



Unraveling Incongruence: The EU Proposal in the Belgrade-Pristina Dialogue

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Abstract: This paper explores the complexities surrounding the acceptance of the European Union (EU) Proposal in the ongoing Belgrade-Pristina dialogue. The incongruence between Belgrade and Brussels is shaped by several interrelated factors. Central to this discord is the premature transfer of authority from the United Nations Mission in Kosovo (UNMIK) to the EU. This transition was prompted by UNMIK's failure to safeguard Kosovo's non-Albanian population and the breakdown of status negotiations, culminating in Kosovo's unilateral declaration of independence. Although the EU has facilitated technical agreements that have supported the region's trajectory toward European integration, it has also encountered significant challenges. Notably, the withdrawal of Kosovo Serbs from political, judicial, and law enforcement institutions, compounded by the destabilizing effects of the Ukraine conflict, has intensified the crisis. These dynamics have accelerated a reliance on informal agreements, which circumvent domestic legislative processes and are characterized by a lack of transparency.

The EU Proposal seeks to expedite the normalization process but contains a contentious provision that implicitly demands Serbia's acceptance of Kosovo's independence—an issue perceived in Serbia as a transgression of its core national interests. While the proposal lacks formal legal bindingness, the EU wields considerable influence, applying pressure on Serbia through mechanisms such as economic sanctions. However, such measures risk exacerbating anti-EU sentiment within Serbia. The paper argues that the EU's strategy, which emphasizes informal agreements and seeks to avoid overt confrontation, may yield eventual progress but also risks entrenching political tensions within Serbia and Kosovo. The long-term implications of this approach remain uncertain, posing potential challenges for the stability of the EU and the broader Western Balkans region.

Keywords: EU Proposal, Franco-German Proposal, Ohrid Agreement, Brussels Agreement, Washington Agreement, Belgrade-Pristina dialogue, EU Enlargement, Serbia, Kosovo

UDC: 327(4-67EU:497.11-04)"2008/..."

Received: April 12, 2024

Accepted: August 8, 2024

Over the past 25 years, following the collapse of Yugoslavia and the 1999 war, the issue of Kosovo¹ has become a focal point for scholarly inquiry across various disciplines. The conflict itself drew significant attention from legal scholars and practitioners, who have debated the legitimacy and legality of NATO's intervention² (Wheeler 2000; Chesterman 2002). The establishment of the UNMIK protectorate has inspired deeper investigations into the conceptualization of sovereignty and its implications within this specific context (Tziampiris 2004; Yannis 2005). Kosovo's unilateral declaration of independence and the subsequent case before the International Court of Justice redirected scholarly focus back to international law, prompting reassessments of legal principles related to self-determination and recognition (Hilpold 2009; Cirkovic 2010). Additionally, the deployment of the EULEX mission raised questions regarding its legality and the broader implications for international governance (de Wet 2009).

Since the Brussels Agreement, scholarship has increasingly centered on the EU's conflict management strategies and facilitation of dialogue between Belgrade and Pristina (Bieber 2015; Beysoylu 2017; Economides & Ker-Lindsay 2015). More recently, this research has expanded into several key areas: the evolution of Kosovo's statehood and its international position (Tadić & Elbasani 2018; Baracani 2020; Armakolas & Ker-Lindsay 2020; Reis 2022); proposals for political solutions to Kosovo's status, including the controversial idea of partition³ (Proroković 2022); strategies for European enlargement in the Western Balkans (Lefteratos 2023; Bargués et al. 2024); and Kosovo's role within regional cooperation frameworks (Proroković & Entina 2023; Tota & Culaj 2023; Trošić & Arnaudov 2023).

The dynamic and evolving nature of the Kosovo issue continues to demand scholarly engagement, prompting ongoing reflection and periodic reassessment of past analyses. This paper contributes to this discourse by employing institutionalist and constructivist frameworks to examine the EU's "Agreement on the Path to Normalization between Kosovo and Serbia," commonly known as the EU Proposal (EP). The institutionalist approach is contextualized within the unique setting of the Balkans, where the EU's dual role is evident: on one hand, it pursues clear strategic goals and a unified foreign policy, yet on the other, it encounters conflicting interactions between its strategic interests and normative commitments⁴. The constructivist approach

¹ All references to Kosovo should be interpreted without prejudice to its final status and in compliance with Resolution 1244.

² Chomsky N. 2000. Another Way for Kosovo? *Le Monde diplomatique*. 14.03.2000. URL: <https://mondediplo.com/2000/03/06chomsky> (accessed 17.09.2024).

³ Rossi M. 2018. Partition in Kosovo will Lead to Disaster. *Foreign Policy*. 19.09.2018. URL: <https://foreignpolicy.com/2018/09/19/partition-in-kosovo-will-lead-to-disaster-serbia-vucic-thaci-mitrovica-ibar/> (accessed 17.09.2024).

⁴ Zenelaj Shehi R and Melani I. 2023. The Logic of EU Normative Power in the Western Balkans. Țigănașu R., Încălțărău C. & Alupului C. (eds) *Widening Knowledge for a More Resilient European Union*, Conference Proceedings. https://eurint.uaic.ro/proceedings/articles/EURINT2023_SHE.pdf (accessed 17.09.2024).

highlights these tensions, emphasizing “the arbitrary nature of the Western Balkans concepts as used by the EU [and] their side effects in the Western Balkan countries themselves” (Lika 2024: 73).

On 19 March 2023, Josep Borrell, the EU’s High Representative for Foreign Affairs and Security Policy, announced, “We have a deal, we have an agreement on how to do it.”⁵ This statement appeared to mark a breakthrough after more than two years of EU-led crisis management in the Belgrade-Pristina relationship, addressing issues such as disputes over license plates, the withdrawal of Kosovo Serbs from institutional roles, and the persecution of Kosovo Serbs. However, significant challenges remain. The day after the announcement, Serbian President Aleksandar Vučić declared that Serbia would not compromise on its red lines, emphasizing that Serbia would implement only those parts of the Agreement that do not imply recognition of Kosovo or its accession to the United Nations⁶. While informal agreements are not new in the realm of international law and intergovernmental negotiations, it is highly unusual for one party to immediately announce its refusal to adhere to specific provisions.

