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SWP Comment

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The Normalisation of Relations between Kosovo and Serbia

How the EU can secure the implementation of the “European proposal”

Marina Vulović

Over the new year, tensions between Serbia and Kosovo rose once again. This occurred in the context of negotiations on a new European Union (EU) proposal – also known as the Franco-German or “European” proposal aimed at formalising relations between Belgrade and Pristina, much along the lines of the 1972 Basic Treaty between the two Germanys. On 27 February, there was a breakthrough in the negotiations: Both sides agreed on the text of the proposal, although it has not yet been signed. Additionally, the prioritisation of individual issues in the so-called implementation map has not yet been determined, which could cause further disputes. To ensure the adoption and full realisation of the agreement, the EU should not only assess its progress in the context of the EU accession negotiations of both countries. It should also establish specific implementation and monitoring mechanisms that will secure more modest interim targets for the implementation of individual issues in the agreement. This is the only way to successfully implement the new agreement.

Serbia’s non-recognition of Kosovo, which declared independence in 2008, lies at the heart of many problems in the Balkans. It prevents both countries from making progress in their EU accession processes, it causes destabilisation in the Balkans, which is visible in the recent tensions in northern Kosovo, and it blocks regional economic cooperation. The so-called European proposal – also known as the Franco-German proposal – for the normalisation of relations between Belgrade and Pristina would address the conflicting understandings of Kosovo’s statehood and could unlock new opportunities for the region.

The proposal originated as a diplomatic initiative by Germany and France that aimed to stabilise the Balkan region and normalise relations between Belgrade and Pristina in light of Russia’s invasion of Ukraine. German Chancellor Olaf Scholz and President Emmanuel Macron sent a letter each to Serbia’s president, Aleksandar Vučić, and Kosovo’s prime minister, Albin Kurti, in early September 2022. In those letters, they announced that they would send two of their top advisors to support Miroslav Lajčák, the EU’s special envoy for the Belgrade-Pristina dialogue. The advisors were Jens Plötner and Emma-



nuel Bonne, two experts on foreign and security policy.

For those familiar with the process of normalisation between Serbia and Kosovo, the basic principles of the said proposal were no surprise. The “European proposal” envisages a similar model for the normalisation of relations between Belgrade and Pristina as provided in the Basic Treaty signed by the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) in 1972, and it was already mentioned as a possible model in the initial phase of the normalisation process (2011 – 2013). The FRG never recognised the GDR as an independent state under international law, but it accepted that the GDR acted *de facto* like a sovereign state. In international law, “*de facto*” refers to a state of affairs that is generally accepted as valid, even though it has not been formally recognised under international law (*de jure*).

In the new agreement, Serbia is required to accept Kosovo’s independence *de facto*, but not *de jure*. This would allow Serbia to adhere to its Constitution, which recognises Kosovo to be a part of Serbian territory. Similar to the Basic Treaty between the two Germanys, the Franco-German proposal states that the agreement should apply “without prejudice to the different view of the Parties on fundamental questions, including on status questions” concerning Kosovo.

In addition, Serbia should abandon its obstruction of Kosovo’s membership in international organisations and recognise certain features of Kosovo’s statehood, such as documents, vehicle registration plates and sovereign action in the international arena. The recognition of statehood features without *de jure* recognition is also enshrined in the Basic Treaty in Articles 4 and 6. In addition, Kosovo and Serbia should establish permanent representations at the seat of their respective governments; this in turn is also provided for in Article 8 of the Basic Treaty. Article 1 is also almost the same in both texts: It speaks of the development of normal, good neighbourly relations on the basis of equality.

Kosovo is required to implement all agreements signed to date in the normalisation process – also known as the Brussels Dialogue. This primarily refers to the establishment of the Association/Community of Serb-majority Municipalities (A/CSM) in Kosovo, which had already been agreed in 2013 within the framework of the so-called Brussels Agreement and would provide more autonomy for Serb municipalities in Kosovo. The status of the Serbian Orthodox Church in Kosovo should also be formalised, and a high level of protection for Serbian religious and cultural heritage should be guaranteed.

