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THE EU COMPREHENSIVE APPROACH  
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## WORKING PAPER

# The EU and international actors in Kosovo: Competing institutional logics, constructive ambiguity and competing priorities

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**The EU and international actors in Kosovo:  
Competing institutional logics, constructive ambiguity  
and competing priorities**

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**Abstract**

This paper analyzes the role of the EU and other international actors in the context of practice-level crisis management on the ground in Kosovo. We focus on activities performed by the EU and the member states in support of stabilization as well as in support of the ‘normalization dialogue’ between Belgrade and Pristina launched in 2013. In addition, we look at the implementation and practices of the EU rule of law mission in Kosovo (EULEX), highlighting EU’s challenges in mounting an executive mission. This paper builds on organization theory oriented institutionalist approaches in political science and analyzes the EU’s role on the ground in Kosovo by focusing on three aspects: negotiating the context of *competing institutional logics* of political order; *constructive ambiguity* of criteria for ‘normalization’; and competing priorities in the EU-supported processes on the ground.

## **Introduction**

This paper analyzes the role of the EU and other international actors in the context of practice-level crisis management on the ground in Kosovo. We focus specifically on activities performed by the EU and the member states in support of stabilization as well as in support of the ‘normalization dialogue between Belgrade and Pristina launched in 2013. In addition, we look at the implementation and practices of the EU rule of law mission in Kosovo (EULEX), highlighting EU’s challenges in mounting an executive mission. The role of international actors in Kosovo has been analyzed quite profoundly in the academic literature focusing mostly on strategies of post-conflict stabilization and structural diplomacy (eg. Ham and Medvedev, 2002; Dobbins, 2003; Keukeleire, 2003; Latawski and Smith, 2003; Juncos 2005; Diamond, 2006; Keukeleire, Thiers and Justaert 2009; Spernbauer, 2014; Keukeleire et al 2015; Mulchinock, 2017). Less attention has been paid to *organizational and institutional aspects* in international actors’ engagement on the ground. This paper builds on organization theory and institutionalist oriented approaches in political science and analyzes the EU’s role on the ground in Kosovo by focusing on three aspects: negotiating the context of *competing institutional logics* of political order; *constructive ambiguity* of criteria for ‘normalization’; and *competing priorities* in the EU-supported processes on the ground in the context of the work performed by EULEX.

In political science and international relations there has been quite a substantial focus on the EU’s role in Kosovo and in the Balkans region more generally (eg. Todorova, 2009; Lavenex and Schimmelfennig, 2011; Juncos, 2012; Noutcheva, 2012; Tzifakis, 2012; Vachudova, 2014). What has lacked so far, has been a focus on *organizational* and *institutional* aspects in the EU’s crisis management on the ground. This does *not* mean merely a focus on the EU’s institutions and their organizational features. Indeed, quite a few studies have provided such accounts and this paper does *not* aim to provide another description of what institutional capacities the EU has operating on the ground in Kosovo (Keukeleire et al 2015; Eberlein and Grande, 2005; Papadimitrio, Petrov and Greicevci, 2007; Bieber, 2011). What this paper provides is a focus on the institutional and organizational dynamics in how the EU and its member states operate in Kosovo and thereby also constitute Kosovo as a social and political order. What we are interested in are not only the specific activities of the EU and its member states but also the meanings attached to the EU’s and the member states’ activities on the ground. Kosovo remains an unsettled order and we seek to understand how the EU and its member states by their actions constitute Kosovo as a political order. To this end we study not only the EU as such but also other actors active there - including international actors and the Serb government - to identify differences from the EU. In this way, we can provide a perspective complementing earlier findings on local

populations' perceptions of the EU's role in Kosovo and specifically in Mitrovica (Bátora, Osland and Stojanovic 2017, Bátora, Kursani and Osland 2017).

In terms of empirical data, the study builds on a series of semi-structured interviews with EU-diplomats and EULEX officials as well as diplomats from selected EU member states (Belgium, France, Netherlands, Slovakia and Sweden) and associated- and/or third states (Norway, Switzerland and United States) with diplomatic presence in Kosovo conducted in Pristina and Mitrovica in October and November 2017, as well as on a series of semi-structured interviews conducted with an EU-diplomat and with senior officials of the Serbian government conducted in Belgrade in November 2017. We also draw on material from interviews with local actors in Kosovo. Overall, 37 interviews were conducted (see Annex 1 for a list of interviews). We also use material from three interviews with senior officials in the European Commission (DG NEAR) and the EEAS conducted in Brussels in October 2016. This analysis also builds on official documents pertaining to crisis management in Kosovo produced by the EU, EU member states as well as by the Serb and Kosovo governments.

The paper is organized into three sections. The first section addresses competing institutional logics and visions of Kosovo's political order that inform international and domestic actors' actions on the ground. The second section analyzes the dynamics and practices of constructive ambiguity as a key feature of the 'normalization dialogue' between authorities in Belgrade and Pristina. The third section then provides empirical evidence on multiple and competing priorities informing EU practices in the rule of law sector, most notably in the context of EULEX. Conclusions follow.

### **1. Competing institutional logics of political order in Kosovo**

Kosovo and its status are contested on multiple levels. This concern, first, its recognition as a sovereign state. A number of states including some major powers have recognized Kosovo as a state while others have not.<sup>1</sup> The EU does not have a unified position on this as five of its member states (Cyprus, Greece, Romania, Slovakia and Spain), have not recognized Kosovo. Second, the status of Kosovo is contested by Serbia as it continues to see Kosovo as belonging to its territory and as being an integral part of its sovereign jurisdiction. Third, Kosovo's status as a sovereign state has been contested internally by the Kosovo-Serb municipalities who have been receiving financial and political support from the Serb government. Given these challenges to the statehood of Kosovo, there are also competing visions and meanings attached to the development of the political order in Kosovo among the international actors

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<sup>1</sup> Kosovo has been recognized by the US, France, Germany and the UK. So far, Russia and China have not recognized Kosovo. Full list of countries recognizing Kosovo can be found here: <http://www.kosovocompromise.com/PDF/KosovoRecognitionWorldMap.pdf> (last accessed, January, 22, 2018).

active on the ground. It can be argued that actions of international actors in Kosovo are driven by different *institutional logics of political order* in Kosovo.

Institutional logics can be defined as “socially recognized orders of practice that are simultaneously orders of subjectification and objectification, that is, orders of practice that depend on and afford the particular identities of subjects and ontologies of objects, which in turn depend on these same orders of practice” (Friedland 2017:24). In modern societies institutional logics structure power distribution, access to key resources and patterns of interactions between actors (Friedland and Alford 1991). Tensions and contests between institutional logics are common in political orders and stabilization of a political order also involves stabilization of cleavage lines between key institutional logics in various social spheres (Eisenstadt 1964). When a particular institutional logic achieves dominance in an organization, it has implications for the distribution of power between actors within that organization (Thornton and Ocasio 1999). This applies also to political orders. In particular, unsettled or contested political orders are sites of constitutive struggles between institutional logics (Olsen 2010).

Arguably, Kosovo remains an unsettled order with international actors active in Kosovo entertaining different visions for what Kosovo should be and how it should get there. In the empirical section of the current paper, we elaborate on these visions and identify international actors’ ensuing approaches to the stabilization of Kosovo. These visions and efforts are expressions of particular institutional logics attached to Kosovo by international actors, by the Serb government as well as by domestic actors in Kosovo (including Kosovo Serbs).

### **1.1. The EU’s contradictory institutional logics for Kosovo**

To a large extent, the EU took over administrative responsibilities and authority in supporting good governance in Kosovo from the UN mission in Kosovo (UNMIK) in 2008 (UN, 2008; Commission, 2009). Since the declaration of independence, the EU institutions have promoted a “clear European perspective” for Kosovo (Commission, 2009). Some of the EU member states (Cyprus, Greece, Romania, Slovakia and Spain) still refrain from recognizing Kosovo as a sovereign state. Predominantly domestic political reasons and fear of creating legal and political support for separatist movements, veiled into arguments about breach of international jurisprudence, are at the core of reasoning why the “EU-5” did not follow suit of the rest of the member states (see i Fanés, 2011; Sláviková, 2011; Popescu, 2011; Kentas, 2011). Nevertheless, since 2008 when stark national debates in all non-recognizers countries preceded declaration of independence, Greece, Slovakia and Romania opened

liaison offices in Pristina, hereafter at least implicitly recognizing possible changes in their position regarding Kosovo's recognition. Cypriot and Spanish positions remain basically the same since 2008.<sup>2</sup>

Yet, this dichotomy between the positions and visions of recognizers and non-recognizers is far too simplistic if we examine the positions of the EU's diplomatic missions (i.e. embassies and liaison offices) in Kosovo. Building on interviews with diplomatic missions based in Pristina conducted November 6 - 10, 2017, we find that there are different perceptions on how to achieve stability in Kosovo, as well as regarding possible future EU perspective for the country.

