

How the Agreement on the Path to Normalisation **IF IMPLEMENTED** changes relations between Kosovo and Serbia?



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Brief analysis :

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EXECUTIVE SUMMARY

- The Agreement on the Path to Normalisation between Kosovo and Serbia (APN), creates a possibility for a new state of relations between the two countries, albeit a new status-quo. Through the APN Serbia practically recognizes statehood attributes of Kosovo, by accepting national symbols, as well as the obligation to respect the territorial integrity and sovereignty of Kosovo, and treat Kosovo on the basis of the principles of the Charter of the United Nations (UN), and the Treaty of the European Union (TEU). The APN also makes Kosovo and Serbia responsible to preserve the peace and “contribute to fruitful regional co-operation and security in Europe”.

- The new state of relations (new status-quo), is dependent upon effective implementation of the Agreement on the Path to Normalisation. Without effective implementation, the APN becomes another conflict management tool, rather than an instrument for affirmative normalization of relations. The current trends are not optimistic for implementation and suggest that both parties, especially in Serbia, are focused on undermining the APN and its impact;

- The Agreement on the Path to Normalisation between Kosovo and Serbia, while introduces significant affirmative changes in the Kosovo-Serbia relations – if implemented – it also includes elements that can potentially create legal and political hurdles for the Kosovo government. The APN marks the first time, that a Kosovo government accepts Serbia’s position on the status question. The preamble of the APN includes the following sentence: “[...] without prejudice to the different view of the Parties on fundamental questions, including on status questions”, but there is not reference to the ICJ advisory opinion on the declaration of independence of Kosovo. Based on the precedents set by previous agreements/arrangements between Kosovo and Serbia in the framework of the EU-facilitated normalization dialogue, whenever the phrasing “without prejudice to the status” was used, a reference to the ICJ advisory opinion on declaration of independence was also included;

- The Agreement on the Path to Normalization of relations between Kosovo and Serbia has been welcomed by the European Council, which marks the first time that all 27 Member States of the European Union (EU) have endorsed an agreement from the normalization dialogue. The European Council conclusions note that APN puts “the relationship between both parties on a new and sustainable basis as a historic chance that should be seized by both parties” and urges implementation “ ; ”

- In other words, if the optimistic scenario of all five recognizing Kosovo fails, then Spain and Cyprus should move towards the current Greek position on Kosovo, while Greece itself, alongside Slovakia and Romania, should move to formal recognition. In Kosovo there are concerns about the position of Romania, which is seen as moving further away from constructive engagement with Kosovo and recognition and closer to the position of Spain.
- The role of the European Union (EU) as a facilitator in the dialogue for normalization of relations between Kosovo and Serbia, has arguably evolved into an arbiter, as a result of the Agreement on the Path to Normalization (APN), and the implementation roadmap. This means that for Kosovo and Serbia implementation of the provisions from the APN is a contractual obligation towards the EU in the framework of the European integration process. This arrangement was necessitated by the refusal of Serbia to sign the APN, although it agreed to it verbally. In this context, when neither side has signed the APN, the role of EU as an arbiter is a must, in order to guarantee implementation by both countries.
- The transparency of the process of the dialogue for normalization of relations with Serbia has declined in Kosovo. The Kosovo government has limited its reporting on the normalization dialogue both to the public as well as to the Kosovo Assembly. In addition to this, Kosovo government has acted against previous precedents of asking the Kosovo Assembly for consent when accepting a high-level agreement with Serbia, such as the case from 2013 with the "First agreement of principles governing the normalization of relations".
- The implementation annex to the Agreement on the Path to Normalisation of relations between Kosovo and Serbia agreed in Ohrid in March, is vague, and lacks concrete measures to ensure implementation of the agreement, including sequencing of actions.

EXAMINING THE PROS AND CONS OF THE AGREEMENT ON THE PATH TO NORMALISATION BETWEEN KOSOVO AND SERBIA

The Agreement on the Path to Normalization (APN) of relations between Kosovo and Serbia has potential to change the current status-quo between the two countries and introduce a new phase of relations. According to the European Union (EU) APN “will put the relationship between Kosovo and Serbia on a new and sustainable basis”¹. We call this new phase of relations **a functional recognition of Kosovo’s independence** from Serbia. One the key features of this new phase of relations is that Serbia recognizes or accepts major statehood attributes of Kosovo and creates an enabling environment for an independent Kosovo to move forward with regional, European and international integration. However, in this context, there are at least, two major challenges. First, **the implementation of the APN is vital** for this new phase of relations between Kosovo and Serbia to materialize, and the current trends are not positive that the APN will be implemented. Secondly, **changes in the position of the five EU Member States that do not recognize Kosovo’s independence is crucial** for unlocking the process of Euro-Atlantic integration, and the APN is yet to lead to these changes, and the indicators are not positive it will, based on the recent votes on accepting Kosovo’s application for membership in the Council of Europe (CoE). This is despite the fact that the APN was endorsed by all 27 EU Member States in the conclusions of the European Council meeting².

