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The EU enlargement policy in the context of new geopolitical reality – What is the future of Kosovo's membership application?

SUMMARY

This article analyses the application for membership in the EU submitted by the Kosovo government in 2022 in the context of changing geopolitical realities in Europe. It maps out four key obstacles for Kosovo to get a green light for the candidacy status and the membership perspective overall. First and the biggest challenge of Kosovo is the contested statehood and unresolved sovereignty questions. Second, the EU's non-recognition of Kosovo and its neutrality policy towards its status stands in front of Kosovo's membership in this organisation. Third, contractual relations between the EU and Kosovo severely limit its chances to join the EU. Lastly, potential vetoing by some Member States, especially five non-recognisers, is highly likely which severely affects Kosovo's

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chances of joining the EU. Nevertheless, despite the fact that in short-term there will be no progress of Kosovo towards the EU, the article argues that the EU-facilitated dialogue have a potential to unlock the membership perspective for Kosovo in a long-term.

KEYWORDS: Kosovo, EU, membership application, enlargement policy.

I. INTRODUCTION

In December 2022, the Provisional Institutions of Self-Government (PISG), or the Government of Kosovo how it presents itself, submitted to the Czech Presidency of the Council an official application of Kosovo[2] for membership in the European Union (EU) (Reuters 2022). This step confirmed the aspirations of the political leadership of Kosovo to join the EU as a fully-fledged member state despite the statehood issue and unresolved bilateral relations with the government in Belgrade. This application came in the midst of the war in Ukraine, which 'woke up' the somnolent EU's enlargement policy and forced the Member States to rethink their stance towards enlargement. Granting the candidacy status to Ukraine and Moldova in June 2022, and Bosnia and Herzegovina in December of the same year emboldened the Government of Kosovo to take a step in the direction of membership application. However, despite the fact that all three mentioned countries that received the candidacy status have various serious internal challenges, namely, Ukraine is a country at war with a global superpower, Moldova has the problem of territorial integrity due to Transnistria, all the while Bosnia and Herzegovina can be hardly qualified as a functional state, Kosovo might have an even bigger problem(s) that prevents it from becoming an EU Member State.

The aim of this article is to delve deeper into Kosovo's membership application and map and analyse major obstacles standing in front of Kosovo. It will provide arguments and analysis taking into account the EU's policy towards Kosovo, the Belgrade-Pristina Dialogue facilitated by the EU, contractual relations that the EU entered with Kosovo, agreements stemming from the Dialogue, especially the Agreement on the path to normalisation between Kosovo and Serbia, and lastly, geopolitical developments. This article also analyses how the previously mapped obstacles can be overcome as a direct consequence of the EU-facilitated dialogue.

2 This designation is without prejudice to the status of Kosovo and is in line with the UNSC Resolution 1244 (1999) and the ICJ Advisory Opinion (2010).

II. METHODOLOGY

The article utilises the qualitative analysis of primary and secondary sources in order to map key challenges in front of Kosovo and explain the potential decision of the European Council and the European Commission (EC). It put Kosovo's application against the backdrop of the Treaty of the EU (TEU), Copenhagen criteria, and the agreements adopted within the Belgrade-Pristina Dialogue as part of the primary literature. Second, the article analyses secondary literature on Kosovo's EU integration prospects and political and geopolitical developments in Member States and around the world, and how it can affect Kosovo's bid for membership. Lastly, the author utilises data collected via interviews with the experts in the EU enlargement policy.

The main research question of the article tends to shed light Kosovo's application for membership in the EU and whether it is going to be greenlighted in a fast-track manner following the geopolitical developments and cases of Ukraine, Moldova and Bosnia and Herzegovina. Furthermore, the analysis will try to answer the question of whether and how Kosovo's application can be accepted in the future. The main hypothesis of the article is that, at this point, there is no possibility nor political will among the EU Member States and institutions to grant candidacy status to Kosovo. However, there is a possibility that the path towards membership will open for Kosovo in the long run, but it will depend on multiple variables.