The central question guiding this paper is: What is the primary underlying cause of the apparent incongruity? To address this question comprehensively, we begin by examining the objectives and functions of the United Nations Mission in Kosovo (UNMIK) and the subsequent transfer of competencies. Although legally partial, this transfer effectively resulted in a significant devolution of authority to the European Union Rule of Law Mission in Kosovo (EULEX). We then analyze the European Union’s strategy in the Belgrade-Pristina dialogue, exploring the factors contributing to the ongoing impasse and the abrupt change in approach in the context of the conflict in Eastern Europe. Additionally, we critically assess the nature of the EU Proposal (EP) by analyzing its provisions in relation to prior agreements and the current geopolitical environment. The final section seeks to determine the legal bindingness of the document for the involved parties and assesses the extent of the European Union’s leverage in ensuring its implementation.

From Unresolved Settlement to EU-Facilitated Dialogue

Following protracted peace negotiations between the Serbian government and the Kosovar separatist Kosovo Liberation Army, and the failure of the Rambouillet ultimatum⁷, NATO launched a unilateral bombing campaign against Serbia in March 1999. On June 9, a cease-fire agreement was signed in Kumanovo between NATO

⁵ Serbia Report. 2023. *European Commission*. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_695_Serbia.pdf (accessed 17.09.2024).

⁶ Zimonjic J. 2023. Serbia Still Firmly Opposes Kosovo Recognition, UN Accession. *Euractiv*. 20.03.2023. URL: <https://www.euractiv.com/section/politics/news/serbia-still-firmly-opposes-kosovo-recognition-un-accession/> (accessed 17.09.2024).

⁷ The United States’ lack of genuine intent to seek a peaceful solution is well-documented, perhaps best encapsulated by Henry Kissinger, who described the text as “a provocation, an excuse to start bombing. Rambouillet is not a document that even an angelic Serb could have accepted.” (Osmani 2011: 71).

and Serbia, and the following day, the UN Security Council adopted Resolution 1244. This resolution reaffirmed the sovereignty and territorial integrity of Serbia, including Kosovo, while simultaneously mandating the withdrawal of all Serbian military and police forces from the province (UN SC Resolution 1244: Annex 1, par. 2)⁸, effectively placing Kosovo under a UN protectorate. Under these new circumstances, the resolution authorized the UN to establish an interim transitional administration tasked with overseeing the development of provisional democratic self-governing institutions (art. 10), with the ultimate goal of transferring authority to «institutions established under a political settlement» (art. 11, par. 6). In essence, the UN Security Council set forth an international mission to: (a) address the administrative, political, judicial, and security vacuum left by the withdrawal of Serbian institutions; (b) facilitate the establishment of democratic self-governing institutions in Kosovo; and (c) transfer governance to these institutions once a final political settlement was achieved.

This final point implied that negotiations on the province's status would eventually take place, with the views of Kosovo Albanians being considered⁹. Over the following years, UNMIK concentrated on creating the Provisional Institutions of Self-Government (PISG) through a Constitutional Framework¹⁰ and establishing standards such as democratic governance, the rule of law, sustainable returns, and the protection of community rights, all aimed at preparing Kosovo for its final status¹¹. However, in March 2004, spurred by «sensational and ultimately inaccurate reports»¹² alleging Serbian responsibility for the drowning of three Albanian children, violent riots erupted across Kosovo, led by ethnic Albanians. During the nearly two days of unrest, UNMIK and KFOR experienced significant lapses in maintaining control. Paradoxically, rather than leading to a strengthening of security infrastructure and self-governing institutions, the violence of March 2004 signaled to the international community that it was time to initiate status negotiations¹³.

⁸ United Nations Security Council. Resolution 1244. S/RES/1244. *United Nations Mission in Kosovo*. 10.07.1999. URL: <https://unmik.unmissions.org/united-nations-resolution-1244> (accessed 17.09.2024)

⁹ It should be noted that the Kumanovo Agreement was signed by NATO and Serbian representatives, followed by the adoption of the corresponding UN Resolution by the UN Security Council.

¹⁰ United Nations Interim Administration Mission in Kosovo. On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. UNMIK/REG/2001/19. *United Nations Mission in Kosovo*. 13.09.2001. URL: https://unmik.unmissions.org/sites/default/files/regulations/02english/E2001regs/RE2001_19.pdf (accessed 17.09.2024)

¹¹ It is worth noting that UNMIK retained primacy of regulations and subsidiarity instruments.

¹² Failure to protect: Anti-minority violence in Kosovo March 2004. *Human Rights Watch*. 25.07.2004. URL: <https://www.hrw.org/report/2004/07/25/failure-protect/anti-minority-violence-kosovo-march-2004> (accessed 17.09.2024)

¹³ As Kai Eide, then the Special Envoy of the United Nations Secretary-General in Kosovo, observed, «there will not be any good moment for addressing Kosovo's future status, [and] it is unlikely that postponing the future status process will lead to further and tangible results» (see United Nations Secretary-General. Letter dated 7 October 2005 from the Secretary-General to the President of the Security Council). S/2005/635. 07.10.2005. URL: <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N05/540/69/PDF/N0554069.pdf?OpenElement> (accessed 17.09.2024).

Following a report by Kai Eide, the Contact Group¹⁴ determined that Kosovo's future status would not revert to its pre-March 1999 condition nor be established through unilateral actions¹⁵. Subsequently, Ban Ki-moon, then UN Secretary-General, appointed Martti Ahtisaari, a seasoned diplomat and expert on the Balkans, to lead direct negotiations between Belgrade and Pristina. Despite extensive efforts, Ahtisaari's negotiations failed to produce an agreement, prompting him to present a proposal in 2007 advocating for "provisional independence"¹⁶. Russia, however, made it clear that it would exercise its veto in the Security Council, leading Germany to suggest renewed negotiations involving the United States, Russia, and the European Union. Nevertheless, as in the previous negotiation phase, the US-EU-Russia troika was unable to reach a compromise solution.