The weak commitment of Serbia to the agreement will undermine the effective implementation of the Agreement on the Path to Normalisation of relations. In an address to the Serbian citizens, President Vucic implies that he did not accept the APN but the concept and stated the following: “An additional problem is that Article 7 of the Vienna Convention establishes that the verbal consent of the head of state is binding. Of course, always less binding than a signature, but it has value. That’s why I refused to accept verbal nouns like acceptance, nor ‘adoption’, neither ‘acceptance’, nor ‘acknowledgment’”³. In other words, President Vucic planned and intentionally refrained from using any words that would imply that Serbia accepted the APN, and he has vowed not “to sign anything”⁴ from the EU-facilitated dialogue. **The first test for the commitment of Serbia towards the Agreement on the Path to Normalisation of relations came on April 25, 2023, when it voted against Kosovo’s application for membership in the Council of Europe (CoE)**, and even vowed to ‘punish’ states that abstained from the vote⁵. The article 4 of the APN clearly states that “Serbia will

1 Belgrade-Pristina Dialogue: Press remarks by High Representative Josep Borrell after High-Level Meeting with President Vučić and Prime Minister Kurti. February 27, 2023. Available at: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-press-remarks-high-representative-josep-borrell-after-high-level_en

2 Belgrade-Pristina Dialogue: Press remarks by High Representative Josep Borrell. February 27, 2023.

3 B92. (2023, March 19). Vučić explained: Why didn’t I sign? Available at: https://www.b92.net/eng/news/politics.php?yyyy=2023&mm=03&dd=19&nav_id=115616

4 Serb leader says he won’t sign anything during Kosovo talks. Associated Press (AP). March 16, 2023. Available at: <https://apnews.com/article/serbia-kosovo-vucic-kurti-meeting-eu-30a7f921cf2c31a4f21e71d59e55ab5c>

5 Serbia to change foreign policy after EU votes for Kosovo’s membership to Council: President. April 25, 2023.

not object to Kosovo's membership in any international organisation", and by voting against, and not potentially abstaining, it effectively breached the agreement.

The Agreement on the Path to Normalisation between Kosovo and Serbia⁶ (APN), creates a possibility for a new state of relations between the two countries, albeit a new status-quo. Through the APN Serbia practically recognizes statehood attributes of Kosovo, by accepting national symbols, as well as the obligation to respect the territorial integrity and sovereignty of Kosovo, and treat Kosovo on the basis of the principles of the Charter of the United Nations (UN)⁷, and the Treaty of the European Union (TEU). The Agreement also gave responsibility to both countries to preserve the peace and "contribute to fruitful regional co-operation and security in Europe". The APN upgrades relations between Kosovo and Serbia to a higher level of symmetry, as both agree to "develop normal, good-neighbourly relations with each other on the basis of equal rights." In other words, Serbia accepts Kosovo as a neighbour and agrees to develop relations on the basis of equal rights. The EU itself has argued that the APN marks a new phase of relations between Kosovo and Serbia. The statement by EU's High Representative Josep Borrell after High-Level Meeting with President Vučić and Prime Minister Kurti includes the following sentence: "Now we are going out of the crisis management [phase], and we are looking for a structured solution to the normalisation"⁸. In other words, the APN – if implemented – creates an enabling environment for the new phase of relations, or what we call, **a functional recognition of the statehood of Kosovo**, on the part of Serbia. Functional recognition seems to better capture the "zeitgeist" of the new stage of relations between Kosovo and Serbia, based on the APN, until a comprehensive and legally binding agreement is reached by both countries. Functional recognition, is a transitory phase in the relations between Kosovo and Serbia and means that there are no technical, legal or political obstacles for cooperation between the two parties, and for Kosovo to make progress towards regional, European and international integration. However, **the new state of relations (new status-quo), is dependent upon effective implementation of the Agreement. Without effective implementation, the APN becomes another conflict management tool, rather than an instrument for normalization of relations.** Effective implementation of the APN is undermined by a number of factors, including the fact that the agreement is not signed by leaders from Kosovo and Serbia, adding political and legal confusion.

