Norm contestation in EU foreign policy: understanding the effects of opposition and dissidence

Abstract: The EU is as a liberal normative community, where liberal norms play a central role. However, the inherent vagueness of these norms and the absence of clear authority have led to conflicts. While contestation is considered essential within a normative community to establish the legitimacy of norms, within the EU, contestation can also challenge the validity of its foundational norms. This raises the question of how this type of contestation affects EU foreign policy. This study examines two radical forms of contestation: opposition and dissidence. Through the analysis of two case studies, namely the Global Compact for Migration and Sexual and Reproductive Health and Rights, it becomes evident that the EU's foreign policy system can sustain opposition, but not always dissidence.

Keywords: contestation; norms; gender equality; migration; EU Foreign Policy.

Introduction

The European Union (EU) is currently facing a 'polycrisis' that is simultaneously causing fractures across multiple areas of its political system (Zeitlin, Nicoli and Laffan 2019). Scholars argue that the European project has moved from permissive consensus to constraining dissensus,[1] with an increased role for identity politics (Hooghe and Marks 2009; Zürn 2019, p. 977). This transformation is also evident in EU foreign policy (Costa 2019; Barbé and Morillas 2019). The current reconfiguration of political conflicts within the EU is occurring at a time when the international liberal order is experiencing significant contestation. At the international level, this contestation involves a clash between advocates of a postnational order, representing the more cosmopolitan facets of the international liberal order, and proponents of the Westphalian order (Lake, Martin and Risse 2021; Börzel and Zürn 2021).

This article posits that although the EU is defined as a normative community, it may encounter situations where actors are inclined to reclaim control over specific rules and norms. This aligns with the observation that challenges to the international liberal order also come from within the liberal community itself, particularly from right-wing populist parties and movements advocating for renationalisation policies (Adler-Nissen and Zarakol 2021). As Prime Minister Viktor Orbán of Hungary expressed on Twitter during the European Council meeting on 23 March 2023, his country is seeking to Europeanise the principles of 'no migration' and 'no gender' (Rivera-Escartin 2020; Orbán 2023). This seems to go against what the EU stands for, as was recently acknowledged by Josep Borrell, Vice-President of the European Commission and High Representative of the European Union for Foreign

[1] Permissive consensus refers to a historical phase within European integration during which both citizens and political elites exhibited substantial support for the integration process without active opposition. This era stands in stark contrast to the contemporary period, which is characterised by constraining dissensus, wherein European integration has become increasingly politicised and subject to contestation by both citizens and political elites alike.

Affairs and Security Policy, who remarked that the migration issue 'is a bigger divide for the European Union. And it could be a dissolving force for the European Union' (quoted by Wintour 2023). He has also observed that 'women's rights and gender equality are increasingly attacked and questioned in many places in the world [Europe included],' recognising that the Council (i.e. member states) 'has some difficulties with that [gender equality]' (EEAS 2020). Consequently, this article looks at the issues of migration and gender equality as high-profile illustrations of the current era of constraining dissensus.

What are the main effects of actors contesting EU foreign policy norms when this contestation comes from within the EU itself? Contestation can take two forms, targeting either the application of norms or their validity (Deitelhoff and Zimmermann 2020). So far, the literature has examined the consequences of the former (c.f. Johansson, Nogués, Vlaskamp and Barbé 2020; Biedenkopf, Costa and Gora 2021). However, less attention has been paid to actors within the EU contesting the validity of norms. This article seeks to understand how contestation of this sort impacts the robustness of EU foreign policy and the norms underpinning it by examining the two most radical strategies of validity contestation: opposition and dissidence (Deiltehoff and Daase 2019). The former refers to an actor or group of actors who advocate for change within the existing system while accepting the rules of political participation. The latter involves a more active and defiant opposition that seeks to challenge and reject the existing system as a core aspect of its strategy. This article posits that when contestation takes the form of opposition, it is unlikely to erode EU foreign policy norms, but when it takes the form of dissidence, the erosion of EU foreign policy norms becomes a likely outcome.