Perceptions of our respondents on what international involvement in Kosovo is trying to achieve ranged from institution building<sup>3</sup> and peace building,<sup>4</sup> to state building<sup>5</sup> and transition to viable modern market economy.<sup>6</sup> Also, as several respondents noted, there are differences between the notion of building a state and that of building a state 'with European perspective'. Using the leverage of EU accession and the prospects of European integration is according to one interviewee rather misleading:

"...even if countries would recognize Kosovo, then what can we (the EU) offer to them? We offer the open perspective ... European perspective but it does not mean a lot if you cannot indulge in it.... it is like a dream... you put something on the top and you say there is European perspective, ok great, but it is something that will be very difficult to achieve and we all know that. So, it is like giving something that is not really achievable or what demands a lot of effort... So, what can we offer?"<sup>7</sup>

Yet, most respondents from the international diplomatic community present in Kosovo shared a vision of improving governance and living conditions while placing less focus on the issue of Kosovo's future formal status.<sup>8</sup> This has been the EU's approach since the early days of Kosovo's struggle for independence in 1999 when the European Commission had supported the establishment of independent governance structures in Kosovo – often placing premium on the efficiency in the delivery of essential public services to the local population such as tax and toll collection and electricity supply

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<sup>2</sup> Spain does not have a liaison office in Kosovo and it does not participate in the EULEX mission. It refrained from sending its personnel in 2008 following the declaration of independence of Kosovo. See *Spain holds personnel back from EU Kosovo mission*, Reuters, March 31, 2008 (<https://www.reuters.com/article/idUSL3176339>, accessed on January 17, 2018.)

<sup>3</sup> Interview Navrátil with diplomatic mission senior official 8, 9 November 2017.

<sup>4</sup> Interview Navrátil with diplomatic mission senior official 7, 9 November 2017.

<sup>5</sup> Interviews Navrátil with diplomatic mission senior official 6 and 5, 8 November 2017.

<sup>6</sup> Interview Navrátil with diplomatic mission senior official 5, 8 November 2017.

<sup>7</sup> Interview Navrátil with diplomatic mission senior official 4, 7 November 2017.

<sup>8</sup> Interviews Navrátil with diplomatic mission senior official 1, 2, 3, 4, 8; 6, 7 and 9 November 2017.

and doing so using pragmatic solutions and instruments.<sup>9</sup> Similarly, such pragmatic approaches have characterized much of the international actors' activities in 2017. International actors including the EU member states and non-members such as the US or Norway shared concerns in improving the socio-economic situation; decreasing political fragmentation; decreasing air pollution and modernization of Kosovo's energy infrastructure including power plants and recycling capacities.<sup>10</sup> In achieving these goals, the EU was coordinating its activities in particular with the US, which was seen as having substantial political leverage in Kosovo.<sup>11</sup>

## **1.2. Non-recognition by Serbia**

Serbia did not recognize Kosovo when it declared independence in 2008. A decade later, the official line of the Serbian government continues to be tied to the notion that Kosovo and Metohija are integral part of Serbia. This was confirmed in our interviews with senior officials in Belgrade in the Office for Kosovo and Metohija – in charge of running the administration of Kosovo and Metohija - and in the Serbian Ministry of Foreign Affairs.<sup>12</sup> In fact, the officials in the Ministry of Foreign Affairs refused to comment on the situation on the ground in Kosovo referring to the fact that they are responsible for 'foreign' affairs and Kosovo is an internal matter of Serbia and hence in the portfolio of other agencies of the Serbian government.<sup>13</sup> When asked about the fact that there are foreign diplomatic missions with the status of embassies in Pristina and whether this would be a challenge to Serbian sovereignty in Kosovo, Serbian foreign ministry officials declined to comment.<sup>14</sup> Meanwhile, the practical reality on the ground is such that basic norms and rules of the 1961 Vienna Convention pertaining to host states and their duties in relation to embassies residing in their territories (e.g. protection of premises, immunities, exemption from taxation) cannot be performed by the Serbian government in Kosovo. Nevertheless, Serbia continues to claim its sovereign rule over Kosovo.<sup>15</sup>

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<sup>9</sup> An example was the money collected in toll and duties on Kosovo borders which was being flown out of Kosovo in bags on military transport planes and deposited into a bank account set up for that purpose in one of the banks in Frankfurt, Germany. (Interview Bátora with DG NEAR senior official, Kosovo Desk, 23 October 2016).

<sup>10</sup> Interview Bátora with EU Delegation senior official, 28 November 2017; interviews Navrátil with diplomatic mission senior official 1, 3, 4, 5, 8; 6, 7, 8 and 9 November 2017.

<sup>11</sup> Interview Bátora with EU Delegation senior official, 28 November 2107.

<sup>12</sup> Interview Bátora with Office for Kosovo and Metohija senior official, 28 November 2107; Interviews Bátora with Serbian Ministry of Foreign Affairs senior official and Serbian Ministry of Foreign Affairs junior official, 28 November 2017.

<sup>13</sup> Interview Bátora with Serbian Ministry of Foreign Affairs senior official and Serbian Ministry of Foreign Affairs junior official, 28 November 2017.

<sup>14</sup> Interview Bátora with Serbian Ministry of Foreign Affairs senior official and Serbian Ministry of Foreign Affairs junior official, 28 November 2017.

<sup>15</sup> Interview Bátora with Office for Kosovo and Metohija senior official, 28 November 2017; interviews Bátora with Serbian Ministry of Foreign Affairs senior official and Serbian Ministry of Foreign Affairs junior official, 28 November 2017.

### **1.3. Internal non-recognition of Kosovo**

There are contending claims and visions about the nature and status of Kosovo's statehood. This is obvious already in the terminology used by various actors when referring to the structures and institutions of governance in Kosovo. The Office of the Prime Minister in Pristina and other governmental agencies there refer to themselves as *The Government of the Republic of Kosovo* (Government of Kosovo, 2016). The government in Belgrade uses a different terminology when referring to the governmental institutions in Pristina, namely the term *Provisional Institutions of Self-Government* (see e.g. Government of Serbia, 2017). There is a clash here in understanding the status of Kosovo between the institutional logic of sovereign statehood promoted by the government in Pristina and the institutional logic of regional governance within a sovereign Serbian state promoted by the government in Belgrade.

A key feature of Kosovo's challenged political order is the existence of and Kosovo Serb participation in what is referred to as *parallel structures* of governance (OSCE 2003). Parallel structures may emerge in transitional societies, where newly established governance institutions and administrative structures of local government are still relatively weak. Their existence often underlies deep socio-political cleavages based on ethnic, religious, economic or ideological divides. This term is used to define administrative institutions operational within the Kosovo territory, that are not mandated for under the UN security Council Resolution 1244 and Kosovar government in Pristina has no influence over them (OSCE, 2008). Parallel structures build on remnants of pre-1999 Yugoslav governance structures and they operate due to direct and open support by the Serbian government. It is worth noting that the Serbian government does *not* consider these governance structures to be 'parallel structures'. As a senior official in the Office for Kosovo and Metohija pointed out in November 2017, the Provisional Institutions of Self Government in Pristina are by the Serb government considered to be the "real parallel structures".<sup>16</sup> This indicates how deeply contested the political order in Kosovo still is. For the sake of the current analysis, we will continue to use the term 'parallel structures' in reference to the governance structures in Kosovo directly supported by the government of Serbia.

The existence of parallel structures challenges efforts by the government in Pristina to administer the entire country including the Northern Kosovo municipalities. For the municipalities with mostly Kosovo Serb composition, these structures offer services needed for everyday life in areas such as security, property rights, education or healthcare. The challenges to effective governance of the Kosovo

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<sup>16</sup> Interview Bátora with Office for Kosovo and Metohija senior official, 28 November 2017.

territory by the institutions of self-government in Pristina that these parallel structures create have been addressed on numerous occasions in various policy reports (see OSCE, 2003, 2008; European Court of Auditors, 2012; European Commission, 2009, 2010, 2014). The Kosovo Serb population has been relying on parallel structures for various public services including education, healthcare and issuing of passports.

OSCE reports (OSCE, 2003; 2008) provide detailed accounts on how parallel legal environment in Kosovo solved every day practicalities of Kosovo Serbs and other minorities. Parallel court system allowed citizens basic access to justice in questions related to property rights, civil litigation, criminal proceedings, certification of documents etc. Courts operated in both Kosovo and Serbia, final appellate body for judgements was taken at the Supreme Court of Serbia. Although decisions made by parallel courts in Kosovo had no legal power and neither there was authority to enforce them, Kosovo Serbs, and members of other communities, even Kosovo Albanians, tend to rely on them, because judgments are enforceable and recognized in Serbia. Usually plaintiff had to undergo two proceedings, if he/she wants the decision to be enforceable also in Kosovo. This creates overlapping jurisdiction what consequently rises problem of double jeopardy and legal uncertainty in the country (OSCE, 2003; 2008).