III. STATE OF THE ART

Application of Kosovo for membership in the EU is the process that happened recently, with very limited number of academic and policy papers analysing this issue. In that sense, this analysis can be perceived as pioneering when it comes to potential membership of Kosovo in the EU. However, the background of this paper should be searched in three distinct areas: the enlargement policy of the EU, relations between Kosovo and the EU, and analyses of Kosovo's membership prospects. An overview of relevant literature in these areas will be a good starting point for the analysis of the legal and political implications of Kosovo's EU membership application.

III.1. Development of the enlargement policy and the place for Kosovo

By officially applying for membership in the EU, the government of Kosovo showed the desire to become a part of the accession process to the EU. Kosovo has been part of the enlargement policy of the EU indirectly ever since the launch of the Stabilisation and Association Process (European Commission

1999). Kosovo has been mentioned in the Thessaloniki Declaration without the explicit mention of the membership (European Commission 2003). Later on, in 2005, the Commission, in its communique "A European Future for Kosovo", mentioned very vaguely the European perspective on the eve of the UN status talks (European Commission 2005). After unilaterally declaring independence in 2008, the EU established its permanent mission in Kosovo – EULEX (EEAS 2008), and Kosovo has been recognised as a potential member state, keeping in mind the fact that five member states do not recognise Kosovo. Following the attempt of secession from Serbia, the EU launched the dialogue between the government in Belgrade and the government in Pristina with the aim of normalising relations. Following the success of the dialogue, the EC signed the Stabilisation and Association Agreement (SAA) with Kosovo in 2015. In December 2022, Kosovo applied for membership, putting the EU in a complicated situation to position itself regarding Kosovo's application, and Kosovo's statehood as well.

The EU enlargement policy was established in the 1970s with the first enlargement of the European Economic Community (EEC). Since then, there have been five waves of enlargement, while geopolitical circumstances often played an important role in stimulating the widening of the Union. The first enlargement of the EU saw Denmark, Ireland, and Great Britain, joining the EEC during the 1970s, while the second wave included Portugal, Spain, and Greece in the 1980s. The Cold War was a key geopolitical driver of integrating these countries into the EEC (Schimmelfennig and Sedelmeier 2005, 3). The third wave that ensued after the end of the Cold War and it also had a geopolitical segment, as in the meantime EEC became the EU and integrated three neutral countries: Austria, Sweden, and Finland (Ramiro Troitino 2018, 97). Fourth wave, or Big Bang enlargement of 2004 (O'Brennan 2006, 195), represents the biggest widening of the EU integrating previous socialist countries in Central and Eastern Europe (Czech Republic, Slovakia, Poland, Slovenia, Hungary, Lithuania, Latvia, Estonia) and two Mediterranean countries (Malta and Cyprus). Bulgaria and Romania joined the EU in 2007, but in the literature their accession is often considered as a second part of the fifth wave (Dineva 2008). Lastly, final country to join the EU was Croatia in 2013. The accession of Croatia in some literature is considered as part of the fifth wave, while in other as the sixth wave (Ministry of Foreign Affairs of Lithuania 2014; Nello 2013, 168; Vidotto Labastie and Wright 2022), despite being the single country to join in the EU in 2013.

Nowadays, Kosovo is considered as a potential candidate for EU membership together with Georgia. It is part of the Western Balkan region, geopolitical term to mark off Balkan countries that have not yet joined the EU, but have the aspiration towards EU membership. This group of countries is often referred as the Western Balkan six, including alongside Kosovo, Serbia, Montenegro, Bosnia and Herzegovina, Albania, and North Macedonia. All these countries

are in different stages of the accession process, but Kosovo is most notably the furthest away from the EU compared to other countries in the region.