Focusing on the policy areas targeted by right-wing populists, we present two case studies that shed light on different forms of contestation. First, the case of the UN Global Compact for Migration exemplifies the contestation surrounding migration. The effective erosion of

the EU foreign policy that underpinned the Compact was achieved through an alliance between Hungary and the US, demonstrating the effects of dissidence. Second, sexual and reproductive health and rights (SRHRs) are a representative example of the contestation of gender equality. In this case, both forms of contestation have appeared. Opposition became the dominant framework for contestation after SRHRs were included in the EU's foreign policy agenda, which reinforced the norm. Dissidence then came to the fore in 2020, following the joint presentation of an alternative SRHR norm by Hungary, Poland and the US, which temporarily eroded the norm.

Furthermore, it is important to note that EU foreign policy can be implemented through two distinct logics: an intergovernmental logic primarily driven by member states and a supranational logic characterised by shared competences and a balanced institutional framework involving the Council of the EU, the European Commission and the European Parliament (Keukeleire and Delreux 2014, p. 2). Both cases fall under the supranational logic of EU foreign policy. Migration is an internal policy with external implications, while SRHRs fall within the external action cluster (Keukeleire and Delreux 2014). Both issues have been identified as critically important to EU foreign policy since the adoption of the 2003 European Security Strategy. In terms of normativity, SRHRs are an internalised norm, whereas the Global Compact for Migration is an emerging norm (Finnemore and Sikkink 1998).

The next section introduces the conceptual framework for EU foreign policy and norm contestation. The third section of the article examines the Global Compact for Migration and SRHRs as case studies. To analyse the impact of contestation, the article employs document analysis and resorts to 47 semistructured interviews with officials from the European Commission and the European External Action Service (EEAS) and

representatives of member states and civil society.[2] The fourth section discusses the consequences of contestation on these two issues and proposes further avenues for research on EU foreign policy.

Conceptual framework on norm contestation and EU foreign policy

The Lisbon Treaty embodies the essence of the EU, constituting its identity through a set of values and norms. Article 2 of the Treaty on the European Union (TEU) makes it abundantly clear that the EU is built on fundamental values that include respect for human rights, democracy and equality. Moreover, the EU's external action also reflects these norms, as is stated in article 21 of the TEU. In sum, the EU's identity is firmly anchored in liberal norms (Wagner 2017).

Similarly, the scholarly literature argues that the EU's normative foundation consists of five 'fundamental norms' codified in the EU Treaties (and mentioned in articles 2 and 21 of the TEU): peace, freedom, democracy, the rule of law and human rights. Additionally, there are four more contested 'minor norms', which are social solidarity, antidiscrimination, sustainable development and good governance (Manners, 2002). This list was further expanded by Daniel C. Thomas, who included 'conflict prevention, the strengthening of multilateral institutions, free trade' (Thomas 2009, p. 344). Such norms have led to the EU being described as a normative power and have even attained the status of a foundational

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[2] Interviewees were assured of confidentiality and anonymity. Additionally, the interviewees deemed the two case studies exceptionally sensitive, which led to an agreed decision not to use direct quotes. Interviews were conducted with officials from various Directorates-general (DGs) of the Commission, including Migration and Home Affairs (DG HOME), Civil Protection and Humanitarian Aid Operations (DG ECHO), European Neighbourhood and Enlargement Negotiations (DG NEAR) and International Partnerships (DG INTPA, formerly DG DEVCO) as well as official from the European External Action Service (EEAS), which included representatives the EU delegation in New York. Representatives from all member states except Bulgaria, Poland, the Czech Republic, Luxembourg, Latvia, Slovakia, Lithuania and Estonia were interviewed. Those interviewed regarding the UN Migration Compact included key negotiators, such as chargés d'affaires or ambassadors from the permanent representation at the UN. The interviewees on SRHRs included representatives from member states serving in the permanent mission to the EU, who are assigned to the Working Party on Human Rights (COHOM) and/or the Working Party on Development Cooperation and International Partnerships (CODEV).

myth (Manners 2010). These norms are evident in significant EU foreign policy documents, including the 2003 European Security Strategy and the 2016 EU Global Strategy.

