

ARTICLES

The Shapes of Neutrality. EU Enlargement, Engagement and Kosovo's European Path

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Abstract

The article examines the European Union's neutrality toward Kosovo's statehood and its influence on the EU's enlargement process and engagement strategy in view of internal divisions among the EU Member States over Kosovo's recognition. It assesses how the EU's mantra of neutrality shapes the dimensions of EU actorness, balancing differences among EU Member States while ensuring Kosovo's inclusion in the EU enlargement process. Next, the article explores how the EU engages with Kosovo despite the lack of unanimous recognition of Kosovo's statehood from five EU Member States, arguing that neutrality unfolds both as a legitimising principle and an authorisation mechanism. Our hypothesis is that neutrality has enabled Kosovo's incremental involvement in the enlargement process without undermining the EU's internal cohesion. Drawing on three illustrative examples, notably, the EU Rule of Law Mission in Kosovo, the Stabilisation and Association Agreement and the CJEU's interpretation of EU-Kosovo SAA Agreement, the article demonstrates the variations of the concept of neutrality and its impact in maintaining Kosovo's attachment to enlargement policy. The findings suggest that neutrality has been instrumental in authorising the EU missions in Kosovo and in sustaining Kosovo's European trajectory.

Keywords: EU actorness; EU engagement; EU enlargement; Kosovo; Statehood

1. Introduction

Kosovo's relations with the European Union (EU) are viewed as “unique” and “atypical.” The uniqueness stems primarily from Kosovo's quest for recognition of statehood that has been occurring in parallel with its EU membership aspiration. The legal relationship remains atypical due to novel legal pathways and policies, employed by both Kosovo and the EU, to intermediate the lack of unity among the twenty-seven EU Member States regarding Kosovo's recognition.¹

To better understand these “unique” and “atypical” features, a deeper analysis is required. The analysis should delve into the legal examination of EU's role and the

¹ Out of 27 EU MS only Spain, Cyprus, Greece, Romania and Slovakia, do not recognise Kosovo's independence.

concomitant policies it adopted in Kosovo's state-building and enlargement processes, and, ultimately, unpack how these features of simultaneous engagement impacted the variations and limitations of EU actorness.²

The academic literature on EU actorness in Kosovo uncovers the policy responses of the EU institutions and Member States (MS) to a strategic vacuum caused by the non-recognition of Kosovo by five Member States.³ The EU's strong actorness in Kosovo was partially made possible by MS agreeing that "diversity on recognition" should not impede 'the EU unity in engagement'.⁴ Yet, simultaneously, the EU's engagement in Kosovo was parallelly constrained by the contestations arising from the individual positions of five non-recognising Member States.⁵ This also explains why the EU's approach to Kosovo contrasts from its approach to the other Western Balkans countries, whose statehood is not disputed by any EU Member State. In relation to Kosovo, the EU's approach is structured through a framework of policies and actions designed to maintain an (EU's) engagement continuum but that are, by their very nature, portrayed as neutral *vis a vis* Kosovo's statehood. As a result, neutrality is sometimes cited as a principle demonstrating that the EU's actions do not take a position on Kosovo's statehood. Contrary to its initial definition,⁶ 'neutrality' has evolved into a constant refrain, serving a two-fold purpose: a legitimising principle to lend credibility to EU's actions, and an authorisation mechanism to validate and enable the deepening of EU–Kosovo relations.

The following section outlines the historical trajectory of the dimensions of EU's involvement in Kosovo since 1999 and explores the current strategic priorities shaping EU–Kosovo relations. It then introduces a conceptual framework for analysing the dimensions of EU engagement policy and unpacks the features of EU enlargement approach with the Western Balkans. This section discusses the EU's engagement framework in the accession process with Kosovo from a legal perspective, and seeks to map out and unveil the reasons shaping the differences with other Western Balkan countries. Section III examines the defining characteristics of EU actorness in Kosovo, highlighting the main variations in the EU's approach towards Kosovo. It attests "whether" and "to what extent," neutrality as both, a principle and a mechanism of engagement with Kosovo is manifested, by particularly focusing on three illustrative examples. Section IV concludes with reflections on the EU's strategic neutrality and its implications for Kosovo's EU accession path.

² Noutcheva, G. (2018). Contested Statehood and EU Actorness in Kosovo, Abkhazia and Western Sahara. *Geopolitics*, vol. 25, No. 2, pp 449–471. <https://doi.org/10.1080/14650045.2018.1556641>; Baracani, E. (2019). Evaluating EU Actorness as a State-BUILDER in 'Contested' Kosovo. *Geopolitics*, vol 25, No. 2, pp 362–386. <https://doi.org/10.1080/14650045.2018.1563890>.

³ Noutcheva, *supra* note 2, pp 449–71, at p 452.

⁴ Elsuwege, Peter Van. 'Legal Creativity in EU External Relations: The Stabilization and Association Agreement Between the EU and Kosovo'. *European Foreign Affairs Review*, vol. 22, No. 3 (2017): 393–410.

⁵ P Bargués, A Dandashly, H Dijkstra and G Noutcheva, "Engagement Against All Odds? Navigating Member States' Contestation of EU Policy on Kosovo" (2024) *The International Spectator*, vol 59, No. 1, pp 19–38. <https://doi.org/10.1080/03932729.2023.2295893>; Noutcheva, *supra* note 2, pp 449–71, at p 452; Baracani, *supra* note 2, pp 362–86; C Bretherton and J Vogler, *The European Union as a Global Actor* (London, Routledge 2006).

⁶ See the first Council conclusions after Kosovo declaration of independence, confirming EU's readiness to participate in the state-building efforts in Kosovo. Council of the European Union, Council Conclusions on Kosovo 2851st External Relations Council Meeting Brussels, 18 February 2008, available at <http://www.eu2008.si/en/News_and_Documents/Council_Conclusions/February/0218_GAERC5.pdf> (last accessed 5 January 2025).

II. EU enlargement process and Kosovo: from state-building to geopolitics

I. Aspirations and realities

The EU's geopolitical engagement in the Western Balkans builds on a “dual of state-building and European integration,”⁷ according to the principle of conditionality.⁸ This approach suggests that the domestic elites are incentivised to reform and to transform national institutions “if rewarded by the EU with membership.”⁹ Initially aimed at stabilising and integrating the post-communist Eastern European countries, the EU's enlargement policy has evolved significantly in response to emerging geopolitical crises, transforming into a strong geopolitical tool.¹⁰ While this approach proved effective in Eastern Europe, it faced greater scrutiny in the Western Balkans, where post-conflict fragmentation required deeper engagement and long-term strategic planning.¹¹ The 1999 Kosovo war marked a pivotal moment for the EU's role as a geopolitical actor and conflict manager, intertwining its EU enlargement policy with broader security and stability imperatives. This shift was marked by external pressures from the United States and the North Atlantic Treaty Organisation (NATO) to address the growing crises in the EU's neighbourhood, and the risks posed to the European security by an increasingly resurgent and aggressive Russia.¹²

The EU enlargement strategies were often criticised for being reactive, focused on adapting to external crises rather than pre-emptively shaping the regional dynamics.¹³ From 1999 onwards, the EU increasingly prioritised security concerns to counter the Russian influence, which culminated in the 2004 “Big Bang” enlargement, and persistently maintained an “enhanced engagement” with the Western Balkans, Ukraine and Georgia.¹⁴

⁷ F Bieber, “Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans” (2011) *Europe-Asia Studies*, vol. 10, No. 1, pp 1783–802. <https://doi.org/10.1080/09668136.2011.618679>; J Stilhoff Sørense, *Intervention and Statebuilding in Kosovo* (London, Routledge 2013), *Routledge Handbook of International Statebuilding*, pp 269–91.