III.2. Legal and political relations between the EU and Kosovo

Despite the fact that the EU's neutrality policy towards the independence of Kosovo certainly burdens relations (Rrahmani 2018), legal and political relations between the EU and Kosovo are vibrant. By establishing EULEX rule of law mission and opening the EU Office and appointing the EU Special Representative in Kosovo, the EU established permanent mission at the same time starting legal and diplomatic relations with the entity of unclear status. The EU entered contractual relations with Kosovo with commencement of negotiations on SAA in 2013. The SAA was signed in 2015 and ratified in 2016 (Official Journal of the European Union 2016). While signing and ratifying the SAA with Kosovo the "EU only" principle was applied for the first time (Polokaj and Tuhina 2016, 8). This means that the representatives of European institutions sign the agreement instead of the representatives of each member state. Despite the fact that this was the first SAA not ratified by Member States, it marked an important milestone – the first international agreement signed between the EU and Kosovo.

Alongside the SAA, the EU signed other agreements with Kosovo which do not have the strength and statue of an international agreement. One such agreement is one signed under the auspices of the Belgrade-Pristina dialogue facilitated by the EU – Brussels Agreement (European Union 2013) in 2013. First agreement of principles governing the normalisation of relations does not possess elements required for the status of international treaty, however it represents a legal act (Simović and Šurlan 2014). This is a feature of all other agreements reached and signed under the framework of negotiations even though they are sometimes ratified in the Kosovo's Assembly as international agreements. Beside the dialogue-related agreements, Kosovo has multiple agreements with the EU concerning financial and technical assistance to the government in Pristina. A good example is the agreement signed granting Kosovo access to the Instrument for Pre-Accession III (IPA III) (Kabinet Premijera 2022). Lastly, the EU nurtures political relations with Kosovo through its diplomatic mission in Kosovo headed by the EU Special Representative. The level of the EU's diplomatic mission in Kosovo is lower compared to other Western Balkan candidate countries where EU delegations are headed by ambassadors who are at the same time heads of their delegations, while in Kosovo the EU has the Office headed by the Special Representative.

III.3. Scarce literature on potential EU membership for Kosovo

First document mentioning potential future of Kosovo in the EU is a 2005 EC's publication (European Commission 2005). Previously, Kosovo was snubbed in Zagreb and Thessaloniki declarations of the European Council that offered and promised membership in the EU for the Western Balkan countries. In 2007, during the period of status negotiations, the "Joint report" (European Commission 2007) by Javier Solana, EU high representative for the CFSP and Olli Rehn, EU commissioner for enlargement, on the state of preparations of the future EU and international presence in Kosovo was adopted setting forth the possibility of an SAA with Kosovo after its status is determined. Following the unilateral declaration of independence and recognition of such independence by majority of Member States, the EU has conducted a "Study" for Kosovo (Commission of the European Communities 2009) assessing its's readiness to start the process that normally leads to the signing of the SAA. Five non-recognisers influenced the Commission to call this document a "Study" instead of a "Feasibility Study," as was the practice with every other country in the Western Balkans (Polokaj and Tuhina 2016). This study highlights the necessity that the lack of recognition by all EU Member States should not to be an obstacle to relations between Kosovo and the EU (Polokaj and Tuhina 2016).

