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NOTE

From:	General Secretariat of the Council
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Subject:	Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies - Member States comments

Delegations will find below the written comments from Member States on the revised guidelines presented in FREMP on 3 October 2014.

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GREECE

1. Page 3, background section, second paragraph

To delete footnote 1, which read as follows:

1. See Judgment of 8 April 2014, Cases C 293/12 and C 594/12, *Digital Rights Ireland* (information note by the Council Legal Service in doc. 9009/14).

To add a new footnote at the end of the paragraph [to be included after: "(...) being left to the legislation of the Member States."]

New footnote: See information note by the Council Legal Service in doc. 9009/14 (Judgment of 8 April 2014, Cases C 293/12 and C 594/12, *Digital Rights Ireland*)

2. Page 4, section III, 2.c)

To add: or protect the rights and freedoms of others?

The sentence will read as follows: c) Does it genuinely meet the objectives of general interest recognised by the Union or protect the rights and freedoms of others?

3. Page 6, section III, 1.a)

To add and delete so the paragraph reads as follow:

After having identified ~~what~~which fundamental rights may be affected in general, the next step is to ascertain the exact content of those fundamental rights. The content of fundamental rights should be identified first of all on the basis of the Charter and the explanations relating to the Charter . The Charter contains rights, freedoms and principles ~~and freedoms~~: EU legislation must respect rights ~~but~~ and observe principles, and promote the application thereof ~~in accordance with their respective powers and~~ respecting the limits of the powers of the Union as conferred on it in the Treaties. Article 52 (5) of the Charter sets out how principles should be observed.

4. Page 7, section III, 1.a), first sentence of page 7

To delete the following sentence:

Besides, there are some other sources of understanding the Charter (see Annex II).

5. Page 8, section III, 2 a) and 2 c)

On point a), to add "for" so it reads:

Is this limitation provided for by law?

On point c), to add "or protect the rights and freedoms of others" so it reads:

Does it genuinely meet the objectives of general interest recognised by the Union or protect the rights and freedoms of others?

6. Page 9, section IV, 3, last sentence of page 9

To add "systematically" so it reads:

This will also ensure that the FREMP Working Party is kept systematically informed.

7. Page 24, Annex IV, section 3

To add "or protect the rights and freedoms of others" so it reads:

genuinely meet the objectives of general interest recognised by the Union or protect the rights and freedoms of others;

8. Page 25, Annex IV, section 4, first paragraph of the page

To move the certain sentence from the footnote 10 to the end of the paragraph so the paragraph reads:

[...] in order to achieve those objectives. The assessment of the principle of proportionality under Article 52(1) of the Charter is therefore more strict than the one under the general principle of proportionality set out in Article 5(4) TEU.

9. Page 26, Annex IV, section 4, last paragraph of the page

To delete "in many cases" and add instead "where relevant" so it reads as follows:

This examination of acceptable limitations on fundamental rights will be based on the case law of the Court as well as ~~in many cases,~~ where relevant, on the case law of the European Court of Human Rights.

FRANCE

In connection with the drafting of the European Council conclusions adopted on 26 and 27 June 2014, France endorsed the reinforcement of the procedures for evaluating European legislation. We can therefore only welcome the updating of the guidelines, the objective of which is to apply this approach at the Council of the European Union.

The amendments proposed by the Presidency are mainly geared to clarifying the explanations on the conditions governing the limitation of the rights and freedoms set out in the Charter.

We consider it first and foremost necessary to incorporate all the legal consequences provided for in Article 52(1), (2) and (3) of the Charter, which sets out the mandatory provisions vis-à-vis the European Union institutions responsible for drawing up legislation.

We therefore propose that the word "*should*" be replaced by "*shall*", which is more consistent with the obligation to justify any limitation on the rights guaranteed by the Charter:

- On page 3: "Moreover, the legislator *shall* ~~should~~ be able to demonstrate that it has explored alternative ways to attain the objectives pursued which would be less restrictive of the rights of the individuals concerned."
- On page 6: "The legislator *shall* ~~should~~ be able to demonstrate that it has explored alternative ways to attain the objectives pursued which would be less restrictive of the rights of the individuals concerned."