The culmination of these events was Kosovo's Unilateral Declaration of Independence (UDI) in early 2008, a decision that generated numerous immediate and enduring contradictions. These include overlapping legal frameworks—Resolution 1244, the Ahtisaari Plan, and the Kosovo Constitution—the absence of local "ownership" of the Constitution, and questions surrounding the legality of the EULEX mission within Kosovo's institutional framework (Semenov 2022a). To clarify the core of these opposing interpretations, Kosovo Albanian representatives and the sponsors of the UDI argue that the Ahtisaari-led negotiations were conducted in accordance with Resolution 1244 and that, since the dialogue failed, his proposal should be considered the final political settlement envisaged by the Resolution. Conversely, Serbia and Russia hold nuanced but similar views. Russia maintains that any final settlement must be approved by the UN Security Council, setting a precedent applicable to other comparable regions. Serbia initially tied its objection to the need for UN Security Council approval but, with the EU's involvement, now insists that a final settlement requires the consensus of all three parties: Brussels, Belgrade, and Pristina.

This reasoning can be understood through two interconnected developments. First, the transfer of authority from UNMIK to the EU mission (EULEX) became a point of contention in the Security Council. EU member states and the United States argued that EULEX was grounded in Resolution 1244, while Russia contended that it was linked to Kosovo's (illegal) declaration of independence and lacked a Security Council mandate (de Wet 2009). Nevertheless, in November, a consensus-driven Security Council report resolved disputes across six areas. Second, as EULEX consolidated its presence in Kosovo, the UN General Assembly adopted Resolution 63/3, formally requesting an advisory opinion from the International Court of Justice (ICJ)

¹⁴ This is an informal grouping of countries consisting of the USA, the UK, France, Germany, Italy, and Russia.

¹⁵ Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council. S/2005/635. *United Nations Secretary-General*. 07.10.2005. URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/540/69/PDF/N0554069.pdf?OpenElement> (accessed 17.09.2024)

¹⁶ Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council. S/2007/168. *United Nations Secretary-General*. 26.10.2007. URL: <https://www.refworld.org/docid/4a54bc380.html> (accessed 17.09.2024)

on whether the unilateral declaration of independence by Kosovo's Provisional Institutions of Self-Government was consistent with international law¹⁷. On July 22, 2010, the ICJ ruled that Kosovo's declaration did not violate international law, but emphasized that the Court's opinion was limited to the legality of the declaration itself and did not address its broader legal consequences (ICJ 2010: par. 51)¹⁸. This ambiguity appears to have been a deliberate attempt by the Court to signal Serbia to address Kosovo's status through political means (Tricot & Sander 2011).

These events had profound implications for the negotiation process. The UN's decision to partially delegate authority to the European mission, with both Belgrade and Pristina's consent, paved the way for direct negotiations under EU auspices. After reaching several technical agreements—such as those on cadastral records, registry books, and university diplomas—Belgrade and Pristina signed the First Agreement of Principles Governing the Normalization of Relations, commonly known as the Brussels Agreement. This was the first document signed by both sides' highest representatives: Ivica Dačić, then Prime Minister of Serbia, and Hashim Thaçi, then Prime Minister of Kosovo's provisional institutions. The Agreement established a framework for resolving long-standing issues and can be divided into three main components. A key element involves the creation of the Association/Community of Serb-majority Municipalities (ASM), aimed at providing a degree of autonomy to Serb communities in Kosovo (Brussels Agreement [BA] 2013: par. 1–6)¹⁹. Additionally, the Agreement outlines the restructuring of the judiciary, law enforcement, and governance, facilitating the integration of Serb communities—previously boycotting Pristina's institutions—into Kosovo's governance structures (BA: par. 7–11). Lastly, it mandates the organization of elections in Serb-majority municipalities, mutual commitments not to obstruct each other's EU accession processes, and intensified discussions on energy and telecommunications (BA: par. 12–15), supported by comprehensive agreements on justice, energy, and telecoms²⁰.

In the following years, both sides entrenched their confrontational positions, diverging from the Brussels Agreement. Pristina has remained reluctant to establish the Serb Association, primarily disputing its executive powers, while Serbia launched a campaign for the derecognition of Kosovo. Nevertheless, Belgrade and Kosovo Serbs

¹⁷ Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law. A/RES/63/3. *United Nations General Assembly*. 08.10.2008. URL: <https://www.securitycouncilreport.org/un-documents/document/kos-a-res63-3.php> (accessed 20.01.24)

¹⁸ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. Advisory Opinion. *International Court of Justice*. 22.07.10. URL: <https://www.icj-cij.org/sites/default/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> (accessed: 20.01.24); It is worth mentioning that the decision implicitly rejects the notion that Kosovo is sui generis (see: Christakis, 2011)

¹⁹ Brussels Agreement. First Agreement of Principles Governing the Normalization of Relations. *Kancelarijakim*. 2013. URL: <https://www.kim.gov.rs/eng/p03.php> (accessed 20.01.24)

²⁰ Arrangements regarding Energy, Justice, Telecommunications (2015–16). *Kancelarijakim*. URL: <https://www.kim.gov.rs/eng/pregovaracki-proces.php> (accessed 20.01.24)

implemented some provisions, albeit with delays, such as participating in local and general elections within Kosovo's institutional framework and integrating into the judiciary and police systems²¹.

The year 2020 marked a turning point in the Belgrade-Pristina dialogue. In April, the EU appointed Miroslav Lajčák as the European Union Special Representative (EUSR) for the Belgrade-Pristina Dialogue and broader Western Balkans issues, with a mandate to achieve «comprehensive normalization of relations between Serbia and Kosovo» (EU Council 2020: art. 2, par. 2²²). Concurrently, amidst renewed European engagement in the region, the Trump administration brokered the Washington Agreement on Economic Normalization. This Agreement revisited elements from the Brussels process, emphasized U.S. investment in key projects, and introduced new dynamics, such as Kosovo's inclusion in the Open Balkan initiative (formerly Mini-Schengen) and shared management of the Gazivode/Ujmani Lake. It also underscored a commitment to Western values, including reducing reliance on Russian energy and joining the U.S. Clean Network. However, following the transition from the Trump to Biden administrations and the change from Hoti to Kurti in Kosovo, the Washington Agreement²³ lost its practical momentum, although it did result in Kosovo gaining recognition from Israel and securing its own telecommunications code²⁴.

