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**American Bar Association
Section on Administrative Law and Regulatory Practice**

Seminar on The Administrative Law of the European Union

**Thursday, August 7, 2008
Yeshiva University Cardozo School of Law**

About the Program

The European Union has become the locus of an extraordinary range of activities that the academic and professional community in the United States associates with the field of administrative law. This range of decisional activity is of special interest because no other regulatory regime outside the U.S. affects American businesses and individuals as regularly and intensively as the European and no other regulatory regime constitutes as steady a frame of reference for comparison with American administrative law processes. This seminar will present the results of, and discussion on, an extensive study of the E.U. administrative law conducted by a large team of experts put together by the Section. The seminar should be of particular interest to lawyers representing clients with business in the E.U., those whose interests are affected by E.U. decisions, members of the judiciary and academics interested in comparing processes, and government officials and many others interested in the progress of regulatory convergence. These and many others should be aided by a better understanding of the procedural differences between U.S. and E.U. administrative processes and their capacity to shape substantive differences in outcome.

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8:30 – 8:45: Introductory Remarks

Section Chair – Michael Asimow; Professor Emeritus, UCLA School of Law
Project Chair – Neil Eisner; Assistant General Counsel, U.S. Department of
Transportation

8:45 – 9:00: Project Overview/Executive Summary

Chief Reporter – George Bermann; Professor, Columbia University School of Law

9:00 -10:50: Rulemaking

This panel will discuss how the E.U. process, although very different from the U.S. process and without the strong statutory support of an “APA,” does follow reasonably common and established procedural paths. It will include discussion of the rigor and professionalism in the E.U.’s preparation of legislative proposals, especially in terms of transparency and opportunities for structured and highly interactive public participation, but also will cover some of the difficulties caused by a very structured approach to consultations. The panel will also review the concept of “comitology” and how its

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obscurity and sometimes hyper-technical and non transparent nature can affect the actions by the executive branch in implementing legislation. Another important part of the discussion will be the emergence of administrative agencies, with the European Commission sharing rulemaking authority with these agencies even more than they do in the adjudicatory area.

Moderator: James O'Reilly, Professor, University of Cincinnati Law School

Panelists:

Rulemaking Reporters – Peter Strauss, Professor, Columbia University School of Law; Turner Smith, Hunton & Williams; Lucas Bergkamp, Hunton & Williams: Summary of report; major points of difference with U.S. law (30 mins.)

E.U. Official: Comments on report; why E.U. chose particular process approaches; lessons learned in developing E.U. system (15 mins.)

Wang Xixin, Professor, Peking University School of Law: A third country's perspective; especially as it develops its administrative law system, what it has learned from its review of U.S. and E.U. law (15 mins.)

Francesca Bignami, Professor, Duke University School of Law: comments on the report and discussion of its pros and cons (15 mins.)

Bernard Amory, Jones Day, Brussels: how to effectively participate in E.U. rulemaking process; the practical advice and lessons learned from how the E.U. process works

Q & A/audience discussion

10:50 – 11:00: Coffee break

11:00 – 12:30: Adjudication

Although the direct administration of policy in individual cases is more frequently at the Member State level than at the E.U. level, there are a number of areas – including competition law, state aids, pharmaceutical licensing, food safety, trademarks, and trade remedies – in which decisions are made at the E.U. level. This program will cover such things as the important emergence of specialized administrative agencies in the E.U.; provide important information, such as the fact that in some sectors, hearings are conducted by the same personnel who participated in and even possibly led the investigation; and generally discuss the abundance of process that is available and how it provides a substantial opportunity to represent and interest.

Moderator: Charles Koch, Professor, College of William and Mary School of Law

Panelists:

Adjudication Reporters – Michael Asimow; Lisl Dunlop, _____:
Summary of report; major points of difference with U.S. law (20 mins.)

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E.U. Official: Comments on report; why E.U. chose particular process approaches; lessons learned in developing E.U. system (15 mins.)
Peter Bogaert, Covington & Burling, Brussels: the relationship between adjudication and judicial review in the E.U.; the effect on U.S. businesses; how to effectively participate in (or avoid) E.U. adjudicative process; practical advice or lessons learned (15 mins.)
Q & A/ audience discussion

11:00 – 12:30: Judicial Review

This panel will discuss the relationship between the member states, who retain considerable authority for judicial enforcement even when EU law and rights or claims may be at issue, and the E.U. It will include discussion of the Treaty of Lisbon, which was signed in December 2007 and is due to go into effect on January 1, 2009, if duly ratified; the treaty will bring changes to some of the features (e.g., the strictness of the individual standing criteria) on which the ABA Ad Law reports had considerable commentary and criticism. Among other things, the panel will also discuss the distinctive institutions within the E.U. Court of Justice and the influence on statutory interpretation resulting from the reality of multiple authoritative language texts.