Norms are intersubjective standards of appropriateness (Finnemore and Sikkink 1998). They not only prescribe behavioural guidelines for actors but also establish an implicit understanding that their actions will be subject to scrutiny by other members of the in-group. However, effective scrutiny requires two crucial elements. First, the meanings of norms should be unambiguous in order to mitigate divergent interpretations (Wiener 2014). Second, the presence of an impartial arbiter is essential to assess whether actual behaviour aligns with the prescribed behaviour (Costa 2019). Paradoxically, the ambiguity of norms has enabled actors within the EU to capitalise on interpretive leeway. This ambiguity allows them to act on the basis of the interpretation that most benefits them while legitimising such claims by referring to EU norms. Moreover, the absence of a clear authority within the EU exacerbates the challenge of determining when a member state is in breach of EU values.

Building on this assessment, Costa (2019) highlights a significant gap in the study of EU foreign policy, noting that insufficient attention has been paid to the potential for political conflict over the regulative and constitutive norms that underpin EU external relations (Costa 2019, p. 1). However, one could argue that, internally, a union of 27 member states is by nature open to disagreement and normative divergence, making norm contestation inevitable (Author). Indeed, contestation can serve as a means for the EU to find more legitimate solutions, provided that it occurs within established mechanisms and rules of procedure (Author).

Within the EU, contestation is expected to take the form of applicatory contestation, given the bloc's nature as a liberal normative community (Deitelhoff and Zimmermann 2018, p. 6; Author). This means that applicatory contestation strengthens norms (Wiener 2014). Nonetheless, right-wing populist parties and nationalist movements strategically target liberal

norms within the international order (Adler-Nissen and Zarakol 2021). They view the transfer of authority as a direct threat to their national identity and are staunch advocates for addressing norms exclusively at the national level (Zürn 2018). Notable examples include Hungarian Prime Minister Viktor Orbán's refusal to comply with the EU's decision on refugee resettlements and the Bulgarian Constitutional Court's ruling against the Istanbul Convention, which encompasses many gender equality norms. These instances vividly illustrate their unwavering determination to reclaim national sovereignty and safeguard their perceived autonomy in the face of normative impositions. Actions such as these suggest the potential consequences of a member state's noncompliance with the *acquis communautaire* need to be considered.

The issue of noncompliance within the EU resonates with the concept of validity contestation, which asks why an actor or group of actors should uphold a norm and, in so doing, has the potential to undermine existing norms (Deitelhoff and Zimmermann 2018, p. 6). Of particular concern in relation to the EU is validity contestation since it arises among normative communities rather than within a single normative community (Hoffman 2010). This brings us to one of the key assumptions of this article: both applicatory and validity contestation are observable at the EU level. This suggests that a distinct group of actors is emerging within the EU that are increasingly distancing themselves from the values and norms ingrained in the *acquis communautaire*. Johansson-Nogués, Vlaskamp and Barbé (2020) have shed light on this phenomenon, arguing that norm contestation has intensified within the EU. It has created a divide between those advocating for universal values and proactive EU actions on the international stage, on the one hand, and those seeking greater devolution of power and foreign policy decision-making from EU institutions to national capitals, on the other (Johansson-Nogués, Vlaskamp and Barbé 2020, p. 2)

Furthermore, validity contestation implies resistance to existing norms. In line with Daase and Deitelholff's (2019) work on resistance, this article examines two radical modes of validity contestation: opposition and dissidence. Before defining and operationalising these two concepts, it is important to note that they exist along a spectrum. This means that validity contestation can transition between opposition and dissidence and back again. In contrast to Daase and Deitelhoff (2019), this article asserts that the transition between the two forms of contestation is contingent upon the actor's characteristics rather than the system. Whether actors are engaging in opposition or dissidence, they fundamentally seek to challenge and reject the existing system as a core aspect of their strategy.

Opposition

In the case of opposition, an actor or group of actors can advocate change within the system after first accepting the existing rules of the game of political participation. While such actors express a willingness to alter the existing order, they lack the means to do so (Author). There are two main reasons for this: first, the actor lacks the ideational and/or material resources to shape the existing norm to its own views (Deitelhoff and Zimmermann 2019, p.10). Second, the actor is not part of a broad internal and/or external network or constellation of actors who share the same objective (Johansson-Nogués et al. 2020, p.10).