⁸ For a better understanding of EU-Kosovo relations and the conditionality mechanism in specific areas, see: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, Brussels, 8.11.2023 SWD(2023) 692 final.

⁹ D Denti, “The Europeanisation of Candidate Countries: The Case for a Shift to the Concept of EU Member-State Building” (2014) *Contemporary Southeastern Europe*, vol. 1, No. 1 pp 9–3; E Baracani, Evaluating EU Actorness as a State-Builder in ‘Contested’ Kosovo. *Geopolitics*, vol. 25, No. 2, pp 362–386. <https://doi.org/10.1080/14650045.2018.1563890>; F Schimmelfennig and U Sedelmeier, “The Europeanization of Eastern Europe: The External Incentives Model Revisited” (2020) *Journal of European Policy*, vol. 27, No.6 pp 814–33. <https://doi.org/10.1080/13501763.2019.1617333>

¹⁰ Baracani, *supra* note 2, pp 362–86; Greiçevci, *supra* note 2; D Papadimitriou and P Petrov, “State-Building Without Recognition. A Critical Retrospective of the European Union's Strategy in Kosovo (1999–2010)” pp 121–138, in Elbasani Arolda (eds). (2013), “European Integration and Transformation in the Western Balkans Europeanization or Business as Usual?”, Routledge, London.

¹¹ Anghel and Džankić, *Wartime EU: consequences of the Russia – Ukraine war on the enlargement process*. *Journal of European Integration*, (2023) vol. 43, No. 3, pp 487–501. <https://doi.org/10.1080/07036337.2023.2190106>.

¹² S Keil and Z Arkan, “The Limits of Normative Power?: EU Member State Building in the Western Balkans” in S Keil and Z Arkan (eds), *The EU and Member State Building. European Foreign Policy in the Western Balkans* (London, Routledge 2015) pp 15–32; V Anghel and J Džankić, “Wartime EU: Consequences of the Russia – Ukraine War on the Enlargement Process” (2023) *Journal of European Integration*, vol. 43, No. 3, pp 487–501. <https://doi.org/10.1080/07036337.2023.2190106>.

¹³ G Van der Beek and L Neal, “The Dilemma of Enlargement for the European Union's Regional Policy” (2004) *World Economy*, vol. 27, No. 4, pp 587–607. <https://doi.org/10.1111/j.0378-5920.2004.00615>.

¹⁴ R Biermann, “Secessionism, Irredentism and EU Enlargement to the Western Balkans. Squaring the Circle?” in A Elbasani (ed), *European Integration and Transformation in the Western Balkans. Europeanization or Business as Usual* (London, Routledge 2013) pp 157–69; B Iancu, “Core, Periphery, and Universals in Rule of Law Promotion: Contextual (Dis)incentives, Conceptual Shifts” (2024) *Hague Journal on the Rule of Law*, vol. 16, No. 1 pp 465–78. <https://doi.org/10.1007/s40803-024-00236-1>.

The EU's engagement in Kosovo characterised by a shift from economic aid and state-building to mediation and normalisation efforts, provides a lens through which the EU's actorness and strategic priorities could be assessed. Following the 1999 war in Kosovo, the EU, in collaboration with the United Nations Mission in Kosovo (UNMIK), took a leading role in Kosovo's economic reconstruction and state-building efforts. This period focused on establishing democratic institutions, promoting good governance, rule of law and rebuilding infrastructure.¹⁵ From 1999 to 2008, the EU engagement in Kosovo was mostly subscribed to two distinct tracks. The first track of engagement was prescribed in the United Nations (UN) 1244 Security Council Resolution which handed the EU a broad authority to manage post-war reconstruction efforts.¹⁶ The second track was a byproduct of the EU's own enlargement policy applied through the Stabilisation and Association Process (SAP)¹⁷, that already was implemented in other Western Balkans countries. The Stabilisation and Association Process was instrumental to these efforts, aiming to stabilise the region and facilitate its integration into the EU.¹⁸

The EU's approach shifted after Kosovo's declaration of independence, during which period as outlined in the Ahtisaari Plan,¹⁹ transitioned into a body vested with the authority to supervise Kosovo's post-independence.²⁰ It is within this historical context that the EU's expression of strong actorness combined with the policy of neutrality unfolds. The EU Member States have collectively agreed to oversee the implementation of Ahtisaari Plan and partake in the state-building efforts in Kosovo,²¹ but concurrently contradict and uphold their position of neutrality towards Kosovo's statehood.

With the conclusion of Kosovo's supervised independence in 2012, conditionality evolved into a central mechanism through which the EU applied the explicit enlargement criteria that Kosovo ought to meet to progress towards closer integration with the Union.²² This shift transformed the EU's neutrality policy in both scope and substance. While the EU maintained its formal position of neutrality towards Kosovo's statehood, it explored avenues for contractual relations with Kosovo, mirroring its engagement with other Western Balkans countries hence adding another layer to the EU's definition of neutrality towards Kosovo.

¹⁵ V. Musliu, *Europeanization and Statebuilding as Everyday Practices. Performing Europe in the Western Balkans* (London, Routledge 2021).

¹⁶ See Report of the Secretary-General pursuant to Paragraph 10 of Security Council Resolution 1244 (1999), S/1999/672, 12 June 1999, para 5; D. Doli, *The International Element, Statehood and Democratic Nation-Building: Exploring the Role of the EU and International Community in Kosovo's State-Formation and State-Building* (Switzerland, Springer 2019), at p 35.

¹⁷ C Phipps, "The Rocky Road to Europe: The EU's Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality" (2004) *European Foreign Affairs Review*, vol. 9, No. 2, pp 219–45.

¹⁸ D Phinnemore, "The Stabilisation and Association Process. A Framework for European Enlargement" in A Elbasani (ed), *European Integration and Transformation in the Balkans. Europeanisation or Business as Usual* (London, Routledge 2013) pp 22–35.

¹⁹ In this article we use the term Ahtisaari Plan to refer to the Comprehensive Proposal for the Kosovo Status Settlement as proposed by Martti Ahtisaari, the then UN Special Envoy for Kosovo status process, see for more: United Nations Security Council, Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council. Addendum Comprehensive Proposal for the Kosovo Status Settlement, 2007, UN Doc. S/2007/168, available at <<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf>>.

²⁰ B Bashota, D Gërguri and L Bajrami, "The Ambivalence of Kosovo-EU Relations in the Last Decade: The Perspective of Kosovo's Political Elites" in MB Troncota, RA Cucuta and AO Özçelik (eds), *Reconfiguring EU Peripheries: Political Elites, Contestation, and Geopolitical Shifts* (Helsinki, Helsinki University Press 2024) pp 259–85.

²¹ Council of the European Union, *supra* note 6; See also sections III.1–III.3 in our contribution.

