaw* to subscribers, information on our peer-review procedures, as well as information for prospective authors.

The editors, Groningen & Utrecht