The new proposal differs from the Brussels Agreement from 2013 in that Serbia would not only recognise Kosovo’s authority within Kosovo (in the Brussels Agreement, Serbia had already accepted that Kosovo law should be the only valid one in Kosovo). Serbia would also recognise Kosovo’s sovereignty in the international arena and accept that Kosovo could also independently belong to international organisations such as the United Nations (UN). Serbia has so far actively tried to prevent this.

Opposition to the European proposal

Both sides have agreed on the text of the proposal, but not on the annex with the so-called implementation map, which could become a serious point of contention. The map should define which issues will be dealt with first. Serbia, for example, wants to start with the establishment of the A/CSM, but Kosovo does not. Therefore, there is still resistance in both Belgrade and Pristina to the adoption of the new proposal, which has not been initialled yet.

President Vučić sparked a heated debate in the Serbian parliament in January 2023 after warning that Serbia could become politically isolated from the EU and face economic destruction if the proposal was not accepted. He then announced new elections that would also serve to legitimise the poten-

tial agreement – a strategy that would absolve Vučić of responsibility for accepting the proposal.

Prime Minister Kurti, in turn, declared that Kosovo had no interest in implementing the A/CSM because it could endanger Kosovo's sovereignty, promote Greater Serbia politics and destabilise the country. Moreover, in line with his policy of reciprocity, Kurti demanded that Serbia first establish a similar association of Albanian-majority municipalities in the Presevo Valley and maintained that the rights of Kosovo Serbs were in any case protected by Kosovo's multi-ethnic institutional framework.

In other words, both sides are looking for ways to avoid accepting the agreement. Why should Vučić accept an agreement that would solve the Kosovo problem when it is an unpopular choice in Serbia and would not win him political support? Nor can the EU offer Serbia quick accession in exchange for a solution to the Kosovo issue, which would be quite attractive to Vučić. The accession process is linked to reforms in democracy and the rule of law, which the incumbent regime in Serbia does not want, as it bases its power on patronage, corruption and control of the media.

At the same time, Kosovo sees the EU as an unreliable partner. After all, five EU member states have not recognised Kosovo (Greece, Romania, Slovakia, Spain and Cyprus), which calls into question its prospects for potential EU membership. The EU's treatment of Kosovo as a status-neutral partner contradicts Kosovo's aspirations for recognition of its statehood, and thus touches on issues of its identity.

All of this limits the EU's potential for action and credibility in the Belgrade-Pristina dialogue. This is also reflected in Kosovo's often greater reliance on the United States as a mediation partner.

Reasons for rapid implementation

As it stands, all other options for solving the dispute have been exhausted and

rejected, such as the often-criticised idea of a territorial swap between northern Kosovo and the Presevo Valley, an issue that dominated the dialogue in 2018. That is why all parties should focus on the latest proposal. The time is ripe for a solution that would confront Serbia with the reality of an independent Kosovo. The Brussels Agreement has already laid good groundwork for this. Since 2013, Serbia has recognised Kosovo's authority throughout the territory of its former province. In this respect, recognising Kosovo as de facto independent would not be a big leap.

In order not to have to wait another ten years for a solution to the Kosovo-Serbia dispute – which was exactly the scenario of the Brussels Agreement – the EU would need to put pressure on both sides right now so that they do not find more excuses to avoid implementing previous agreements and adopting the new proposal.

Vučić's announcement of new elections as a means to legitimise the adoption of the agreement should be viewed with scepticism. New elections would only serve to buy time. In the parliamentary and presidential elections in April 2022, Vučić and his Progressive Party (SNS) won a clear majority. This should have already given them the necessary legitimacy. Moreover, the European proposal is a political agreement that does not require a referendum, as it would not violate Serbia's constitution. Similarly, the Constitutional Court in Serbia also stated that the Brussels Agreement of April 2013 was a political, not a legal agreement.

At the same time, Kosovo's arguments for not implementing the A/CSM should be viewed critically. Kurti often emphasises that Kosovo's Constitutional Court has ruled that the establishment of the A/CSM is unconstitutional. In doing so, he ignores the fact that the Constitutional Court explicitly recommended that the A/CSM be established in line with the 2013 Brussels Agreement. Only the 2015 agreement, which spells out the main principles and elements of the A/CSM, was found not to be entirely in line with the Constitution.