Some of the important features of the 'new historic' agreement between Kosovo and Serbia, starts with the title, which refers to the agreement as between "Kosovo and Serbia" and not "Prishtina and Belgrade". This is symbolic, but important change, marks

Available at: <https://www.aa.com.tr/en/europe/serbia-to-change-foreign-policy-after-eu-votes-for-kosovos-membership-to-council-president/2881260>

6 Belgrade-Pristina Dialogue: EU Proposal - Agreement on the path to normalisation between Kosovo and Serbia, available at: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-eu-proposal-agreement-path-normalisation-between-kosovo-and-serbia_en

7 Kushtrim Istrefi, Kosovo-Serbia Agreement on the Normalisation of Relations: Not Signed but Binding, Not Formally on Recognition but with Clear Elements of Implicit Recognition, Available at: <http://opiniojuris.org/2023/03/28/kosovo-serbia-agreement-on-the-normalisation-of-relations-not-signed-but-binding-not-formally-on-recognition-but-with-clear-elements-of-implicit-recognition/>

8 Belgrade-Pristina Dialogue: Press remarks by High Representative Josep Borrell after High-Level Meeting with President Vučić and Prime Minister Kurti. Available at: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-press-remarks-high-representative-josep-borrell-after-high-level_en

the transition of Serbia, as well as the EU, towards a higher degree of recognition of the statehood attributes of Kosovo. The agreement refers to Kosovo and Serbia, as ‘contracting parties’, establishing some level of political and legal symmetry. This marks a change from previous agreements that referred to Kosovo and Serbia as ‘parities, sides’. On the other hand, in Article 4 of the Agreement, Serbia accepts not to object to Kosovo’s membership in any international organization, which strengthen Kosovo’s subjectivity in the international system. In the preamble to the agreement, it is stated that contracting parties have “respect for territorial integrity and sovereignty and the protection of national minorities are a basic condition for peace”, which effectively means Serbia recognizes Kosovo’s sovereignty and territory. This is a step further for Serbia from 2013 when it made the first formal move of recognizing territorial integrity of Kosovo in the Stabilization and Association Agreement (SAA)⁹. Table 1, provides an overview of how the APN changes from previous agreements, in favour of recognition of Kosovo’s statehood attributes.

TABLE 1 How the Agreement on the Path to Normalization between Kosovo and Serbia (APN) changes the relations between the two countries and leads to a working recognition of Kosovo’s statehood.

No	Previous state of play	Changes with APN
1	Agreement, conclusion, arrangements	Agreement
2	Prishtina and Belgrade	Kosovo and Serbia
3	Sides, parties	Contracting parties, Parties
4	No similar reference previously	“Both Parties shall mutually recognise their respective documents and national symbols [...]”
5	Kosovo’s integration in organizations promoting regional cooperation in Balkans	“Serbia will not object to Kosovo’s membership in any international organisation.” (Article 4)

⁹ See article 135 of the Stabilization and Association Agreement (SAA) between the European Communities and their Member States of the one part, and the Republic of Serbia, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22013A1018\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22013A1018(01)&from=EN) p.32

6	Kosovo participation is conditioned with the use of asterisk (*) in the name with a sentence "This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence."	"The Parties proceed on the assumption that neither of the two can represent the other in the international sphere or act on its behalf." (Article 4)
7	Requirement for a "Legally binding agreement" only part of the EU's 2018 strategy "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" ¹⁰	Reaching a legally binding agreement on comprehensive normalization of relations has been accepted by Serbia and it is a contractual obligation between Kosovo, Serbia and the EU (article 6).
8	Exchange of Liaison Officer	"The Parties shall exchange Permanent Missions" (article 8)
9	Liaison officers are hosted in EU Delegation/EU Office	"[...] established at the respective Government's seat" (article 8), meaning in the capital cities of both countries and in own building, which is tantamount to a diplomatic mission (second sentence of the article 8).
10	No similar previous reference	Reference to article 2 and 21 of the Treaty of the European Union (article 5). Article 2 recognizes both Kosovo and Serbia of TEU refers to values that are common to the Member States of the EU, while article 21 refers to EU's engagement in the international relations, and one of the values that obliges Serbia and Kosovo to respect is "security, independence and integrity" as well as prevent conflict.¹¹

¹⁰ A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, available at: https://www.eeas.europa.eu/sites/default/files/communication-credible-enlargement-perspective-western-balkans_en.pdf p. 7

¹¹ See Treaty of the European Union (EU), available at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf-140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

11 No similar previous reference

“In conformity with the United Nations Charter, the Parties shall settle any disputes between them exclusively by peaceful means and refrain from the threat or use of force.” This provides a strong legal and political foundation for the agreement, as well as consolidates further the attributes of statehood of Kosovo.

The Agreement on the Path to Normalisation between Kosovo and Serbia, while introduces significant affirmative changes in the Kosovo-Serbia relations – if implemented – it also includes elements that can potentially create legal and political hurdles for the Kosovo government. The APN marks the first time, that the Kosovo government explicitly accepts Serbia’s position on the status question.