Legal uncertainty together with contested Kosovo's status create a plethora of problems in attracting investors to the country. International reputation and prejudices towards Kosovo remain one of the reasons why potential entrepreneurs eventually declined offers from national representatives to invest in the country.<sup>17</sup> This consequently creates structural problem resulting in high unemployment rates and hampers transition from state-centric to market-oriented economy.<sup>18</sup>

Along with judiciary and rule of law, Kosovo Serb parallel structures continue to provide services in other areas of everyday life of citizens, such as health care, education, security. Regarding health care, there have been several reports on poor condition in which the Kosovo health care system operates.<sup>19</sup> Lack of staff, poor state of facilitates and far reaching corruption are only few reasons why Kosovo Serb minorities prefer to participate in health care system provided to them by Serbian government (Beha, 2013; Visoka, 2017, pp.147-183). Concerns of Kosovo Serbs regarding children's education and that they would learn history or geography from curricula made by Kosovo's Ministry of Education is the

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<sup>17</sup> Interview Navrátil with diplomatic mission senior official 1, 6 November 2017.

<sup>18</sup> Interviews Navrátil with diplomatic mission senior official 3 and 5, 7 and 8 November 2017.

<sup>19</sup> Interview Navrátil with diplomatic mission senior official 6, 8 November 2017.

main motivation for using also the parallel educational system. Security issues are perhaps one area where at least some progress has been made by partial dismantlement of parallel structures. Although there are certainly many things needed to be accomplished, so that people's perception of security risks would decrease, and all parallel structures to be abolished, at least Serb civil protection structures and Serb police structures (formerly known as Serbian Ministry of Interior parallel structures) have been partially dismantled thanks to the Brussels brokered dialogue between Belgrade and Pristina. "Complete integration of Kosovo Serb personnel in Kosovo police including their ranking process based on the Kosovo law and Brussels Agreement, ensures a higher quality security for everyone in Kosovo" (Government of Kosovo, 2014, pp.13). Based on Article 9 of the Agreement, "there shall be a Police Regional Commander for the four northern Serb majority municipalities ... Commander of this region shall be a Kosovo Serb nominated by the Ministry of Internal Affairs from a list provided by the four mayors ... and the composition of the Kosovo Police in the north will reflect the ethnic composition of the population of the four municipalities" (Government of Kosovo, 2013). An important factor in this process has been the fact that salaries and other funds to Northern Kosovo police have been provided by the government in Pristina as of 2015.<sup>20</sup>

For a contested state such as Kosovo, slow progress in dismantling Serbian parallel structures poses a potential threat. Pristina has limited administrative reach to the regions where those structures operate and limits the Kosovo government in implementation and execution of reforms in many areas. Hence, Serbian parallel structures weaken what Mann calls "infrastructural power" of the state (1984, 1993). Concept of infrastructural power derives from a Weberian tradition, which perceives the state as a set of institutions that regulate social interactions and exercise control over its territory. In fact, Mann supports this notion elsewhere (1993), when he identifies state as a set of central and radial institutions penetrating its territory. Infrastructural power is power of central state *through*, rather than over, the society (Mann, 1993, pp.59). More precisely, Mann defines infrastructural power as the "capacity of the state actually to penetrate civil society, and to implement logically political decisions throughout the realm" which stems from state's ability to provide territorially centralized form of organizations (Mann, 1984, pp. 189). In short, infrastructural power represents capacity of the central state and state institutions to redistribute certain social utility, enforce rules within a given territory or to implement decisions taken at the central level of state. It was mentioned above that infrastructural power is an important puzzle in the state's capacity to conduct autonomous action. Infrastructural power also could be used by the central state as a prevention mechanism in case of turmoil. This maybe

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<sup>20</sup> Interview Bátora with EEAS Civilian Contact Planning Capability, Operations division, senior official, October 23, 2016.

holds for territorial states, where reach of the state is geographically demarcated. However, in contested states, such as Kosovo, capacity for performing autonomous powers is limited. Given that local ownership in Kosovo is still weak and mainly externally driven (Qehaja and Prezelj 2017), parallel structures subvert efforts to establish viable governance from Pristina. Parallel structures are proxy of Belgrade's interests in what they consider to be part of Serbia and represent reach of one state into the territory of another, which existence on top of that is contested on multiple levels. To paraphrase Mann, this "infrastructural weakness" hinders Kosovo's capacity to act autonomously and overall undermines the state as such.

## **2. Normalization dialogue: constructive ambiguity**

In negotiations concerning international crises, it has been common practice to use ambiguous language in treaties regulating post-crises regimes as a way of achieving conflicting parties' buy-in and gradual progress towards stabilization of relations. Among practitioners, Henry Kissinger has been one of the most prominent proponents of constructive ambiguity in international negotiations. The Oslo accords, negotiated between Israel and the Palestinians in the early 1990s were an example of a treaty with numerous consciously ambiguous formulations. Yet, as was noted by Elgindy (2014), ambiguity in the language of treaties can also lead to misunderstandings, ensuing tensions and consequent deterioration of relations between conflicting parties. In EU governance, constructive ambiguity is used in situations when member states or other parties to a particular negotiation cannot fully agree on an issue and ambiguously worded agreements can then be interpreted differently in different national contexts. In the context of the current analysis, one can also draw upon research in historical sociology analyzing transformations of social relations and actorness in Medieval Florence (Padgett and Ansell 1993). Here, actors were strengthening their positions in social networks and relations based on what Padgett and Ansell call 'robust action'. This is a mode of action characterized by 'multivocality': when actions of actor A can be interpreted in multiple ways by her interlocutors B, C and D. Robustness of action then is the degree to which each of the interlocutors can understand actor A's actions as promoting their particular interests B, C and D. Ambiguity in political negotiation processes is a typical bargaining strategy to reach settlement, in cases when the aim of parties involved is heterogeneous and potential clarity of the agreements would face fierce opposition (Jegen and Mérand, 2013). For instance, Palier (2005) documents how French social reforms, based on "ambiguous consensus", allowed to policy actors attach different meanings to them (cf. Dingley, 2005).

Applying these concepts to the 'normalization dialogue' between Belgrade and Pristina it seems clear that it is a case of using 'constructive ambiguity'. It features language that remains ambiguous enough

to provide a leeway for both sides to interpret a great deal into the agreement. As one interview revealed: “I very often witness different press statements of the same meetings issued by Belgrade and Pristina”.<sup>21</sup> Also, as such, the EU’s role as a mediator always referring to the ‘normalization dialogue’ as a way of legitimizing its requests, demands and various kinds of conditions set for the parties in the Dialogue, enable the EU to make multivocal – and thereby possibly robust – actions on the ground. Moreover, the EU consciously leaves it open to the parties to specify the conditions of normalcy – whatever the two parties consider to be a state of normal relations the EU will accept.<sup>22</sup> However, our respondents from embassies consider the whole concept of the Dialogue to be “artificial”<sup>23</sup>, “superficial”<sup>24</sup> and “too narrow to deliver”<sup>25</sup> objectives for both sides. The question arises to what extent the ‘normalization dialogue’ with its constructive ambiguity approach does provide for positive results in relations between Belgrade and Pristina or whether there are some aspects where such an ambiguity leads to misunderstandings and undermining of trust.

## **2.1. Practices of constructive ambiguity and their implications**

The Dialogue between Belgrade and Pristina on the normalization of relations (the Dialogue) is understood here as a *tool* for reconciliation of the above mentioned competing institutional logics. Dialogue was launched in 2011 and could be conceived of as the EU’s conflict management mechanism. It aims to (a) initiate and promote cooperation between Belgrade and Pristina; (b) help both countries achieve progress in EU integration process; (c) have very tangible and practical effect on everyday life of the citizens in Serbia and Kosovo. In his definition and philosophy behind the Dialogue, Robert Cooper pointed out that the EU’s mandate in the process is based upon “...“cooperation ... to improve the lives of ordinary people” and that this reflects what people sometimes call “the European method” – seeking peace through practical cooperation rather than through grand rhetoric about the brotherhood of mankind” (Cooper, 2015).

Only limited information on what have been discussed during the talks is actually released to the public. Talks are surrounded with secrecy and are usually held in close circle of high ranking EU officials and Kosovar and Serb prime Ministers or ministers responsible for the dialogue. Even the EU officials’ comments on follow-up questions are laconic and in nature ambiguous. Rarely EU leaves interpretation of the outcome of discussions on other parties, in this case to Kosovar and Serbian

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<sup>21</sup> Interview Navrátil with diplomatic mission senior official 7, 9 November 2017.

<sup>22</sup> Interview Bátora with DG NEAR Serbia Desk senior official, 23 October 2016.

<sup>23</sup> Interview Navrátil with diplomatic mission senior official 3, 7 November 2017.

<sup>24</sup> Interview Navrátil with diplomatic mission senior official 4, 7 November 2017.

