

KOSOVO AND SPAIN AT THE EU LEVEL: A BATTLE OF SEMANTICS

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1

Setting the scene

Since Kosovo's unilateral declaration of independence in February 2008, the country's non-recognition by some weighty states in the international arena has remained an obstacle for attaining membership in international organisations. The reluctance of states, such as Russia, China, Brazil, India and five European Union (EU) member states (Cyprus, Greece, Romania, Slovakia and Spain), has prevented Kosovo to join prominent international organisations like the UN, UNESCO or INTERPOL. The accession into the EU, though, is a story of

its own. EU's nature – not only as an international organisation, but as a hybrid entity with political, legal and economic competences as well as with an internal single market – makes accession into it much more cumbersome; a process known as 'EU enlargement' is an EU policy through which the Commission assists European states to meet criteria for membership in the bloc.

Kosovo's European perspective¹ has been confirmed by the EU in multiple summits,

1 This paper uses specific terminology that describes the different types of (potential) relationships between the EU and Kosovo. To set a common ground with the reader: "EU path & track" refers to those steps Kosovo has taken to draw near to the EU, such as the signing of agreements and harmonisation of laws; "European perspective" is a term used by the EU to show commitment and offer (political and economic) assistance to the WB, and at the same time respect non-recognisers position on statehood; "EU integration" refers to the integration of national policies to that of the EU so that at some point in the future Kosovo could qualify for EU membership; "EU accession process" alludes to the process any country should follow to attain EU membership, from submitting a formal application to the Council, to implement EU laws and standards; and lastly, "EU membership" concerns the formal accession into the EU.

starting with Thessaloniki in 2003,² to the most recent 2020 Western Balkans (WB) Summit in Zagreb.³ Despite this impetus, Kosovo's accession process into the EU is currently in a stalemate. The signing of the Stabilisation and Association Agreement (SAA) in 2015 is the last milestone Prishtina has achieved to draw closer to the EU. The resumption of the EU-mediated dialogue between Belgrade and Prishtina in September 2020 has not brought Prishtina a step closer to the EU; nor has there been any progress with the visa liberalisation process that remains stalled in the European Council.

Leaving internal reforms aside, what are member states' responsibility for this lack of progress in Kosovo's EU integration process? What role do non-recognisers such as Spain play in this impasse? Recognisers and non-recognisers have often held different views concerning Kosovo's EU integration process, but the Spanish approach has certainly been one of the toughest to accommodate in the European Council of Ministers' meetings.⁴

This policy paper sheds light on Spain's position vis-à-vis Kosovo's EU integration process and explores to what extent has Spain played an obstructive role in Kosovo's path into the EU. Has Spain vetoed Kosovo's attempt to

move forward on the EU track? After setting the scene, three main milestones between the EU and Kosovo are scrutinised to answer these questions: (1) the signing of the SAA between Kosovo and the EU; (2) the process of visa liberalisation for Kosovo citizens; and (3) the EU-mediated dialogue between Belgrade and Prishtina. The policy paper ends with a set of recommendations to the EU and Kosovo's and Spain's government. It finds that opening new channels of communications between Madrid and Prishtina and promoting engagement among the different parties is key to reformulate the Spanish stance on Kosovo's EU integration process. The methodology of this policy paper is based on a qualitative approach and mainly focuses on desk research and semi structured interviews. EU official documents, political speeches, policy reports and academic papers in the field of Kosovo's statehood and Spain's position on Kosovo's independence are used for analysis. In addition, to complement the desk research and gaining a deeper understanding on the Spanish position on Kosovo's EU integration process, a series of semi-structured interviews have been conducted with EU and Spanish policymakers as well as Kosovo officials. ●

2 EU-Western Balkans Summit Thessaloniki, 21 June 2003. Accessible at https://ec.europa.eu/commission/press-corner/detail/en/PRES_03_163

3 Zagreb Declaration, 6 May 2020. Accessible at <https://www.consilium.europa.eu/media/43776/zagreb-declaration-en-06052020.pdf>

4 Interview with EU official and Kosovo diplomat, September and November 2020, respectively.

2

Drivers of the Spanish position

Madrid holds two main policy strands that define and guide the Spanish approach on Kosovo's track to the EU: the Spanish stance on Kosovo's statehood (in other words, the lack of recognition and engagement) and the Spanish view on enlargement in general.