The most recent analysis of Kosovo experts argues that there are good chances for Kosovo to obtain the candidacy status and the EU membership. By taking a look at Bosnia and Herzegovina's path towards the candidacy status granted in December 2022, and criteria on which decision was adopted, authors from Kosovo draw parallels. Therefore, three key criteria for assessing BIH's candidacy were: a) single, united and sovereign country, then the Council refers to b) implementation of the SAA, and c) the progress in the implementation of European Reform Agenda (ERA). While over the last half a decade Kosovo has made a good progress in implementing ERA and SAA, the first criterion will be the most problematic. In that sense, five EU member states non-recognisers of Kosovo (Spain, Cyprus, Slovakia, Romania, and Greece) might block Kosovo's aspiration to join the EU. Despite the fact of non-recognition, Fetahu argues that these countries will not block Kosovo's EU path (Fetahu 2023, 11). Kosovo has already established diplomatic relations with Greece, Slovakia, and Romania, and secured for now one of these countries not to block future decisions of the Council (Fetahu 2023, 11). Lastly, the question of sovereignty, especially in the north of Kosovo is linked to Kosovo's progress on establishing governmental authority across all of its territory, but argues that Kosovo has been improving its legal authority and periodically taken institutional steps to enhance such presence (Fetahu 2023, 12). At the end of the day, the question of statehood and sovereignty of Kosovo lies as a key obstacle to its EU membership aspiration.

IV. CHALLENGES OF KOSOVO'S EU MEMBERSHIP APPLICATION

Every country that joined the EU in the past and all countries wishing to join the EU at this moment have more or less challenges standing on the way of the full membership. Usually, these challenges range from political conditions set forth by the EU itself before granting candidacy, or opening negotiations with a certain country, bilateral disputes between certain EU Member State and the aspiring country or two aspiring countries that need to be resolved prior to the accession, or some serious systemic, administrative or other issues that require attention and solution. In that regards, Kosovo is not an exception. However, the Kosovo case might be more difficult than all others, as several formidable issues stand in its way of EU accession.

Challenge 1: Statehood and sovereignty issue

First and the most problematic issue of Kosovo is its unresolved statehood status. Ever since declaring independence unilaterally in 2008, Serbia refuses to recognise Kosovo and treats its as part of its sovereign territory. On the other hand, the Pristina government acts unilaterally in international arena, presenting Kosovo as an independent state, and striving to attain international recognition. While Belgrade and Pristina are leading a diplomatic battle on their opposed stances, the questions of Kosovo's statehood and sovereignty over this territory remains open. This is particularly important in the context of the EU membership, as according to the Treaty on European Union, only "European State" may apply to become a member of the EU (TEU 2007). Therefore, the real question that necessitates answer is can Kosovo be considered a state by the EU?

There have been multiple sources of scientific articles, books, and publications discussing and assessing Kosovo's statehood. Despite the fact that Kosovo obtained majority of features of state, including classical definition (central government, territory, and population) over the years, some important elements are still missing. Such as universal recognition, full control over the territory (sovereignty issue), and army (Pavković 2020). Although Kosovo has been recognised as an independent state by more than half of world countries, it still lacks universal recognition and recognition from the parent state, effectively making the question of statehood problematic. The EU itself does not recognise Kosovo as an independent state. Despite the fact that Kosovo managed to join multiple international organisations such as World Bank, International Monetary Fund, Regional Cooperation Council, CEFTA, International Olympics Committee, it remains out of the United Nations, Council of Europe, and the European Union.

Alongside statehood, the question of sovereignty is also present in the case of Kosovo. Despite the fact that Serbia claims sovereignty over Kosovo refer-

encing the UN Security Council Resolution 1244 (1999). Additionally, within its territory, the Pristina government has problems in asserting sovereignty fully. Most notably in the north of Kosovo the Pristina government does not have full control and this part of the territory remains largely not integrated neither politically, nor economically. In that sense, the First agreement of principles governing the normalisation (2013) of relations signed between Serbia, EU, and Kosovo made a step forward in integrating north of Kosovo into the political system of Kosovo. However, it was reversed in 2022 when Serb collectively resigned from all Kosovo institutions in the north. This state of play persists at the moment of writing this analysis.

Having in mind the fact that there is no consensus whether Kosovo is an independent state, a province within Serbia, or something third, it will be very hard for the EU, or to be more precise European Commission (EC) to give a positive opinion on Kosovo's membership bid. This becomes increasingly unlikely bearing in mind five non-recognisers within the EU: Spain, Cyprus, Greece, Romania, and Slovakia. Moreover, another important benchmark for deciding about candidacy is based in the Copenhagen criteria (EUR-Lex 1993). These criteria encompass following prerequisites:

1) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
2) a functioning market economy and the ability to cope with competitive pressure and market forces within the EU;
3) the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.