<sup>25</sup> Interview Navrátil with diplomatic mission senior official 5, 8 November 2017.

authorities. Cooper admits that there is indeed an element of ambiguity included in the whole process, that creates flexibility and leaves room to maneuver in the future, especially when parties might reach flashpoint: “the language of the agreement is sometimes ambiguous. ... both sides knew perfectly well what they’d agreed. If you look back at the agreements, not everything is done ... it would probably be sensible to look back at some of the early agreements and ask if they need to be revised or improved in some way because they may not have met the objectives we had for them.” (BalkanInsighth, 2015). Prelec in a way also embraces ambiguity in the process by defining the EU’s negotiation strategy as “the Brussels House style: get the parties to commit publicly to an agreement whose content is to be filled later, often by EU officials...” (2013). The European Commission officials in charge of management of relations with Serbia and Kosovo do not necessarily share this interpretation as they argued in an interview with one of us that the process of normalization has no specific EU-set requirements and the parties to the Dialogue are allowed to set their own criteria for what is considered a normalized situation.<sup>26</sup>

While ambiguity allows for progress on difficult issues, it has also its costs, mainly if it comes down to implementation of agreed provisions. The ambiguous nature of the Dialogue process has also manifested in contesting views of who actually benefits this. In a recent survey, Kosovo Democratic Institute found that

“about 71% of citizens estimate that the main element for normalizing relations between Kosovo and Serbia is the apology for war crimes by Serbia. About 60% of Kosovo Serb community citizens interpret normalization as not interfering with each other on the European path or membership in international organizations without the need for states to recognize each other. While respondents from the Albanian community (73%) and other communities (68%) see as crucial to normalizing relations to be Serbia’s apology for war crimes in Kosovo” (KDI, 2017).

As a result of such conflicting public perceptions, political representatives on both sides of the Dialogue use to get heavy political blows from the political parties in the opposition in their respective domestic political spheres and they are accused of being too soft during negotiations, making too many concessions.<sup>27</sup> Accountability is something that even Cooper admits being a liability, because when things go wrong, prime ministers are the ones getting the blame, “while they are actually the ones who deserve all the credit” (Cooper, 2015). In general, the dynamics of domestic politics does have impacts

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<sup>26</sup> Interview Bátora with DG NEAR Serbia Desk senior official, and DG NEAR Kosovo Desk senior official, 23 October 2016.

<sup>27</sup> Interviews Navrátil with diplomatic mission senior official 1 and 5, 6 and 8 November 2017.

on the development of the Dialogue. Election cycles and long transition periods after elections on both sides intervene in the process and usually hamper any progress.<sup>28</sup>

In situations like these, it is helpful when special package deals are negotiated by the EU. In August 2015, the Brussels Agreement was revitalized via the Brussels Agreement Package, which included the Agreement on Telecommunication, where parties decided to provide Kosovo with one country code.<sup>29</sup> The Package also included agreement on energy; normalization of relations in Mitrovica region, the establishment of Association of municipalities with Serb majority in Kosovo, the opening of the Mitrovica Bridge as well as continuation in dismantling of parallel structures. What is important for our proposed argument is, however, the way it was interpreted by the parties present. First of all, all parties included in the dialogue, even the EU represented by HR Mogherini, claimed success. Mogherini called it a “landmark achievement”, implicitly recognizing the indispensable role the EU played in the dialogue (Phillips, 2017). Shortly after the deal was brokered, Serbian Prime Minister Vucic stated that the agreement is “good for the Serb population in Kosovo” and that creation of association of Serb-majority municipalities “will decide on all four questions ... from healthcare, education, urban and rural planning and economic development, to financing it from Serbia. It states unambiguously that Serbia has a right to finance it, without taxes and fees” (BalkanInsight, 2015). On the other hand, narrative of the then Kosovo’s Foreign Minister Thaci, focused on the fact that by sitting behind the negotiation table with Kosovo-Albanian representative, the Serbian leader actually acknowledged Kosovo as an equal partner. Thaci stated that Serbia had “in a way recognized Kosovo as an independent state” (BBC, 2015). Many details of the agreement were not published by neither of the parties, which only raised speculations about what was actually agreed upon and increased ambiguity of the whole process. Official reports on the progress of the Dialogue implementation released by both governments consequently provide conflicting interpretations. Such situations can then lead to derailing of normalization processes.

This became clear in 2017, when work on several important steps agreed in the framework of the Dialogue was stalled. An example is the Main Bridge in Mitrovica, which was supposed to be open in December 2016 but due to rise in tensions locally and various technical problems, the bridge was still not open for traffic in January 2018 (see also Bátorá et al 2017). Throughout 2017, the Dialogue came virtually to a stand-still on the political level as there were no high-level meetings between January

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<sup>28</sup> Interviews Navrátil with diplomatic mission senior official 1, 5, 7 and 8; 6, 8, and 9 November 2017; interviews Bátorá with EU Delegation senior official and Office for Kosovo and Metohija senior official, 28 November 2017.

<sup>29</sup> Austria will apply for it in Kosovo’s name, because technically, Kosovo demand its own country code, since it is not yet an UN member state (Sertolli, 2016).

and October 2017. The technical-level meetings were organized as separate events in Belgrade and Pristina where EU officials would meet with both sides separately. The Serb government account of the lack of progress from November 2017 deserves to be quoted at some length:

“Unfortunately, contrary to the best wishes of the Serbian side, we must note that the dynamics of the Dialogue during the reporting period was the lowest since the whole process started in 2013. ... The bilateral meetings with EU facilitators held at the technical level have unfortunately been reduced to talks about requirements and manners of implementing the agreements already reached. It is clear that these talks, with no active and genuine participation of the other side, with whom the EU facilitators spoke in parallel at meetings that took place in Pristina, had a very limited effect. Therefore no significant progress has been achieved in implementing the existing agreements during this reporting period. At the meetings held in Belgrade with the representatives of the EEAS, their stress was mainly on the obligations of the Serbian side in the implementation of the Agreement on Judiciary and the freedom of movement in the main bridge zone at the Ibar River in Kosovska Mitrovica. The representatives of Belgrade, on the other hand, repeatedly pointed out to the EU facilitators the unsustainability of the situation in which Pristina refuses to talk and implement the obligations it has undertaken, especially those pertaining to the Community of Serbian Municipalities, but also a plethora of other issues, such as cadaster, police, diplomas, civil protection, delineation between north and south Mitrovica in the area of Suvi Dol etc.” (Government of Serbia, 2017; p.3).

As this makes clear, the EU’s open and ambiguous approach to the Dialogue process allows the parties to shift blame on each other. The Kosovo Government makes similar statements regarding who is to blame for why the Dialogue process has been stagnating. The latest progress report lists seven reasons why are the “agreements blocked or disrupted by Serbia” following three, rather brief outline of reasons why they are “delayed” by Kosovo. According to Kosovo government, Serb conformational attitude and provocations are the reasons why the implementation of the agreement is still pending. Once again, reasoning and perspective of the Kosovo government deserves to be quoted at some length:

„It is obvious that Serbian side has been seriously failing in fulfilling its obligations. You might recall destabilizing provocations by Serbia against Kosovo in December 2016 and January 2017, through a strange wall built in Mitrovica, a strange train trying to enter Kosovo, ... The Kosovo Government responded to such challenges with resolve and prudence, defended sovereignty and integrity, and in cooperation with international partners, EU and US, the situation is stabilized. ... We believe that commitments to this dialogue can be proved credible only if both states proceed with full implementation of their obligations. ... I would like to emphasize that the EU remains a critical factor to help speed up and ensure consistency in lasting results of this dialogue. We consider that the role of US, Germany and other European countries is indispensable for the success of this dialogue.“ (Government of Kosovo, 2017; pp.6-7).

In the next section, we address practice level challenges in EU’s attempts to contribute to rule of law reforms in Kosovo.

### **3. The European Union and the rule of law in Kosovo**

As was maintained above, through its involvement and interventions on the ground, the European Union helps constitute Kosovo as a particular social and political order. The main characteristic of this order is the multiplicity of voices (both local and international) and their competing visions of the order itself. While the question of status is of primary importance, the competing visions of the social and political order are also a result of more concrete, but differing, priorities for the region and Kosovo. Here, we examine how these different priorities influence EU's rule of law approaches to Kosovo and how these end up being perceived by local and international actors on the ground. How has constructive ambiguity, which allowed for the initial buy-in of all parties to EU's presence and the deployment of the European Union Rule of Law Mission in Kosovo (EULEX), contributed to the problem with rule of law in Kosovo? How have differing and multiple priorities of actors – local and international – influenced conflict-sensitivity and the impact of rule of law interventions? To what extent does Kosovo's European perspective play into this? We argue that the rule of law is particularly susceptible to challenges arising out of competing priorities, and that EU's contribution to these challenges is more pronounced in Kosovo than elsewhere due to the executive functions of EULEX.

This section is organised in three parts. In the first part, we provide an overview of how and why Kosovo rule of law was internationalised as well as indicate how this continued with EULEX. In the second part, we explore the Europeanisation of the rule of law in Kosovo and its challenges. We highlight competing priorities of the EU in the rule of law sector, illustrating how these impacted the EULEX mission. In the third part, the analysis focuses on local perceptions of the EU rule of law and EULEX as a mission. We conclude with some broader observations.