Furthermore, we note that although the wording used on page 9 ("*most fundamental rights-friendly solution*") clearly expresses the objective, it is an ambiguous legal expression that does not accurately describe the legal procedures implementing the proportionality principle.

We therefore propose the following wording:

- On page 9: *"The exchange of available information and expertise could help to find ~~the most fundamental rights friendly solution~~ the best solution which is in accordance with fundamental rights, avoid duplication of discussions and increase the coherence in the application of the Charter."*

We endorse the last paragraph of Annex IV on the conditions for examining limitations on fundamental rights. This paragraph in fact reiterates that the examination of limitations on fundamental rights is based on the case law of both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR), in accordance with Article 52(3) of the Charter.

We would however like the references made earlier to the ECHR's judgments of 26 April 1979 (*Sunday Times v United Kingdom*)¹ and of 2 August 1984 (*Malone v United Kingdom*)² to be kept, as they set out the procedure for examining the legislation and, more specifically, the requirement for accessibility and predictability.

¹ "49. In the Court's opinion, the following are two of the requirements that flow from the expression "prescribed by law". Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. "

² "68. (...) Since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference."

Similarly, the French authorities approve Austria's proposal to add a reference to the proceedings of the European Court of Human Rights, worded as follows:

- On page 6: " a) *Check the Charter, the explanations relating to the Charter, the case-law of the Court of Justice of the European Union, the factsheets of the European Court of Human Rights and other relevant sources for understanding the Charter.*

That being so, we endorse the chosen definition of the concept of "law" on page 24 ("Where such an interference exists, the provision concerned has to, in order to comply with Article 52(1) of the Charter as interpreted by the Court, **be provided by law** (...)"), as it coincides with Article 288 TFEU and constitutes a strict reading of the Treaties and the Charter.

We consider in fact that this restrictive approach represents an additional guarantee in terms of democratic control. The reference to the CJEU judgment of 5 September 2012 (C-355/10) relating to the essential elements of a legislative act is relevant.

More generally, the references to CJEU case law, even by way of example, make the reader aware of the potential legal effects of failure to take into consideration the provisions of the Charter in the legislative drafting process.

The terms "*See*" or "*See for instance*" are used for information purposes.

Footnote 8 on page 24 may therefore be amended: "*See Judgment of 5 September 2012*".

With regard to the actual reading of the judgment of 5 September 2012 (C-355/10), we note that paragraphs 77 and 78³ thereof do not leave any legal option as to the choice of the legislative procedure.

We therefore propose the following wording:

- On page 24: "the seriousness of an interference with the fundamental rights ~~may require~~ requires the direct involvement of the Union legislature".

Finally, we endorse paragraph 4 on page 25, which uses the wording "*strictly necessary*", as interpreted by the case law of the CJEU and of the European Court of Human Rights.

For greater legal certainty, we should like members of the various EU working parties to have the most up-to-date legal information, with it being made clear that these guidelines may be amended in the event of any development or revision of the case law.

³ "77. *Second, it is important to point out that **provisions on conferring powers of public authority on border guards – such as the powers conferred in the contested decision, which include stopping persons apprehended, seizing vessels and conducting persons apprehended to a specific location – mean that the fundamental rights of the persons concerned may be interfered with to such an extent that the involvement of the European Union legislature is required.***"

"78. *Thus, the adoption of provisions such as those laid down in paragraph 2.4 of Part I, and paragraphs 1.1 and 2.1 of Part II, of the Annex to the contested decision, requires political choices to be made as referred to in paragraphs 76 and 77 above. Accordingly, the adoption of such provisions goes beyond the scope of the additional measures within the meaning of Article 12(5) of the SBC and, in the context of the European Union's institutional system, is a matter for the legislature.*"

HUNGARY

General comments

We welcome that the Italian Presidency is committed to dealing with the guidelines drafted and agreed during the Hungarian Presidency and we appreciate the contribution of the Council's Legal Service to revising the text of the guidelines. We agree with the need of the revision in order to be fully in line with the recent developments on the subject matter, but we also emphasize that revising the text is not enough in itself. It should also be ensured that the guidelines are systematically and regularly used to check fundamental rights compatibility in all Council preparatory bodies. We welcome the debate which aims to give the guidelines full effect and encourage their use and implementation, but we think that concrete steps should be taken for the revised text of the guidelines to become a widespread tool to help Council's preparatory bodies assess fundamental rights compatibility.