Copenhagen criteria set out back in 1993 represent a baseline for making decisions regarding membership in the EU and Kosovo needs to be tested against these criteria positively, which also might prove challenging. When Kosovo is put against these three criteria, the results are gloomy. When it comes to the rule of law, Kosovo struggles to secure independent judiciary, enforce court decisions, while the Commission in its latest report assessed the state of play in chapter 23 and 24 that cover judiciary, fundamental rights, justice, freedom and security in between the early stage and some level of preparation for membership (European Commission 2023). Observing economic criterion, Kosovo's economy is dependent on foreign aid with underdeveloped economy unable to cope with competition in the EU Single Market. Additionally, Kosovo is not fulfilling democratic standards neither. It is classified as a transitional or hybrid regime by renowned democracy indices, such as Freedom House since independence (Smeltzer and Karppi 2023). Lastly, having in mind some level of preparation within the area of public administration (European Commission 2023), it is hard to expect that Kosovo would be ready to take over complex and large-scale administrative obligations. Therefore, it seems that at

this point Kosovo is not fulfilling the Copenhagen criteria, necessary for obtaining candidacy status.

Challenge 2: EU policy of neutrality towards Kosovo

Since Kosovo unilaterally declared independence in 2008, the EU has established and maintained a policy of neutrality towards its status. What it basically means is that though the EU does not recognise independence of Kosovo, it maintains some kind of political and diplomatic relations with the Kosovo government. This means that in all official documents EU uses an asterisk and footnote referencing that it is not prejudging its status in line with the UNSC Resolution 1244 and ICJ Advisory Opinion (2010) (Pavković 2023b). However, maintaining diplomatic relations is one thing, while opening the doors of membership to Kosovo is completely different. In the history of the EU, there have been no examples of integrating one country than has not been recognised by the EU previously. Essentially, this means that the EU policy of neutrality towards Kosovo is incompatible with its membership aspirations.

Despite the fact that the policy of neutrality has been tightly embedded in the EU, there have been attempts to adjust it without the official change of policy and stance of five non-recognisers. The gradual change drift from this policy can be seen in some of key EU institutions. The European Parliament (EP) fully abandoned the neutrality policy referring Kosovo as an independent republic in all its documents (Pavković 2023b). Moreover, the European Commission (EC) and its working bodies are increasingly inconsistent in following the official EU policy (Pavković 2023b). On the other hand, the Council of the EU and European Council, as politically most influential institutions, are firm in respecting and maintaining the neutrality policy towards Kosovo (Pavković 2023a). Lastly, the Agreement on normalisation of relations between Kosovo and Serbia (European Union 2023) reached under the EU-facilitated dialogue in 2023 is the first document in the dialogue which excludes the asterisk and a footnote with regards to Kosovo, potentially indicating change of this EU policy.

Despite the fact that the EU has entered diplomatic, political and even legal relations with Kosovo, this fact does not constitute sufficient basis for opening the doors of membership for Kosovo. Rather, it remains a challenge that effectively blocks Kosovo's membership aspiration, despite many political statements and commitments by different European leaders and EU documents in past decade or so. Prior to granting Kosovo a candidacy status, the neutrality policy requires an update. However, this update is not possible due to the opposition of five non-recognisers. This is the main reason why the political leadership in Pristina expected the recognition of these five states as part of the normalisation process and acceptance of the normalisation agreement in 2023 (N1 2022). From the same reason, in order to unlock membership per-

spective and change of the policy of neutrality, the normalisation agreement envisage *de facto* recognition of Kosovo by Serbia (N1 2023) and possibility of its membership in any international organisation (European Union 2023). All above mentioned points speak in favour of the neutrality policy as a huge obstacle for Kosovo in its goal of acceding the EU.