²² E Gateva, *European Union Enlargement Conditionality* (London, Palgrave Macmillan 2015); Bieber, *supra* note 7, pp 1783–802; J Sadriu Lushaku, *Europeanization through Conditionality and Deliberation in the EU. An Analysis of the Case Study of Kosovo* (Hannover, Europa als Politischer Raum 2019) pp 225–8; T Marošková, "Conflict Conditionality in the Western Balkans: Its Conceptualization, Evolution, and Nature" (2024) *Journal of Contemporary European Studies* Vol 32, No. 1, 1–18. <https://doi.org/10.1080/14782804.2024.2398784>

Currently, the EU's engagement in Kosovo focuses on normalising relations between Kosovo and Serbia, marking a strategic shift in its enlargement policy and adding another layer of conflict mediation into its external actions policies.²³ The Kosovo–Serbia dialogue has emerged as a cornerstone of EU conditionality in the case of both countries and represents the largest mediation mission led by the EU to date. For Serbia, progress in accession negotiations is contingent in part upon its commitment to the dialogue with Kosovo and the implementation of concluded agreements.²⁴ In the same vein, relations between Kosovo and Serbia and the implementation of the agreements reached in the dialogue process have evolved into specific benchmarks that both inform and condition the relations of Kosovo with the EU as stipulated in the Stabilisation and Association Agreement between the EU and Kosovo.²⁵

Although this engagement is crucial for regional stability, its effectiveness is often challenged by internal divisions among EU Member States, particularly by the five non-recognising states,²⁶ as well as the broader geopolitical context following the Russia–Ukrainian war.²⁷ Those divergencies and internal disagreements may risk undermining the EU's coherence of external policy and thus erode the EU's effectiveness and influence in Kosovo.²⁸

2. The EU actorness and legal creativity in Kosovo: a conceptual analysis

The concept of “EU actorness” is employed in academic literature to refer to the extent to which the EU can exert and maintain influence in external relations.²⁹ The seminal work of Bretherton and Vogler³⁰ lay a foundational framework for analysing the concept of EU actorness, delineating three criteria: “opportunity”, “presence” and “capability.” “Opportunity” denotes external factors viewed as “the external context of ideas and events that enable or constrain action.” “Presence” refers to the EU's ability “to exert influence beyond its borders [...] and shape the perceptions, expectations and behaviour of others.” Finally, “capability” signifies the EU's ability “to capitalise on presence or respond to opportunity.”³¹

²³ S Economides and J Ker-Lindsay, “Pre-Accession Europeanization: The Case of Serbia and Kosovo” (2015) *Journal of Common Market Studies*, vol. 53, No. 5, pp 1027–44; J Bergmann, *The EU as a Mediator in the Kosovo-Serbia Conflict* (London, Palgrave Macmillan 2020).

²⁴ See Council of the European Union, Negotiating Framework, General EU Position on the Accession of Serbia to the European Union Ad1/14, Conf RS 1, Brussels, January 2014, paras. 23, 45, 46, available at <<https://data.consilium.europa.eu/doc/document/AD%201%202014%20INIT/EN/pdf>> (last accessed 6 January 2025), and Bargués et al, Member States *supra* note 5, pp 19–38, at p 25.

²⁵ Arts 5 and 21, Stabilisation and Association Agreement with between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, on the other part, OJ L 71/3, 16.3.2016.

²⁶ G Visoka, “Kosovo” in G Visoka, J Doyle and E Newman (eds), *Routledge Handbook of State Recognition* (London, Routledge 2019) pp 402–16.

²⁷ A Hajrullahu, “The Serbia Kosovo Dispute and the European Integration Perspective (2019) *European Foreign Affairs Review*, vol. 24, No. 1, pp 101–20; R Dopchie and L Lika, “The EU Enlargement Strategy in the Western Balkans: Assessing the Implications Amidst the War in Ukraine” (2024) *European Foreign Affairs Review* 159–76; K Gashi, “Simulated Power and the Power of Simulations: The European Union in the Dialogue between Kosovo and Serbia” (2021) *Journal of Common Market Studies*, vol. 59, No. 1, pp 206–21; J Ker-Lindsay and I Armakolas “Kosovo, EU Member States and the Recognition-Engagement Nexus” in I Armakolas and J Ker-Lindsay (eds), *The Politics of Recognition and Engagement* (London, Palgrave Macmillan 2019) pp 1–17.

²⁸ See: Bargués et al, *supra* note 5, Member State pp 19–38, at p 32.

²⁹ C Bretherton and J Vogler, “A Global Actor Past Its Peak? International Relations” (2013) 375–90; Bretherton and Vogler, *supra* note 5, pp 209–17, at p 212.

³⁰ Bretherton and Vogler, *supra* note 29, pp 375–90, at p 376; Bretherton and Vogler, *supra* note 5, pp 209–17.

³¹ Bretherton and Vogler, *supra* note 29, pp 375–90.

Building on external dimensions and changes in international power relations, Costa and Barbé³² expand their analysis, contending that shifts in global power dynamics and the fragmentation of the international order need adjustments to the EU's requirements for actorness. Such a fragmentation posed significant challenges to the EU's ability to remain an effective actor, particularly due to reduced "levels of preference cohesion, authority or capabilities (or any combination of them)."³³ Beyond the impact of external environment in preconditioning EU actorness,³⁴ academic commentators employ additional criteria for measuring "actorness," namely, "recognition", "authority", "cohesion" and "autonomy".³⁵ Empirical evidence suggests that the EU has progressively enhanced its actorness through increased diplomatic cohesion, "horizontal coordination," and the "supranationalisation" of foreign policy mechanisms.³⁶ These developments have allowed the EU to take a more proactive role in conflict prevention and management, as demonstrated by its engagement in the Western Balkans, and particularly in Kosovo.

Due to the EU's multi-layered institutional framework and policies, the study of its actorness, is extensive yet rarely focused on individual countries. However, academic literature on the EU's conflict management, actorness and engagement in Kosovo reveals a nuanced yet complex interplay between reactive policies, legal creativity and strategic adaptation. Historically, the EU's enlargement strategy has served as a key instrument for regional stabilisation; however, this approach has encountered significant challenges due to internal divisions amongst the EU Member States, external crises and evolving geopolitical dynamics.³⁷

The case of Kosovo has been instrumental in shaping the EU's strategic approach and its actorness tools, showcasing its strengths in fostering stability and its limitations in addressing internal disagreements and external pressures. Thus, the evolving nature of the EU's role as an international actor reflects its capacity to adapt but also raises pertinent questions on its overall effectiveness. As the EU continues to face new challenges with the ongoing war in Ukraine³⁸ unveiling the geopolitical leverage inherent in the enlargement strategy, the necessity for a better coherent and proactive strategy that balances internal disagreements with external effectiveness becomes paramount. The success of EU's

³² O Costa and E Barbé, "A Moving Target. EU Actorness and the Russian Invasion of Ukraine" (2023) *Journal of European Integration*, vol. 45, No. 431–46.

³³ *Ibid.*

³⁴ A Niemann and C Bretherton, "EU External Policy at the Crossroads: The Challenge of Actorness and Effectiveness" (2013) *International Relations*, vol. 23, No. 3, pp 261–75; T. Gehring, S Oberthür and M Mühleck, "European Union Actorness in International Institutions: Why the EU Is Recognized as an Actor in Some International Institutions, but Not in Others" (2013) *Journal of Common Market Studies*, vol. 51, No. 5, pp 849–65.

³⁵ C Rhodes, "States, Agency, and Rules: The European Union in Global Environmental Politics" in J Jupille and JA Caporaso (eds), *The European Union in the World Community* (Boulder, CO, Lynne Rienner Publishers 1998) pp 213–29.

³⁶ Bargués et al, *supra* note 5, A. Dandashly, H. Dijkstra and G. Noutcheva, "Engagement against All Odds? Navigating Member States' Contestation of EU Policy on Kosovo" (2024) *The International Spectator*, pp 19–38.