Specific comments

1. Page 2, Purpose

The last sentence of the 'Purpose' section should be separated from the content of the last bullet point.

2. Page 2, paragraph 1 and bullet point 1

The words 'revised' should be deleted from the text. There is no need for the text to highlight that it contains 'revised' guidelines. This is all the more unnecessary because the word 'revised' only appears at two points of the text, while several other points do not mention that the guidelines have been revised. If necessary, the fact of the revision might be indicated in a short footnote to the 'Purpose' section or to the end of the 'Background' section. The footnote may read as follows: '[In light of the recent case law of the European Court of Justice], the guidelines, originally endorsed by the Coreper in May 2011, have been updated in November 2014.'

3. Page 3, paragraphs 2 and 3

We propose to delete the new, underlined parts of the text from the ‘Background’ section which only aims at outlining a short, general background to the guidelines. There is no need for highlighting one specific element, namely the proportionality criterion, of the guidelines at this point; it is enough to be elaborated in Annex IV. Besides, it is slightly confusing from a chronological point of view that the revised text of the guidelines first refers to the recent case law of the European Court of Justice from 2014, then to the fact that ‘for taking measures to fulfil this obligation’ the Council considered in its conclusions of 2011 that the Council’s preparatory bodies should dispose of the guidelines in question.

4. Page 4, point II.1; page 5, point II.1.

We would like draw attention to that the original purpose of the point dealing with identifying the general link with fundamental rights was merely to raise awareness on fundamental rights, especially for those who have never dealt with them. As a first stage in the logical process of the perception of fundamental rights related problems this point only aimed at motivating the experts in the Council’s preparatory bodies to start thinking from a fundamental rights perspective and to perceive that fundamental rights might be concerned by the subject matter of the proposal that they were discussing. The verb ‘affect’, in this regard similarly to the terminology used by the checklist in the 2011 Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessment, intended to reflect the need for identifying at first glance a general link with fundamental rights. We are of the opinion that verb ‘interfere’ is a slightly stronger expression here which should rather belong to the more legalistic approach of the next stage (point III) where the compliance with the Charter is at stake, and not to the first, preliminary stage of the perception of fundamental rights related provisions.

5. Page 4, point III. 2 c); page 8, point III. 2 g); page 24, point 3

In accordance with Article 52(1) of the Charter, the words ‘or the need to protect the rights and freedoms of others’ should be added to the ‘objectives of general interest recognised by the Union’. Besides, on page 8, sub-points of point III.2. should be renumbered.

6. Page 4, point III. 2. d); page 8, III. 2. h); pages 25 and 26, point 4

As regards the expression ‘strictly necessary’ we note that from a theoretical point of view we are not against using this term and for example the Hungarian legal system also relies on this terminology. However, Article 52(1) of the Charter itself does not refer to ‘strict’ necessity, and that is why we are not convinced that ‘strictly necessary’ is an appropriate general wording in the guidelines instead of ‘necessary’. We are aware of the European Court of Justice indicated in certain cases that this notion should be interpreted in a restrictive way, but it might be more appropriate to only refer to this fact in one separate paragraph or footnote.

7. Page 25, last sentence

The object pursued by the interference should also be highlighted in the enumeration of the element which may be examined according to the last sentence of page 25. The question of whether an interference is limited to what is strictly necessary cannot be separated from purpose to be achieved by the interference.

8. Page 25, footnote 9

The last sentence of this footnote should be deleted, because it is not generally duly substantiated in the text that the assessment of the principle of proportionality under Article 52(1) of the Charter is more strict than the one under the general principle of proportionality set out in Article 5(4) of the TEU.

9. Page 26, paragraph 1

As regards the first sentence on page 26, we are of the opinion that the assessment of proportionality and necessity should not depend on the seriousness of the restrictions to fundamental rights. That is why the word ‘serious’ should be deleted from this sentence.

THE NETHERLANDS

1. Page 3, second paragraph

Comment: Proportionality encompasses necessity and appropriateness. Hence, for reasons of clarity, there should either be a reference to proportionality or to necessity and appropriateness.