The preamble to the Agreement on the Path to Normalisation includes the following statement: “Proceeding from the historical facts and without prejudice to the different view of the Parties on fundamental questions, including on status questions”, which means that Kosovo government agrees to disagree with Serbia, and vice versa, on the status of the country as an independent state. This is a major compromise on the side of Kosovo, when compared to other agreements from the EU-facilitated dialogue, especially because this statement or the APN in its entirety, does not include any reference to the advisory opinion of the International Court of Justice (ICJ) from 2010 which “concluded that the declaration of independence in respect of Kosovo had not violated general international law”¹². Accordingly, this is the major difference between the APN and the February 2012 agreed conclusions between Kosovo and Serbia on arrangements regarding regional representation and cooperation, which introduced for the first time the asterisk (*) that reads –“This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.”¹³ Perhaps, by avoiding the reference to the ICJ opinion, the EU wanted to also avoid references to the UN Resolution 1244. Also, the Agreement on the Path to Normalisation essentially makes the 2012 arrangement on regional representation void with article 4 which states that “The Parties proceed on the assumption that neither of the two can represent the other in the international sphere or act on its behalf.” In other words, Kosovo can represent and speak for itself in regional organizations and meetings, and therefore the asterisk (*) should no longer be necessary or required. Nevertheless, the APN in article 10 states that Kosovo and Serbia “confirm their obligation to implement all past Dialogue agreements, which remain valid and binding.”

The EU should provide legal clarity, with respect to the meaning and obligations of both contracting parties vis-à-vis the APN, which is a must in the aftermath of the APN

¹² Accordance with international law of the unilateral declaration of independence in respect of Kosovo, July 22, 2010, available at: <https://www.icj-cij.org/case/141#:~:text=The%20Court%20thus%20concluded%20that,1244%20of%2010%20June%201999,para.5>

¹³ Agreed Conclusions: Arrangements on Regional Representation and Cooperation, available at: <https://dialogue-info.com/wp-content/uploads/2011/02/Agreement-on-Regional-Representation-and-Cooperation-24-February-2012.pdf>

becoming an integral part of Kosovo's and Serbia's contractual obligations towards the EU in the framework of the accession process. In addition to this, considering that the 2012 was a technical arrangement on regional representation, it does not hold the same political and legal relevance as the APN, and therefore, if the APN is challenged legally in the Constitutional Court of Kosovo, it can potentially have a similar outcome as the 2015 agreement on "General Principles/ Main Elements of ASM/CSM"¹⁴, but then again, the APN has not been signed by either side, which means that it will be highly unlikely to challenge the agreement in the court. In addition to the preamble, article 7 of the APN, also present a potential major legal challenge for the government of Kosovo, particularly the following: "[...] to ensure an appropriate level self-management for the Serbian community in Kosovo and ability for service provision in specific areas [...]". In this context, there are three key issues: what does self-management imply or mean in policy context? what would constitute an 'appropriate level' and who defines that? And, does the 'ability for provision of services' contradicts the 2015 ruling of the Constitutional Court of Kosovo on the establishment of the Association/Community of Serb-majority municipalities? In addition to this, formalizing the status of the Serbian Orthodox Church in Kosovo, will present its own challenge, because this implies there is an agreed status, that only requires formalization. Does this refer to existing arrangements from the Ahtisaari Plan, or something else?

TABLE 2 Potential legal and political hurdles for the Kosovo government stemming from the Agreement on the Path to Normalization between Kosovo and Serbia

No	Previous state of play	The APN
1	Agreements, conclusions, arrangements, signed or initialled	Not signed
2	No similar previous reference at the high-level agreements	"[...] without prejudice to the different view of the Parties on fundamental questions, including on status questions" (preamble).
3	Community/Association established on the same basis as the existing statute of the Association of Kosovo municipalities ¹⁵	"... ensure an appropriate level of self-management for the Serbian community in Kosovo and ability for service provision in specific areas" (article 7 of the APN) ¹⁶

14 General Principles/ Main Elements of ASM/CSM, available at: <https://dialogue-info.com/wp-content/uploads/2020/09/ASM-General-Principles-Main-Elements-25-August-2013.pdf>

15 See point 3 of the 2013 agreement of principles governing the normalization of relations, available at: <https://dialogue-info.com/wp-content/uploads/2020/09/First-Agreement-of-Principles-Governing-the-Normalisation-of-Relations-19-April-2013-3.pdf>

16 In addition to possible legal implications of the obligations to ensure "self-management", provision of services can potentially contradict the judgement of the Constitutional Court of Kosovo (Case No. KO130/15) concerning the

4 No similar previous reference “... formalise the status of the Serbian Orthodox Church” (article 7 of the APN)

The Agreement on the Path to Normalization of relations between Kosovo and Serbia has been welcomed by the European Council, which marks the first time that all 27 Member States of the European Union (EU) have endorsed an agreement from the normalization dialogue¹⁷. The European Council conclusions note that APN puts “the relationship between both parties on a new and sustainable basis as a historic chance that should be seized by both parties” and urges implementation¹⁸.