³⁷ K Beshku, "The War in Ukraine: Europe's Geopolitical Momentum. Will the Western Balkans Take Advantage of It?" in J Džankić, S Kacarska and S Keil (eds), *A Year Later: War in Ukraine and Western Balkan (Geo)Politics* (Florence, European University Institute 2023) pp 23–30; R Panagiotou, "The Impact of the Ukraine War on the Western Balkans: What Is at Stake?" in J Džankić, S Kacarska and S Keil (eds), *A Year Later: War in Ukraine and Western Balkan (Geo)Politics* (Florence, European University Institute 2023) pp 165–76.

³⁸ D. Denti, "A New Geopolitics for the Western Balkans, a Thessaloniki Moment for the Eastern Partners, and a New Big Project for Europe. The Effects of Russia's Invasion of Ukraine on the EU's Neighbourhood and Enlargement Policies" in J Džankić, S Kacarska and S Keil (eds), *A Year Later: War in Ukraine and Western Balkan (Geo)Politics* (Florence, European University Institute 2023) pp 46–55; F Bieber, "A 'Zeitenwende' in the Balkans after the Russian Attack on Ukraine?" in J Džankić, S Kacarska and S Keil (eds), *A Year Later: War in Ukraine and Western Balkan (Geo)Politics* (Florence, European University Institute 2023) pp 30–9.

engagement to stabilise its neighbourhood is often hindered by protracted decision-making processes and internal contestations within EU. These factors have contributed to an increasing sense of enlargement fatigue among the Western Balkans countries.³⁹

Literature on the EU's actorness in Kosovo underscores the tools, strategies and motives employed by the EU institutions and individual Member States to navigate internal and external constraints arising from contestations within the EU.⁴⁰ The EU's actorness in conflict and state-building is conditioned by external "action-enabling and action-hindering factors" including the contested nature of statehood.⁴¹ Noutcheva and Baracani put forward three main arguments. First, geographical and cultural proximity influences EU engagement.⁴² In fact, the EU is "motivated" to exert its influence when opportunities arise within its immediate region of interest, as exemplified by its involvement in the Western Balkans. This proximity reduces internal dissent over future actions, thereby increasing the effectiveness of Union's instruments in "traction."⁴³ This rationale partially explains the motivations and aims why the EU's role in Kosovo is characterised by such a pronounced intensity. Second, the lack of consensus amongst the twenty-seven Member States, constrains the EU's ability to exert influence, thus, contributing to the perceived ineffectiveness of EU actorness.⁴⁴ The latter highlights "how" and "why" "neutrality towards statehood" was interpreted and reshaped in redefining EU actorness in Kosovo. Third, the EU's ability to engage in Kosovo "is facilitated by the acceptance of its security role in a specific conflict by other international or regional players."⁴⁵ Despite other conditions, the absence of internal contestation within Kosovo about the EU's presence backed by other international actors, such as a fully aligned USA-EU policy on Kosovo, not only enabled but was detrimental to the EU's actorness in Kosovo.

Differences regarding Kosovo's statehood have unfolded as the main element that both pre-conditions and limits the EU's reach towards Kosovo.⁴⁶ A set of particular measures aiming to overcome the divide among the EU Member States varying from institutional, functional to diplomatic were necessary to mitigate the negative impact of contestation.⁴⁷ To circumvent a deadlock in the Council's decision-making process, the EU has increasingly delegated responsibilities pertaining to conflict resolution and accession to institutional bodies, namely, the European Commission, the European External Action Service (EEAS) and mission-specific bodies like the European Union Rule of Law Mission in Kosovo (EULEX).⁴⁸ This delegation strategy was key to understanding EU actorness in Kosovo, where disparities for recognition of statehood among the EU Member States

³⁹ P. Bargués, A. Dandashly, H. Dijkstra and G. Noutcheva, "Time to Re-Engage with Kosovo and Serbia: Strengthening EU Foreign and Security Policy amidst Internal Contestation" (2022) Istituto Affari Internazionali 1–47; T. Lavrelashvili and S. Van Hecke, "The End of Enlargement? The EU's Struggle with the Western Balkans and Eastern Partnership Countries" (2019) In O. Costa and S. Van Hecke, "The EU Political System After the 2019 European Elections" (London: Palgrave Macmillan 2019) pp. 433–54; M. Bonomi, "Beyond 'Enlargement Fatigue': A View from Rome" (2022) In M. Kaeding, J. Pollak and P. Schmidt, "Enlargement and the Future of Europe. Views from the Capitals" (Berlin: Springer 2022) pp. 65–9; K. Sören and B. Stahl, "EU enlargement in times of crisis: Strategic enlargement, the conditionality principle and the future of the 'Ever-Closer Union'" (2023) In M. Roos and D. Schade, "The EU under Strain? Current Crises Shaping European Union Politics" (De Gruyter 2023) pp. 155–72.

⁴⁰ Noutcheva, *supra* note 2, pp. 449–71; Baracani, *supra* note 2, pp. 362–86; Greiçevci, *supra* note 2.

⁴¹ Noutcheva, *supra* note 2, pp. 449–71; Baracani, *supra* note 2, pp. 362–86.

⁴² *Ibid.*, p. 454.

⁴³ *Ibid.*

⁴⁴ Bretherton and Vogler, *supra* note 29, pp. 375–90, at p. 381.

⁴⁵ Noutcheva, *supra* note 2, pp. 449–71, at p. 457.

⁴⁶ Bargués et al, *supra* note 5, Member State pp. 19–38; A. Lefteratos, "Contested statehood, complex sovereignty and the European Union's role in Kosovo" (2023) European Security 294–313.

⁴⁷ Bargués et al, *supra* note 5, Member State pp. 19–38.

⁴⁸ *Ibid.*

resulted in a unifying yet ambivalent EU approach towards Kosovo described as “diversity on recognition, but unity in engagement”.⁴⁹

The literature review reveals three major findings: firstly, internal contestations over Kosovo’s statehood have shaped the contours of EU actorness; secondly, these contestations have limited the EU’s capacity for unified engagement; and lastly, neutrality using legal creativity towards Kosovo’s status has facilitated the continued involvement of the EU.

Our contribution suggests a deeper exploration of the third feature of EU actorness, namely, the mantra of neutrality. Our hypothesis is that neutrality serves as (a) an action-enabling principle, (b) a broadly applied mechanism throughout EU-Kosovo relations and (c) its application does not undermine Kosovo’s equal participation in the enlargement process. The article explores how particular EU strategies are impacting and legitimising Kosovo’s statehood, opening its EU perspective and ensuring, incrementally, the launch of the EU accession process with Kosovo. The article focuses on assessing their impact on Kosovo’s ability to maintain and expand treaty-based relations with the EU while examining broader institutional strategies.

To maintain focus and specificity, three specific delimitations are imposed in this conceptual framework. First, our contribution does not delve into the specific nature of contestation by the five EU Member States regarding Kosovo. This limit is set to avoid replicating existing knowledge about the nature of contestations of five EU members states concerning Kosovo.⁵⁰ Instead, the article accepts these contestations as facts, recognising their influence on the characteristics of EU actorness and its approach towards Kosovo. Second, the conceptual framework is not aimed to assess the effectiveness of these EU strategies in relation to Kosovo.⁵¹ We expand on policies, decisions and actions that are relevant for Kosovo as benchmarks to explain how they are impacting Kosovo’s ability to maintain and develop a treaty-based relations with the EU. In addition, we explain the overarching strategies rather than the actions of individual institutions, providing a detailed analysis of the “shapes of neutrality” and the various dimensions through which it is applied. This in addition impacts the selection of illustrative examples to assess and explain the variations of neutrality.