The bulk of our data comes from interviews.<sup>30</sup> In selecting our interviewees, we paid special attention to implementers of the executive mandate, such as EULEX judges and prosecutors, and others intimately familiar with the relationship between the executive and the capacity-building work in the rule of law sector in Kosovo. This was done purposely to avoid building our understanding of EU practices solely on the basis of meetings with EU gatekeepers in the field (Ejdus and Juncos, 2017). We are interested in challenges as they are identifying them, asking how practitioners are assessing the

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<sup>30</sup> The findings in this section are based on a total of 25 interviews conducted in Pristina and Mitrovica, 14 of these with local actors (both inside and outside international organisations) and 11 with international actors. Five of these interviews were done jointly by K. Osland and M. Peter, while the rest were done independently by one of the two researchers. Interviews are anonymised following ethical guidelines of the EUNPACK project and are referenced stating the name of the interviewer and the code of the interviewee. Full references of the interviews can be found in the appendix.

situation and what meaning they are ascribing to their actions and to the actions of the EU. Perceptions were gathered both from Kosovo-Albanian (majority) and Kosovo-Serb (minority) representatives of local groups (such as NGOs) and local experts on the rule of law (Kosovo-Albanian judges). Again, we are interested in their interpretation of EU practices.

### ***3.1 Internationalisation of the rule of law in Kosovo***

Since the end of the Cold War, the international community has routinely assisted post-conflict states with the rule of law. This assistance tends to involve aid to rebuild the infrastructure and capacity-building programmes, such as training and mentoring of the local police and judiciary. Such initiatives are present also in Kosovo and are provided by multiple international actors, from embassies to international organisations – today, most notably the OSCE and the EU. Usual problems of coordination and overlap, known from every post-conflict context, were mentioned also in our interviews. An OSCE official argued that the rule of law assistance is so crowded that by now local judiciary is “training fatigued”.<sup>31</sup> In the case of Kosovo, however, the international community took a step further, enhancing its capacity-building role with an executive one.

The door for the deployment of an executive mandate was opened already with the entry of UNMIK in 1999. The UNSC resolution 1244, which established a UN transitional administration over Kosovo, allowed for a possibility of an executive mandate in all aspects of civilian administration (UN, 1999). But while international police officers were deployed, the UN declined to introduce international jurists immediately after the cease-fire (Hartmann, 2003). Whether this was to build local ownership or merely a reflection of the lack of adequate human resources (Betts, Carlson and Grisvold, 2001), the result was that the UN initially decided to rely on local judges and prosecutors to dispense justice across Kosovo. A Joint Advisory Council, composed of international and Kosovo representatives, selected these and as no Kosovo-Serb jurist applied, the composition of the Kosovo judicial system was entirely ethnically Albanian (Skendaj, 2014: 89). This represents a concern to this day and as our interviews with EULEX officials on the ground highlighted, integration of Kosovo-Serb judges from the so-called parallel institutions<sup>32</sup> is seen by them to be a priority for the EU. While none of them saw EULEX being in the lead on this matter, supporting normalisation between Pristina and Belgrade, which entails also integration of Kosovo-Serb judiciary, is one of the four areas that EULEX is supposed to focus on.<sup>33</sup> One EULEX official commented that Brussels spends an immense amount of energy on this

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<sup>31</sup> Interview Osland and Peter with OSCE staff 2, 23 October 2017.

<sup>32</sup> For an explanation of the term parallel structures see Section 2.

<sup>33</sup> Interviews Peter with EULEX staff 1, 3 and 6, 23 and 24 October 2017. Also, EULEX (no date).

process, often at the expense of ‘the real problems’ with the Kosovo judiciary.<sup>34</sup> That said, after two decades, the make-up of Kosovo judiciary is still not representative of all groups. William O’Neill, a senior adviser at UNMIK in its early years, argues that the post-war Kosovar justice system was widely seen as biased against Kosovo minorities. He provides several concrete incidents of discrimination from the early years (O’Neill 2001). It was this bias, most notably against Kosovo-Serbs, that lead to a change in UN policy and the eventual deployment of international judges and prosecutors.

International jurists were deployed incrementally but in increasingly greater numbers.<sup>35</sup> The initial mixed panels of two Kosovo-Albanian and one international judge were still perceived as biased and eventually the most controversial – inter-ethnic and political – cases were allocated to panels with majority international judges. UNMIK, and originally also EULEX, had full authority to transfer any case to the ‘internationalised’ docket. However, UNMIK’s capacity to administer justice in these most controversial cases was low from the beginning. The same issue has plagued EULEX and the number of cases that both UNMIK and EULEX took on, but did not close, runs in thousands.<sup>36</sup> One EULEX official argued that as the mission prepares for exit, the core of his work now represents handing over more than 5000 cases they had been working on to local authorities. He continued that around 1200 of these were picked up from UNMIK and that many were still on EULEX’s docket ten years later.<sup>37</sup> In the view of international interlocutors on the ground, both missions overstretched, and in the process raised the expectations of the local population. Andrea Lorenzo Capussela, a former Head of the Economics Unit of the International Civilian Office in Kosovo, argues that a major contributing factor to this problem was the inappropriate distribution of human resources within EULEX, with judges and prosecutors representing only 2.3 per cent of the total authorised staff of about 3300 positions in the first four years (Capussela, 2015). According to EULEX jurists interviewed, the effects of this understaffing have had serious implications not just for the judges and prosecutors, who in the eyes of the management and the local population should have handled an inordinate number of cases, but also for the rule of law in Kosovo. One contended that cases, which were at the first instance judged by a majority international panel, are already being overturned by majority Kosovo-Albanian panels at higher instances, thus undermining EULEX’s efforts to deal with sensitive cases through international

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<sup>34</sup> Interview Peter with EULEX staff 6, 24 October 2017.

<sup>35</sup> See Hartmann (2003) for an excellent overview of early UNMIK thinking on the issue. Hartmann served as the first and at the time also the only UNMIK prosecutor.

<sup>36</sup> We return to the question of capacity and willingness in the next sub-section, when discussing competing international priorities for Kosovo.

<sup>37</sup> Interview Peter with EULEX staff 1, 23 October 2017.

judges. This was attributed to both the process of transition to local ownership but also the lack of EULEX judges.<sup>38</sup>

Kosovo justice system is internationalised, but is not entirely international and can best be described as a hybrid judiciary. In practice, this means that international judges sit on panels with local judges and that international prosecutors argue cases before local judges. Internationals were never supposed to substitute local judiciary, merely complement it. As the quality and independence of local institutions was suspect, one would expect that international officials would serve in mentoring roles to their local counterparts and that capacity building and executive functions would work hand-in-hand. This was implemented in the customs service and police, where Elton Skendaj (2014: 94 and Chapter 4) maintains that local officials and their international counterparts developed rapport that contributed to the professional growth of Kosovo-Albanian officers. Asking EULEX staff what they considered successes of the mission, improvement of customs service and professionalism of Kosovo-Albanian police were mentioned most often. One affirmed that he personally feels safe, when he sees the local police.<sup>39</sup> The same approach was not taken in the judiciary and UNMIK judges did not collaborate with or mentor their local counterparts, as they did not work together or in the same office (Skendaj, 2014: 93).

Our interviews show that an improvement in how international and local judges interacted was made with the deployment of EULEX. The EU did learn from UNMIK in the early years of the mission, but reversed back to the original mode of operation later. When established, the justice component of the EU rule of law mission had both an executive and a mentoring mandate combined, which in practice meant that international jurists were supposed to provide mentoring and advice to their local counterparts. Every one of our interviewees, who expressed opinion on the relationship between the executive and the strengthening aspects, deemed this a good method to build capacity.<sup>40</sup> One of them contended that the only way you can mentor judges is by sitting with them on the bench and through that gain their trust, continuing, that mentoring takes time and experience, not a drop-in approach.<sup>41</sup> Our interlocutors with several years in Kosovo thought that the decision to separate the executive and the strengthening section in 2012 was a mistake, one claiming that for a while the executive side was even explicitly told not to get involved in mentoring.<sup>42</sup> Another thought that the trust gained through

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<sup>38</sup> Interview Peter with EULEX staff 4, 24 October 2017.

<sup>39</sup> Interview Peter with EULEX staff 2, 23 October 2017.

<sup>40</sup> Interviews Osland and Peter with OSCE staff 1 and 2, 23 October 2017; Interviews Peter with EULEX staff 5, 6, 8 and 10, 24 and 27 October 2017.

<sup>41</sup> Interview Peter with EULEX staff 5, 24 October 2017.