2. Page 4, section III, point 2, a); Page 8, section III, point 2, a)

To reinsert a sentence which was present in the original 2010 guidelines: "May fundamental rights at issue be subject to limitation?"

Comment: This sentence needs to be kept here in order to avoid the misunderstanding that absolute rights might be limited.

3. Page 4, section III, point 2, c); Page 8, section III, point 2, c)

To reinsert a sentence which was present in the original 2001 guidelines: "Are the limitations necessary and proportionate to achieve an objective of general interest recognised by the Union or to protect the rights and freedoms of others?"

To delete: "Does it genuinely meet the objectives of general interest recognised by the Union?"

4. Page 7, first sentence

To delete the following sentence:

Besides, there are some other sources of understanding the Charter (see Annex II).

5. Page 9, section IV, point 3

To modify this sentence in the first paragraph of this point so it reads:

The exchange of available information and expertise could help to find an adequate ~~the most~~ fundamental rights-friendly solution, avoid duplication of discussions and increase the coherence in the application of the Charter.

Comment: In case of non-absolute rights, the ultimate goal is always an exercise of balancing rights.

6. Page 4, Section III, point 3,d); Page 25, title of point 4.

Comment: Although the heading formulation follows from the text of Article 52 of the Charter, for this document, this heading may be unclear since the principle of proportionality encompasses the necessity requirement.

7. Page 24, point 2

To add "and freedoms" at the end of the heading so it reads:
respect the essence of the rights and freedoms;

8. Page 24, point 3

To add "or the need to protect the rights and freedoms of others" so it reads:
genuinely meet the objectives of the general interest recognised by the Union or the need to protect the rights and freedoms of others;

9. Page 24, last paragraph

Comment: This part differs from the relevant explanations to the Charter which states that: "The reference to general interests recognised by the Union covers both the objectives mentioned in Article 3 of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article 4(1) of the Treaty on European Union and Articles 35(3), 36 and 346 of the Treaty on the Functioning of the European Union."

10. Page 26, first paragraph

Comment on "serious restrictions": This reflects the case law nevertheless it is not necessary here to limit it to that situation alone.

11. Page 26, second paragraph

Comment: To add reference here to Digital Rights Ireland or other relevant source would be beneficial.

12. Page 26, third paragraph

To change the paragraph so it reads as follows:

When ~~this examination of~~ examining the acceptability ~~acceptable~~ of limitations on fundamental rights the ~~will be based on the~~ case law of the Court as well as, in many cases, ~~on the~~ case law of the European Court of Human Rights will be taken into account. Indeed, Article 52(3) of the Charter provides that: "In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection." As a result, the Union legislature must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR. ~~within the meaning of the Art. 52(3) of the Charter.~~

Comments:

- The changes are intended to underline that the legislator has its own responsibility in verifying compliance with fundamental rights when developing policy options, and part of that is to take account of the case law. That's a different accent.
- This observation is intended to provide more guidance as to how and when to take account of the ECHR.

THE UNITED KINGDOM

Introduction

The UK is most grateful for the work the CLS has undertaken in reviewing and revising the guidelines, for the discussion and comments from other Member States at FREMP on 3 October and for the opportunity provided by the Presidency to submit written comments on the text.

Alongside revising the text, the UK considers that it is important to consider the provision of support and training on the guidelines, as well as their promotion, to ensure that they are widely recognised and used by all preparatory bodies.

Key issue

The guidelines set out the steps for assessing whether an interference with a fundamental right is justified, namely whether the limitation:

- (i) is provided by law;
- (ii) respects the essence of the right;
- (iii) genuinely meets objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others; and
- (iv) subject to the principle of proportionality, is necessary.

The UK agrees with the CLS that the guidelines should adopt this framework of analysis, which reflects Article 52(1) of the Charter. However, it is clear from the case law that, *within* this framework, the degree of scrutiny will vary depending on the facts of the case. The guidelines should reflect that what is required to justify a limitation of a fundamental right will depend on the facts of the case.

It is of paramount importance that EU legislation respects and protects fundamental rights. But in seeking to ensure this, the guidelines should not unduly constrain legitimate use of legislative competence. The UK is simply keen to ensure that the text of the guidelines accurately reflects the case law of the Court.