Simply put, the actor may lack the tools that it needs to fully exercise its agency and engage in validity contestation through dissidence. Instead, it resorts to using institutionalised channels of political participation as a means to articulate its dissent (Daase and Deiteholff 2019, p.12). After acknowledging that it is unable to advance its specific normative vision, the actor will endeavour to establish mechanisms that safeguard or shield this vision while simultaneously allowing the majority of the community to promote the dominant understanding of the norm. In essence, the actor is unable to bring about a transformation in the existing norm and instead engages in a contestation that pertains to the application of

the norm. We can anticipate that the contested norm will be strengthened in response to this contestation.

Dissidence

In the case of dissidence, the actor has not only the will but also the capacities and mechanisms needed to bring about a change in the established norm. These capacities take the form of ideational and material resources, as well as alliances forged within and outside the EU that aim to undermine a specific EU norm. Consequently, the actor openly rejects or violates these norms through a form of validity contestation known as dissidence. This mode of contestation involves the actor adopting unconventional forms of organisation and articulation to challenge the existing norm (Daase and Deiteholff 2019, p. 12–13). For example, the actor's actions may jeopardise a common position on a pertinent issue even though a consensus has already been reached.

Actors who engage in dissidence do not accept the legitimacy of the existing norm and deliberately act in ways that violate it. Their objective is to dismantle or transform the normative order itself. This decision reflects a conscious choice to no longer abide by the existing consensus that they helped forge, which they perceive to be incompatible with its normative views. Ultimately, the actor seeks to disrupt the established order and create an alternative one that aligns with their vision.

Consequently, this article argues that when contestation takes the form of opposition, EU foreign policy norms will remain robust. However, when contestation manifests as dissidence, EU foreign policy norms will be eroded.

Opposition and dissidence in EU foreign policy: migration and gender equality

Freedom of movement (including migration) and gender equality (including SRHRs) have been crucial topics since the European Security Strategy was adopted in 2003 and its implementation report was published in 2008 (European Council 2003; European Council

2008). These issues remain highly significant in the 2016 EU Global Strategy and its implementation reports (EEAS 2016; EUGS 2018). Given the predisposition of right-wing populism to portray migrants and women's rights as threats to national identity (Brait 2015), it is to be expected that contestation in these areas will be fierce.

The UN Global Compact for Migration: from consensus to dissidence

Consensus as the guiding principle

During the consultation stage of the Global Compact for Migration, the EU's interventions were guided by the task mandated in the Council conclusions, as well as the EU Guidelines agreed by the United Nations Working Party (CONUN) and endorsed by the Committee of Permanent Representatives (COREPER) (interview 8).

At this stage, member states held a shared stance: migration is not considered a human right and the document should thus not reflect this notion (interview 6). The EU delegation also aimed to ensure member states' involvement by clearly differentiating between regular and irregular migration (interview 8). Furthermore, the EU explicitly emphasised that there would be no transfer of authority to either the EU level or the international level. This point was reiterated by the EU delegation multiple times, emphasising the 'sovereign right of states to determine whom to admit to their territories and under what conditions, subject to that state's international obligations' (European Union 2017, p. 1). Some member states sought to expand the scope of the EU's position. Bulgaria, although it later withdrew from the agreement, advocated for addressing the rights of migrant children in the Compact: 'migrant children are children first and foremost [and] they [are] entitled to all human rights' (Bulgaria 2017).

The EU was able to produce joint commentaries and enabled member states to shape the document according to their views. It is worth noting that the EU's ability to maintain consensus among member states owed mainly to the fact that negotiations were still in the

consultation phase. That is, the Compact was not a top priority on the political agenda (interviews 2, 3 and 8).

Channelling the dissidence of the US and Hungary

The Puerto Vallarta meeting in December 2017 played a crucial role in determining the fate of the document and the EU's attitude towards the Compact. The first sign of dissidence was when former president Donald Trump decided to withdraw the US from the agreement (Lynch 2017). The decision was justified by the US ambassador to the UN, who stated that 'our decisions on immigration policies must always be made by Americans and Americans alone. We will decide how best to control our borders and who will be allowed to enter our country. The global approach in the New York Declaration is simply not compatible with US sovereignty' (United States 2017). Furthermore, the ambassador highlighted that 'unlike standard titles for international instruments, "compact" has no settled meaning in international law, but it implies legal obligation' (United States 2018). While this dissidence on the part of the US did not intend to impede the process, the country's rhetoric resonated powerfully, persuading others to follow suit.