Third, our contribution does not focus on the EU’s role in Kosovo-Serbia dialogue. Although Kosovo-Serbia dialogue is an important part of the EU’s engagement with Kosovo, and therefore a priority of EU’s Common Foreign and Security Policy (CFSP) its results have been limited as far as the impact in re-dimensioning the EU’s approach towards Kosovo. This is not to argue that the dialogue and the agreements reached have not become part of the EU’s conditionality towards both Kosovo and Serbia. The Kosovo-Serbia dialogue remains the largest diplomatic mediation mission managed by the European External Action Service. For Serbia, the EU has introduced the agreements reached in the Kosovo-Serbia dialogue along with the commitment to continue the dialogue as explicit benchmarks contained in Chapter 35 for the EU accession conditionality.⁵² The Kosovo-Serbia relations and the following agreements have been added in the Stabilisation and Association Agreement, constituting specific

⁴⁹ P. Bargues, A. Dandashly, H. Dijkstra and G. Noutcheva, “Time to Re-engage with Kosovo and Serbia: Strengthening EU Foreign and Security Policy amidst Internal Contestation” (2022) Istituto Affari Internazionali 1–47, and Van Elsuwege, *supra* note 4, pp 393–409, at p 398.

⁵⁰ Out of twenty-seven EU MS only Spain, Cyprus, Greece, Romania and Slovakia, do not recognise Kosovo’s independence.

⁵¹ A Global Strategy for the European Union’s Foreign and Security Policy, 2016, available at <https://www.eea.europa.eu/sites/default/files/eugs_review_web_0.pdf>.

⁵² See Bargués et al, *supra* note 5, A. Dandashly, H. Dijkstra and G. Noutcheva, “Engagement against All Odds? Navigating Member States’ Contestation of EU Policy on Kosovo” (2024) *The International Spectator*, pp 19–38, at p 25.

benchmarks that condition the pace of reproachment of Kosovo to the EU.⁵³ In practice, until now, the Kosovo–Serbia dialogue reflects on the pace of Kosovo’s reproachment with the EU and is a tool which the non-recognising EU Member States often utilise to inform their formal position on important decisions regarding Kosovo. While the dialogue and its outcomes could potentially inform and shape the EU Member States positions towards Kosovo’s application for EU membership our analysis entails three illustrative examples for better clarity and specificity that can yield concrete answers in addressing the existing dynamics.

III. Unfolding the shapes of neutrality

I. Neutrality and statehood

The EU role in Kosovo formally began in 1999, following its acceptance to lead the economic recovery and governance efforts within the UN administration of Kosovo.⁵⁴ The EU’s involvement became substantial after the UN Special Envoy, Martti Ahtisaari, unveiled the plan for Kosovo’s independence in March 2007.⁵⁵ The plan laid the foundation for Kosovo’s current constitutional framework and shaped the transition from the UN-mandated mission to the International Civilian Office (ICO), headed by an International Civilian Representative (ICR) who simultaneously served as the EU Special Representative (EUSR). The Ahtisaari Plan prescribed three main pillars for the EU’s mission mandate: supervising the implementation of the Ahtisaari Plan through an ICR and (EUSR) (overseeing Kosovo’s independence), supporting Kosovo’s state-building efforts and fostering good neighbouring relations between Kosovo-Serbia.⁵⁶

However, the Ahtisaari Plan, was not adopted by the UN Security Council (UNSC) mainly due to opposition from Russia.⁵⁷ Consequently, the EU assumed a decisive role in implementing the Ahtisaari Plan and supporting Kosovo’s post-independence institutions to shape its constitutional identity. To that aim, there were two consecutive policy issues related to accommodating Kosovo’s commitment to effectuate its claim to statehood which the EU had to manage. First, the EU facilitated the transfer of powers from the UN mission to an EU-led mission, without involving the UNSC to formally endorse such a transfer of powers.⁵⁸ Second, the EU deployed a Common Security and Defence Policy (CSDP) mission (EULEX) and appointed an EUSR (who also served as the ICR) to operate within the framework established by the Ahtisaari Plan. Despite non-recognition of Kosovo’s independence by five EU Member States, the EU remained committed to ensuring the plan’s implementation, thus supporting Kosovo’s path to statehood efforts. Regarding the first point, the EU effectively replaced the existing UN mandated mission, through an exchange of letters between the EU High Representative for Common Foreign and Security

⁵³ Arts 5 and 21, Stabilisation and Association Agreement with between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, on the other part, OJ L 71/3, 16.3.2016.

⁵⁴ Report of the Secretary-General pursuant to Paragraph 10 of Security Council Resolution 1244 (1999), S/1999/672, 12 June 1999, para 5, available at <https://documents.un.org/doc/undoc/gen/n99/175/05/pdf/n9917505.pdf?>.

⁵⁵ United Nations Security Council, *supra* note 19.

⁵⁶ A Orakhelashvili, “Statehood, Recognition and the United Nations System: A Unilateral Declaration of Independence in Kosovo” in E De Wet and K Maria Scherr, *Max Planck Yearbook of United Nations Law* (Leiden, Brill 2008) pp 1–44, at p 37; O Tansey, “Kosovo: Independence and Tutelage” (2009) *Journal of Democracy*, vol. 20, No. 2, 153–66, p 159; AJK Shepherd, “A Milestone in the History of the EU: Kosovo and the EU’s International Role” (2009) *International Affairs*, vol. 85, No. 3, 513–30.

⁵⁷ Security Council Report, July 2007 Forecast, 28 June 2007, 4, available at <<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/July%202007%20Forecast%20PDF%20version.pdf?>>.

⁵⁸ E De Wet, “The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of Eulex” (2009) *The American Journal of International Law*, vol. 103, No. 1, pp 83–96.

Policy (CFSP) and the UN Secretary General. In the exchange of letters, the EU confirmed the launch of the EULEX mission in Kosovo under the CSDP, agreeing to take over UN Mission mandate in core areas as outlined in the Ahtisaari Plan (albeit without explicit reference to it directly).⁵⁹

Preparations for the EU's leadership in implementing the Ahtisaari plan on Kosovo's status settlement started in 2006 with the establishment of an EU mandated team to contribute to the preparations of the establishment of a possible International Civilian Office in Kosovo, including a European Union Special Representative component (ICO/EUSR Preparation Team).⁶⁰ This commitment was reconfirmed only three days after the Ahtisaari Plan was formally submitted to the UN Secretary General through a joint report by then-EU High Representative of Javier Solana, the then Enlargement Commissioner Olli Rehn, regarding the preparations for the then future EU presence in Kosovo.⁶¹ The report also laid down the division of duties between the ICO office, the CSDP Mission (EULEX) and the European Commission, delineating the EUSR's and the EULEX's responsibilities in supporting Kosovo institutions in implementing the Ahtisaari Plan and consolidating rule of law.⁶²

The European Commission's role primarily focused on assisting Kosovo institutions to deliver on a long-term European perspective.⁶³ These efforts were further reiterated by the European Council's conclusions by the end of 2007, underlining the EU's willingness to play a leading role in implementing the Ahtisaari Plan and establish an ESDP mission and a double-hat with a dual mandate EUSR/ICR to guide these efforts.⁶⁴ Following Kosovo's declaration of independence in 2008, the EU remained the sole *sui generis* international organisation, inheriting some aspects from the then UN mission in Kosovo. The reach of the mandate of both the EUSR and the EULEX mission aligned closely with the Ahtisaari Plan and the Kosovo's Constitution.