<sup>42</sup> Interview Peter with EULEX staff 6, 24 October 2017.

years of collaboration was lost in one sweeping move.<sup>43</sup> A local judge confirmed this lack of interaction, maintaining that while she attends trainings and workshops organised by the EU, member states or other international actors, she rarely substantively interacts with EULEX judges outside the courtroom. Trainings and mentoring are provided by outsiders.<sup>44</sup> Her colleague on the other hand argued that the quality of EULEX justices is also far from being uniform and that many would not be the best mentors in any case.<sup>45</sup> Regardless of this, none of the jurists interviewed understood why the decision to separate the executive and the capacity-building functions was taken nor were they ever consulted on it.

This section highlighted some of the concerns arising out of internationalisation of Kosovo rule of law. It showed that unlike with the police and customs, where the deployment of international officers serving in executive roles was planned from the beginning, deployment of international jurists with executive functions was an afterthought. Many of the challenges were not systematically thought through. The hybrid judiciary was deemed necessary to protect the minorities and to be able to try the most controversial cases, which local judges and prosecutors were either incapable or unwilling to pursue. But we also illustrated that many of the problems commentators raise about the UNMIK time were inherited and never resolved by EULEX. We now turn attention to issues identified as stemming more intimately from the Europeanisation of the rule of law.

### ***3.2. Europeanisation of the rule of law in Kosovo***

Over the last decade, Kosovo rule of law has become Europeanised. By Europeanisation of the rule of law we mean both the intensification of EU presence in the Kosovo rule of law sector post 2008, but also a specific set of challenges introduced to the sector stemming from EU's priorities for Kosovo and its rule of law. These challenges are intensified due to the executive mandate of EULEX. We first provide an overview of EU in Kosovo and outline its competing objectives. These provide different visions of the social and political order and its value to the EU itself. We then analyse how these different and often contradictory objectives impacted the EULEX mission.

#### ***3.2.1. European Union and rule of law in Kosovo: competing priorities***

The European Union has played an important role in international efforts in Kosovo since the 1990s, but its status and influence has increased over the last decade. By mid 2000s, the EU wanted to increase the stakes by highlighting its own special relationship with the region, one that other states –

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<sup>43</sup> Interview Peter with EULEX staff 10, 27 October 2017.

<sup>44</sup> Interview Peter with local judge 1, 25 October 2017.

<sup>45</sup> Interview Peter with local judge 2, 25 October 2017.

Russia and the US, in particular – and other international organisations did not share. In 2005, the European Commission published a Communication highlighting its contribution to making Kosovo's European perspective a reality, thus linking Kosovo future to its own (European Commission, 2005). In its 2008 Enlargement Strategy, the Commission announced its intention to present a feasibility study on Kosovo. One of the main priorities in ensuring this European perspective is rule of law, and both Brussels and EU presence on the ground stress it as a priority.

Almost simultaneously as Kosovo proclaimed its independence, in February 2008, the Council of the European Union in one Joint Action established both the EU Special Representative and the European Union Rule of Law Mission in Kosovo: EULEX Kosovo (Council of the European Union, 2008a). While EUSR could be deployed rather quickly, the EULEX mission in Kosovo became operational only in April 2009. These two missions are still the main EU bodies on the ground in Kosovo, with EUSR now also double-hatted as the Head of EU Office (not Delegation, due to Kosovo's contested status) (Peter, 2012). The EUSR/EU Office is the main political partner, while EULEX is designed as a technical/legal Common Security and Defence Policy (CSDP) mission, which took over justice functions from UNMIK.<sup>46</sup> Both deal with the rule of law, but this division between political and technical/legal is one that our international interlocutors argued exists to a large extent also in practice. According to its mandate EULEX is to:

“assist Kosovo, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and custom service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.” (European Union External Action Service, 2018).

The EU Office:

“plays the pivotal role in realising the European agenda in Kosovo with the aim to promote Kosovo's approximation to the European Union. As an integral part of the European External Action Service and the European Commission's representation in Pristina, the Office ensures that a permanent political and technical dialogue is maintained with the Brussels institutions.” (*ibid.*)

And the EUSR offers:

“advice and support to the Government of Kosovo in the political process; provides overall coordination for the EU presences in Kosovo; and contributes to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo.” (*ibid.*)

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<sup>46</sup> EULEX's deployment was originally planned as part of the so-called Ahtisaari Plan of Kosovo's supervised independence and would have replaced the UN mission in Kosovo (UNMIK). However, due to Russia's and Serbia's opposition to the Ahtisaari plan and disagreement among EU's member states, the mission was deployed within the legal framework of the UN. One consequence of this was that EULEX is “status-neutral”, and does not take any official position on the future status of Kosovo. For more on this, see Dijkstra (2011).

When the EULEX mission was launched, the then EU High Representative for the Common Foreign and Security Policy, Javier Solana, raised high expectations among both the EU and the citizens of Kosovo:

“The mission will be crucial for the consolidation of rule of law in Kosovo, and furthermore, the development of rule of law and strengthening of multi-ethnic institutions will be to the benefit of all communities in Kosovo. The mission is proof of the EU’s strong commitment towards the Western Balkans and it will contribute to the enhancement of stability in the whole region.”  
(Council of the European Union, 2008b)

With such a heavy footprint of EU institutions themselves and the concurrent presence of EU member states on the ground, it is unsurprising that the EU has multiple objectives for what it wants to achieve with its rule of law interventions. While objectives specific to individual actors – such as economic interests of a member state – contribute to shaping EU policies and priorities, we identify three overarching objectives the EU is pursuing through its assistance to the rule of law in Kosovo:

- 1) ***Increasing stability of the region*** through normalization of relations between Kosovo and Serbia, and Kosovo-Serbs and Kosovo-Albanians;
- 2) ***Preparing Kosovo for its EU future*** by supporting an independent judiciary free from political interference; and
- 3) ***Minimising security threats to Europe emanating from Kosovo***, due to high levels of organised crime and its links to European networks.

These objectives can be identified in multiple EU documents. The EU stresses that they are pursued simultaneously and in parallel to each other. However, there are underlying tensions between them and in implementing the mandate of the mission, it matters which of these objectives is prioritised. The third objective, for example, has more to do with the EU than Kosovo. In 2012, the European Court of Auditors (2012) concluded that “given the international nature of organised crime, the strengthening of the rule of law in Kosovo is also important for the internal security of the EU” and assessed that these security objectives have not been adequately integrated into the EU’s external objectives for Kosovo. Ironically, one of our EULEX interlocutors argued that one of the biggest impacts coming out of EULEX deployment is the international police cooperation. He continued that through EU presence on the ground, EULEX officers are helping fight organised crime in their home countries and that more has been done on this than on the organised crime in Kosovo.<sup>47</sup>

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<sup>47</sup> Interview Peter with EULEX staff 2, 23 October 2017.

More importantly for our discussion, to achieve these priorities, the EU needs to work with different local constituencies.<sup>48</sup> Priorities 1 and 3 require an elite buy-in. Elite consent is needed for the normalisation of relations between Serbia and Kosovo and for continued cooperation of local authorities with EU ones on transnational organised crime and terrorism. Priority 2, on the other hand, at its heart, requires that justice institutions are insulated from these same local elites. The EU would therefore require support of the local population, as elite accountability cannot be achieved from the outside. In the next sub-section, we look at how these political objectives intersect with the work of EULEX.

### *3.2.2. EULEX and the competing EU priorities*

Looking at its mandate, EULEX is a legal/technical CSDP mission supporting rule of law in Kosovo, albeit an unusual one for the EU, given its executive mandate. This is how our interlocutors at EULEX perceived the mission as well: they were there to improve the judiciary through their legal work. This would seem to best coincide with priority number 2 above. But the mission operates within broader EU objectives for (the rule of law in) Kosovo and the EU itself. This tension between the legal nature of the work and the political objectives of the EU has been brought up as a frustration in several of our interviews and we illustrate the experiences communicated to us through two separate issues: (1) the internal structure and appointments, and (2) the interference in the work of EULEX judges and prosecutors. This tension between political and legal is particularly acute in an executive mission and a general sentiment among EULEX jurists was that the mission management and Brussels do not have a full appreciation of the problem, almost ten years in. Before analysing the two areas, it is interesting to note that the question of a settled status for Kosovo – a political objective above all others for local actors and one that dominated the planning of the mission itself (Zupancic et al, 2017) – was not seen as a challenge for their everyday work by EULEX staff. Despite its status neutrality, which allowed for the deployment of an executive EU mission, EULEX in practice treats Kosovo's institutions as sovereign, respecting and applying laws of Kosovo (see also Capussela, 2015: 113). The question of status was therefore almost never brought up in our interviews on the rule of law.

The question how EULEX executive staff, judges and prosecutors, but also investigators and legal officers, are appointed and integrated in the overall mission was a topic both local and international actors had strong opinions on. Staffing for EULEX follows a similar logic to staffing for other CSDP missions, officials are either seconded by member states or are contracted by the mission itself. This system was widely seen as inappropriate for the type of mission EULEX is, with one interlocutor arguing

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<sup>48</sup> This can be seen also in the perceptions of EULEX by the local population, which we cover in section 3.3.

that when you take over executive functions, you take over state functions, meaning that the turnover rate is incompatible with the tasks you are asked to take on: in legal proceedings, you cannot change an investigator every year.<sup>49</sup> The turnover particularly impacts the seconded staff, where the decision on the length and the possible extension of the mandate rests with the sending state. At the time of interviews, roughly three quarters of staff working in the Executive Division were seconded.<sup>50</sup> On the other hand, contracted staff are hired on short, but renewable, contracts and are therefore seen to be under a bigger pressure to perform to the wishes of the management. Unlike the seconded justices, they do not have positions waiting for them in their home states.