One of the key incentives for Kosovo to make concessions in the framework of the EU-facilitated dialogue for normalization of relations with Serbia has been the prospect that the potential agreement will lead to changes in the current position of Cyprus, Slovakia, Spain, Romania, and Greece (five EU non-recognizers), which hold the key to unlocking Kosovo’s Euro-Atlantic path¹⁹. However, despite the endorsement of the agreement by the European Council, Cyprus, Romania, Spain, and Hungary, voted with Serbia in the Ministerial Committee of the Council of Europe against the approval of the request from Kosovo for membership in the Council of Europe (CoE)²⁰, although article 4 of the APN states that “Serbia will not object to Kosovo’s membership in any international organisation”. While Serbian vote is in clear violation of the APN, the ‘no’ votes from the three EU Member States, should be of high concern for Kosovo. Kosovo government should ask the High Representative Borell in order for the Agreement on the Path to Normalization (APN) to have its intended impact and begin a new phase of relations between Kosovo and Serbia, implementation is key. Lack of signatures in the agreement minimizes both domestic and bilateral accountability for implementation. Lack of signatures also question the extent, legally and politically, what was agreed in February of 2023 in Brussels, constitutes an agreement between Kosovo and Serbia. In this context, it was a mistake that the EU did not insist on having the agreement signed by leaders from Kosovo and Serbia. The EU is yet to move forward with the necessary procedures to formalize and transform the agreement into a binding obligation for Serbia and Kosovo, in the framework of the EU accession process of the respective countries. In practical terms, this can potentially lead to amendment of the Chapter 35 for Serbia, and in the case of Kosovo, include the agreement as an integral part of the National Program for Implementation of the Stabilization and Association Agreement (SAA).

Association/Community of Serb majority municipalities in Kosovo, as it finds that the objectives of the Association/Community based on the 2015 agreement that includes the right of the A/CSM to provide services can undermine the status of the participating municipalities. Available at: https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_130_15_ang.pdf, p. 27

17 Special meeting of the European Council (9 February 2023) – Conclusions. Available at: <https://data.consilium.europa.eu/doc/document/ST-1-2023-INIT/en/pdf>

18 Ibid., p. 14

19 Kosovo: Unlocking its Euro-Atlantic Path, Balkan Policy and Research Group (BPRG), March 8, 2023, available at: <https://balkansgroup.org/en/kosovo-unlocking-its-euro-atlantic-path-the-eu-dialogue-on-normalisation-of-relations-with-serbia-and-the-prospects-for-recognition-by-five-european-non-recognisers/>

20 Andrew Rettman. (2023, April 25). EU deal on Kosovo ‘alive’ despite Serbian vote. EU Observer. Available at: [https://euobserver.com/world/156962#:~:text=Serbia%20is%20trying%20to%20block,on%20Monday%20\(%2024%20April\).](https://euobserver.com/world/156962#:~:text=Serbia%20is%20trying%20to%20block,on%20Monday%20(%2024%20April).)

If the APN, does not lead to changes in the position among the five non-recognizers, it is highly likely that whatever momentum the EU and the US will be able to build in the dialogue process, will be significantly undermined. On the other hand, if the five non-recognizers move towards a more affirmative engagement with Kosovo, through a combination of formal recognition from some, such as Greece, Slovakia and Romania, and an informal recognition from others (Spain and Cyprus), than there is a greater potential for the APN to lead to meaningful changes both internally in Kosovo as well as in the Euro-Atlantic integration process. In other words, if the optimistic scenario of all five recognizing Kosovo fails, then **Spain and Cyprus should move towards the current Greek position on Kosovo, while Greece itself, alongside Slovakia and Romania, should move to formal recognition.** The Slovak parliamentary elections, which are scheduled for September 30, 2023, add to the urgency for changes in the positions towards Kosovo status among the five non-recognizers, because the current polls project SMER–SSD of Robert Fico as a potential winner. Mr. Fico, was Prime Minister of Slovakia in 2008 when Kosovo declared its independence which he called a “major mistake”. Since all 27 Member States of the EU endorsed the Agreement on the Path to Normalisation²¹, then the relations between Kosovo and the five non-recognizers should move in the direction of closer and more constructive engagement, even potential recognition. At least the APN should result with a de-facto recognition of Kosovo from those among the five non-recognizers who have more challenging domestic conditions for formal recognition. However, Hungary, who recognizes independence of Kosovo joined Cyprus, Spain and Romania to vote against accepting Kosovo’s application for membership in the Council of Europe (CoE).