Challenge 3: Legal limitations

Respect for the rule of law is one of key values which the EU is built upon, and there are several legal limitations that prevent Kosovo from becoming an EU member state. First and foremost, this is Article 49 of TEU relevant in the context of Kosovo's contested statehood. Secondly, the legal practice and previous decisions of the Court of Justice of the EU (CJEU) also act an important determinant of the EU and as a guideline for all decisions of EU institutions. Thirdly, the Stabilisation and Association Agreement (SAA) signed between the EU and Kosovo in 2015 must be observed as a basis for contractual relations, but the SAA itself sets considerable limits for Kosovo's accession to the EU.

It is impossible for Kosovo to join the EU with a contested statehood within this organisation. Morocco's application was rejected by the Council on the grounds that Morocco was not a European State as prescribed by Article 49 TEU. A similar destiny can potentially happen if the Council enters into assessment of Kosovo being a state based on Article 49. The legal basis of EU's stance Kosovo can be found in the Agreement on regional representation and IBM technical protocol (European Union 2012) signed as part of the Belgrade-Pristina dialogue. The Agreement envisions self-representation of Kosovo in regional forums with a footnote referencing to Resolution 1244 of the UN Security Council and the advisory opinion of the ICJ. This agreement obliges the EU as well, as a facilitator in the dialogue, to treat Kosovo not as a state, but rather as an entity with a right of self-representation. Therefore, putting the Agreement against the Article 49 creates a tension and represents a considerable challenge for Kosovo's membership application.

The case-law of the European Court of Justice is another important determinant in the decision-making process of other EU institutions. The most famous decision that may affect Kosovo's membership application is CJEU's annulment of Commission's allowing Kosovo to participate in the Body of European Regulators for Electronic Communication (BEREC) initiated by Spain against the EC (CJEU 2023). In the first instance, the General Court rejected Spain's claims by differentiating the concepts of a "State" and a "country", classifying Kosovo in the latter category (CJEU 2020). The Court created a kind of paradox: Kosovo's determination as a "country" should adhere to international law, yet the court asserts that this recognition doesn't influence Kosovo's status within the same international legal order (Fedele 2023). Nevertheless, the CJEU, in its final decision on this matter, contended that the treatment of Kosovo as a

country, and thus as a State, did not impact the position of Member States towards its recognition in international law (CJEU 2023; Fedele 2023). Basically, the Court reiterated the stance of the EU, and some member states, of non-recognition of Kosovo. Consequently, the case law of the CJEU will also have impact on future decisions of the Council and the Commission and it acts as another limiting factor.

Thirdly, Kosovo's SAA represents yet another limiting factor for membership aspirations having in mind its peculiarities vis-à-vis all other SAAs signed with the Western Balkan countries. There are three most notable differences of the SAA the EC signed with Kosovo. First, this is the "EU only" SAA, meaning that the EC signed it as part of the EU exclusive competences, without each member state ratifying it, as it was the case with all other SAAs. Stemming from this, Kosovo SAA is less comprehensive and covers less areas compared to others (Van Elsuwege 2017). Thirdly, while in the case of other Balkan countries, their SAAs explicitly mention perspective of their membership in the EU and the role of the SAA to as an interim step towards full membership, in the case of Kosovo's SAA there is no mention of the EU membership (Council of the European Union 2015). Bearing in mind that the SAA is the most important legally binding contract between the EU and Kosovo, and a basis for relations between two identities, it only allows for economic cooperation while not predicting membership perspective.