1

Madrid's non-recognition of Kosovo has influenced the Spanish position on Kosovo's

path to the EU. Amongst the five EU non-recognisers, Spain has often been considered the toughest of all countries, lacking any kind of engagement.⁵ The lack of official meetings between diplomats from the two countries, the difficulties to travel from Kosovo to Spain, the presentation of long written statements by Spain advocating the illegality of Kosovo's declaration of independence during the deliberations before the 2010 ICJ Advisory opinion, or the voting against Kosovo's membership into interna-

⁵ Ferrero-Turrión, R. (2020) "Spain: Kosovo's Strongest Opponent in Europe", in Armakolas, I. and Ker-Lindsay, J. ed. *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo*, Palgrave Macmillan, pp.215-235.

tional organisations are just a few examples of the Spanish position.⁶

2

The reasons behind non-recognition are multifaceted but can be boiled down to the territorial dynamics within Spain (namely Catalonia and the Basque Country) and the Spanish governments' strong adherence to international law.⁷ The Spanish position on Kosovo has been extremely legalistic (in terms of state recognition) in order to prevent any ostensible *de facto* recognition in its policies *vis-à-vis* Kosovo's statehood: from preventing Kosovo to show state symbols in sports competitions in Spain,⁸ to denying official meetings between the two administrations.

Madrid's overall approach to enlargement in the Western Balkans is also a major catalyst of the Spanish position *vis-à-vis* Kosovo's integration process into the EU. Since the signing of the Maastricht Treaty and the establishment of the Copenhagen criteria in 1993, Spain has followed the main state drivers of EU enlargement (e.g. Germany and Austria) and has taken a minor role in enlargement in the Western Balkans. Despite the positive image Spain has in the region, Madrid has lacked a political and strategic vision for the Western Balkans.⁹ The limited economic and political interests in the area being one of the main reasons.¹⁰ This lack of involvement, together with Kosovo's unilateral declaration of independence, and the 'difficulties' it caused for Madrid, has made the last Spanish governments (2004-2020) to take a position of distance and non-interference in EU enlargement in the region and follow the position of other member states that are the drivers of the process.

6 Vila Sarriá, P. (2019) "The Kosovo Question in Spanish Domestic Politics: a View from Catalonia", in Armakolas, I. et al (ed.) *Local and International Determinants of Kosovo's Statehood*, Pristina, Kosovo Foundation for Open Society, pp. 322-346.

7 Vila Sarriá, P. And Demjaha, A., (August 2019) "Kosovo-Spain Relations and the Dilemmas on the Problem of Non-Recognition", *SEEU Review*, Volume 14, Issue 1.

8 Morina, D. (November 2018). Flag Ban in Spain Highlights Kosovo's Sporting Handicap, *Balkan Insight*.

9 Ferrero-Turrión, R., (1 October 2020) "Los dilemas de la UE y España ante Balcanes Occidentales" (EU and Spain dilemmas in the Western Balkans) Documento de Opinión IEEA 121/2020.

10 Vila Sarriá, P. (2019) "The Kosovo Question in Spanish Domestic Politics: a View from Catalonia", in Armakolas, I. et al (ed.) *Local and International Determinants of Kosovo's Statehood*, Pristina, Kosovo Foundation for Open Society, pp. 322-346.

Although being generally supportive of enlargement (albeit with limited engagement), Spain's approach differs from that of other member states. Madrid does not conceive enlargement as a foreign or regional policy tool, but as a process of harmonisation of laws and norms to match EU standards set in the Copenhagen criteria and Treaty on European Union (TEU).¹¹ Furthermore, according to a Spanish diplomatic source, Spain's view seems to have come in conflict with the position of the Commission on several occasions. Madrid, for example, does not recognise the term 'potential candidates', simply because the TEU or any of the other statutes do not refer to this terminology at all, while the term is used by the Commission to keep the European perspective of the region afloat.¹²

In a nutshell, Madrid's position on Kosovo's path to the EU has mirrored the strained statehood relations between the two countries. On some occasions Madrid's decisions however softened at the EU level, with some 'concessions' being made. The signing of the SAA in 2015 or the non-blocking of Council declarations pertaining to Kosovo exemplify some of these concessions. These non-obstructive steps are explained through the fact that these events did not undermine the Spanish position on Kosovo's statehood, and that Madrid has been a follower on enlargement rather than a country breaking consensus. Building on these fundamental guiding principles, Madrid's decisions on Kosovo's EU integration process are explained in detail in the next section. ●

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11 Interview with Spanish diplomat, October 2020.

