



Mr. Kadri Veseli
Assembly President
Assembly of Kosovo
10000 Prishtina
Kosovo

Ms Teuta Sahatqija
Head of the European Integration Committee
Assembly of Kosovo
10000 Prishtina
Kosovo

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Dear Mr. Veseli,

EDRi is a pan-European organisation working on human rights in the digital environment. Founded in 2002, EDRi is the leading civil society organization dealing with digital rights in Europe and works closely the European Commission and the European Parliament. Currently, [33 privacy and civil rights organisations](#) with offices across Europe are EDRi members.

We are writing you in order to raise our concerns regarding the Draft Law on Interception of Electronic Communication. The Draft Law, in its present state, raises serious concerns regarding compatibility with international human rights law and, in light of Kosovo's EU accession plans, EU law.

When the Court of Justice of the European Union¹ (CJEU) invalidated the Data Retention Directive on 8 April 2014, it established a number of principles defining the limits imposed by the EU's primary law. In paragraph 38 of the judgment, the Court stated among other reasons that “[a]rticle 52(1) of the Charter provides that any limitation on the exercise of the rights and freedoms laid down by 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.” These obligations are broadly identical to those enshrined in the European Convention on Human Rights, which Kosovo has embraced in its Constitution. An analysis

¹ Joined cases C-293/12 and 594/12, Digital Rights Ireland and Seitlinger and others v. Ireland, 8 April 2014

of the CJEU ruling was produced by the legal services of the European Parliament.² In this study, it was pointed out that, in order to be in line with the EU Charter, the principles of proportionality and necessity need to be applied consistently to similar legislation affecting the retention of personal data.

At no stage during the legislative process in the adoption of the Directive, the review process leading to the Commission's evaluation report on the Directive nor during legal proceedings before national courts and the Court of Justice was any national government or the European Commission able to provide credible evidence of necessity or proportionality. The government of the Republic of Kosovo has, to our knowledge, also failed to present such evidence. In the absence of such evidence, it is difficult to find grounds to argue that the proposal is permissible under Kosovo's current and future international legal obligations.

As in the invalidated EU Directive, the Draft Law on Interception of Electronic Communication does not have adequate limits to the interferences in the rights to respect to private and family life and right of personal data, freedom of expression and information and could have indirect consequences on other rights, such as on the freedom of assembly and association protected in Articles 7, 8, 11 and 12 of the Charter of Fundamental Rights and Articles 17, 19, 21 of the International Covenant on Civil and Political Rights³.

Although we welcome the positive changes that the Draft Law has gone through in the latest version, there are a number of points which concern us:

- According to Art. 1. 7 and Art. 4.6 of the Draft Bill, the Kosovo Intelligence Agency will have its own interception interface separate from that of the network operator/service provider. The fact that the KIA, as an intelligence agency, will retain data in its own premises would make it difficult, if not impossible, to supervise the correct use of that data and any safeguards put in place will not be effective.
- The mention to "special laws" in Art. 3.1.1 does not add any safeguards in order to guarantee the same degree of protection which is established in the present Draft Law. This could lead to a race to the bottom in data protection safeguards in subsequent laws since, once a law is passed under the form of a "special law", new institutions could have access to that data but, depending on the law, may be subject to a more permissive regime of access and storage of that data. This could permit that the personal data retained could be used for unintended purposes by a wider range of personnel than this law allows. Furthermore, the risks of leaks of information and security breaches will grow exponentially with every new institution authorized to access that information.

² See https://s3.amazonaws.com/access.3cdn.net/27bd1765fade54d896_l2m6i61fe.pdf

³ For more information on the UN position on the right to privacy, see United Nations High Commissioner for Human Rights' report "[The Right to Privacy in the Digital Age](#)". For a more comprehensive and equally insightful analysis, we draw your attention to the Issue Paper of the Council of Europe Human Rights Commissioner on "[the rule of law and the Internet](#)".



- Articles 12.1 and 12.3 are also worrying. Article 12.1 contains a very extensive list of data which can be retained by the Network Operator or Service Provider, which could hardly be defensible as necessary and proportionate as required for any other restriction on the right to personal data. Furthermore, the 12 months retention period in Art. 12.3 would also fail to pass the proportionality test. In addition to this, as in the Directive 2006/24 annulled by the CJEU, there is no objective criteria to determine the long duration of the retention period.
- Finally there are no safeguards in the Draft Law to prevent Network Operators or Service Providers from using the data which is stored by them.

For all these reasons, we believe that the current Draft Law on Interception of Electronic Communication raises serious concerns which are not in line with international law and which raise serious concerns for human rights in Kosovo. We urge you to take our comments into consideration and to pay particular attention to the above-mentioned European Parliament study.

We look forward to hearing from you regarding the concerns raised on this letter as we thank you in advance for forwarding these concerns to the Deputies of the parliamentary committee in charge of this Draft Law's consideration and the Deputies of the your Assembly if the draft law makes it to the Plenary Session.

Yours sincerely,

Joe McNamee
Executive Director
European Digital Rights