ERA October 2015 Speakers' contribution

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Since 2011	Head of Unit European Public Prosecutor's Office (EPPO) and Criminal Law European Commission – Directorate General for Justice and Consumers
2007-2011	Head of Unit European Commission - Directorate General Enterprise and Industry
1997-2007	Member of Cabinet of EU Commissioners/Vice-Presidents in charge of Regional Policy, Justice and Home Affairs, Enterprise and Industry
1996-1997	Legal Officer European Commission - Directorate General Competition
1993-1996	German Economics Ministry – European Department
	Law studies at Universities of Münster and Geneva

Recent developments and priorities for EU criminal justice:

The perspective of the European Commission

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ERA Conference 22-23 October 2015, Trier

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Political context

- COM Communication (2014) 144 of 11 March 2014 – consolidate, codify, complement
- European Council strategic guidelines for legislative and operational planning within the area of freedom, security and justice of 26/27 June 2014
- Priority 7 of President Juncker's political guidelines of 15 July 2014 & Priority 7 of President Juncker's letter of intent of 9 September 2015

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Three Areas

- Transposition of EU criminal justice legislation by Member States
- On-going Negotiation of COM proposals
- Possible Initiation of new legal initiatives

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Transposition - Post Lisbon legal instruments

Procedural measures and rights	Substantive criminal law
Directive 2010/64/EU on interpretation and translation - 27 October 2013	Directive 2011/36/EU on THB – 6 April 2013
Directive 2012/13/EU on the right to information – 2 June 2014	Directive 2011/92/EU on combating the sexual abuse / exploitation of children – 18 December 2013
Victims Directive 2012/29/EU – 16 November 2015	Directive 2013/40/EU on cybercrime – 4 September 2015
Directive 2013/48/EU on the right of access to a lawyer – 27 November 2016	Directive 2014/42/EU on freezing and confiscation of assets 4 October 2015
	Directive 2014/62/EU on counterfeiting – 23 May 2016
	Directive 2014/57/EU on market abuse – 3 July 2016

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Transposition - Pre Lisbon legal instruments

- Environmental Crime Directives
- The former third pillar *acquis*
  - On-going fact finding exercise on transposition process

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Negotiation

- **A The procedural rights package**
  - Presumption of Innocence Directive
  - Children's Rights Directive
  - Legal Aid Directive
- **B The protection of the EU's financial interests**
  - PIF Directive
  - EPPO Regulation
  - Eurojust Regulation

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Presumption of Innocence Directive

COM(2013) 821

- **Aim:** strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings
- **Content**:
  - No public references to guilt before conviction
  - Burden of proof and *in dubio pro reo*
  - Right not to incriminate oneself and not to cooperate; right to remain silent
  - Right to be present at one's trial

- **Trilogue phase**
- **Issues:** scope, burden of proof and reversal, right to remain silent.

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Children's Rights Directive

COM(2013) 822

- **Aim**: enable children to understand and follow proceedings – fair trial – prevent re-offending by children and foster their social integration
- **Content**: information of child and holder of parental responsibility – mandatory access to lawyer – individual assessment and medical examination – questioning – audio visual recording of police interviews – safeguards in case of deprivation of liberty – presence at trial

- **Trilogue phase**
- **Issues**: protection of privacy, continuation of safeguards, scope, extent of mandatory assistance by a lawyer, minor offences

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Planned new legal criminal law initiatives

- European Agenda on Security COM(2015) 185
- European Agenda on Migration COM(2015) 240

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European Agenda on Security

Legal criminal law initiatives

- ECRIS-TCN
- Mutual recognition of freezing and confiscation orders
- Revision of the Framework Decision on Terrorism (FD 2008/919/JHA)

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European Agenda on Security

Some important policy initiatives

- Countering radicalisation
- Cutting the financing of criminals: strengthening cooperation between competent authorities; 4th AML Directive
- Enhancing dialogues with the IT industry: launch an EU forum with major IT companies to counter terrorist propaganda on the internet and in social media
- Enhancing the capacities of Eurojust and Europol

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European Agenda on Migration

Legal criminal law initiatives

- Possible revision of Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA to **improve the existing EU legal framework to tackle migrant smuggling,** which defines the offence of facilitation of unauthorized entry and residence, and strengthen the penal framework

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EPPO Regulation

COM(2013) 534

- **Aim**: strengthening the protection of the Union's financial interests – establish a more coherent, efficient and effective European system for the investigation and prosecution of offences affecting the Union's financial interests
- **Content**: central model with EDPs under direction and supervision of the EPP – exclusive competence - Single Legal Area with partly harmonised investigation measures, procedural rights, judicial control by national Courts

- **Negotiations in Council**
- **Two Interim Reports of EP** (Iacolino of 12 March 2014 and Macovei of 29 April 2015)

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Eurojust Regulation

COM(2013) 535

- **Aim**: improving Eurojust's performance

- **Content**: reforming the structure and organisation of Eurojust, increasing its democratic legitimacy (NP/EP) and providing for a close cooperation between Eurojust and EPPO and other partners