Challenge 4: Blockade of non-recognisers

As already mentioned on several occasions in the text, there are five member states of the EU currently not recognising Kosovo and thus disabling the EU itself to recognise Kosovo. Spain, Slovakia, Romania, Greece, and Cyprus are non-recognisers, and these countries have critically influenced the relationship between the EU and Kosovo in the past. They played crucial role in drafting the SAA with Kosovo, while Spain even took the Commission to court over (CJEU 2020). Bearing in mind the unanimous decision-making in the Council when it comes to the enlargement policy, blockade of Kosovo's candidacy and membership in the EU can be expected by one, more, or all five of non-recognisers.

The issue of non-recognisers and their subsequent blockade is currently Kosovo's biggest challenge. For instance, Spain tried to block adoption of the EU's Strategy for the Western Balkans in 2018 (Koha Ditore 2018). Moreover, Spain is also the only country not to participate in visa liberalisation for Kosovo due to the fact that this country does not recognise documents issued by Kosovo (Radio Slobodna Evropa 2023a). Bearing in mind statements of key political figures of these five countries in the past, it is hard to expect that all of this countries can agree and approve candidacy status for Kosovo, at least not at this point. Government in Madrid confirmed in 2023 that there will be no change of stance regarding Kosovo (Danas 2023), while recently minister of foreign

affairs of Slovakia confirmed that Slovakia continues to respect territorial integrity of Serbia (Kosovo Online 2023). Similarly, neither Romania, Greece, nor Cyprus plan on changing their stance on the status of Kosovo (Kosovo Online 2022; Radio Slobodna Evropa 2023b; Tanjug 2023). Lastly, unnamed officer of the German Federal Foreign Office confirmed in the interview with the author that Kosovo's application will not be on the Council's agenda in 2023 due to lack of consent among the member states. All the mentioned statements by key political figures in five non-recognising states indicate that there is no unanimity within the EU on the question of Kosovo's candidacy and membership in the EU.

Lastly, besides non-recognisers, Kosovo's accession to the EU can be blocked by other Member States as well. One potential blocker among the members that have previously recognised Kosovo is Hungary. This country has developed very good relations with Serbia and already stated publicly that it will block Kosovo's EU accession (Vesti Online 2023). Moreover, Hungary is currently blocking revision of the negotiation framework of Serbia in the Council, preventing the normalisation agreement from becoming legally binding for Serbia (European Union 2023).[3] This represents a demonstration of a blockade and speaks in favour of blocking decision on Kosovo's candidacy in the future. Consequently, the challenge of blockade comes not only from non-recognisers, but from recognisers within the EU as well. Therefore, potential veto of one or more member states, alongside with legal, political (EU neutrality policy), and contested statehood issue represent four key challenges for Kosovo's membership application.

V. DECISIVE ROLE OF THE EU-FACILITATED DIALOGUE FOR KOSOVO'S FUTURE MEMBERSHIP

The previous chapter mapped and analysed four biggest challenges for Kosovo in its aspiration to join the EU. However, these four challenges can be mitigated more or less successfully, or impacted by the EU-facilitated dialogue between Belgrade (Serbia) and Pristina (Kosovo). The dialogue which started as technical level dialogue in 2011, and was elevated on high political level in 2012, has produced multiple agreements in the process of normalisation of relations between the two parties. In the way this process ends, the future of Kosovo's membership in the EU will be impacted decisively.

The most important agreement signed within the framework of the dialogue so far is the Brussels Agreement (European Union 2013) which in one of its articles states that: *neither side will block, or encourage others to block, the other*

3 According to the unnamed official of the European Commission interviewed by the author.

side's progress in their respective EU path (European Union 2013). The first legal contour of European perspective for Kosovo can be seen in this agreement. Although this document cannot be classified as an international agreement, both sides agreed to implement it (Kosovo even ratified it as in international agreement in its assembly). However, the Ohrid agreement accepted (but not signed) (European Union 2023) in 2023 has a potential to be a gamechanger for Kosovo in terms of the EU accession. In Article 4, it states that *Serbia will not object Kosovo's membership in any international organisation* (European Union 2023). This agreement practically opens the path for Kosovo to be greenlighted as a candidate, and in the case of signing and ratification, it would constitute a legal basis for the Council and the Commission to approve Kosovo's candidacy. What may be equally important is the fact that all 27 EU Member States have reached unanimity in proposing this agreement to Belgrade and Pristina. This agreement has a potential to mitigate three out of four key challenges. Prevent blockages, provide legal grounds for the membership of Kosovo, and allow the EU to revise its policy of status neutrality towards Kosovo.

