From the Editors

The mandate, imposed by Article 298 TFEU, for adopting the necessary provisions in order to achieve 'an open, efficient and independent European administration' is providing administrative law scholars in Europe with renewed enthusiasm for the development of European Administrative Law. The provision requires the European Parliament and the Council to adopt, in accordance with the ordinary legislative procedure, the regulations needed to achieve the aforementioned goal. It aims to ensure that the Union legislature develops, through legally binding rules, the fundamental right to good administration enshrined in Article 41 CFREU, based on the codes of good administrative behaviour developed by the European Ombudsman, the Parliament and the Commission. In this respect the Treaty of Lisbon potentially represents an important step forward for European administrative (procedural) law. The mandate is no guarantee for a codification of general EU Administrative Law in a European Administrative Procedure Act (APA) as sectoral regulations and partial codification, supplemented by (existing) soft law, could also achieve 'an open, efficient and independent European administration'. In light of the mandate, rather than an obligation, of Article 298(2) TFEU the European Parliament's Committee on Legal Affairs has launched a Working Group on EU Administrative Law (WGAL) 'with the aim of examining whether a codification of EU administrative law is possible and what such a project would involve in practice'. The Working Document 'State of play and future prospects for EU Administrative Law' (version of 19 October 2011[1]) was presented to the European Parliament's Committee on Legal Affairs. This result of the work undertaken by WGAL will serve as a starting point for the future activities of the Committee and the European Parliament in the field of EU administrative law. The prospect of codifying general EU Administrative Law was discussed in *REALaw* 2009/2 by Meuwese, Schuurmans and Voermans in their Article 'Towards a European Administrative Procedure Act', but work on EU Administrative Law is progressing and deserves the attention and contribution of experts in both European and National Administrative Law.

Each issue of *REALaw* strives to contribute to EU Administrative Law. This issue is no exception. De Moor-van Vugt provides an overview of the law and case law on administrative sanctions. The coming into force of the CFREU has had influence on EU procedural standards but some questions haven't been answered sufficiently. Will the ECtHR and the ECJ agree on the qualification of certain EU administrative sanctions as not criminal in nature?Procedural guarantees for administrative sanctions that are reparatory, criminal or criminally 'light' differ. With the EU gaining competence in criminal matters, De Moor-van Vugt argues that the ECJ should clarify the different categories in view of the gradually higher procedural safeguards the ECHR affords in cases

[1] See www.renueal.eu for the Working Document.

of a criminal charge in comparison to a 'light' criminal charge. It would clarify whether some specific safeguards, like the principle of culpability, right to remain silent, the principle of *ne bis in idem* and others, are required in national law or not.

De Lucia's contribution analyses conflicts and cooperation between administrative bodies in the EU. It is to be expected that administrative disputes, which are categorised by De Lucia, will play a bigger part in the European Union in the future thanks to the significant rise in the number of Member States and the clearer role that the Treaty assigns to national authorities in implementing European norms (Article 291 TFEU). However, the EU legal system provides settlement procedures and different administrative mechanisms are available for turning administrative conflict (*Eris*) into cooperation (*Philia*).

Van Cleynenbreugel's analysis of the *Boxus* case shows that the ECJ has recently imposed positive procedural obligations on Member States. In *Boxus* the ECJ interprets the exception of Article 1(5) EIA Directive 'as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope' and that it is for the national court 'to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates.' When the conditions are not met EU law mandates national judges to disregard that national act and review an underlying administrative act. Van Cleynenbreugel concludes that requirements of effective judicial protection precede the arguments of procedural autonomy. However, it seems that important issues remain unanswered.

The last contribution to this issue of *REALaw* is a case law analysis by De Vos. It concerns the *Lady & Kid* case and reflects on the principle of unjust enrichment. That principle finds its origins in private law but can be applied in a public law context. Member States are allowed to apply their national principle of unjust enrichment within the requirements of equivalence and effectiveness. However, the ECJ does not mention these requirements in the *Lady & Kid* case. De Vos finds that the judgment must mean that unjust enrichment, as an exception to the right to the repayment of taxes and charges paid in breach of Union law, can only be successfully applied when the burden of the charge has been passed on to third parties. In the opinion of the author the fact that the requirements of equivalence and effectiveness are not mentioned could be an apparition of the increasing convergence between the European and national unjust enrichment theory within the scope of Union law.

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