The Imperative for Informal Agreements and Accelerated Implementation

At this critical juncture, two factors are of paramount importance: the deadlock in the negotiation process due to the lack of implementation, and the geopolitical shift caused by the war in Ukraine. The protracted delays in negotiations are largely attributed to the European Union's hybrid facilitation strategy, which, avoiding comprehensive agreements, tactically disaggregates complex issues into technical components, advancing incrementally through successive stages (Beysoylu 2020). While this approach has yielded certain results, such as the aforementioned Serbian concessions, Pristina has failed to implement the Association of Serb-majority Municipalities (ASM), arguing that its principles «are not entirely in compliance with the spirit of [Kosovo's]

²¹ Kosovo Serbs withdrew from Kosovo's institutions in November 2022 in response to the presence of Kosovo Special Forces, the perceived persecution of ethnic Serbs, and the dispute over license plates.

²² Council of European Union – Decision (2020) Appointing the European Union Special Representative for the Belgrade-Pristina Dialogue and Other Western Balkan Regional Issues. (CFSP) 2020/489. *EurLEX*. 02.04.2020. URL: <https://eur-lex.europa.eu/eli/dec/2020/489/oj/eng> (accessed 20.01.24)

²³ Washington Agreement. Economic Normalisation. 2020. URL: <https://www.new-perspektiva.com/wp-content/uploads/2020/09/Washington-Agreement-Kosova-Serbia.pdf> (accessed 20.01.24)

²⁴ While Kosovo Serbs possess numbers with both the +381 (Serbia) and +383 (Kosovo) country codes, their numbers are not recognized by Serbian telecommunications operators.

Constitution» (Constitutional Court-Kosovo 2015: art. 189, par. 4²⁵). This reasoning challenges the foundational logic of the Brussels dialogue; by the same logic, since Serbia's Constitution regards Kosovo as integral territory, it would imply the exclusion of Serbian representatives from negotiations on Kosovo's status²⁶. Furthermore, while Kosovo's Assembly ratified the Brussels Agreement as legally binding, Serbia's Parliament has notably not done so.

While initial progress in the Belgrade-Pristina dialogue was slow but discernible, the onset of the conflict in Ukraine drastically altered the context. This geopolitical event introduced seismic shifts, disrupting the previous dynamics and necessitating a re-evaluation of negotiation strategies and constitutional considerations. In prior years, an incremental approach appeared to satisfy all stakeholders: the EU maintained the region's path toward integration, Pristina secured concessions such as Serb political participation, its own communication code, and a monopoly over energy issues in the North²⁷, while Serbia enjoyed European loans and investments without having to address the fundamental issue of Kosovo's final status. However, the prolonged conflict in Eastern Europe has increased pressure on both Brussels and Belgrade. The EU's persistent internal divisions regarding statehood have weakened its influence in the region, and "hiding behind Serbia on the key question of Kosovar statehood has become particularly embarrassing since the start of the Russian war against Ukraine in 2022" (Bargués et al. 2024). Consequently, although the EU previously tolerated Serbia's relationship with Russia, the latest European Commission report emphasizes alignment with the Common Foreign and Security Policy (CFSP) as a prerequisite for accession progress (European Commission 2023²⁸).

²⁵ Judgment on the assessment of compatibility of the principles contained in the document entitled "Association/Community of Serb Majority Municipalities in Kosovo – General Principles/Main Elements" with the spirit of the Constitution, specifically Article 3 [Equality Before the Law], paragraph 1, Chapter II [Fundamental Rights and Freedoms], and Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo. Case No. KO 130/15. 2015. *Constitutional Court of Kosovo*. URL: <https://gjk-ks.org/en/decision/concerning-the-assessment-of-the-compatibility-of-the-principles-contained-in-the-document-entitled-associationcommunity-of-serb-majority-municipalities-in-kosovo-general-principlesmain/> (accessed 20.01.24)

²⁶ The Constitutional Court of the Republic of Serbia declared the Governmental Act pertaining to the Agreement on Cadastral Records unconstitutional (The Constitutional Court of Republic of Serbia (2014) Уредба о посебном начину обраде података садржаних у матичним књигама за подручје Аутономне покрајине Косово и Метохија. ЈУо-222/2013. «Службени гласник РС», бр. 116/2014). Notably, the Court abstained from expressing an opinion on the compatibility of the Brussels Agreement (2013) with Serbia's Constitution.

²⁷ As of 2024, the Kosovo energy company KEDS will bill Kosovo Serbs through Elektroever, a company licensed to operate in four Serb-majority municipalities in North Kosovo. The EU has announced this latest agreement, though the full details have yet to be disclosed (European Union – External Action. Kosovo: Statement by the Spokesperson on the Signature of the Commercial Contract between KEDS and Elektroever, 09.12.2023). *The Diplomatic Science of the EU*. URL: https://www.eeas.europa.eu/eeas/kosovo-statement-spokesperson-signature-commercial-contract-between-keds-and-elektroever_en (accessed 20.01.24)

²⁸ European Union - External Action Belgrade-Pristina Dialogue: Press remarks by High Representative Josep Borrell after the Ohrid Meeting with President Vučić and Prime Minister Kurti. *The Diplomatic Science of the EU*. 19.03.2023. URL: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-press-remarks-high-representative-josep-borrell-after-ohrid-meeting_en (accessed 20.01.24)

The selective adherence to, and partial commitment toward, the Brussels Agreement indicate that signatures alone do not guarantee progress toward a final settlement. However, the conflict in Ukraine signals an urgency to shift strategies and accelerate implementation. These developments have placed both the EU and Serbia in a challenging position. On one hand, Russian policymakers, commentators, and even academics draw parallels between NATO's intervention in Yugoslavia in 1999 and Russia's actions in Ukraine (Costamagna 2023). On the other hand, under President Aleksandar Vučić, Serbia has pursued a nuanced foreign policy "balancing act" between European integration and partnership with Russia, reflecting a strategy of equidistance aimed at preserving sovereignty (Jovanović 2023: 111). This strategy seeks to capitalize on EU-Russia tensions without overtly challenging normative positions (Radeljić & Özşahin 2023). Additionally, both EU officials and leaders of EU member states have prioritized regional stability over democratization, even at the expense of undermining the EU's moral authority in the Western Balkans (Radeljić & Đorđević 2020)²⁹.