- **Council GA in March 2015**
- **No report from EP yet**

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Legal Aid Directive

COM(2013) 824

- **Aim**: ensuring that suspects or accused persons' right of access to a lawyer becomes effective in certain situations
- **Content**:
  - Provisional legal aid
  - Legal aid in EAW proceedings
- **Trilogue phase**
- **Issues:** extension of scope

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PIF Directive

COM(2012) 363

- **Aim:** reduce differences in national criminal legislation to better fight crimes against the EU's financial interests
- **Content**: common definitions and sanctions of fraudulent behaviour to be criminalised in Member States; liability of public officials and contract agents, time-effectiveness, VAT fraud
- **Trilogue phase**
- **Issues:** VAT inclusion
- Taricco judgment (ECJ) of 8 September 2015

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European Agenda on Migration

Criminal law policy initiatives

- Strengthen the role of Europol as an intelligence hub for dismantling criminal networks
- Strengthen the role of Eurojust in assisting with investigations to dismantle smuggling and trafficking networks

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Thank you for your attention!

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Ola LÖFGREN

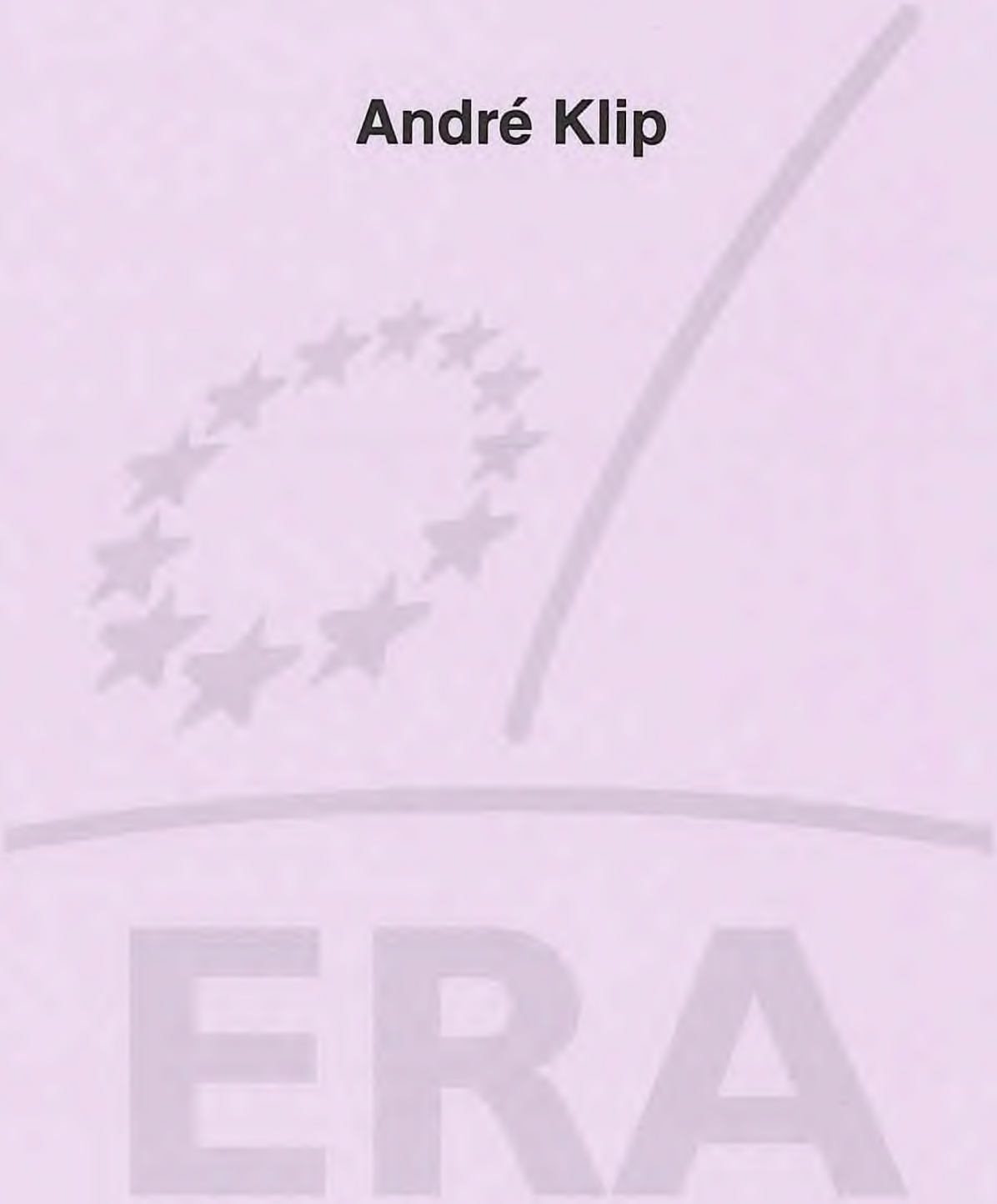
Secretary to the *European Judicial Network in Criminal Matters (EJN)* since December 2014

- Head of International Unit at the Office of the Prosecutor General of Sweden (2005-2014).
- EJN National Correspondent and Tool Correspondent for Sweden (2005-2014).
- Chair of the EJN and manager for Eurojust's matters during the Swedish Presidency in 2009.
- Swedish delegate in the Council for the negotiations on the revised Eurojust Decision (2008) and the Eurojust Decision (2001-2002).
- Deputy National Member for Sweden at Eurojust (2002-2005).
- Experience as Public Prosecutor since 1995.