The first challenge – contested statehood and sovereignty – remains a considerable obstacle. However, the Ohrid agreement can indirectly address this challenge as well. In Article 2, the agreement establishes territorial integrity of Kosovo and refers to sovereign equality of states according to the UN Charter, implying the sovereignty of Kosovo (European Union 2023). In the event of implementation of this agreement, the territorial integrity and sovereignty of Kosovo would not be questionable anymore. One may argue that the term accession in the 2023 Agreement implies that the EU Member States (which have supported the Agreement) agree to Kosovo meeting the subjecthood requirements to become a member of the EU in the future (Istrefi 2023). Although this interpretation might be stretched, when it comes to the statehood issue, there are other options for Kosovo as well.

Additionally, question of statehood can be indirectly solved by Article 4 of the Ohrid agreement. Since this article envisions that Serbia will not object Kosovo membership in *any international organisation*, and having in mind that Kosovo is in the process of acceding the Council of Europe (CoE), accession to this international organisation could be decisive for Kosovo's EU aspiration as well. Since the CoE's Statute clearly states that [*a*]*ny European State which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe* (Council of Europe 1949), by becoming a member of the CoE, Kosovo will fulfil the requirement of the Article 49 TEU. Upon becoming a member of the organisation which gathers only independent states on the European continent, the European Commission will take it as a sufficient proof of statehood and adopt positive opinion (*Avis*) on Kosovo's membership application. Additionally, EC's President asked Serbia to *de facto* recognise Kosovo as an independent state, and explained that this is what the Ohrid agreement is about (N1 2023). To sum up, the EU-facilitated dialogue,

and agreements stemming from it have the potential to mitigate all of the challenges mapped in this analysis, therefore giving it a decisive role for Kosovo's EU perspective.

VI. CONCLUSION

This article provided historical development of relations between the EU and Kosovo, advance of the enlargement policy over time, mapped key obstacles for Kosovo to get the candidate status for membership in the EU, and analysed the normalisation dialogue and its key agreements against the backdrop of mapped challenges. Contested statehood and sovereignty issues stand as primary problem for Kosovo to join the EU, especially when one take into account Article 49 of TEU. In the second place is the EU policy of neutrality towards the status of Kosovo, which is in tension with Kosovo's membership bid. Third, legal limitations such as Kosovo's SAA with the EU, case law of CJEU stand in front of EU institutions adopting positive decision on Kosovo. Lastly, potential veto on Kosovo by either non-recognisers within the EU, but also others, can shatter the dreams of political elites in Pristina for membership in the EU.

Taking into consideration all challenges presented and analysed in this analysis article, the main conclusion is that there will be no decision regarding Kosovo's membership application in the short term. Geopolitical momentum was used for Ukraine, Moldova and Bosnia and Herzegovina in 2022, while Kosovo remained out of focus of the EU. Reasons for leaving Kosovo out of decisions by the Council should be searched in lack of progress in the EU-facilitated dialogue. Having in mind all the challenges Kosovo has, as well as the fact that it is currently under the restrictive measures by the EU, and that Spain as non-recogniser is presiding over the Council, the Council is not ready to put Kosovo's application to the agenda of the meeting on deciding. In the short term, one should not expect decision regarding Kosovo. However, on a longer term, Kosovo's future in the EU will heavily depend on the achievements in the EU-facilitated dialogue, which has a potential to mitigate all challenges that Kosovo currently has.

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