In effect, the EU views Vučić as the only Serbian politician with both significant public support and the political infrastructure necessary to implement policies on Kosovo, albeit unpopular ones. Meanwhile, Vučić maintains strong ties with Russia in alignment with Serbian public opinion, as recent polls indicate greater popular support for Russia over the EU³⁰. This simplified portrayal of Vučić's role, however, requires further scholarly examination; future research must determine whether he is primarily a pragmatic populist (Castaldo 2020), a leader deeply concerned with his legacy (Semenov 2022b), or something else entirely. Nonetheless, this framework aids in understanding the dynamics within the EU-Serbia-Russia triangle and the necessity for informal agreements.

According to Lipson (1991), informal agreements serve four functions: (a) they maintain a degree of opacity toward domestic constituencies, (b) bypass the need for legislative endorsement, (c) evade scrutiny from other states, and (d) allow for potential renegotiations. Thus, the EU has strategically embraced an informal agreement approach in negotiations between Belgrade and Pristina to achieve outcomes that diverge from public sentiment. This approach acknowledges that Serbian citizens not only support Russia but overwhelmingly reject the idea of recognizing Kosovo, even if it impedes economic progress³¹. Additionally, this strategy bypasses parliamentary ratification. As previously noted, even agreements formally ratified, such as the Brussels Agreement by Pristina, do not guarantee full implementation. By contrast, the EU, incorporating the agreement as a benchmark in Chapter 35, requires both parties to

²⁹ Eror A .How Aleksandar Vucic became Europe's favorite autocrat. *Foreign Policy*. 09.03.2018. URL: <https://foreignpolicy.com/2018/03/09/how-aleksandar-vucic-became-europes-favorite-autocrat/> (accessed 20.01.24)

³⁰ Spoljno-političke orijentacije građana Srbije. *Demostat*. 29.06.22. URL: <https://demostat.rs/sr/vesti/istrazivanja/spoljno-politicke-orijentacije-gradana-srbije/1512> (accessed 20.01.24)

³¹ Ibid.

implement all provisions diligently as a precondition for EU accession. Thirdly, the EU proposal, as an informal agreement, operates outside the oversight of the broader international community, meaning that its implementation does not require discussion within UN forums or EU institutions. Finally, the informal framework allows the three parties flexibility to revisit specific points through future renegotiations.

Our analysis thus far has examined the nature of the Belgrade-Pristina negotiations under EU auspices, highlighting the EU's tolerance for incomplete commitments and the shift toward a more expedient, informal framework in response to changing geopolitical realities. We now proceed to a detailed examination of the EU proposal itself.

Overview of the EU Proposal and Its Objectives

The EU Proposal comprises a main document with a preamble and eleven articles, accompanied by a seven-paragraph annex. The preamble underscores both parties' commitment to regional cooperation and European security, as well as to "respect for territorial integrity and sovereignty," while stipulating that the agreement is "without prejudice to the different views of the Parties on fundamental questions, including on status questions" (EU Proposal [EP], 2023: Preamble)³². However, the first two articles seem to contradict the claim that the agreement does not address status issues. Specifically, the parties agree to "develop normal, good-neighborly relations with each other on the basis of equal rights" and to "mutually recognize their respective documents and national symbols" (EP: art. 1). Furthermore, Belgrade and Pristina are expected to adhere to UN Charter principles such as "sovereign equality of all States, respect for their independence, autonomy and territorial integrity, the right of self-determination, the protection of human rights, and non-discrimination" (EP: art. 2).

This apparent contradiction serves a dual purpose. On the one hand, the clause "without prejudice [...] on status questions" allows Serbia to maintain its position that Kosovo is not a sovereign state. On the other hand, the explicit inclusion of terms like "equal rights" and "respect for their independence" places an obligation on Serbia to treat Kosovo as an independent state, albeit without formal recognition. Thus, the EU Proposal essentially requires Serbia to engage with Kosovo as a *de facto* independent state while avoiding changes to its Constitution (given the inconsistency with these provisions) and mitigating potential domestic opposition.

Notably, these provisions are derived verbatim from the Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic. Following this approach, Article 3 requires both parties to commit to resolving disputes exclusively by peaceful means, in line with the UN Charter (EP: art. 3).

³² EU Proposal. Belgrade-Pristina Dialogue: Agreement on the path to normalisation between Kosovo and Serbia. *The Diplomatic Science of the EU*. 27.02.2023. URL: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-agreement-path-normalisation-between-kosovo-and-serbia_en (accessed 20.01.24)

Article 4 further states that neither party shall “represent the other in the international sphere or act on its behalf” (EP: art. 3 and art. 4, par. 1), implying that Serbia cannot represent Kosovo in international relations. While Kosovo has been represented internationally by UNMIK since 1999—and subsequently by both UNMIK and EULEX since 2008—Serbia has allowed Kosovo’s interim administration to participate “on its own account and speak for itself at all regional meetings,” with an asterisk indicating its autonomous representation (Regional Representation and Cooperation 2012: art. 3–4)³³. The primary objective of Article 4 is to remove this asterisk, expanding Kosovo’s representation from regional to global organizations and potentially legitimizing its direct representation without the involvement of UNMIK or EULEX. Additionally, the provision states that “Serbia will not object to Kosovo’s membership in any international organization” (EP: art. 4, par. 2).

Article 5, however, introduces a slight variation from the Basic Treaty by stipulating that neither Belgrade nor Pristina will obstruct or encourage actions that impede the other party’s progress toward EU accession (EP: art. 5)³⁴.