The EU's initial assessment was that the US decision presented an opportunity for the EU to take a leading role in the negotiations (interview 8). It gave the EU a chance to reach an international agreement that would address the internal disagreement on migration (Author). However, Hungary expressed discomfort with the Compact in March 2018, dissenting from the EU's stance by asserting that 'migration is an unfavourable and dangerous process' (Hungary 2018). The country's rhetoric aligned with the normative claims put forth by the US: it stated that 'migration is not a basic human right' and argued that 'the international community must realise that migration is not beneficial for anyone' (Hungary 2018). Hungarian dissent was clearly evident during this period, between the first and second rounds of official negotiations, yet there was no pursuit of an alliance with the US.

As a first move, the EU delegation in New York unsuccessfully urged Brussels to be more actively involved. Subsequently, the delegation turned their attention to persuading Hungary to rejoin the European consensus, leading to various coordination meetings within the EU. It soon became apparent that Hungary was not seeking to shape the substance of the EU's stance on the Global Compact. Instead, according to several interviewees, the country's objective was to undermine EU consensus for domestic purposes (interview 8). This behaviour eroded the EU's role and jeopardised the first international agreement on migration.

Transitioning from the persuasion approach, the EU delegation shifted towards a legalistic approach. The delegation considered that the EU and its member states could actively participate in the negotiations for the Global Compact, based on the 2017 European Consensus on Development and the Council conclusions on migration, which provided a solid foundation (c.f. Council of the EU 2018). Waiting for COREPER approval was deemed unnecessary as there was already agreed language on the matter. However, a few smaller member states opposed the EU delegation or the EEAS working in this manner. There was a general concern that it could have negative consequences if these member states identified other issues as problematic.

By then, Hungary had already escalated its dissent by obstructing resolutions on migration in the Second Committee of the UN General Assembly, which emphasised the importance of upholding fundamental human rights. The country's actions created a situation where EU member states felt trapped because one member state was undermining the bloc's position at the UN (interview 12). During this critical period, the EEAS attempted to pursue an appeasement policy with Hungary, but individuals within the EU delegation advocated for a tougher stance towards the country. At this point, High Representative and Vice-President

Federica Mogherini became involved in a futile effort to persuade Hungary to rejoin the 27-EU block (interview 4).

Neither her actions nor the legalist attempt succeeded in persuading Hungary. In a bold manoeuvre, the European Commission decided to leverage share competences. It was argued that unanimity was not required, since the Global Compact fell within the purview of the development portfolio. In April 2018, the European Commission proposed two Council Decisions granting the Commission the authority to conclude the Compact on behalf of the EU and its member states. The Council and European Commission legal services became involved and worked towards a compromise. However, the differing conclusions reached by the two services meant that the Council did not adopt the Commission's proposal and the proposals for Council Decisions were subsequently withdrawn (interviews 4, 6, 7 and 8).

On the one hand, the EU delegation was unable to convene a coordination meeting due to Hungary's dissent. On the other, the Global Compact continued to be addressed by the CONUN Working Group and at the level of COREPER. Given this situation, the remaining leverage lay in the extent to which member states, including Hungary, believed in the EU as a political community and the norms that underpin it. A window of opportunity emerged when Hungary indicated that the EU could still undertake all the necessary work, but the delegation would be unable to speak (interview 8). This stance implied that Hungary was clearly opposed to anything labelled as being from the EU. All the same, the EU could continue to draft a negotiation position, circulate it to all the member states for feedback and then convene an EU coordination meeting. The discussion that ensued at this meeting was driven by member states and included suggestions that the country holding the EU presidency should act as the spokesperson.

Regarding Hungary's dissidence, Bart De Wever, the leader of the New Flemish Alliance (NVA), a right-wing populist party within the Belgian coalition government, noted that

'neither Trump's nor Orbán's withdrawal from the Global Compact caused a turning point for the party's support of the international instrument' (De Weber, quoted by Cerulus 2018).