12 Ibid.

3

The Spanish position on Kosovo's EU integration process

Spain has supported Kosovo's European perspective provided that the decisions taken by the European Commission and the European Council, as well as any other EU body, did not undermine the Spanish position on Kosovo's statehood. In other words, Madrid has maintained a neutral position on Kosovo's path to the EU as long as the documents, declarations, and agreements signed between the EU and Kosovo did not

make a specific reference to statehood or imply a *de facto* recognition of Kosovo. To do so, from the outset of Kosovo's declaration of independence, Madrid has been very vigilant and ensured that the EU would take a neutral position on the recognition of Kosovo. Whenever this has not been the case, Spain has voiced its concerns and threatened with the use of veto.

Spain's position on Kosovo's EU integration process has remained largely unchanging in the last 13 years, although it has fluctuated over time, mirroring the Spanish domestic situation.¹³ Although Spain did not participate in the launching of the EULEX mission in Kosovo in 2008 —as it thought it could jeopardize the enforcement of the UNSC Resolution 1244 and thus undermine the Spanish position¹⁴—it maintained a non-interference approach in the first two years of Kosovo's independence. The Spanish government at the time supported the start of discussions between the EU and Kosovo (provided that the status neutral clause was respected)¹⁵ and supported regional cooperation in the Western Balkans during the 2010 Spanish EU Presidency.¹⁶ Spanish Minister of Foreign Affairs at the time, Miguel Angel Moratinos, even organised a Summit in Sarajevo, where Spanish and Kosovo officials were present in an official meeting, which has rarely happened since.¹⁷

The ICJ Opinion published in July, 2010, however, ended hopes for a softening of the Spanish position vis-à-vis Kosovo. This advisory opinion, which coincided with an increase of tensions in Catalonia for the movement of independence, forced Spain to take a detached approach regarding Kosovo's

EU integration process. From there on, Spain ensured that every EU declaration that pertained to Kosovo or that included Kosovo in the framework of enlargement had the following asterisk: "This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence". This disclaimer was part of the agreement on "Arrangements Regarding Regional Representation and Cooperation (ARRRC)" signed between Kosovo and Serbia on February 23, 2012 in Brussels. Furthermore, to emphasize the distinction between Kosovo and other WB countries, Spain ensured that any step Kosovo took in the EU path had no references to (future) membership. The voting nature of the Council, with unanimity required for most foreign affairs decisions, granted Madrid with a particularly important position to negotiate any declarations related to Kosovo, and to block any decision that they did not deem as complying with status neutrality.¹⁸ Despite this, Spain supported some steps with regard to the European perspective of Kosovo, such as the initiation of the EU mediated dialogue between Belgrade and Prishtina in 2011, or the signing of the SAA in 2015. These moves, however, did not jeopardise the Spanish position on Kosovo's statehood in and of themselves.

13 Interview with EU official, November 2020.

14 Vila Sarriá, P. (2019) Armakolas et al, (2019) "The Kosovo Question in Spanish Domestic Politics: a View from Catalonia", in Armakolas, I. et al (ed.) "Local and International Determinants of Kosovo's Statehood, Pristina, Kosovo Foundation for Open Society, pp. 322-346.

15 Status neutral entails that the EU shall not take a decision on the recognition of Kosovo and it is up to member states to decide whether or not to recognise and maintain relations with Kosovo.

16 Ferrero-Turrión, R. (2020) "Spain: Kosovo's Strongest Opponent in Europe", in Armakolas, I. and Ker-Lindsay, J. ed. *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo*, Palgrave Macmillan, pp.215-235.

17 Vila Sarriá, P. (2019) Armakolas et al, (2019) "The Kosovo Question in Spanish Domestic Politics: a View from Catalonia", in Armakolas, I. et al (ed.) "Local and International Determinants of Kosovo's Statehood, Pristina, Kosovo Foundation for Open Society, pp. 322-346.

18 Smeets, S. (2015), "Negotiations in the EU Council of Ministers: All Must Have Prizes", Colchester: ECPR, 2015.

It was in 2018, during the high tensions in Catalonia and when the EU was trying to recreate a momentum for the European perspective of the WB, that the Spanish approach on Kosovo's EU integration process became more notorious.