It is evident from paragraph 48 of the judgment in *Digital Rights Ireland* (Cases C-293/12 and C-594/12) that the ‘strictness’ of the Court’s review is related to the EU legislature’s discretion, which depends on several factors and not simply, as the revised text currently indicates, the seriousness of the interference:

“47. ... the extent of the EU legislature’s discretion may prove to be limited, depending on a **number of factors**, including, in particular, the area concerned, the nature of the right at issue guaranteed by the Charter, the nature and seriousness of the interference and the object pursued by the interference ...”

The UK recognises the need for safeguards in legislation to protect fundamental rights. However, in *Digital Rights Ireland* the Court’s findings on the importance of safeguards in the Data Retention Directive were specific to the legislation in question. Having highlighted the special importance of the obligation in article 8(1) of the Charter in relation to the right to respect for private life, the Court held that

“54. **Consequently**, the EU legislation in question must lay down clear and precise rules ... imposing minimum safeguards so that the persons whose data have been retained have sufficient guarantees to effectively protect their personal data ...

55. The **need for such safeguards is all the greater where**, as laid down in Directive 2006/24, personal data are subjected to automatic processing and where there is a significant risk of unlawful access to those data ...”

We are content for the language in the *Digital Rights Ireland* judgment to be reflected in the guidelines - see suggested changes to the second paragraph on page 26 – but those findings were specific to the facts of that case. Requiring any limitation, or any serious limitation, to be ‘strictly necessary’ is inconsistent with the Court’s case law. For example, in *Schwarz* (Case C-291/12), another case concerning the compatibility of EU legislation with the right to protection of personal data, the Court, when applying the steps set out above, assessed whether the limitation was necessary; there is no mention in the judgment of ‘strictly necessary’. Judgment in *Schwarz* was delivered after that in *Volker* (Cases C-92/09 and 93/09), which was cited by the case (Case C-473/12 *IPI*) that the Court in *Digital Rights Ireland* referred to when holding that the limitation in that case could apply only in so far as was strictly necessary.

Specific textual changes relating to the key issue

Page 3: Paragraph 3 of background and the first sentence of paragraph 4 [ie the new text].

The ‘Background’ section of the document provides a brief introduction, setting out why there are guidelines. We consider that this introduction should be concise, pragmatic and accessible to all, with the legal explanations set out in Annex IV. This would help meet the concerns expressed by some Member States that the guidelines should be written with the level of expertise of officials in preparatory bodies in mind. We agree with the CLS’s view that the document needs to set out the legal position, but that is best done only once and in Annex IV.

Moreover, for the reasons set out above, the text does not reflect the entirety of Court’s case law. We would suggest simply deleting the new text, which is repeated in Annex IV anyway. However, if others feel strongly that something to the effect of the new text should be retained, we suggest replacing it with the following:

“Any limitation on the exercise of the rights and freedoms laid down in the Charter must be provided for by law, respect their essence and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. How the Court approaches this assessment is set out in more detail in Annex IV. It is important that all preparatory bodies consider carefully any possible interference including exploring alternative ways to attain the desired objective which would be less restrictive of the right in question.”

Page 4: III 2 d)

For the reasons set out above, the word ‘strictly’ should be deleted so the point reads:

“d) Subject to the principle of proportionality, is it limited to what is necessary?”

Page 8: III 2 h)

As above (Page 4: III 2 d)) – delete the word “strictly”. The text would then read:

h) Subject to the principle of proportionality, is it limited to what is necessary.

Page 25: footnote 9.

The last sentence of footnote 9 should be deleted.

The Court has given no indication that its review of proportionality under Article 52(1) of the Charter will generally be stricter than that which it performs in relation to the general principle of proportionality under Article 5(4) of the TEU. The final sentence of footnote 9 is therefore somewhat misleading and may lead readers to consider that this is always the case.

As set out above, the Court's findings in *Digital Rights Ireland* on the appropriate level of scrutiny were specific to the facts of that case. For example, *Schaible* (Case C-101/12) concerned the compatibility of EU legislation with freedom to conduct a business (Article 16 of the Charter). In considering the proportionality of the measure, the Court noted that the EU legislature enjoyed a broad discretion in the area of agriculture and its review was consequently limited to whether the legislature had 'manifestly exceeded the limits of its discretion' (paragraphs 47 and 48).