The second set of actions of EU's engagement involved the deployment of the CSDP mission (EULEX) and the appointment of an EUSR. Authorisation for these initiatives faced significant hurdles due to internal divisions over transition of Kosovo to an independent country. The differences towards Kosovo's recognition were the driving factor to question both actions.⁶⁵ With the aim of technically addressing those differences, two specific arrangements were implemented. The first concerned the date of adoption of Joint Actions, while the second related to the symbolic reference of the UNSC Resolution 1244. As to the first, the Council adopted, few days before the declaration of independence of Kosovo, two joint actions, one authorising the operationalisation of the then biggest ever

⁵⁹ United Nations Security Council, Letter dated 18 February 2008 from the Secretary-General to the President of the Security Council, UN Doc. S/2008/106, available at <<https://documents.un.org/doc/undoc/gen/n08/242/62/pdf/n0824262.pdf>> (last accessed 5 January 2025); United Nations Security Council, Report of 12 June 2008 of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, para 8, UN Doc. S/2008/354, available at <<https://unmik.unmissions.org/sites/default/files/s-2008-354.pdf>> (last accessed 5 January 2025).

⁶⁰ Council Joint Action 2006/623/CFSP of 15 September 2006 on the establishment of a EU-team to contribute to the preparations of the establishment of a possible international civilian mission in Kosovo, including a European Union Special Representative component (ICM/EUSR Preparation Team), OJ L 253/29, 16.9.2006.

⁶¹ European Commission, Memo: Summary note on the joint report by (the then) Javier Solana, EU High Representative for the CFSP and Olli Rehn, (the then) EU Commissioner for Enlargement, on the state of preparations of the future EU and International presence in Kosovo, Brussels, 29 March 2007, available at <https://ec.europa.eu/commission/presscorner/detail/en/memo_07_121> (last accessed 4 January 2025).

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Council of the European Union, Presidency Conclusions, 14 December 2007, paras. 65–70, available at <https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressData/en/ec/97669.pdf> (last accessed 5 January 2025), and Council of the European Union, *supra* note 6.

⁶⁵ Council of the European Union, *supra* note 6.

CSDP mission, EULEX, the other appointing an EUSR for Kosovo.⁶⁶ The second arrangement, was addressed by mentioning the UNSC Resolution 1244 as one of the broad legal references in the preambular parts of both Joint Actions.⁶⁷ Since Kosovo declared the independence few days after, the casual link related to the commencement of the mandate of both EULEX and EUSR and EU's direct support for Kosovo's independence was avoided. This moment also marked the first time Cyprus put into motion the right to constructive abstention and avoided a deadlock on the launching of EULEX and appointment of EUSR.⁶⁸ However, as defined in the text of both joint actions, the mandate of EULEX and EUSR was determined based on the Ahtisaari Plan and based on the then Kosovo institutions commitment to implement Ahtisaari Plan.⁶⁹ As an example, the Joint Action, *inter alia*, mandates the EUSR to "play a leading role in strengthening stability in the region and in implementing a settlement defining Kosovo's future status, with the aim of a stable, viable, peaceful, democratic and multi-ethnic Kosovo."⁷⁰ This framework enabled the EUSR to take over and lead with the International Civilian Office and allowed EULEX to begin implementing its mandate according to the Ahtisaari Plan and the Kosovo's Constitution.

The EU's approach reflected its evolving principle of neutrality towards Kosovo. While "diversity on recognition but unity in engagement,"⁷¹ became the mantra that guided the EU's role in Kosovo, differences amidst the EU Member States about Kosovo's statehood were inducing factors shaping the contours of the EU's future relations with Kosovo. In 2010, the continuation of the EUSR's mandate, along with the extension of EULEX in 2012, marked another dimension of EU's neutrality. This apparent contradiction was addressed in 2011 when the EU decoupled the EUSR's mandate from the ICR role. As to the first point, the dilemma about EU's neutrality was linked to the double-headed position of the EUSR, which until 2010 was heading the International Civilian Office, a key position in guaranteeing the enactment of Kosovo's independence. How could the EUSR, a representative of a status neutral organisation, the EU, serve simultaneously as the international representative entitled to supervise Kosovo's maturity to fully fledged sovereign country? The answer to this question was eventually addressed in 2011, and the EU decided to decouple the EUSR from the mandate of the ICR. In extending EULEX mandate, the main question remained how to accommodate EULEX within the contours of Kosovo's post-independence Constitution and authorise its presence throughout the territory of Kosovo. This was resolved through constitutional amendments and subsequent exchanges of letters between the President of Kosova (approved as international agreement by Kosova Parliament) and the EU High Representative, as a preliminary step before the Council adopted its Joint Action to continue the mandate of EULEX.⁷² The EU's

⁶⁶ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, Eulex Kosovo, OJ L 42/92, 16.12.2008; Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo, OJ L 42/88, 16.2.2008.

⁶⁷ *Ibid.*

⁶⁸ Bargués et al, *supra* note 5, Member State pp 19–38; M Cremona, "Enhanced Cooperation and the Common Foreign and Security and Defence Policies of the EU" (2009) European University Institute 1–17; R Zupančiča, N Pejičb, B Grilj and A Peen Rodt, "The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission? (2018) Journal of Balkan and Near Eastern Studies, vol. 20, No. 6, pp 599–617.

⁶⁹ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, Eulex Kosovo, OJ L 42/92, 16.12.2008; Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo, OJ L 42/88, 16.2.2008.

⁷⁰ Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo, OJ L 42/88, 16.2.2008.

⁷¹ Van Elsuwege, *supra* note 4, pp 393–409, at p 398.

⁷² EULEX mandate in Kosovo was welcomed in the act of Declaration of Independence, Article 5, para 20: "we invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan,

strategy in authorising the launching of EULEX and appointing the EUSR was not merely procedural. Considering internal contestations to Kosovo's statehood, debates about the legal basis to establish a mission the mandate of which was entrenched and directly linked to Kosovo's constitutional authorisations, resulted in defining the "shapes of EU's neutrality" towards Kosovo. Ultimately, the then EU's strategy transformed neutrality into a mantra which opened avenues for sustaining the EU's engagement in Kosovo with a view to influencing positively Kosovo's internal state-building, promoting its statehood,⁷³ and also ensuring its continued engagement in Kosovo.

2. Neutrality, EU-Kosovo Treaty relations and the path to EU accession

The Stabilisation and Association Agreement (SAA) which entered into force on April 2016, marks the first international agreement between the EU and Kosovo.⁷⁴ Its unique nature does not only reflect the divergences among the EU Member States regarding Kosovo's statehood, but also its content. While differences exist between the SAA with Kosovo and those concluded with other Western Balkan countries, these distinctions do not pertain to the substantive obligations undertaken by the parties. Rather, they lie in the type of agreement, the specific exemptions and the legal clarifications incorporated by the EU to address Kosovo's status.⁷⁵ The SAA represents a pivotal instrument reaffirming the EU's commitment for a distinct and separate EU enlargement perspective for Kosovo within a broader, yet similar, treaty framework governing the EU relations with all of the Western Balkan countries.