This provision is already incorporated within the Brussels Agreement (art. 14); however, the novelty lies in Serbia’s commitment to refrain from opposing Kosovo’s membership in any international organization, including UNESCO—a particularly contentious issue. Pristina regards UNESCO membership as an affirmation of Kosovo’s international legal status, countering Serbian efforts to retain Orthodox cultural heritage under Serbian designation (Surlić 2017). Article 7 of the EU Proposal appears designed to address this impasse, stipulating that both parties “shall formalize the status of the Serbian Orthodox Church in Kosovo and afford a high level of protection to Serbian religious and cultural heritage sites, in line with existing European models” (EP, art. 7, par. 2). Together, Articles 4 and 7 create a framework wherein Serbia would allow Kosovo to join UNESCO, while Kosovo would commit to preserving the property rights of the Serbian Orthodox Church (SOC) in Kosovo³⁵.

Article 6 of the Proposal envisions Belgrade and Pristina continuing EU-led negotiations “towards a legally binding agreement on comprehensive normalization of their relations” (EP: art. 6, par. 1), listing potential cooperation areas such as the economy, science and technology, transportation, and judicial and law enforcement relations (EP: art. 6, par. 2). However, the article does not specify any binding implementation measures.

³³ According to the same document, this modification does not prejudice UNMIK’s legal rights, and its representative shall receive invitations to attend such meetings (Regional Representation and Cooperation 2012: art. 5).

³⁴ The Basic Treaty (1972: art. 5) asserts that both German republics will promote peaceful relations and security cooperation.

³⁵ Washington Agreement (par.10) also mentions the protection of religious sites of the SOC.

Beyond its cultural provisions, Article 7 also calls for both parties to “ensure an appropriate level of self-management for the Serbian community in Kosovo and enable service provision in specific areas, including the possibility of financial support from Serbia and a direct communication channel between the Serbian community and the Government of Kosovo” (EP: art. 7, par. 1). While the Association of Serb-majority Municipalities (ASM) is addressed in the Brussels Agreement with far more detail—including its structure, dissolution process, governance bodies, and oversight over areas such as economic development, education, health, and urban planning (Brussels Agreement: art. 1–6)—the EU Proposal does not clarify whether the ASM would hold executive powers, which remains the central barrier to its implementation.

Article 8, inviting Belgrade and Pristina to exchange permanent missions, is another provision drawn verbatim from the Treaty between the Federal Republic of Germany and the German Democratic Republic (cf. Basic Treaty 1972: art. 8³⁶). This builds on previous initiatives, such as the exchange of Liaison Officers in 2013 (Liaison Arrangement, 2013³⁷). Article 9 reaffirms the EU’s commitment to convene a donors’ conference to secure financial assistance for key sectors, including economic development, connectivity, and environmental sustainability, aligning with broader EU objectives in the region (EP: art. 9). However, the EU stipulates that “[n]o disbursement will occur until the EU determines that all provisions of the Agreement have been fully implemented” (European Commission 2023: 94).³⁸

Article 10 includes two primary provisions. First, it mandates the creation of a Joint Monitoring Committee, overseen by the EU, to monitor the implementation of the Agreement (EP: art. 10, par. 1). This Committee, inaugurated on April 18, 2023, comprises Miroslav Lajčák, the EU Special Representative, Agron Bajrami, Kosovo’s Ambassador in Brussels, and Petar Petković, Serbia’s Chief Negotiator. Second, Article 10 reaffirms both parties’ obligation to comply with all previous Dialogue agreements, underscoring their continued legal validity and binding nature (EP: art. 10, par. 1). The final article of the Proposal commits both sides to adhere to the Implementation Roadmap attached to the Agreement (EP: art. 11). The annex primarily reiterates obligations from the Proposal with specified deadlines, cautioning that non-compliance “may have direct negative consequences for their respective EU accession processes and the financial aid they receive from the EU” (EP Annex 2023: par. 12)³⁹.

³⁶ Basic Treaty. Treaty on the Basis of Relations Between the Federal Republic of Germany and the German Democratic Republic and Supplementary Documents. Signed in Berlin. *Luxemburg centre for contemporary and digital history*. 21.12.1972. URL: https://www.cvce.eu/content/publication/1999/1/1/3b9b9f0d-6910-4ca9-8b12-accfcb91d28e/publishable_en.pdf (accessed 20.01.24)

³⁷ Liaison Arrangement. Agreed Conclusion. 31. 05.2013. URL: <https://dialogue-info.com/exchanging-liaison-officers/> (accessed 20.01.24)

³⁸ European Union – External Action Belgrade-Pristina Dialogue: Press remarks by High Representative Josep Borrell after the Ohrid Meeting with President Vučić and Prime Minister Kurti. 19.03.2023. URL: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-press-remarks-high-representative-josep-borrell-after-ohrid-meeting_en (accessed 20.01.24)

³⁹ EU Proposal - Annex. Belgrade-Pristina Dialogue: Implementation Annex to the Agreement on the Path to Normalisation of Relations between Kosovo and Serbia. *The Diplomatic Science of the EU*. 18.03.2023. URL: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-implementation-annex-agreement-path-normalisation-relations-between_en (accessed 20.01.24)

In essence, the EU Proposal obliges Serbia to accept Kosovo's independence without formal domestic or international recognition or ratification. Kosovo would effectively receive Serbia's *de facto* recognition and a pathway to membership in most international organizations in return for establishing the ASM and protecting SOC property, though the specific implementation details remain subject to further negotiations. This arrangement faces considerable opposition among Serbian citizens, and the ruling parties show little willingness to implement it. Thus, the pressing question is: can Serbia ultimately say "no"?