A local judge argued that this system influenced the quality of EULEX judges wanting to come to Kosovo and sometimes unfairly also the perception of their rulings by the Kosovo-Albanians. Many in the Executive Division were coming from Eastern European states (Poland and Bulgaria top the list) and locals, sometimes justifiably but often unjustifiably, criticised their work and decisions due to the strong stereotypes about these countries in the former Yugoslavia, including Kosovo. The corruption scandals, and the fact that the management was not perceived to be dealing with them swiftly, did not help this impression of the quality of EULEX staff.<sup>51</sup> Another interlocutor maintained that as the mission preferred seconded staff (as these are paid by the sending states), it repeatedly appointed to managerial posts people that lacked the required legal training and experience.<sup>52</sup> Looking for a possible alternative to the current staffing system, one interviewee argued that the EU should not have implemented a standard CSDP approach, but instead treated the executive wing of EULEX as an international court. Especially when it comes to judges, their position needed to be secure and for a longer period, otherwise it becomes difficult to maintain that you are running an independent judiciary yourself.<sup>53</sup> Overall, the impression was that the specificities of staffing an executive mission were not thought about in advance nor have been properly understood by Brussels ever since. How the staffing system would impact the independence of the judiciary, one of the objectives of the EU, was not seen to be a priority in the EU thinking. An alternative view would be that the mission was/is also an experiment for the functioning of the EU institutions themselves and that there was no incentive for the EU to step outside its own procedures.

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<sup>49</sup> Interview Peter with EULEX staff 10, 27 October 2017.

<sup>50</sup> Interview Peter with EULEX staff 1, 23 October 2017.

<sup>51</sup> Interview Peter with local judge 2, 25 October 2017.

<sup>52</sup> Interview Peter with EULEX staff 6, 24 October 2017.

<sup>53</sup> Interview Peter with EULEX staff 4, 24 October 2017.

The more complicated issue is the question of political interference in EULEX judiciary.<sup>54</sup> Given that support for independent judiciary free from political interference is one of the priorities for local institutions, perceived interference in the EULEX judiciary cannot set a good example. This is also an area where different EU priorities most clearly clash. Every single interviewee with direct experience with EULEX, including internationals not employed by the mission and local judges and staff, categorically rejected any knowledge of direct instructions from Brussels or EULEX management to EULEX judges on what decisions they should be reaching. However, many listed more subtle forms of pressure: judges and prosecutors were let known informally that a certain person is needed for maintaining the balance between different groups; EULEX Head of Judges reassigned a case from a certain judge; interim court measures were not implemented by EULEX police; content of press statements was changed somewhere above, issues raised about handling of a case never received a reply, etc. These examples illustrate the atmosphere and one EULEX employee argued that she constantly feels like there are other things at work, things she is not aware of. She continued by stating that when things are a bit out of the ordinary, staff are never told why they happen the way they do.

Another form of political interference is the general expectation from Brussels and the EULEX management to show success. But the definition of success is not a shared one, with one interlocutor arguing: for us success is justice, for Brussels success means convictions. A EULEX judge, for example, argued that there were cases, where ‘everyone in Pristina knew that the guy was guilty’, but the case was not a solid one and the person was acquitted. As a person, she claimed, she would rather see this guy off the streets, but as a judge she cannot do it without a solid case. Another interlocutor maintained that early on a decision was made somewhere to go after the big fish, but as EULEX did not have the capacity for these types of cases, they inevitably failed. Now these people feel vindicated, as they were cleared by EULEX judges. Such behaviour of the mission and the EU raised also the expectations of the local population, who were then inevitably even more disappointed. In the next section, we turn to the perceptions of the local population.

### **3.3. Local perceptions of EU rule of law and EULEX**

A series of interviews among local and international actors indicates that minority and majority representatives in Kosovo have a negative perception of what is going on in the field of rule of law in

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<sup>54</sup> This is an extremely sensitive issue and to completely protect the anonymity of interviewees, no reference to specific interviews is made in this paragraph and the next. This is something that was promised to the interlocutors explicitly (M. Peter). For further information on this, please consult EUNPACK Ethical Guidelines.

general and what the EULEX is doing in particular.<sup>55</sup> According to one Kosovo-Albanian interviewed, the main challenge to the rule of law in Kosovo is that there is “a political class which has been installed for the sake of stability – they have become legitimate leaders with a naive rationale that people who have fought for a country have more courage to take difficult decisions. But these political leaders have embedded the structures of corruption and organized crime – the underground is becoming part of the mainstream politics.”<sup>56</sup> Another representative of the majority population said that a main challenge to the rule of law in Kosovo is that judges and prosecutors are politically appointed...sending a message to the citizens that the justice system is not independent.”<sup>57</sup> These quotes represent one part of the narrative concerning challenges to the rule of law in Kosovo.

Here, we, however, focus on the narrative and the negative perceptions of EULEX as a mission. We identify several related reasons for such an image. The first reason is that local contestation against EULEX seem to have been high from the start. Another reason for the negative perception of EULEX is that the implementation of its mandate is perceived as neither conflict- nor context-sensitive. Moreover, EULEX according to our local interlocutors achieved few tangible results since its inception in 2008, resulting in a large expectation gap. The last point is the corruption-narrative tied to EULEX.

### *3.3.1. High local contestation from the start*

Ewa Mahr (2017) argues that the local contestation against EULEX was high from the start. She contends that this has mainly been fuelled by conflicting sovereignty claims by the Kosovo-Albanians and the Kosovo-Serbs; by the understanding of sovereignty by parts of society as entailing exclusive authority; and the dissatisfaction with the mission’s effectiveness. Aidan Hehir (2006) explains that a commonality between Kosovo-Serbs and Kosovo-Albanians, which influenced their perceptions of EULEX, was the feeling of weariness after a decade of the omnipresent presence of UNMIK. On this basis, it should come as no surprise that the current perception of the EULEX mission is very negative. However, according to one minority interviewee, “the minority people had no trust in EULEX, however, today, they would rather give the case to EULEX than the local judiciary.”<sup>58</sup> This point resonates also with the fact that there were important differences between these two groups from the start: In

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<sup>55</sup> This view was also confirmed by several of the participants in the workshop “The Bridge as a symbol of divisions in Mitrovica and EU’s role” held at the headquarters of the European Movement in Serbia, Belgrade, Nov 29, 2017 (see <http://eunpack.eu/sites/default/files/publications/D5.8%20Workshop%2C%20European%20caf%C3%A9%20debate%20and%20presentation%20of%20initial%20findings%20in%20Kosovo.pdf>)

<sup>56</sup> Interview Osland with local actor 1, 23 October 2017.

<sup>57</sup> Interview Osland with local actor 8, 25 October 2017.

<sup>58</sup> Interview Osland and Peter with local actor 10, 26 October 2017.

general, Kosovo-Albanians were pro-European while Kosovo-Serbs were more sceptical (Mahr, 2017). This was clearly also to a large extent linked to the NATO-bombing during the war.

### *3.3.2. Lack of conflict- and context sensitivity*

The so-called ‘local turn’ in peacebuilding has also affected the discourse of the EU, with an increasing number of policy documents focussing on the importance of the ‘local’ (Ejodus and Juncos, 2017). However, existing literature identifies several obstacles to local ownership in CSDP interventions: little if any local input into the design of the intervention; lack of context-sensitivity; and a primary focus on top-echelons in host state governments and administrations (*ibid.*; Mac Ginty 2017). This was something that was readily acknowledged also by EULEX staff we interviewed (see above).

Both representatives from the Kosovo-Albanian and the Kosovo-Serb community report about a lack of conflict- and context- sensitivity on the side of the EU, but minority representative express this as more of a problem compared to the majority representatives. According to one minority representative, “the local institutions are reporting to EULEX but communication only goes in one direction. The local community and institutions do not have anything to say for designing the mission and this is very problematic as for local ownership. The EU Office in Kosovo has done a lot but now it changed due to lack of communication. They don’t understand the need of the local community – they don’t ask them – and in some cases, they know what is going on but they are not interested.”<sup>59</sup> Another minority representative maintained that “EULEX people don’t go around in the North unless they have high protection. North Mitrovica is still not considered a safe environment for foreigners.”<sup>60</sup> One of the majority representatives mentioned that “there is a structured platform for dialogue with civil society...but there is no room for criticising the EU. The EU is only interested in the stabilisation and not democracy within the country”.<sup>61</sup> Throughout our interviews, several used the phrase “stabilocracy” or “stabilitocracy”, referring to a weak democracy with autocratically minded leaders, who enjoy external legitimacy by claiming to provide pro-Western stability in the region (BiEPAG, 2017). In its essence, it is an exchange of stability for external lenience on matters of democracy.