The role of the European Union (EU) as a facilitator in the dialogue for normalization of relations between Kosovo and Serbia, has arguably evolved into an arbiter, as a result of the Agreement on the Path to Normalization (APN), and the implementation roadmap. This means that for Kosovo and Serbia implementation of the provisions from the APN is a contractual obligation towards the EU in the framework of the European integration process. This arrangement was necessitated by the refusal of Serbia to sign the APN, although it agreed to it verbally²². In this context, when neither side has signed the APN, the role of EU as an arbiter is a must, in order to guarantee implementation by both countries. Following the high-level meeting between Kosovo and Serbia in Ohrid on March 18, 2023, the EU’s High Representative Josep Borrell stated that the Agreement on the Path to Normalisation of relations and the annex are “foreseen to become integral and binding part of the respective European paths of the Parties.” This effectively turns the EU into an arbiter, since implementation of the agreement and the annex is a contractual obligation of Serbia and Kosovo towards the EU. While this new role for the EU in the dialogue for normalisation of relations between Kosovo and Serbia, is a departure from the UN’s General Assembly resolution, in practice it only unmask the actual role and extent of involvement of the EU in the process. In practice, facilitation did not truly represent the role and extent of involvement of the EU in the normalisation dialogue²³. The European Union (EU), prides

²¹ European Council conclusions, 9 February 2023. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2023/02/09/european-council-conclusions-9-february-2023/>

²² Serbia, Kosovo back normalising ties but need more talks -EU’s Borrell, available at: <https://www.reuters.com/world/europe/serbia-kosovo-agree-normalising-ties-need-more-talks-eus-borrell-2023-02-27/>

²³ Ilazi. (2023). The European Union and Everyday Statebuilding

itself as a “value-based actor” and defines its mediation roles in the Concept on EU Peace Mediation²⁴ in a manner to be less interfering, controlling or deterministic of the outcome of process. This is also the image that the EU promotes for itself in terms of the role it has in the context of the normalization dialogue between Kosovo and Serbia, even though the practice has shown a different reality²⁵.

However, the role of the EU as an arbiter, in the framework of the Agreement on the Path to Normalisation of relations between Kosovo and Serbia, is welcomed, as it can help with implementation, but the EU seems reluctant to assume this role. Following Serbia’s vote against Kosovo’s application for membership in the Council of Europe (CoE), the EU officials avoided questions from journalists if that constituted a breach of the APN. Implementation of the agreements from the normalisation dialogue has been one of the major challenges for the process these past ten years, since the dialogue started in 2011. One way to address this is for the EU to stop appeasement for any party that blocks implementation and assume a more assertive approach. If there are no consequences for parties that undermine the dialogue for normalisation of relations, then the APN will have the same fate as the 33+ agreements between Kosovo and Serbia, with limited implementation and impact on normalisation of relations. Serbia’s chapter 35 and Kosovo’s SAA (Title I) clearly state that if there is no “engagement towards a visible and sustainable improvement in relations” between the two parties, then the EU can suspend parts of the European integration process²⁶. Unlike, with the other agreements, with the APN the EU openly assumes a central role for implementation of the agreement, because the agreement is a binding obligation of Kosovo and Serbia towards the EU.

The transparency of the process of the dialogue for normalization of relations with Serbia has declined in Kosovo. The Kosovo government has limited its reporting on the normalization dialogue both to the public as well as to the Kosovo Assembly. In addition to this, Kosovo government has acted against previous precedents of asking the Kosovo Assembly for consent when accepting a high-level agreement with Serbia, such as the case from 2013 with the “First agreement of principles governing the normalization of relations”. The perceptions of the Kosovar citizens concerning the transparency of the normalization dialogue have been consistently negative. The latest data shows that 56 percent of the Kosovars are not aware what are the goals of the government in the dialogue process, while 83 percent think that the process is not transparent or only partially transparent²⁷. The European Plan was circulated in different media platforms in Kosovo without detailed information provided from the government of Kosovo about the content of the Plan and its implications for both countries. Therefore, the situation created an environment for raising fake news about the Plan and the compromises that Kosovo might make in the dialogue. In the past (largely from 2011-2020) Kosovo government had a higher level of transparency