Page 25: point 4 – third paragraph.

For the reasons set out above, the word 'strictly' should be deleted on both occasions it appears. So the text should be amended as follows:

The second element of the test, i.e. **the necessity** test, requires that derogations and limitations in relation to the protection of a fundamental right may apply only in so far as is ~~strictly~~ necessary. As for the question of whether an interference is **limited to what is strictly necessary**, several elements may be examined: the magnitude of the interference (the number of people concerned), the scope and the duration of the interference, the objective criterion on which the interference may be based, the existence of limitations or exceptions to the interference, etc.

The proportionality assessment requires a balancing exercise for all restrictions on fundamental rights, not just to those where these are ‘serious’ as the text currently implies. In doing this balancing exercise it is clear that the ‘strictness’ of the Court’s assessment of proportionality is related to the EU legislature’s discretion. It is important that the Council is aware of its discretion when legislating and it would be helpful to include in the guidelines the factors identified by the Court in determining that discretion. So we would amend the first paragraph on page 26 to say:

~~“It is crucial to make a strict assessment of~~ When assessing the proportionality and necessity of measures ~~that constitute serious restrictions to fundamental rights, however legitimate the objectives pursued by the EU legislature. This entails that~~ the Union legislature must perform a proper balance between the various interests involved, i.e. the general interests recognised by the Union against the interference with the rights or freedoms recognised by the Charter. On this basis, the legislature should examine whether there is an effective but less intrusive measure available.

When considering whether a proposal is a proportionate interference with fundamental rights, the Council should consider the extent of its discretion. That depends on several factors such as the area concerned, the nature of the right at issue guaranteed by the Charter, the nature and seriousness of the interference and the object pursued by the interference. The narrower the EU legislature’s discretion, the stricter the Court will review its exercise.”

At the end of the new second paragraph could be inserted the following footnote:

“Judgment of 8 April 2014, Cases C-293/12 and C-594/12, Digital Rights Ireland, paragraphs 47 and 48.”

Page 26: 2nd paragraph

While we are content to reflect in the guidelines the Court's level of scrutiny in *Digital Rights Ireland*, it needs to be clear that it does not apply to every limitation on every fundamental right in every context (for example see *Schwarz*). So we suggest amending the second paragraph as follows:

“The Court has held in certain cases that derogations and limitations in relation to a fundamental right must apply only in so far as is strictly necessary. Consequently, ~~Where~~ **there is a serious interference** to a fundamental right, the Court found that the Union legislature must lay down **clear and precise rules** governing the scope and application of the provision in question and imposing minimum safeguards **and cannot limit itself** to leave those elements to the legislation of the Member States.”

At the end of the second paragraph could be inserted the following footnote:

“Judgment of 8 April 2014, Cases C-293/12 and C-594/12, *Digital Rights Ireland*, paragraphs 52 and 54.”

Page 26: *Final paragraph*

To ensure that the guidelines accurately reflect the Explanations to the Charter, we consider it appropriate that after “the Union legislature” should be added “, in laying down limitations to those rights,”:

“As a result, the Union legislature, in laying down limitations to those rights, must comply with the same standards as a fixed by the detailed limitation arrangements laid down in the ECHR.”

Other points

Page 4: III 2 a)

The UK considers that the fact that some rights are qualified, while others are absolute should be retained.

Page 4: III 2 c)

The UK considers that the words ‘or the need to protect the rights and freedoms of others’ should be reinserted at the end of this sentence. The point would then read:

- c) Does it genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others?

Page 8: III 2. g)

As above (Page 4: III 2c)) – the UK considers that the words “’or the need to protect the rights and freedoms of others’ should be added at the end of this bullet point which would then read:

- g) Does it genuinely meet objectives of general interest recognised by the Union *or the need to protect the rights and freedoms of others.*

Page 24: 3.

As above, the UK suggests reinserting the words ‘**or the need to protect the rights and freedoms of others**’.

Finally is this document designed to be public? There are currently references to CLS opinion which will need to be removed if this is the case.