Kosovo's pathway to EU accession was acknowledged prior to its declaration of independence. The EU's overarching vision for the Western Balkans, articulated at the 2003 Thessaloniki Summit, explicitly extended the prospect of EU accession to Kosovo.⁷⁶ In 2005 the EU for the first time confirmed unequivocally the policy shift towards an individual and separate EU perspective for Kosovo.⁷⁷ In the communication about the European future of Kosovo, *inter alia*, the European Commission confirmed that for the Western Balkans, the SAA represents the first step towards integration in the EU.⁷⁸ However, the Commission stipulated that negotiations on an SAA with Kosovo were contingent on the resolution of its final status settlement.⁷⁹ However, following Kosovo's declaration of independence and the establishment of its legal personality in international relations, progress toward formalising an SAA resumed. In 2012, the European Commission launched a feasibility study to assess the prospects for negotiating an SAA between the EU and

and a European Union-led rule of law mission" and defined in the transition provisions of the Constitution as well. See also: The Constitution of the Republic of Kosovo, available at <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> (last accessed 4 January 2025); See also: Ioannides and Collantes-Celador (2011), pp 415–445; Mahr, 2021, pp 43–64; Beha (2022), pp 186–206; See: Amendments to the Constitution of the Republic of Kosovo Regarding the Ending of International Supervision of Independence of Kosovo, available at <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3293>> (last accessed 4 January 2025); Law No. 04/L-148 on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, available at <<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2841>> (last accessed 4 January 2025); Law No. 04/L-274 on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, available at <<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9476>> (last accessed 2 January 2025).

⁷³ Baracani, *supra* note 2, pp 362–86, at p 381.

⁷⁴ Stabilisation and Association Agreement with between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, on the other part, OJ L 71/3, 16.3.2016.

⁷⁵ For a detailed review see: Van Elsuwege (2017), pp 393–410; D Doli (2019) Springer, pp 149–52.

⁷⁶ Commission from the European Communities, Communication from the Commission, A European Future for Kosovo, Brussels, 20.4.2005 COM(2005) 156 final, pp 2–11.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, pp 3–4.

⁷⁹ *Ibid.*

Kosovo.⁸⁰ The findings of this study remain exemplary of another dimension of neutrality, this time to be extended not only to authorise the involvement of the EU in Kosovo's state-building efforts, but to advance Kosovo's accession perspective. The European Commission's report yielded three important findings. First, the EU can enter into international agreement with Kosovo, irrespective of the exiting internal views on its statehood.⁸¹ Second, the positions of individual Member States on Kosovo's statehood will remain unaffected, thus enabling the conclusion of an agreement consistent with their respective policies.⁸² Third, the nature of the SAA with Kosovo would be determined only upon successful completion of the negotiations between the European Commission and Kosovo.⁸³ These findings reflecting both the European Commission's stance and the individual positions of Member States on Kosovo's statehood, were embedded in the final text of the SAA.

To operationalise the concept of "neutrality," the SAA between the EU and Kosovo was concluded as an EU-only agreement following the changes introduced by the Lisbon Treaty, which authorised the EU to enter into EU only agreements with third countries.⁸⁴ As a result, the EU circumvented the need for the Member States to individually sign and ratify the SAA with Kosovo, thereby avoiding potential diplomatic obstacles. Key clarifications were embedded within the text of the agreement to reinforce this neutrality. The most notable clarification is stipulated in Article 2 of the SAA, which acknowledges that none "... of the terms, wording or definitions used in this Agreement, including the Annexes and Protocols thereto, constitute recognition of Kosovo by the EU as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not taken such a step."⁸⁵

The legislative technique employed, regardless of the nature of the agreement as legally binding upon the EU and its Member States, opened the pathways for Kosovo to be placed in the enlargement process with other Western Balkans countries. The latter is explicitly referred to in Article 11 of the SAA with Kosovo, stipulating that the SAA aims the "advancement of Kosovo's European perspective and rapprochement with the EU, in line with the European perspective of the region, based on individual merits and in line with Kosovo's commitments under Article 5 of this Agreement."⁸⁶

The SAA clearly defines that political dialogue between the EU and Kosovo has two particular elements. The first is that it will serve as a forum to further promote Kosovo's participation in international organisations, and second, advance Kosovo's European perspective in line with that of the regions.⁸⁷ Overall, the EU strategy to enter into an international agreement with Kosovo through the SAA reaffirms that the EU, using different dimensions and expressions of neutrality, has legally guaranteed the Kosovo a European perspective. In addition, the EU strategy, has confirmed that internal

⁸⁰ European Commission, Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels, 10.10.2012 COM(2012) 602 final.

⁸¹ European Commission, Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels, 10.10.2012 COM(2012) 602 final, 1–14.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ European Commission, Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo, Brussels, 10.10.2012 COM(2012) 602 final.

⁸⁵ Art 2., Stabilisation and Association Agreement with between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, on the other part, OJ L 71/3, 16.3.2016 (Emphasis added).

⁸⁶ Art 11., para 2, Stabilisation and Association Agreement with between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, on the other part, OJ L 71/3, 16.3.2016 (Emphasis added).

⁸⁷ *Ibid.*

contestations on Kosovo's statehood do not question Kosovo's ability to enter in treaty relations with the EU.

3. Neutrality and validation of Kosovo's EU accession perspective

In March 2019, the European Commission approved the participation of all six countries of the Western Balkans in the Body of European Regulators for Electronic Communications (BEREC).⁸⁸ As part of the implementation of the EU *acquis* in the field of electronic communication the invitation was extended to Kosovo's National Regulation Authority as well as other Western Balkan countries as well. Framed within the implementation of the SAA with Kosovo, such a step was not viewed as controversial. However, this decision proved that EU's neutrality towards Kosovo statehood leave room for interpretation.⁸⁹ There were two main reasons behind Spain's contestation of the European Commission's decision. First, it disputed the categorisation of Kosovo as a "third country" or "third state" under EU law. Second, Spain challenged the European Commission's right to invite Kosovo to join BEREC, given the non-recognition of Kosovo's independence by five EU Member States. In response to Spain's action for annulment, the General Court of the EU dismissed both claims in September 2020. The Court held that the concept "third country" is broader and goes beyond the concept of "third state," thereby confirming that the European Commission is authorized to establish working arrangements with Kosovo institutions using SAA with Kosovo as legal basis.⁹⁰

In reaching its decision, the General Court introduced an artificial and theoretical distinction between the concepts "country" and "state" and as a corollary decided that internal contestations related to Kosovo's statehood place the latter within the broad and not sufficiently clear category of "countries." Dissatisfied with the ruling, Spain lodged an appeal, arguing that the terms "third country" and "third states" are equivalent and interchangeable under international law, and by derivation in EU law as well.⁹¹ However, Spain maintained that Kosovo did not qualify as a "third country/state" and therefore, the European Commission is not authorised to invite the National Regulatory Authority of Electronic Communication of Kosovo to join BEREC.

In responding to Spain's appeal, the Court of Justice of the EU (CJEU) acknowledged that the terms "third country" and "third states" are interchangeable and Kosovo is a third country within the meaning of the EU law.⁹² The CJEU went on further to clarify that Kosovo can be treated as a "third country" under EU law, without affecting individual positions of any Member State on Kosovo's statehood. The CJEU further expanded on the obligations embedded within the SAA between the EU and Kosovo, drawing comparisons to SAAs concluded with other Western Balkan countries and its European perspective.

