

DISTRIBUTE PAR CON (TRIL. 3 du 28. 10. 2009)

"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 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~~ These measures ~~may only be adopted as a result of a prior,~~ shall respect the requirements of a fair and impartial procedure ensuring inter alia that the principle of presumption of innocence and including the right to be heard of the person or persons concerned be fully respected. Furthermore, and 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, inter alia, to establish a requirement of a judicial decision authorising the measures to be taken and to adopt urgent measures in order to assure national security, defence, public security and the prevention, investigation, detection and prosecution of criminal offences."