1

In January 2018, Spain presented a non-paper in which it questioned Kosovo's inclusion in the EU enlargement plan, going a step further than other non-recognisers. Madrid asked the Commission to cut Kosovo from the enlargement process, and to stop referring to the term 'Western Balkans 6 (WB6)'.¹⁹ The Spanish demands were implemented in the 2018 EU strategy for the region, eliminating any references that had originally put Kosovo on the same footing as other WB partners, by, for example, removing any content that referred to Kosovo moving forward on the EU integration process, and including an ambiguous text on Kosovo's EU path.²⁰ The Spanish complaint led to the Commission completely dropping the use of the 'WB6' term, and instead replacing it with the vague term 'Western Balkans Partners' in declarations and reports.²¹

2

The EU's enthusiasm to keep the WB countries engaged in their European perspective was thwarted by Spain's concerns over Kosovo's EU path, which manifested in its extreme attention to the legal aspects of statehood. Whilst the 28 EU leaders took a photo during the May 2018 Sofia summit with WB leaders, showing their commitment to the region, Spanish former PM Mariano Rajoy left the summit a day prior to the meeting. PM Rajoy also blocked the original declaration, limiting the content of the final draft which was released and ensuring that the final declaration was not signed by WB leaders themselves.²² Rajoy made it noticeably clear and showed dissatisfaction with how the Kosovo file was being handled in Brussels: "We have an important issue. Some speak of enlargement with countries which are not recognised. This causes us some worry".²³ This episode exemplified the Spanish legalistic position vis-a-vis Kosovo's statehood and the problems that Spain has with Kosovo being part of the EU enlargement plan.

The Spanish approach on Kosovo's EU integration process differed from the position of other EU non-recognisers. Although on some occasions, some of them supported the Spanish position on Kosovo's EU integration

19 Velebit, V. (30 January 2018), "Spain delivers a non-paper in regard to the Kosovo's EU integration", European Western Balkans.

20 Rettman, A. (6 February 2018), "EU downgrades Kosovo enlargement status", EU Observer; and Ferrero-Turrión, R. (2020) "Spain: Kosovo's Strongest Opponent in Europe", in Armakolas, I. and Ker-Lindsay, J. ed. *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo*, Palgrave Macmillan, pp.215-235.

21 Interview with Kosovo journalist, November 2020.

22 Ferrero-Turrión, R. (2020) "Spain: Kosovo's Strongest Opponent in Europe", in Armakolas, I. and Ker-Lindsay, J. ed. *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo*, Palgrave Macmillan, pp.215-235.

23 Gotev, G. and Valero, J. (March 2018) "Rajoy has an issue with Western Balkans summit in Sofia, Euractiv.

process,²⁴ overall Spain took the lead and became the ‘leader’ of the non-recognisers at the EU level, by vetoing EU declarations and raising concerns on the presence of Kosovo in the enlargement plan. This position mirrored the stance at the national level with regards to relations to Kosovo, where the non-recognisers have followed different approaches, some with more engagement (Greece), others with little engagement (Romania and Slovakia), while others with a complete lack of engagement (Spain and Cyprus).²⁵

If Spain supports Kosovo’s European perspective, why did it take such a stark position on latter events? For Madrid, the way Kosovo was being referred to, and treated by the EU went further than the so called ‘European perspective’ of the region. Kosovo was treated as other WB countries in its path of EU accession and, in the Spanish view that was not admissible. Madrid does not support Kosovo’s accession process, as it would entail *de facto* recognition of statehood. For Madrid, ‘accession’ and ‘perspective’ have a different meaning and connotation. The former implies a clear acknowledgment of aspirations to joining the EU, while the latter has a vaguer meaning, implying only EU’s commitment to the region.

The same gloomy position applies to a potential Kosovo’s bid for membership into the EU. Spain would most likely block Kosovo’s candidacy as article 49 of the TEU states that “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”. While the compliance of article 2 is not relevant for the subject of the study, the tricky part pertains to the terminology ‘European state’. Spain would certainly have problems agreeing that Kosovo complies with this norm. In conversations with a Kosovo diplomat for the subject of this study, they argued that “the problem of full recognition (and Spain in particular) is one of the main reasons why Kosovo has yet not applied for EU membership”.²⁶ When asked about this issue Spanish diplomats were categorical: “If we do not recognise Kosovo as a state, it seems hard that we could support its bid for membership”.²⁷

The question that remains open is: if Kosovo were to apply for candidacy, would EU institutions be able to find the legal remedies to circumvent the statehood issue in a way that non-recognisers’ position would not be undermined? The *sui generis* signing of the SAA with Kosovo in 2015, analysed in the following section, could contribute to shed light into this inquiry. ●

24 Greece, for example, reportedly backed the position of Spain on the amendments to the new strategy for the Western Balkans. See Rettman, A. (6 February 2018), “EU downgrades Kosovo enlargement status”, EU Observer.

25 Armakolas, I. and Ker-Lindsay, J. eds. (2020) “The Politics of Recognition and Engagement: EU Member State Relations with Kosovo”, Palgrave Macmillan.