24 Concept on EU Peace Mediation, Council of the European Union, Brussels, 11 December 2020, available at: <https://www.eeas.europa.eu/sites/default/files/st13951.en20.pdf>

25 Ramadan Ilazi. (2023). The European Union and Everyday Statebuilding: The Case of Kosovo. Routledge [forthcoming]

26 See p. 3 of Chapter 35: Other issues Item 1: Normalisation of relations between Serbia and Kosovo; See article 5 of the Kosovo-EU SAA

27 See the data from the Security Barometer of the Kosovar Centre for Security Studies (KCSS), available at: <https://securitybarometer.qkss.org/te-dhenat>

about the normalization dialogue. Kosovo government informed the public about its approach to the normalization dialogue by publishing in 2011 and in 2015 the platform or the program of the government about the dialogue²⁸. Kosovo government also issued, in the past, regular reports on the overall state of the normalization dialogue as well as implementation of the agreements, a practice that has been largely ignored since 2020. In addition to this, in 2013 when Kosovo and Serbia signed the “First agreement of principles governing the normalization of relations”, Kosovo government, at the time, requested consent from the Kosovo Assembly to accept the agreement, which was granted through the approval of a resolution, and later the agreement was ratified with 84 votes in favour²⁹. However, reportedly the APN was presented to the Kosovo government as a “take it, or leave it” proposal, and also since the APN was not officially signed by either side, it does not make a lot of legal or political sense to ask the Kosovo Assembly to adopt the APN. Nonetheless, the government should have formally informed the Kosovo Assembly about the APN and also potentially ask for consent to accepted, in accordance with the precedent from the 2013 case. This is a potentially missed opportunity to foster domestic political consensus in Kosovo in support of APN. Despite these shortcomings, the APN, as already mentioned, has fostered symmetric relations between Kosovo and Serbia. This upholds the perceptions among Kosovars, 50 percent of whom believe the approaches of the current government have improved the position of the country in the dialogue³⁰.

28 See for instance the Platform of the Government of Kosovo for the Interstate Technical Dialogue between Republic of Kosovo and the Republic of Serbia, March, 2011, available at: https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/Platforma_e_Qeverise_se_Republikes_se_Kosoves_per_dialogun_teknik_undershteteror_mid-is_Republikes_se_Kosoves_dhe_Republikes_se_Serbise.pdf, and Program of the Government of the Republic of Kosovo for the Brussels Dialogue 2014-2018, January 15, 2015, available at: https://kryeministri.rks-gov.net/wp-content/uploads/2022/05/Programi_i_Qeverise_per_Dialogun_e_Brukselit_2014-2018_150115.pdf

29 Ramadan Ilazi. (2022). “Revisiting the historic agreement between Kosovo and Serbia from 2013 with one technical suggestion for breaking the deadlock”, Balkan Policy and Research Group (BPRG), <https://dialogue-info.com/revisiting-the-historic-agreement-between-kosovo-and-serbia-from-2013-with-one-technical-suggestion-for-breaking-the-deadlock/>

30 Security Barometer of the Kosovar Centre for Security Studies (KCSS)

FOOD FOR THOUGHT

The Agreement on the Path to Normalisation of the relations between Kosovo and Serbia creates the opportunity for Kosovo to insist on starting a political dialogue with the EU in the framework of title II of the SAA. This political dialogue should be about supporting Kosovo's path towards integration in the international democratic community, because the APN should constitute 'objective circumstances'³¹. According to Dr Gëzim Visoka, "energized political dialogue between Kosovo and the EU in the framework of the Title II of the SAA is important as it would assist overcoming cases of eventual dissonance in position" as well as "strengthen the geopolitical footprint and diplomatic stature of the EU in Kosovo and in the region"³². Kosovo should also increase the activity of the Special Group for Normalisation of relations that functions in the framework of the SAA, and utilize this group as the primary consultative body between Kosovo and the EU on the normalisation process. Having a more dynamic special group for normalisation, can also improve accountability on implementation of the APN.

The Agreement on the Path to Normalisation should provide a new platform for engagement between Kosovo and the five EU non-recognizers. In this context also civil society should facilitate a conversation about the APN in the capitals of the five non-recognizers. If Kosovo progress, in good faith, with implementation of the APN, it can create a momentum for Kosovo to establish closer ties with NATO. Kosovo should explore alternative options to become part of the Partnership for Peace (PfP) programme of NATO. For instance, Kosovo can utilize the precedent of the Stabilization and Association Agreement (SAA), being an EU-only agreement, for a similar arrangement with PfP.

- 1 Kosovo should focus on implementation of the Agreement on the Path to Normalisation of relations with Serbia and the annex, and deliver on its commitments, regardless of the position of Serbia. Implementation of the APN will boost Kosovo's credibility and currency as a rational actor, and potentially lead to further integration of the Serbian community in Kosovo. Kosovo should regularly discuss the state of implementation of the APN in the framework of the Special Group for normalisation of relations.