- Master of Law (LL.M.) at the Stockholm University.

- Expert on Swedish law on international cooperation in criminal matters to the Law Commentary KARNOV (2012-2014).
- Expert of the Swedish Commission on extradition and Commission on custody in the asylum process (2009-2011).
- Editor and author of manuals for practitioners on the application of Swedish law on a number of European and international instruments of judicial cooperation.
- Lecturer in trainings for prosecutors on international cooperation in criminal matters.

André Klip



André Klip (1965) is Professor of Criminal Law, Criminal Procedure and the Transnational Aspects of Criminal Law at Maastricht University. He conducted research at the Yale Law School, New Haven and the Max Planck Institute in Freiburg im Breisgau. He is a member of the Board of Directors of the International Association of Penal Law. He is founder and editor of the Annotated Leading Cases of International Criminal Tribunals (42 volumes since 1999). He is currently working on a third edition of European Criminal Law. An integrative Approach (Intersentia Cambridge 2016). Throughout his career, professor Klip has been frequently involved in national and international legal practice. He has been involved in cases before the Court of Justice, the ECHR, the ICTY, the Supreme Court of the Netherlands and in many first and second instance cases. He is a Judge at the 's-Hertogenbosch Court of Appeal (criminal division).

André Klip (1965) is hoogleraar strafrecht, strafprocesrecht en de grensoverschrijdende aspecten van het Strafrecht. Hij deed onderzoek aan de Yale Law School, New Haven en het Max Planck Institute in Freiburg im Breisgau. Hij is lid van de Board of Directors of the International Association of Penal Law. Hij is oprichter en redacteur van de Annotated Leading Cases of International Criminal Tribunals (42 delen sinds 1999). Hij werkt thans aan een derde druk van European Criminal Law. An integrative Approach (Intersentia Cambridge 2016). Door de jaren heen is professor Klip steeds betrokken geweest in de internationale en Nederlandse rechtspraktijk in procedures voor het Hof van Justitie, het EHRM, het Joegoslavië-tribunaal, de HR en vele strafzaken in eerste en tweede aanleg. Hij is raadsheer-plaatsvervanger in gerechtshof 's-Hertogenbosch (strafkamer).

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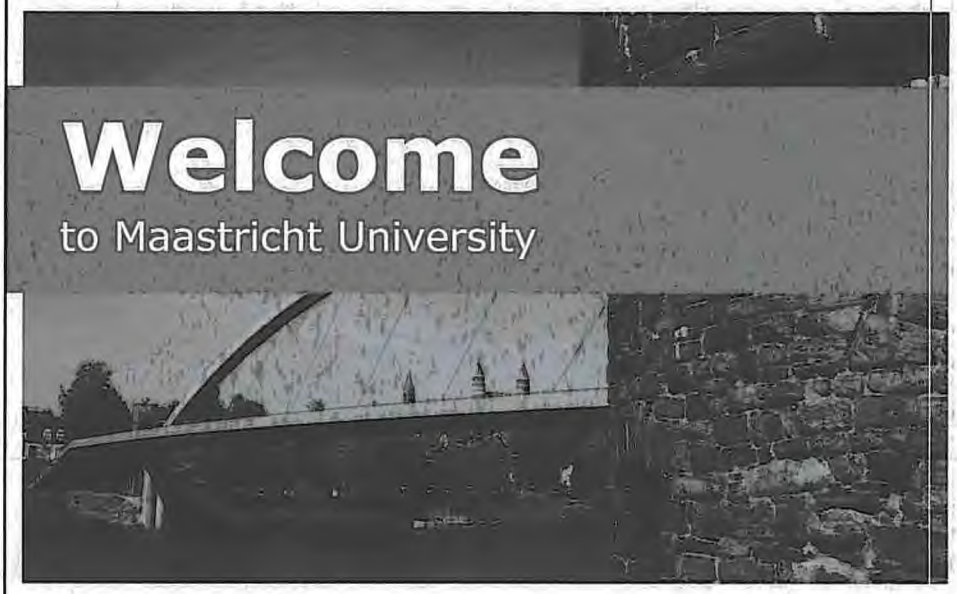

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Mutual Recognition and Directives on Defence Rights

Prof. André Klip

ERA 22 October 2015

Faculty of Law