26 Interview with Kosovo diplomat, September 2020.

27 Interview with Spanish diplomat, October 2020.



Kosovo's Stabilisation and Association Agreement

The entering into force of the EU's Stabilisation and Association Agreement (SAA) with Kosovo in April 2016 represents Prishtina's most significant step in its path towards the EU. For the first time, this agreement provided contractual relations and obligations between Kosovo and the EU. The text provides a wide range of overarching themes related

to economic, political and financial relations, movement of goods, regional cooperation, political dialogue and the alignment of Kosovo laws to those of the EU.²⁸ The signing of the SAA is considered a natural step in the path towards EU integration, which is in practice followed by formal application for EU membership. This is a path that all

²⁸ Council of the European Union, (2 October 2015), "Stabilisation and Association Agreement between the European Union and Kosovo".

WB countries have gone through. However, Kosovo's SAA is a *sui generis* one, replete of nuances that refer to its status issue and that omits any reference to EU membership or integration as the end goal of the agreement. Kosovo's non-recognisers, and Spain in particular, have played a fundamental role in the specifications and language of the text.

The signing of the SAA is not only an example of successful negotiations between the EU and Kosovo but also between the EU and its own member states. Unprecedentedly, the EU signed an SAA with a territory whose status is not agreed upon amongst all EU countries, and without prejudice to its status. In that fashion, Spain managed to support the agreement between the EU and Kosovo, while upholding the same preconditions it had applied to other Kosovo and EU declarations: that the Spanish position would not be undermined, and that no references to (direct or indirect) statehood were made throughout the text. Spain negotiated the text thoroughly and ensured all its provisions were reflected in the text.²⁹ To embed the Spanish and other non-recogniser's demands, the agreement adopted numerous clauses and specifications that had not been applied to other SAAs with the countries from the region.

In an effort to not undermine the non-recognisers' position towards Kosovo, Brussels used existing legal remedies that would limit their say on the process. For the first time, the SAA was signed between a state and the EU, without member states ratification. This was

made possible by the Lisbon Treaty, which came into force in 2007, and according to which EU was conferred legal personality. This was a beneficial step for Kosovo as it circumvented potential vetoing from non-recognisers, while at the same time being an essential point for the Spanish approach. In conversations with a Spanish diplomat for this study, they mentioned: "I think it was a good idea that it was an EU-Kosovo agreement because that allowed us [Spain] to safeguard our *legal* position. It is an agreement consistent with our position, because it does not recognise a direct contractual capacity".³⁰ The Spanish stance was quite clear: 'We support the agreement because it does not hinder our position on Kosovo's statehood.'

The Agreement was drafted with an incredible precision not to make any references to statehood and maintain status neutral position towards Kosovo. In order to respect non-recognisers' position, article 2 of the SAA already reads that the Agreement:

does not 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.³¹

²⁹ Interview with EU official and Kosovo diplomats, September and October 2020, respectively.

³⁰ Interview with Spanish diplomat, October 2020.

³¹ Council of the European Union, (2 October 2015), "Stabilisation and Association Agreement between the European Union and Kosovo".

This clause certainly protects non-recognisers' interests, especially considering that they lobbied strongly for the agreement not to undermine their position. After the signing of the SAA in October 2015, the Spanish government quickly rushed to reiterate that, "Its support to the agreement did not prejudge the Spanish position on the international status of Kosovo".³²

More of these semantic nuances can be found throughout the Agreement, which reflect non-recognisers' demands. It is worth mentioning that the text does not mention Kosovo's European integration or future membership in the Union. Instead, the text makes multiple allusions to "Kosovo's European perspective". This is quite striking, comparing the Agreement to other WB SAAs, which all contain references to future membership in the Union. The legal rationale behind this, is that for certain member states – and certainly Spain – speaking about 'EU integration' implies EU membership, and using such a phrasing (in light of article 49 of the TEU), would entail that Kosovo is being de facto recognised.³³

Unlike other actors, including Kosovo, Spain did not understand the agreement as a step towards EU membership. For Madrid the Agreement signified a process of adjustment to EU laws and a trade agreement between the EU and Kosovo, similar to other agreements the EU has signed with states with limited recognition, such as Taiwan or the occupied Palestinian territories. The Spanish

government took an additional precaution with Kosovo's SAA, openly declaring that the agreement should not be regarded as a step towards Kosovo's integration into the EU.

Overall, the signing of the SAA should be considered as first step forward in Kosovo's EU track, and a good sign that non-recognisers would not hinder Kosovo's European perspective. However, at the time of writing this remains Kosovo's sole step towards EU integration. ●

32 The Diplomat in Spain, (21 July 2017), "Framework Agreement EU-Kosovo comes into force respecting Spain's demands".

33 Palokaj, A. and Tuhina, G. (November 2016), "The Upshot of the SAA: Kosovo-EU Relations", Kosovo Foundation for Open Society.