Moderator: James O'Reilly

Panelists:

Judicial Review Reporters – Ronald Levin, Professor, Washington University School of Law; Frank Emmert, Professor, Indiana University School of Law: Summary of report; major points of difference with U.S. law (20 mins.)
Judge Koen Lenaerts, European Court of Justice: Comments on report; why E.U. chose particular process approaches; lessons learned in developing E.U. system (15 mins.)
Xavier Lewis, E.U. Commission Legal Service: how to effectively participate in judicial review; the need for a local lawyer, how to identify one, etc. (15 mins.)
Q & A/audience discussion

12:30 – 2:00 Lunch

Speaker: Susan Dudley, Administrator, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget

2:00 – 3:30: Transparency

This panel will address the websites of the Commission, the Parliament, and the Council, which offer a wealth of information in a highly-accessible, well-organized manner and compare it with public access to documents, which has some trouble spots. Among other

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topics, it will also discuss the use of an Ombudsman to provide disappointed requesters a non-judicial, but non-binding appeal, and the limitations (compared to U.S. law) of the right of third parties to block government disclosure.

Moderator: James O'Reilly

Panelists:

- Transparency Reporters: Thomas Susman, Ropes & Gray; Cynthia Farina, Professor, Cornell University School of Law; Sidney Shapiro, Professor, Wake Forest School of Law: Summary of report; major points of difference with U.S. law (20 mins.)
- Giorgio Maganza, E.U. Council Legal Service: Comments on report; why E.U. chose particular process approaches; lessons learned in developing E.U. system (15 mins.)
- U.S./Brussels-based lawyer: how to effectively participate, obtain/review documents, submit comments, etc.; need for a local lawyer, how to identify one, etc. (15 mins.)
- Q & A/audience discussion

2:00 – 3:30: Oversight

This panel will cover the complex, evaluative “political oversight” structure of the E.U., which is more diffuse than it is in the U.S. The panel will discuss the more broad categories of oversight used in the E.U.: executive, legislative, independent, and external. The panel will cover such other topics as whether a role comparable to that played by OMB in the U.S. will be centralized in the Commission, but in an organ that sits apart from the college of Commissioners and from the directorates-general.

Moderator: Charles Koch

Panelists:

- Oversight Reporter – Peter Lindseth, Visiting Professor, Yale University School of Law: Summary of report; major points of difference with U.S. law (20 mins.)
- Kieran Bradley, European Parliament Legal Service: Comments on report; why E.U. chose particular process approaches; lessons learned in developing E.U. system (15 mins.)
- Paul Craig, Professor, Oxford University: Comparison between comitology and U.S. oversight; effect of differences between U.S. and E.U. judicial systems and over-sight (15 mins.)
- George Buston, formerly Cleary Gottlieb, Brussels; currently Professor, Princeton University Woodrow Wilson School of International and Public Affairs: How to effectively influence the process via the oversight agencies (15 mins.)

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Q & A/audience discussion

3:30 – 3:40: Break

3:40 – 5:30: Lessons learned/Implications for Regulatory Dialogue

This panel will discuss lessons learned from the Ad Law Section's review of E.U. administrative law and whether those lessons suggest any changes to U.S. or E.U. law. Based on this panel/audience discussion, the Section may decide to propose resolutions for adoption by the ABA House of Delegates.

Moderator: George Bermann

Panelists:

Susan Dudley

James Sanford, Office of the U.S. Trade Representative

Alexander Italianer, Deputy Secretary General of the European Commission

Marianne Klingbeil, Director for Better Regulation, Programming, and Impact Assessment, Secretariat-General, European Commission

Audience participation: There would be no prepared presentations. The moderator will ask questions and the audience would be encouraged to participate throughout the discussion with questions and comments.

6:00 – Reception or dinner

Speaker: Boyden Gray, Special Envoy for European Union Affairs (former U.S. Representative to the European Union) or other U.S. or E.U. official