31 Kosovo-EU SAA, Title II, Article 11

32 Gëzim Visoka. (2021, May). "A brief discussion on the relevance of Title II of the SAA and the Political Dialogue between Kosovo and the European Union (EU)". Prishtina Institute for Political Studies (PIPS). Available at: <https://pips-ks.org/en/Details/ArtMID/1444/ArticleID/4192/A-brief-discussion-on-the-relevance-of-Title-II-of-the-SAA-and-the-Political-Dialogue-between-Kosovo-and-the-European-Union-EU> p. 11

- 2 The European Union (EU), should move as soon as possible with the necessary steps to integrate the Agreement on the Path to Normalisation into a binding obligation for Kosovo and Serbia in the framework of the EU accession process, and in accordance with the Annex to APN;
- 3 Government of Kosovo should adopt a legal position paper outlining its understanding of the Agreement on the Path to Normalization of relations between Kosovo and Serbia;
- 4 Government of Kosovo should prepare a comprehensive report on the state of implementation of the Brussels Dialogue agreements, and propose a roadmap for implementation of all agreements;
- 5 Government of Kosovo should commission a team of experts to prepare a concept document on implementation of the article 7 of the Agreement on the Path to Normalization of Relations between Kosovo and Serbia, with respect to "appropriate level of self-management for the Serbian community in Kosovo";
- 6 Government of Kosovo should commission a team of experts to prepare a concept document on implementation of the segment of the article 7 of the Agreement on the Path to Normalization of relations between Kosovo and Serbia that refers to formalization of the status of the Serbian Orthodox Church in Kosovo;
- 7 Government of Kosovo should improve transparency and engagement with the civil society in the framework of the normalization dialogue, and to that end, publish periodic reports on the state of the normalization dialogue and implementation of the agreements, as was the practice by previous governments until 2020. Prime Minister of Kosovo should regularly report to the Kosovo Assembly on the normalization dialogue, a practice that was followed by previous governments, as was the practice by previous governments until 2020;
- 8 The European Union (EU), should implement its contractual obligations under the Title II of the Stabilization and Association Agreement (SAA) with Kosovo, and start the political dialogue in order to, among others promote Kosovo's participation in the international democratic community³³. Kosovo government should also raise this issue with the EU;

33 Gëzim Visoka. (2021, May). "A brief discussion on the relevance of Title II of the SAA and the Political Dialogue between Kosovo and the European Union (EU)". Prishtina Institute for Political Studies (PIPS). Available at: <https://pips-ks.org/en/Details/ArtMID/1444/ArticleID/4192/A-brief-discussion-on-the-relevance-of-Title-II-of-the-SAA-and-the-Political-Dialogue-between-Kosovo-and-the-European-Union-EU>

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- 9 The EU should strengthen its credible engagement with the Western Balkans, because central to normalization of relations between Kosovo and Serbia is the belief in both countries, that progress in dialogue will bring them closer to the EU. Changes in the position of the five Member States of the EU that do not recognize Kosovo, is vital to unblock Kosovo's Euro-Atlantic integration process;
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- 10 The languages from the political leaders and other public officials in Serbia and Kosovo towards each other and vis-à-vis the agreement, must change with urgency. It is quintessential that President Vucic and Prime Minister Kurti properly inform their respective publics of their endorsement of the agreement. In this context, the rhetoric of the Serbian President Vucic towards Kosovar Prime Minister Kurti, is particularly concerning as it encourages hatred and undermines interethnic relations in Kosovo³⁴. On the other hand, Kosovar leaders should increase their efforts to send affirmative messages to the Serbian community in Kosovo, including in Serbian language.
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34 See for instance "Serbia boycotts EU summit, calls Kosovo PM 'terrorist scum'", available at: <https://www.euractiv.com/section/politics/news/serbia-boycotts-eu-summit-calls-kosovo-pm-terrorist-scum/>

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Kosovar Centre for Security Studies is an independent policy research centre founded in April 2008 and based in Prishtina – Kosovo. KCSS is dedicated to security sector development and reform in Kosovo, Western Balkans and beyond. It proactively promotes the principle of good governance, integrity, social resilience, peacebuilding and regional cooperation.

The KCSS perform its role through intense research activities, organization of events, training, advocacy and direct policy advice. Each year, KCSS publishes numerous reports, policy analysis and policy briefs. It also, runs more than 200 public events including conferences, round-tables, and debates, lectures targeting a wide range of domestic, regional and international audience interested in the security sector.

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