5

Kosovo's Visa Liberalisation Process

In addition to Russia and Belarus, Kosovo is the only other state in Europe whose citizens require a Schengen visa to enter the EU for short stays. Visa liberalisation negotiations between Prishtina and Brussels are ongoing since 2012. In July 2018, after the completion of all EU-set benchmarks, the European Commission recommended the lifting of visa requirements for Kosovo citizens. Two months later, the Europa Parliament approved the

opening of talks on the abolition of the visa regime for Kosovo citizens and called on the European Council to grant visa liberalisation to Kosovo. But since then, the issue has not even been put on the Council's agenda. This stalemate is a result of some member states' concerns, which, headed by France, believe that the abolition of visas might lead to higher levels of migration to the EU and an influx of organised crime.³⁴

³⁴ Schengen Visa Info News, (15 October 2020), "France Extinguishes Kosovo Hopes for Visa Liberalization in the Near Future".

Officially, Spain has not been supportive of visa liberalisation as it believes that Prishtina has not fulfilled all EU benchmarks³⁵. However, this decision has to do more with the general Spanish policy vis-à-vis Kosovo, and the fears and reluctance to support any move that would de facto recognise Kosovo. Compared to other decisions, Spain has taken only a secondary role in voicing visa liberalisation concerns in the Council. The reason is threefold.

Firstly, Spain is not a main member state actor in the enlargement process of the EU towards the Western Balkans. Hence, Madrid rarely takes the lead in any kind of decisions on enlargement, neither regarding Kosovo's EU integration, nor of other countries in the region. Furthermore, Spain has not seen the need to take the lead on its refusal to visa liberalisation for Kosovo, as France and the Netherlands have taken the lead.

Secondly, Spanish officials have stated on several occasions that lifting visas for Kosovo citizens will not change the Spanish position on Kosovar travelling documents.³⁶ To date Spain remains the only non-recogniser that does not accept Kosovo's travel documents and visas are hardly ever issued.³⁷ Kosovar citizens still have to go through a very cumbersome process to obtain a visa for travelling to Spain, which currently, when approved, is issued in a separate sheet accompanying the Kosovo passport.

In the event of visa liberalisation for Kosovo, Madrid will continue to refuse travel documents issued by Kosovar authorities as this would be a de facto recognition of Kosovo's statehood, according to the Spanish position. In an EP debate in September 2018, conservative Spanish MEP Agustín Díaz de Mera expressed this clearly: "We cannot partially grant visa exemption to a province that is part of a sovereign state [Serbia]".³⁸ Thus, even if there is visa liberalisation for the Schengen area, Kosovar citizens will have to go through the same process to obtain a visa for travelling to Spain. If granted, Spain's position of not recognising Kosovo travel documents would comply with the Schengen agreement, as the provisions of Schengen visas for non-EU countries state that "the regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities".³⁹

Lastly, Spain has not taken an active role in advocating for refusing Kosovo visa liberalisation because of the nature of the voting in the Council. Visa liberalisation, unlike other major decisions on enlargement and foreign policy in general, is approved through qualified majority voting (QMV) and not unanimity. QMV means that decisions can be adopted if at least 55% of member states, representing at least 65% of the population, approve it. In other words, Spain could not veto visa liberalisation for Kosovo on its own. ●

35 Interview with Spanish diplomat, October 2020.

36 Interview with Spanish diplomat, October 2020.

37 Armakolas, I. and Ker-Lindsay, J. ed. (2020) "The Politics of Recognition and Engagement: EU Member State Relations with Kosovo", Palgrave Macmillan.

38 European Parliament plenary discussion (27 March 2019), "Listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Kosovo) (debate)".

39 EU Regulation 2018/1806, 28 November 2018. Listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

6

The dialogue between Belgrade and Prishtina

The EU-mediated dialogue between Belgrade and Prishtina remains key for both Kosovo's and Serbia's path to the European Union. Kosovo's and Serbia's SAA and the Commission's respective annual country reports on the WB countries refer in multiple occasions to the importance of the dialogue between the two parties, and EU's commitment to achieving a binding normalisation agreement between Kosovo and Serbia. While the recognition of Kosovo by Serbia (in contrast to the normalisation) has never been an imposed condition by Brussels to integrate Serbia into the EU, it is considered that signing a normal-

isation agreement between the two countries will give a boost to both Belgrade and Prishtina's EU gains. What type of an agreement will it be? Can there be a normalisation agreement without Serbia formally recognising Kosovo?