Legal Nature of the EU Proposal: Consequences and Challenges

Is the EU Proposal, in its current form, legally binding for Belgrade and Pristina? This question can be approached from at least two perspectives. The first approach begins with the principle of *pacta sunt servanda*, which holds that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith" (Vienna Convention on the Law of Treaties 1969: art. 26)⁴⁰. However, applying this principle to the EU Proposal may be misleading for two reasons. First, it presumes that both Belgrade and Pristina have given verbal consent to the roadmap outlined in the Proposal. Yet, Vučić, the sole Serbian representative in these meetings, has openly stated that certain provisions of the Proposal are unacceptable for Serbia. Second, even if we overlook this factor, two schools of thought exist regarding *pacta sunt servanda*: one posits that all "treaties" are universally binding, while the other argues that only validly concluded agreements carry binding force⁴¹.

If we assume Serbia's verbal consent and subscribe to the first school of thought, then the Proposal would indeed be legally binding⁴². However, this line of reasoning raises further complications. If verbal consent or a signature obligates a represented entity, then similar weight could be ascribed to the Washington Agreement, signed by both Prime Ministers, or to the letter sent by then-Prime Minister Hashim Thaçi of Kosovo to Anders Rasmussen, then Secretary General of NATO⁴³. Nevertheless, Pristina's current administration, led by Albin Kurti, disregards these documents, citing inconsistencies with Kosovo's legal framework. By applying the same logic, Serbian representatives could also contest the EU Proposal and prior agreements on constitutional grounds, potentially undermining the entire negotiation process.

⁴⁰ Vienna Convention on the Law of Treaties. 23.05.1969. URL: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 20.01.24)

⁴¹ Here, we focus solely on the first school of thought; establishing the precise criteria for treaty validity falls outside the scope of this paper.

⁴² According to this school of thought, all arrangements—regardless of terminology or form—are legally binding if issued by the President or Prime Minister (Romashev, Ostrouhov 2018).

⁴³ In this letter, Thaçi provides "assurances that the Kosovo Security Force would only undertake a mission in Northern Kosovo with prior concurrence from KFOR" (Thaçi 2013: par. 3).

The second approach to this question adopts a strictly legal viewpoint: since the Proposal's preamble preserves Serbia's stance that Kosovo does not constitute an independent state, [...] an international court assessing whether Serbia had recognized Kosovo by endorsing this or previous agreements would likely conclude that it has not. While this hypothetical position seems plausible at present, it rests on the assumption that Serbia will continue to act in a way that opposes Kosovo's sovereignty. However, it is conceivable that Serbia, without formally endorsing the contentious provision, might nonetheless align its policies with the Proposal. In such a scenario, would an international court interpret this conduct as the creation of legal norms through customary practice? It is reasonable to surmise that the court would refrain from making a definitive judgment on this matter and would instead encourage a political resolution, similar to the stance taken in the ICJ advisory opinion.

While both approaches diverge fundamentally, they converge on one point: the outcome ultimately depends on the EU's leverage to impose the Proposal on Serbia, and to a lesser extent on Kosovo. Although the EU's popularity in both Serbia and Kosovo has declined, it still holds various leverage packages. The EU has integrated provisions of the Proposal into its accession requirements, and the European Parliament has also adopted a resolution calling for an independent international investigation into recent parliamentary, provincial, and municipal elections (European Parliament 2024: par. T)⁴⁴. Thus, Brussels has made it clear that Serbia must accept—if not formally recognize—Kosovo's independence before joining the EU, while signaling that Vučić and his administration are under scrutiny.

The second package involves the potential suspension of EU funds and other financial measures. For Serbia, the European Parliament has urged the European Commission to withhold funding under the Instrument for Pre-Accession Assistance (IPA) III if investigations reveal Belgrade's involvement in the Banjska incident⁴⁵ (European Parliament 2023: par. 4⁴⁶) or if it fails to implement key recommendations from the 2023 elections (European Parliament 2024: par. 27). Regarding Kosovo, the Commission has suspended Pristina from IPA programming, halted proposals under the Western Balkans Investment Framework, and restricted its officials from high-level EU events and bilateral visits (European Commission 2023b: 125⁴⁷).

⁴⁴ European Union – European Parliament. Joint motion for a resolution on the situation in Serbia following the elections. RC-B9-0106/2024. *European Parliament*. 07.02.2024. URL: https://www.europarl.europa.eu/doceo/document/RC-9-2024-0106_EN.html (accessed 20.01.24)

⁴⁵ The Banjska incident, which took place in September 2023, resulted in four fatalities: three Kosovo Serb civilians and one ethnic Albanian member of the Kosovo Special Forces. The EU and Kosovo have labeled it an "act of terrorism." In contrast, the general Serbian population regards the Serb casualties as heroes, while the official stance from Belgrade asserts that, according to Thaçi's letter to Rasmussen, Kosovo Special Forces have no right to operate in North Kosovo.

⁴⁶ European Union – European Parliament. Joint motion for a resolution on the recent developments in the Serbia-Kosovo dialogue, including the situation in the northern municipalities in Kosovo. RC-B9-0437/2023. *European Parliament*. 18.10.2023. URL: https://www.europarl.europa.eu/doceo/document/RC-9-2023-0437_EN.html (accessed 20.01.24)

⁴⁷ European Union – European Commission (2023b) Kosovo* 2023 Report. *The Diplomatic Science of the EU*. URL: https://www.eeas.europa.eu/sites/default/files/documents/2023/SWD_2023_692%20Kosovo%20report_0.pdf (accessed 05.02.2024).

However, such measures appear to have minimal impact on Belgrade and Pristina. For Kurti and his party—who “have won a mandate to directly challenge Kosovo’s EU/US masters” (Blumi 2020: 95)—these actions may actually bolster domestic support. European sanctions contribute to Kurti’s portrayal as a leader opposing elites perceived to have subordinated Kosovo’s interests to Brussels and Washington. For Vučić, EU pressure related to elections and the Banjska incident, coupled with his refusal to impose sanctions on Russia or sign the EU Proposal, supports his narrative about the hypocrisy of EU officials. As Vučić himself stated, if Serbia sanctioned Russia, “I would be a king, not a king, I would be a tsar of democracy. And if I recognized an independent Kosovo, I would immediately receive the Nobel Peace Prize”⁴⁸, signaling to his electorate that the EU’s interests are less about Serbia’s internal governance and more about aligning Serbia with Brussels’ agenda.