Kurti's government prides itself on upholding the principles of the rule of law. It would be contradicting itself if it did not follow the recommendations of the highest court in the country. How a statute of the A/CSM that is in accordance with the recommendations of the Constitutional Court can be devised has recently been demonstrated by the Friedrich Ebert Stiftung. Hence, there is a way, but Kurti has shown no political will to do so.

In addition, there are two other important reasons why the A/CSM should be established. The first is the need to reintegrate the Serb community in the north of the country, which collectively left Kosovo's institutions at the end of 2022. One of the main reasons for their boycott policy is Kurti's refusal to establish the A/CSM, which enjoys great popularity among the Serb community in Kosovo. The second reason is that by establishing the A/CSM, Kosovo would *strengthen* its statehood, not weaken it, as Kurti has often suggested previously. Even the "NEWBORN" monument, which is redesigned every year on Kosovo's Independence Day on 17 February, displayed the letters "NO NEW BR" (for "no new broken republic") this year to draw attention to the danger of the destabilisation of Kosovo that is associated with the establishment of the A/CSM. But Kosovo is already a "broken republic". The north cannot be treated like any other part of Kosovo. By Serbs leaving the institutions, Kosovo's sovereignty in the north has effectively been *weakened*. Kurti is trying to integrate the Serbs in the north with unilateral measures (such as increasing the police presence in the north or declaring that Serbian registration plates for towns in Kosovo are illegal), but such measures will always fail. The integration of Serbs in Kosovo overall stands or falls with the north. This was evident in the north Kosovo crisis from 2011 to 2013, which ended with the Brussels Agreement, and it also holds true for the recent crisis from 2022 to 2023, in the context of the negotiations on the new agreement.

In order to be able to integrate the north and create an "unbroken" republic, the

Kosovo government must demonstrate goodwill to initiate an honest dialogue with the Kosovo Serbs. To this end, Kurti's government could also take advantage of the disappointment of the northern Kosovo Serbs with the results of the recent crisis and the ensuing policies administered by Belgrade. A relatively strong civil society sector exists in the north, and there are people who do not blindly follow Belgrade's policies. Kurti's generalising claim that the north is controlled and inhabited by criminals and extremists is not conducive to a constructive dialogue with the local population.

What the EU can do

Given all of the above, the question remains how the EU can persuade Belgrade and Pristina to ratify and subsequently implement the new agreement. Even if there is no prospect of EU accession in the short term that could ensure the implementation of the agreement, this goal could be achieved by other means.

In return for concluding the agreement, the EU can, for example, support Kosovo in becoming a member of international organisations such as the Council of Europe, thereby strengthening Kosovo's statehood. In addition, the EU Commission, as well as other EU countries engaged in the dialogue, such as Germany and France, should make parallel efforts to ensure that the five EU states that do not recognise Kosovo normalise their relations with the country. This would increase the EU's credibility in the eyes of Kosovo's government.

The adoption of the new agreement would also promote regional cooperation throughout the Western Balkans, which would particularly benefit Serbia, the strongest economy in the region. The new proposal would be a building block for the Common Regional Market (CRM), which could move the countries forward economically. So far, the CRM has not been fully implemented because Serbia and Kosovo do not recognise each other. The so-called four freedoms (free movement of goods, capital,

services and people) cannot be guaranteed in the region as long as one country denies the existence of the other. This has manifold negative consequences: from the recognition of professional qualifications to electricity supply. Even without full EU membership, both countries could achieve economic benefits through regional cooperation and gradual integration into the EU single market. In the short term, it would be important for the EU to fund economically profitable cross-border projects that promote cooperation between organisations from Serbia and Kosovo.