With the appointment of the EU Special Representative (EUSR) Miroslav Lajčák by Josep Borell in April 2020, and the resumption of the dialogue in Brussels in September of the same year, the dialogue seems to have entered its final phase. However, a normalisation agreement remains uncertain, as is unclear what type of an agreement can arise from

these negotiations. Nevertheless, it is implied that the goal of the negotiations is mutual recognition between the two countries, which would further Serbia's membership into the EU and Kosovo's path to the EU and a UN membership.

Contrary to the position on visa liberalisation and the specifications on statehood indicated on Kosovo's SAA, Spain has supported the dialogue between Prishtina and Belgrade. However, it must be noted that all EU member states have supported the EU mediated talks, including non-recognisers. The reasons for Madrid's political support of the dialogue are threefold: firstly, Spain supports the normalisation of relations between Kosovo and Prishtina and good neighbourly relations in the region;⁴⁰ secondly, Prishtina's participation in the dialogue takes place under a status neutral position, hence not undermining the Spanish position on statehood; thirdly, and most importantly, if normalisation means mutual recognition, the dialogue would resolve Madrid's 'uncomfortable' position. With Serbia recognising Kosovo, it would allow Spain to follow suit.

Compared to other member states with greater interests in the Western Balkans, Spain has limited itself to support the dialogue: 'supportive, but not too much engagement'. Madrid's engagement in the dialogue remains distant if compared to that of Germany or Austria, who have actively participated in other WB fora, such as the Berlin Process, and who have maintained talks and meetings with the EUSR Lajčák. Spain limited involvement in the

dialogue can be explained through two reasons: firstly, Kosovo remains far away from the Spanish foreign policy agenda, and thus no major interests are at stake for Spain, and secondly major involvement in the dialogue could potentially create problems with the Spanish stance on statehood by having Kosovo and Spanish officials in the same meeting.

Under the new government of PM Pedro Sanchez (in power since June 2018), Spain's approach on statehood has begun to open up. Efforts have been made to open new channels of communications between Kosovo and Spain through non-political ways, safeguarding that this did not undermine the Spanish position on statehood.⁴¹ Since then, Spanish officials have been categorical on the normalisation of the relations between Kosovo and Serbia, and what could that mean for Spain's position. In August 2018, Spanish former Minister of Foreign Affairs Josep Borrell declared that Spain would recognise Kosovo if Serbia does.⁴² The appointment of Borrell as EU High Representative in December 2019, although originally questioned by Prishtina, has also contributed to soften the Spanish position. And most recently, PM Sánchez attended, for the first time, the (online) Western Balkans summit in Zagreb, where Kosovo was also represented, albeit without flags or titles. Despite these recent developments, it is likely that until there is a binding agreement on normalisation between Belgrade and Prishtina that will include mutual recognition, the Spanish stern and legalistic approach on Kosovo's EU integration will remain. ●

40 Interview with Spanish diplomat, October 2020.

41 Interview with former Spanish official in the Ministry of Foreign Affairs of Spain, October 2020.

42 El Periódico, (27 March 2017), "Borrell: "No voy a reconocer a Kosovo porque lo diga un director general del COI".

Conclusion

Spain continues to apply a tough policy vis-à-vis Kosovo at the EU level due to the non-recognition of its statehood. Madrid often plays a battle of semantics to ensure Kosovo's slow progress towards the EU and the EU's declarations pertaining to Kosovo's European perspective, comply with status neutrality. When this has not been guaranteed in the past, Spain has voiced its concerns to ensure the alignment of EU policies with its position and did not hesitate to veto declarations and resolutions that did not respect status neutrality. Hence, Spain has played a distinct role in limiting Kosovo's integration process into the EU. Nevertheless, when Kosovo progress on its EU path did not undermine the Spanish position explicitly, it was not obstructed by Spain.

Madrid does not support Kosovo's accession process into the EU, because according to the Spanish perspective, Kosovo is not a recognised state and as defined in the TEU, only European states can join the EU.⁴³ This paper shows that Spain has limited Kosovo's EU path. Spain, although supportive of the Kosovo's SAA, played a decisive role both

in its shaping and drafting, to ensure that it remains a *sui generis* Agreement as it was signed for the first time between the EU and Kosovo to avoid non-recognisers vetoing. Spain, although not supportive of Kosovo's visa liberalisation, has not played an active role in the stalemate in the Council. EU recognisers such as France and the Netherlands have been the main member states responsible for Kosovo's deadlock on the visa liberalisation front. Lastly, Spain remains supportive of the Prishtina-Belgrade dialogue. Firstly, because the negotiations do not undermine Madrid's position on statehood. And secondly because a potential outcome of the process leading Serbia to recognise Kosovo would allow Spain to follow suit.