### *3.3.3. Expectation gap*

As mentioned above, the EU contributed to establishing very high expectations when the EULEX mission was launched in 2008. All our local respondents, minority or majority representatives, confirmed this picture. One Kosovo-Albanian argued that “the perception of the EULEX is very bad. We

<sup>59</sup> Interview Osland and Peter with local actor 11, 26 October 2017.

<sup>60</sup> Interview Osland and Peter with local actor 10, 26 October 2017.

<sup>61</sup> Interview Osland with local actor 1, 23 October 2017.

had high expectations and it proved to be a big disappointment".<sup>62</sup> Another majority representative argued that they expected EULEX to go after the big fishes and that this expectation has not been met."<sup>63</sup> A minority representative said that "when you see the cost of the EULEX mission, you would expect more results. A huge expectation gap."<sup>64</sup> However, one of the majority representatives interviewed also said that "I am still against EULEX closing down because its presence has guaranteed protection for all society."<sup>65</sup> This idea of a EU as a 'watchdog' was mentioned by several of our interviewees, both Kosovo-Albanian and Kosovo-Serb.

### *3.3.4. The corruption scandals narrative*

According to one Kosovo-Albanian, the general perception is that EULEX is not doing anything. The main problem for Kosovo is corruption at the elite level and this should be the main responsibility of EULEX. She continued, "there is a lot of political interference and no MPs in prison. 78% think that rule of law institutions (locals and EULEX) are influenced by politicians according to a recent poll. We are losing faith in the EU."<sup>66</sup> Another majority representative was even harsher, stating "they (EULEX) cannot fight corruption because they are so involved in corruption themselves."<sup>67</sup> Yet another majority representative confirmed this image: "The EU came to strengthen the rule of law here but did the opposite. The purpose was to make the local judges competent enough for EULEX to leave – but today it is worse than it was in 2008. EU is more interested in stability with Serbia than with what is going on within the country."<sup>68</sup>

## **4. Conclusion**

The paper has analysed the EU's role in crisis management in Kosovo. Instead of describing the EU's institutional apparatus deployed on the ground, we focused on underlying institutional dynamics structuring the EU's actions in support of stabilization processes in Kosovo. The analysis addressed three aspects: competing institutional logics of political order in Kosovo; practices of constructive ambiguity in the process of normalization dialogue and their implications; and competing priorities reflected in EULEX operations on the ground.

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<sup>62</sup> Interview Osland with local actor 6, 28 November 2017.

<sup>63</sup> Interview Osland with local actor 7, 25 October 2017.

<sup>64</sup> Interview Osland and Peter with local actor 9, 26 October 2017.

<sup>65</sup> Interview Osland with local actor 7, 25 October 2017.

<sup>66</sup> Interview Osland with local actor 5, 24 October 2017.

<sup>67</sup> Interview Osland with local actor 6, 28 November 2017.

<sup>68</sup> Interview Osland with local actor 8, 25 October 2017.

There are three sets of findings. First, the analysis suggests that without internal unity in terms of how the EU views future status of Kosovo, it is difficult for the EU to promote a clear institutional logic in terms of organizing Kosovo's political order. Short of being able to support and recognize Kosovo as a fully sovereign state, the EU is left with having to allow competing visions of political order and thereby also allow the existence of parallel structures of governance in Kosovo. This leaves space for competing claims of sovereignty and authority by the governments in Pristina, Belgrade and by local actors in the Kosovo Serbian municipalities in Northern Kosovo.

Second, the instrumental use of ambiguity in the processes of the normalization dialogue can promote cooperation and constructive steps forward in the processes of reconciliation and stabilization. However, ambiguity also leaves space and leeway for multiple interpretations undermining trust among the parties to the Dialogue. This in turn generates backlashes and outright blockages in the relations among the parties with negative consequences for the situation on the ground.

Third, the European Union assistance to the rule of law in Kosovo has been and continues to be characterised by competing priorities of the EU for Kosovo and the region. This hampers the EU in achieving a coherent and impactful rule of law policy. In turn, it also decreases the local populations' trust and approval of EULEX and ultimately also undermines the EU's overall goals of promoting good governance and a European perspective in Kosovo. The executive mission EULEX is an immense undertaking for the Union and some implementation challenges were to be expected. The scale of these challenges is magnified by the fact that Kosovo and the region are in close proximity to the EU, making their problems also internal problems of the EU. At the same time, talking to the implementers on the ground, it became increasingly clear that the EU had not properly thought through the specific challenges the deployment of an executive rule of law mission would raise. While some modest lessons were seen to be drawn from the experiences of UNMIK (such as, mentoring provided by the international judges), in other ways, the EU was deemed ill-prepared to manage an executive mission. Most importantly, implementers of the executive mandate criticised Brussels and the management for sacrificing what they saw as the most important objective (effective and independent judiciary) for some other political purposes. This is a sentiment shared also by local actors. The negative perception of EULEX by local parties, Kosovo-Serb and Kosovo-Albanian, was nuanced and harsh. Their narratives are not surprising to EULEX implementers—they disagree with some of the reasons and details—and in fact resonate with what EULEX staff and other international actors intimated themselves. At the same time, the intensity of the critique and the nuances between the international and local narrative

on the ground highlight the implementation–perception gap in EU crisis management, a broader research question of the EUNPACK project.

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## **Annex 1: List of Interviews**

### EULEX:

Peter, M. with EULEX staff 1, anonymous interview, 23 October 2017.  
Peter, M. with EULEX staff 2, anonymous interview, 23 October 2017.  
Peter, M. with EULEX staff 3, anonymous interview, 23 October 2017.  
Peter, M. with EULEX staff 4, anonymous interview, 24 October 2017.  
Peter, M. with EULEX staff 5, anonymous interview, 24 October 2017.  
Peter, M. with EULEX staff 6, anonymous interview, 24 October 2017.  
Peter, M. with EULEX staff 7, anonymous interview, 25 October 2017.  
Peter, M. with EULEX staff 8, anonymous interview, 27 October 2017.  
Peter, M. with EULEX staff 9, anonymous interview, 27 October 2017.  
Peter, M. with EULEX staff 10, anonymous interview, 27 October 2017.

### OSCE (Kosovo)

Osland, K. and Peter, M. with OSCE staff 1, anonymous interview, 23 October 2017.  
Osland, K. and Peter, M. with OSCE staff 2, anonymous interview, 23 October 2017.

### Local actors (Kosovo)

Osland, K. with local actor 1, anonymous interview, 23 October 2017.  
Osland, K. with local actor 5, anonymous interview, 24 October 2017.  
Osland, K. with local actor 6, anonymous interview, 28 November 2017.  
Osland, K. with local actor 7, anonymous interview, 25 October 2017.  
Osland, K. with local actor 8, anonymous interview, 25 October 2017.  
Osland, K. and Peter, M. with local actor 9, anonymous interview, 26 October 2017.  
Osland, K. and Peter, M. with local actor 10, anonymous interview, 26 October 2017.  
Osland, K. and Peter, M. with local actor 11, anonymous interview, 26 October 2017.  
Peter, M. with local judge 1, anonymous interview, 25 October 2017.  
Peter, M. with local judge 2, anonymous interview, 25 October 2017.

### Diplomatic representations missions in Prishtina:

Navrátil, M. with diplomatic mission senior official 1, anonymous interview, 6 November 2017.  
Navrátil, M. with diplomatic mission senior official 2, anonymous interview, 6 November 2017.  
Navrátil, M. with diplomatic mission senior official 3, anonymous interview, 7 November 2017.  
Navrátil, M. with diplomatic mission senior official 4, anonymous interview, 7 November 2017.  
Navrátil, M. with diplomatic mission senior official 5, anonymous interview, 8 November 2017.  
Navrátil, M. with diplomatic mission senior official at 6, anonymous interview, 8 November 2017.  
Navrátil, M. with diplomatic mission senior official 7, anonymous interview, 9 November 2017.  
Navrátil, M. with diplomatic mission senior official 8, anonymous interview, 9 November 2017.

### Belgrade:

Bátora, J. with EU Delegation senior official, anonymous interview, 28 November 2107  
Bátora, J. with Office for Kosovo and Metohija senior official, anonymous interview, 28 November 2107

Bátora, J. with Serbian Ministry of Foreign Affairs senior official, anonymous interview, 28 November 2017.

Bátora, J. with Serbian Ministry of Foreign Affairs junior official, anonymous interview, 28 November 2017.

Brussels:

Bátora, J. with DG NEAR Kosovo Desk senior official, anonymous interview, 23 October 2016.

Bátora, J. with DG NEAR Serbia Desk senior official, anonymous interview, 23 October 2016.

Bátora, J. with EEAS Civilian Contact Planning Capability, Operations division, senior official, anonymous interview, 23 October 2016