In addition, the EU can provide more economic support (through the Instrument for Pre-Accession Assistance [IPA III]) to the two countries, on the one hand for projects that have high social relevance, and on the other hand for those that contribute to the reconciliation of both groups. One example would be the “Mirëdita, dobar dan!” festival, which brings together artists, human rights and peace activists as well as opinion makers from Kosovo and Serbia, offering a platform for cooperation and peaceful dialogue. Reconciliation between Serbia and Kosovo can only be achieved through deeper social changes. This will be easier when Belgrade and Pristina have formalised their relations and are not blocking and antagonising each other on a daily basis. The new agreement would be a good first step on the long road to reconciliation.

Crucial for Serbia’s acceptance of the proposal is the establishment of the A/CSM, which is why it should also be explicitly mentioned as one of the first points in the implementation map as the annex to the treaty. For the EU, on the other hand, it is crucial that both sides commit to the implementation of the individual points of the new agreement. To this end, the EU could set up implementation and monitoring mechanisms based on a realistic timeframe. Accordingly, not only the above-mentioned economic benefits resulting from implementation should be defined, but also those measures that would be taken if the agreed points are not implemented within the set deadline. For exam-

ple, the annex could state which investments or aid Kosovo can expect in which period of time – if it were to spell out the statute of the A/CSM as soon as possible – and which measures it could face if it does not do so, for example the continued blocking of Kosovo’s membership in the Council of Europe. It is important to set medium-term goals: If only one major goal were to be set at the end of the long process – EU membership – this would lose traction over the years.

An independent, yet to be established EU-financed monitoring commission should accompany the implementation process to report to the EU the progress on the ground. The commission should be multi-ethnic and composed of, for example, members of local civil society and legal experts. Monitoring and implementation mechanisms would subject all sides involved in the dialogue to more rigorous accountability and communicate clear expectations of them. This should be one of the “lessons learnt” from the poor implementation of the Brussels Agreement, which lacked such mechanisms and still has not been fully implemented ten years after its adoption.

Ultimately, the European proposal should serve as a kind of prelude to the full normalisation of relations between Belgrade and Pristina. It therefore has the character of a transitional instrument rather than a final agreement, which could possibly be reached in ten or twenty years, before Serbia or even both countries are on the verge of EU membership or integration into the EU single market. As long as Serbia and Kosovo have opposing views on Kosovo’s status, their relations will not normalise in a sustainable way. Overcoming the dominant view in Serbia that Kosovo is part of its territory – a view that is identity-building – will take time and gradual change. This has to be accompanied by tangible socio-economic improvements for people in Serbia. According to polls, economic and political progress is more important to a majority in Serbia than preserving Serbia’s sovereignty over Kosovo.

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Last but not least, the new agreement would minimise China's and Russia's vectors of influence on Serbia's politics. Both states have so far used the Kosovo issue as a gateway to influence local politics. Conversely, Serbia also uses China's and Russia's support in the UN Security Council to pursue its politics of de-recognition of Kosovo or prevent Kosovo from joining international organisations. An agreement could reduce the level of Serbia's foreign policy cooperation with Russia and China, which would of course be more realistic if Serbia also recognised Kosovo de jure. If Serbia were to solve its "Kosovo problem", it would no longer be dependent on the support of these states in the UN Security Council.

Conclusion

The fact that all 27 EU states endorsed the European proposal in the conclusions of the European Council on 9 February 2023 gives it the necessary political weight. The supporters also include the five EU member states that have not recognised Kosovo. Adopting the proposal would also strengthen Germany's role as one of the most important foreign policy and economic partners of the entire Western Balkans and create new confidence in the EU accession process. If an agreement between Serbia and Kosovo based on the Franco-German proposal were to be reached, it would also be proof of the seriousness of Germany's commitment to stabilising the Balkans and would also strengthen the Berlin-Paris tandem in EU foreign and enlargement policy. Last but not least, it would be a much-needed sign to the Balkans that the EU is once more committed to the enlargement process after years of stagnation.

As a result of Russia's war of aggression against Ukraine, enlargement has again become an important instrument of EU policy. It is in this context that the new-old proposal of normalising relations between

Belgrade and Pristina resurfaced. The United States, too, has already explicitly supported it and is mediating in the dialogue. The key partners in the West are therefore behind the proposal. The ball is now in the court of the two Balkan countries, which should do their best not to miss this unique opportunity.

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