First, the CJEU determined that the wording and context of the Kosovo SAA provisions in the field of electronic communications is similar with other SAAs the EU has concluded with other countries of the WB and upon which the participation of NRAs of those WB countries in

⁸⁸ Decision No MB/2023/07 of the Management Board of the Agency for Support for BEREC (BEREC Office), available at <https://www.berec.europa.eu/system/files/2023-06/MB%20%2823%29%2040_MB_decision_WAS_between_participating_NRAs_BEREC_BEREC%20Office.pdf>.

⁸⁹ C Challet, P Bachelier and Pierre, "Can Kosovo Be Considered as a 'Third Country' in the Meaning of EU Law? Case Note to Spain v. Commission" (2021) *Maastricht Journal of European and Comparative Law*, vol. 28, No. 3, 399–405, at p 400.

⁹⁰ Case C-632/20 T-370/19, *Kingdom of Spain v European Commission*: ECLI:EU:C:2023:28, para 24.

⁹¹ Ivi, paras 33–4.

⁹² Ivi, para 53; Challet, Bachelier and Pierre, 2021, pp 399–405; Fedele, 2023, pp 536–547; Kassoti, 2024, pp 27–9.

BEREC is based.⁹³ The latter remaining an important principle as far as the interpretation of other provisions of the SAA with Kosovo and its European future. The Court suggested that the mere fact that the terms of Kosovo SAA are not identical is not relevant.⁹⁴ Secondly, the CJEU clarified that the EU Commission's actions cannot entail an act of recognition of Kosovo, implying that such actions are sovereign declarations of states. Third, drawing upon the 2010 International Court of Justice (ICJ) Advisory Opinion on Kosovo's declaration of independence, the CJEU held that the obligation of non-recognition in relation to Kosovo does not exist, since Kosovo's statehood is not attributed to a violation of a *jus cogens* norm (*jus cogens*) and the applicable international law provisions.⁹⁵

The CJEU's ruling proved to be an exemplary precedent which limits internal contestation by an EU Member State over the statehood of Kosovo to influence the re-categorisation of the EU-Kosovo relations as substantively different. This, in addition, prevented individual Member States to question the validity of authorisations vested upon the EU to explore deepening the relations with Kosovo within the limits of the SAA and the European perspective, and potentially divide Kosovo European perspective from those of the rest of Western Balkans countries. The CJEU's clear and unequivocal legal interpretation concerning the nature of the Kosovo SAA and its substantive equivalence to agreements with other Western Balkans countries reinforces Kosovo's accession prospects under Article 49 TEU. In doing so, the CJEU reaffirmed Kosovo's eligibility to pursue EU membership, contributing to the broader goal of regional stability and integration

IV. Conclusions

Our research unveils that the EU's neutrality toward Kosovo has unfolded as an active mechanism shaping its engagement strategy. Neutrality has enabled Kosovo's incremental participation into the EU's enlargement process while accommodating internal divisions among Member States regarding its statehood.

Building on academic debates on EU actorness and its approach towards the Western Balkans,⁹⁶ the research findings illustrates how the EU employed "neutrality towards

⁹³ Case C-632/20 T-370/19, *Kingdom of Spain v European Commission*, para 56: ECLI:EU:C:2023:28, para 56.

⁹⁴ *Ivi*, para 59.

⁹⁵ See also K Istrefi, *Kosovo is a Country, and a Country Means a State*, Rules the Court of Justice of the European Union, EJILTALK, January 20 (2023), available at <<https://www.ejiltalk.org/kosovo-is-a-country-and-a-country-means-a-state-rules-the-court-of-justice-of-the-european-union/>>.

⁹⁶ See, *inter alia*, Noutcheva, *supra* note 2, pp 449–71; Bretherton and Vogler, *supra* note 5; U Sedelmeier, "Europeanisation in New Member and Candidate States" (2011) *Living Reviews in European Governance* 1–52; N Tocci, *The EU and Conflict Resolution: Promoting Peace in the Backyard* (London, Routledge 2008); S Lavenex, "EU External Governance in 'Wider Europe'" (2004) *Journal of European Public Policy* 680–700; GR Whitman, *Normative Power Europe: Empirical and Theoretical Perspectives* (London, Palgrave Macmillan 2011); G Noutcheva, "Normative Power in the Eastern Neighbourhood" in NR Haar, T Christiansen, S Lange and S Vanhoonacker (eds), *The Making of European Security Policy : Between Institutional Dynamics and Global Challenges* (London, Routledge 2021) pp 28–45; H Mylonas, "Balance of Power, System Polarity and Irredentism" (2025) *Journal of Global Security Studies*, vol. 10, No. 1, pp 1–18; J Loevinsohn and LJ Larik, "Protection Without Recognition: The Role of the Council of Europe in Strengthening Human Rights in Kosovo" (2024) *European Papers* 287–309; A Lefteratos, "Contested Statehood, Complex Sovereignty and the European Union's Role in Kosovo" (2023) *European Security* 294–313; L Reis, "From a Protectorate to a Member State of the European Union: Assessing the EU's Role in Kosovo" in B Ferreira Costa (ed), *Challenges and Barriers to the European Union Expansion to the Balkan Region* (Portugal, IGI Global 2022) pp 278–96; E Dionysiou, "The European Union Enlargement in the Western Balkans: A Never Ending Story of High Hopes and High Disappointments" in B Ferreira Costa (ed), *Challenges and Barriers to the European Union Expansion to the Balkan Region* (Portugal, IGI Global 2022) pp 39–67; A Semenov, "Legal and Political Contradictions in Kosovo: Limits of the Brussels Agreement" (SAGE 2022) vol. 12, No. 4, pp 1–10; D Bouris and D Papadimitriou, "The EU and Contested Statehood in Its Near Abroad: Europeanisation, Actorness and State-Building" (2020) *Geopolitics*, vol. 25, No. 2,

Kosovo's statehood" to exploit strategic opportunities, enhance its influence and legitimise its role in Kosovo.

The legal analysis of the EULEX, the SAA and the CJEU's interpretation of Kosovo's statehood illustrates how neutrality operates as both a legitimising principle and an authorisation mechanism. The deployment of EULEX showed how neutrality was used to justify EU involvement in Kosovo's post-independence state-building, despite the lack of consensus among Member States. The conclusion of the SAA further reinforced this approach, allowing Kosovo to establish treaty-based relations with the EU without requiring recognition by all EU Member States. Finally, the CJEU's ruling on Kosovo's participation in the Body of European Regulators for Electronic Communications (BEREC) reaffirmed that Kosovo could engage with EU institutions as a "third country," ensuring its continued inclusion in EU legal and regulatory frameworks despite ongoing political contestations.

While neutrality has been instrumental in sustaining engagement, its long-term viability remains uncertain, particularly as Kosovo moves closer to potential EU candidacy status in the coming years. Our findings suggest that legal and institutional engagement can advance integration despite political contestations, but the absence of a unified position on Kosovo's statehood may pose challenges as accession negotiations progress.

Further research could explore whether the EU's neutrality-based engagement model can be sustained in the later stages of the accession process. Comparative studies could assess whether similar mechanisms could be applied in other cases of political contestation, examining whether the EU's approach in Kosovo can serve as a blueprint for engagement with other issues where divisions between MS are impossible to be addressed in short-term. Future research could also investigate the broader implications of this approach for EU foreign policy, particularly in balancing internal cohesion with external geopolitical objectives.

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pp 273–93; D Chandler, "Kosovo: Statebuilding Utopia and Reality" (2019) *Journal of Intervention and Statebuilding*, vol. 13, No. 5, pp 545–55; Musliu, *supra* note 15.

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