EUROPEAN CRIMINAL LAW

An Integrative Approach
Since the first edition of this book came out at a time that the precise fate of the Treaty of Lisbon was still unclear, many people mentioned to me after it was clear that the Treaty was to be ratified, that I had gambled and was lucky to win. I must disappoint those voices. I am not a gambler. My publisher and I were absolutely sure that the Treaty would be ratified; however, we were uncertain how long it would take and even speculated that it might be some years. In any event, the decision to go ahead with the publication, which included the Treaty of Lisbon, was in the end based on the fact that its ratification did not affect the structure of the book.

This is what the reader will also recognise in the second edition. Its structure is almost identical to the first edition. It has been fully updated, with all new legislation and new case law having been included. Some references to recent literature are also included. More significant amendments were required in Chapter 7 on bilateral co-operation, which has largely been rewritten. This was necessary due to the fact that the entry into force of the Treaty of Lisbon generated an explosion of legislative activity, and many relevant legal instruments on co-operation were adopted just before 1 December 2009. The timing for this second edition allows for the inclusion of the first full year of experience in practice in relation to these new legal instruments.

The response to the first edition was generally very positive, and motivated me not to wait too long, before beginning work on a second edition. I received a lot of praise and some criticism. I have tried to address most of the justified criticisms, whilst at the same wishing to keep all the positive aspects of the first edition. I hope that this more elaborated second edition will also be used as a text book in universities, by practitioners and academics.

I am most grateful to Hans Kluwer, Ann-Christin Maak and Tom Scheirs for the patience and confidence that significantly contributed to the second edition of this work. Last, but not least, I thank my dear friend Professor Steven Freeland.

Preface for the second edition

of the University of Western Sydney, Australia, for his time and effort in editing the manuscript.

André Klip
Maastricht, October 2011
PREFACE FOR THE FIRST EDITION

What should the future of European criminal law be? Are we going to see further competences for the Union, while, at the same time, limiting national competences? I have raised these and similar questions every year since Treaty on European Union was concluded in Maastricht in 1992, when teaching courses on European Criminal Law. Students and practitioners alike were, by and large, consistent in their answers. They could, more or less, accept the developments to date at the time and were absolutely clear in stating that further European integration in the field of criminal law was undesirable. I found the consistency of this attitude over the years more and more fascinating, as it almost invariably remained unaffected by new treaties on further integration, new steps in case law of the Court, and enlargement with further Member States.

The idea for this book goes back to a common plan of Professor John Vervaele and myself made in 1999, when both of us worked at Utrecht University. I am most grateful to John for having introduced me to the law of the European Communities and its relevance for national criminal law in the early 1990s. However, the plan for the book had to be abandoned and impressive changes in circumstances made the 1999 outline into a historical document, which testified to the unbelievable changes that have taken place in the last decade. After the experience of having had to abandon my plan to write a book on European criminal law before, I realise how privileged I have been by the circumstances that allowed me to write this volume: I was able to take sabbatical leave in the academic year 2007–2008 due to a replacement subsidy of the Nederlandse Organisatie voor Wetenschappelijk Onderzoek, and my concentration on writing was further facilitated by the Department of Criminal Law and Criminology and by the Faculty of Law of Maastricht University which relieved me of my administrative obligations.

I am honoured with the comments on my drafts which I received from two panels. One panel consisted of colleagues and experts in the field. I owe many thanks to Dr. Pedro Caeiro (the University of Coimbra), Professor Michele Caianiello (the University of Bologna), Professor John Spencer (the University of Cambridge) and Professor John Vervaele (the University of Utrecht) for their willingness to comment on my drafts, whilst they were already overcommitted. The other panel that assisted me was an internal panel, consisting of colleagues of mine from the department at Maastricht University. I am most grateful to Jeroen Blomsma, Gerard de Jonge, Johannes Keiler, Maartje Krabbe, Anne-
Preface for the first edition

Sophie Massa, Christina Peristeridou and Martijn Zwiers. The assistance of this internal panel is also evidence that the research group on European criminal law has come into being. The comments of both panels have greatly improved the quality of the book.

Laura Bosch has provided me with most accurate help as a student-assistant. She enabled me to go through the approximately 750 Court cases in a structured manner. I am indebted to her for her patience in complying with my numerous requests for yet another document. I am also grateful to the assistance of Steffi Menz and of my secretary, Lydie Coenegrachts, who also protected me against those who might intrude upon the writing process. I thank Lucas van der Heijden for giving me shelter “far from the madding crowd”. The co-operation with Chris Engert, who took care of editing the book, was one of the last, but also most pleasant, stages of writing this book.

I acknowledge once again the great co-operation with Hans Kluwer of Intersentia Publishers, who, after some eighteen volumes of *Annotated Leading Cases of International Criminal Tribunals* was willing to take the risk of publishing on an entirely different area of criminal law. Last, but not least, I thank all the students, practitioners and colleagues in court who shaped the structure of this book by raising persistent questions on European criminal law. The book has been written for students, practitioners and academics alike.

I would appreciate any comments and observations, and would be happy to try and answer any questions that any reader might have (andre.klip@maastrichtuniversity.nl).

André Klip
Maastricht, November 2008
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<td>CISA</td>
<td>Convention Implementing the Schengen Agreement</td>
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<td>ECHR</td>
<td>European Convention of Human Rights</td>
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<td>EComHR</td>
<td>European Commission of Human Rights</td>
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<td>ECR</td>
<td>European Court Reports</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EU</td>
<td>Treaty on European Union (pre-Lisbon)</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>OJ</td>
<td>Official Journal of the European Union</td>
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<td>OLAF</td>
<td>Office de Coordination de la Lutte Anti-Fraude</td>
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<td>SIS</td>
<td>Schengen Information System</td>
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<td>TEC</td>
<td>Treaty establishing the European Community</td>
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<td>TEU</td>
<td>Treaty on European Union (post-Lisbon)</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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