43 Article 49 Treaty on the European Union.

Recommendations

1

In light of the appointment of PM Pedro Sánchez in 2018 and the UK leaving the European Union, Spain aims to play a more decisive role in EU decision-making.⁴⁴ With the Western Balkans enlargement being a priority for the years to come, **Spain is advised to engage more on the enlargement process. This entails paying more attention to the WB partners and listening to the different actors' concerns and views, including Kosovo.** PM Sánchez's (online) presence in the Zagreb Summit in May 2020 showcases Spanish efforts to slowly enhance its relations vis-à-vis Kosovo. However further steps are needed to create a constructive rapprochement between the two countries.

2

In view of the fact that the Belgrade-Prishtina dialogue has entered in its last phase, Madrid should **continue to open more channels of communications with Kosovo, through civil society actors. Madrid cannot lose this momentum.** Mobility of people between Spain and Kosovo has been minimal in the last decade because of the stern Spanish position on Kosovo's statehood, which have resulted in a lack of cultural and educational exchanges between the two countries. Spain could follow other EU non-recognisers, such as Greece or Slovakia,⁴⁵ and accept that engagement with Kosovo does not imply recognition. Hence, **Spain should continue to engage with Kosovo civil society actors, through think tanks, educational, cultural, tourism and business sectors.** Like this, once an eventual agreement of mutual recognition is signed between Prishtina and Belgrade, Spain would be in a better position to start official diplomatic relations with Kosovo.

44 El País, (9 November 2020) "España apuesta por ampliar las alianzas más allá de Alemania y Francia".

45 Armakolas, I. (2020) "Greece: Kosovo's Most Engaged Non-recogniser", in Armakolas, I. and Ker-Lindsay, J. eds. *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo*, Palgrave Macmillan, pp.123-146; Nic, M. (2020) "Slovakia: Diplomatically Engaged with Kosovo, but No Recognition", in Armakolas, I. and Ker-Lindsay, J. eds. *The Politics of Recognition and Engagement: EU Member State Relations with Kosovo*, Palgrave Macmillan, pp.147-172.

3

In the event of EU visa liberalisation for Kosovo, **Spain should use this opportunity to align its position with other non-recognisers, and recognise Kosovo's travelling documents.** As seen by other non-recognisers, under no circumstances this would be considered a recognition of statehood and hence the Spanish position would be upheld. Ultimately, the recognition of Kosovo's passport would facilitate people to people contact and could serve to boost the exchange in the fields of culture, education and sports, possibly resulting in the breakdown of stereotypes from both sides.

4

Spain is advised to engage more in the dialogue between Serbia and Kosovo, in addition to maintaining talks with EUSR Lajčák. Spain needs to show that it cares about stability and prosperity in the region, which can be achieved through EU integration. In order to do that, Madrid should take good example of other member states that have actively participated in the dialogue without having major interest in the region, such as the Nordic countries. In addition, **Spain should utilise Josep Borrell's position as the High Representative of the European Union to engage more thoroughly in the Kosovo-Serbia dialogue in particular,** and issues related to Kosovo's EU integration process in general. **Spain can play an active role by organising future Western Balkans summits and by supporting future regional initiatives.** However, Spain's involvement in these regional fora needs to be accompa-

nied by a softening of the Spanish position vis-à-vis Kosovo's statehood. Spain cannot continue to limit Kosovo presence in different fora. This position would show Spain's commitment with Kosovo, and the region overall, and an active role in EU's policy making on enlargement.

5

Kosovo should continue to make reforms and show stark commitment to advance in its EU path, which currently remains stalled due to the absence of visa liberalisation for Kosovo citizens. Provided that Kosovo advances on reforms, **the Commission is recommended to conduct a feasibility study to examine if Kosovo could formally apply for EU membership while respecting non-recognisers position.** The EU found the legal remedies to circumvent the statehood issue with the signing of Kosovo's SAA in 2015, which could serve as a precedent for decoupling membership and statehood. This could serve to unblock the Spanish and other non-recognisers reluctance towards Kosovo membership, as the neutral status will not be affected. The commission of the study would send a strong signal to Kosovo and its citizens about EU's commitment and will maintain Kosovo's EU path afloat.

INTERVIEWS

This policy paper benefited from semi-structured interviews with 13 anonymised EU, Kosovo and Spanish officials, journalists and academics between September and December 2020.

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