In sum, the EU’s “carrot and stick” approach has proven ineffective in driving policy change in Belgrade and Pristina. Instead, it seems to reinforce anti-EU sentiment and reduce its appeal among the public. However, Kurti will face general elections within the next year, and a united, EU-backed opposition could have a realistic chance of unseating his administration. In Serbia, however, the situation is more complex. The war in Ukraine will eventually end, and time is a factor. Russian officials have repeatedly drawn parallels between Kosovo and Crimea, later extending the comparison to the Ukraine conflict—a link Brussels is keen to sever. The EU has one final, albeit highly improbable, option: imposing comprehensive economic sanctions on Serbia. Such measures could destabilize Vučić’s administration, as his popularity hinges on stable economic growth and diplomatic balancing. Yet, this process could take years, and there is no guarantee that a new administration would succeed in overcoming domestic resistance to reach an agreement with Pristina. The EU recognizes Vučić’s unique capacity and the public trust he commands—a reality of which Vučić is well aware.

Conclusion

An exploration of the complex factors underlying the divergence between Belgrade and Brussels regarding the acceptance of the EU Proposal—whether in full or selectively—leads to the following conclusions:

UNMIK, despite achieving modest progress in addressing the security vacuum and supporting institution-building within Kosovo’s self-governing bodies, transitioned prematurely to the third stage of authority transfer, according to its original mandate for post-settlement Kosovo. This premature transfer resulted from two consecutive failures: UNMIK’s inability to protect the non-Albanian population, which,

⁴⁸ Aleksandar Vučić, interview by Gordana Uzelac at TV Pink. *YouTube*. 18.02.2024. URL: <https://www.youtube.com/watch?v=TmJkexyfsBM&t=546s> (accessed 05.02.2024).

rather than prompting a shift in security strategy, accelerated status negotiations; and the failure of these negotiations ultimately culminated in Kosovo's Unilateral Declaration of Independence.

Amid these increasingly strained circumstances, the EU assumed authority from the UN. Initially, the EU managed to de-escalate tensions through a series of technical agreements and the Brussels Agreement, which ostensibly satisfied all parties involved. Serbia made several concessions to Pristina, benefiting from EU funding while remaining unconcerned about Kosovo's final status, and the EU appeared content to guide the region toward European integration.

However, crises—including the withdrawal of Kosovo Serbs from judicial, police, and political roles, along with the conflict in Ukraine—accelerated the process. Brussels now seeks to assert control over its immediate region and to prevent Russia from drawing parallels between Kosovo and Ukraine. The informal structure of these agreements is designed to maintain opacity for domestic audiences, circumvent the need for legislative approval, and allow space for future renegotiations. Unlike prior agreements, the EU Proposal introduces a pivotal provision requiring Serbia to accept Kosovo's independence—a step that Serbia regards as crossing its red lines, though it remains open to dialogue.

While the proposal is not legally binding in its current form, the EU retains considerable leverage. EU institutions have applied pressure on Vučić and his ruling party by initiating investigations into the Banjska incident and the 2023 elections. Additionally, given Serbia's economic dependence on the EU market, Brussels has the option of imposing economic sanctions. However, as demonstrated in the case of Kurti's administration, such measures can often backfire, intensifying anti-EU sentiment. On the other hand, more extreme measures could lead to unpredictable outcomes.

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Conflict of interests:



The authors declare the absence of conflict of interests.

Acknowledgements:

This study was supported by the Ministry of Science, Technological Development and Innovations of the Republic of Serbia (Contract No. 451-03-66/2024-03/200184).

УДК: 327(4-67EU:497.11-04)"2008/..."
Поступила в редакцию: 12.04.2024 г.
Принята к публикации: 08.08.2024 г.

Имманентная критика «Предложения ЕС» в контексте диалоге Белград – Приштина

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[DOI 10.24833/2071-8160-2024-5-98-100-119](https://doi.org/10.24833/2071-8160-2024-5-98-100-119)

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В статье проводится анализ взаимодействия представителей Белграда и Брюсселя в процессе принятия предложения ЕС (EU Proposal). Автор выделяет ряд факторов, приводящих к расхождению позиций Белграда и Брюсселя. Одной из ключевых проблем стала преждевременная передача полномочий от Миссии ООН в Косово (МООНК) к Европейскому союзу, вызванная неспособностью МООНК обеспечить защиту неалбанского населения Косово и провалом переговоров о статусе региона, что в итоге привело к одностороннему провозглашению независимости Косово. Несмотря на достигнутые технические соглашения, поддерживавшие регион на пути европейской интеграции, ЕС столкнулся с рядом кризисов, включая массовый выход косовских сербов из политических, судебных и полицейских структур, что осложнилось ситуацией, связанной с конфликтом на Украине. Эти факторы ускорили переход к неформальным соглашениям, не требующим законодательного одобрения и находящимся вне контроля избирателей. Основная цель предложения ЕС — ускорить процесс нормализации, однако его ключевое положение, обязывающее Сербию фактически признать независимость Косово, Белград рассматривает как пересечение «красной линии». Несмотря на отсутствие юридически обязывающей силы, ЕС располагает значительными рычагами давления, включая возможность введения экономических санкций, которые, однако, могут усилить антиевропейские настроения. В статье делается вывод, что стратегия ЕС, основанная на неформальных соглашениях и избегании прямой конфронтации, в перспективе может способствовать достижению результатов, но при этом усиливает политическую напряжённость как в Сербии, так и в Косово. Конечный результат применения данного подхода остаётся неопределённым и может иметь долгосрочные последствия для ЕС и стабильности в регионе Западных Балкан.

Ключевые слова: европейское предложение, франко-германское предложение, Охридское соглашение, Брюссельское соглашение, Вашингтонское соглашение, диалог Белград – Приштина, расширение ЕС, Сербия, Косово

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Конфликт интересов:

Авторы заявляют об отсутствии конфликта интересов.

Благодарности:

Это исследование было проведено при поддержке Министерства науки, технологического развития и инноваций Республики Сербия (контракт № 451-03-66/2024-03/200184).

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