

EP proposal for Article 1(3)a:

"3a. Measures taken by Member States regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.

Any of the above these measures regarding end-users' access to or use of services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may therefore only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of presumption of innocence and the right to privacy. A prior fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with European Convention for the Protection of Human Rights and Fundamental Freedoms. and tThe right to an effective and timely judicial review, shall be guaranteed.

This shall not affect the competence of a Member State, in conformity with its own constitutional order and with fundamental rights, to establish, inter alia, a requirement of a judicial decision authorising the measures to be taken."

Council proposal for Article 1(3)a:

"3a. Measures taken by Member States regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.

Any of the above measures liable to restrict those fundamental rights or freedoms may therefore only be imposed if they are appropriate, proportionate and necessary within a democratic society, and shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of presumption of innocence and shall respect the requirements of a fair and impartial procedure including the right to be heard of the person or persons concerned and the right to an effective and timely judicial review.

This shall not affect the competence of a Member State, in conformity with its own constitutional order and with fundamental rights, to establish, inter alia, a requirement of a judicial decision authorising the measures to be taken."

EP Compromise proposal

Meeting of the EP delegation on 20 October 2009

Text to be inserted in Article 1:

"3a. Measures taken by Member States regarding end-users' access to or use of services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.

Any measures liable to restrict those fundamental rights or freedoms may only be taken in exceptional circumstances and imposed if they are appropriate, proportionate and necessary within a democratic society, and shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. In particular, any measures may only be adopted as a result of a prior, fair and impartial procedure ensuring inter alia that the principle of presumption of innocence and the right to be heard of the person or persons concerned be fully respected. Furthermore, the right to an effective and timely judicial review shall be guaranteed.

This shall not affect the competence of a Member State, in conformity with its own constitutional order and with fundamental rights, to establish a requirement of a judicial decision authorising the measures to be taken."