From the Editors

The judicial system of the European Union is a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions. See, inter alia, Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 40. As we all know, in this case the Court refused standing for the trade association UPA, which sought the annulment of a Council regulation reforming the olive oil market. The CFI confirmed the well-known *Plaumann* test and denied standing for UPA, even if some of its members would have to cease their economic activity thanks to the contested regulation. On appeal in 2002, the ECJ confirmed the CFI decision and ruled that, 'where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty [now Article 263, fourth paragraph TFEU], directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 184 of the Treaty [now Article 277 TFEU] or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid (see Case 314/85 Foto-Frost [1987] ECR 4199, paragraph 20), to make a reference to the Court of Justice for a preliminary ruling on validity.'

This 'law of communicating vessels' is not undisputed. The basic problem is of course that the ability to challenge measures taken by the EU institutions depends on the availability of remedies at the national level. Of course, according to *Unibet,* EU law is able to create new remedies in the national courts to ensure the observance of EU in the extreme case that 'no legal remedy existed' but that may be more of a theoretical than a practical solution to this problem.[1]

Recently, a new 'attack' on this case law has been launched from outside the EU by the Aarhus Compliance Committee. The AAC was established in Article 15 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Members of the public may make 'communications' concerning a party's compliance with the convention in order to start the compliance procedure. On the 1st of December 2008 the non-governmental organisation ClientEarth submitted a communication to the Committee alleging a failure by the European Union to comply with its obligations under article 3, paragraph 1, and article 9, paragraphs 2, 3, 4 and 5, of the Convention. The communication alleges that by applying the 'individual concern' standing criterion for private individuals and NGOs that challenge decisions of the EU institutions before the EU Courts fails to comply with article 9, paragraphs 2-5, of the Convention. Recently the AAC held that the case law of the ECJ regarding the standing requirements under the 'old' Article 234(4) EC Treaty 'is too strict to meet the criteria of the Convention'. And that 'the Committee is also convinced that if the examined jurispru-

[1] Case C-432/05 *Unibet* ECR 2007, I-2271, paras. 40-41 in particular.

dence of the EU Courts on access to justice were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would fail to comply with article 9, paragraph 3, of the Convention.'[2]

Moreover, no less interesting are the observations of the AAC on the possibility of judicial review before the EU Courts through national courts of the Member States:

'While the system of judicial review in the national courts of the EU Member States and the request for preliminary ruling is a significant element for ensuring consistent application and proper implementation of EU law in the Member States, it cannot be a basis for generally denying members of the public access to the EU Courts to challenge decisions, acts and omissions by EU institutions and bodies. Nor does the system of preliminary review amount to appellate system with regard to decisions, acts and omissions by the EU institutions and bodies. Thus, with respect to decisions, acts and omissions of EU institutions and bodies, the system of preliminary ruling does neither in itself meet the requirements of access to justice in article 9 of the Convention nor compensate for the strict jurisprudence of the EU Courts'.

In his case analysis 'Who is the referee? Access to Justice in a Globalised Legal Order: A Case Analysis of ECJ Judgment C-240/09 Lesoochranárske zoskupenie of 8th of March 2011' Jans argues that a straight answer to the simple question 'who has the right to access justice' is not always possible. And that even the question 'who decides who has access to justice' is a difficult one. Indeed, in a globalised legal order, there are no simple answers.

Furthermore, this volume of *REALaw,* contains two comprehensive contributions on important aspects of European administrative law. Anna Simonati discusses the evolution in the case law of the European courts on various principles (participation and respect for the rights of the defence, statement of reasons, protection of legitimate expectations, sound administration, equal treatment, proportionality and respect of a reasonable time) governing administrative procedures. Miroslava Scholten considers what can be called one of the classic problems in public law: to what extent does decision-making by more or less independent administrative agencies imply (un)accountability of those agencies. She argues that agencies' independence need not impair the possibility of holding them to account and that the somewhat misleading term *independent* should perhaps be replaced.

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[2] Findings and Recommendations of the Compliance Committee with regard to Communication Accc/C/2008/32 (Part I) Concerning Compliance by the European Union, adopted on 14 April 2011.