Member states continued to adhere to the CONUN guidelines and the agreed common position. In the negotiating room, Austria relied on the expertise of the EU delegation to formulate a common position on behalf of the EU and 27 member states (interviews 5, 6 and 7). For instance, the EU seat in the General Assembly remained vacant as EU staff rallied behind Austria's seat (interviews 4 and 5). Outside the negotiation room, the EU delegation staff led the negotiations. Hungary rapidly objected to Austria speaking on behalf of the 27 member states while simultaneously holding the rotating EU presidency. In Hungary's view, allowing Austria to do so implicitly granted the EU spokesperson an official role (interviews 4, 6, 7 and 8). However, Hungary's claim was overlooked by the other twenty-seven member states, containing the dissidence.

Moreover, the instruction from Vienna was that changing the spokesperson in the middle of the negotiations would not send a positive signal to the world. Importantly, Chancellor Kurz assured that the country would support the Global Compact, given its prominent role throughout the negotiation process (interview 12). This was a crucial move for the Visegrad countries as Hungary exerted pressure on them to withdraw. The countries entrusted Austria, seen as a reputable member state, to speak on their behalf (interview 12) and Kurz's words were instrumental in keeping them engaged in the process.

In July 2018, 23 objectives were unveiled, designed as guidelines for best practises. This development was viewed as a reaffirmation of the EU's migration policy within the Compact (interview 8). The uniqueness of the Compact resided in its potential to facilitate EU engagement with third countries through their compliance with its provisions (interview 12). In other words, neither the US's withdrawal nor Hungary's dissidence ultimately altered the course of the negotiations or the EU's stance on the Compact.

The fracturing effects of Austria's dissidence

While it may have initially appeared that the EU had successfully contained Hungary's contestation by appointing Austria as the EU spokesperson, the period between July and December 2018 would soon reveal circumstances to be otherwise (interviews 4 and 6). Until that point, either the consensus remained unchallenged or contestation was channelled: the agreement was concluded in July, all member state ambassadors sought approval from their respective capitals and no opposition to the agreement was voiced. The document gained greater legitimacy as high-ranking officials from the different countries joined in the final endorsement (interview 12).

However, this period of relative harmony came to an end with the contentious election of the new director of the International Organization for Migration (IOM). European leaders rallied around António Vitorino, the former Commissioner for Justice and Home Affairs, whose appointment marked the first time in fifty years that the US had its candidate voted down (interview 16). This turn of events prompted US Vice President Mike Pence to adopt a more prominent role and engage with Israel and Hungary. Unlike during the previous episode of contestation, Hungary's dissidence was now viewed with great interest by the US. The two countries started holding regular consultations, at which Hungary provided valuable insights into Eastern Europe's stance on the Compact. As a result of this close collaboration between an international actor and an internal EU actor, Vice-President Pence began making calls to Eastern European (and Latin American) countries, urging them to withdraw from the Compact. In parallel, far-right populist influencers spread fake news on social media platforms like Twitter, Facebook and YouTube (Cerulus and Schaart 2019).

This alliance was key to the clash within the Austrian cabinet between the Foreign Minister, who supported the agreement, and Chancellor Kurz, who now opposed it. Ultimately, Kurz's stance prevailed, leading Austria to withdraw its support by asserting that 'migration is not

and should not become a human right' (Murphy 2018). The decision made by Kurz to withdraw from the Compact had significant implications. Not only did Austria play a significant role in negotiating the Compact – to the point of representing the EU's voice, as mentioned earlier – but it also served as a beacon for the Visegrad group, which had managed to resist Hungarian pressure up to then. Austria's newfound dissidence had an immediate impact on other member states, rapidly triggering uncertainties and paving the way for heightened political conflict that had been previously contained (interviews 4, 6, 7 and 8).

Indeed, Austria's position led to the collapse of the Belgian government as the NVA, refusing to support the Compact, quit the cabinet. This move highlighted the growing involvement of civil society organisations in the debate. Poland and the Czech Republic joined Austria in voicing concerns against the Compact, as they believed that the agreement did not adequately protect national sovereignty. Poland emphasised that its priorities were safeguarding the security of its citizens and maintaining control over migration flows (PAP 2018). The Czech Republic argued that the document should have explicitly stated that illegal migration was undesirable. Overall, these countries contended that the Compact created a norm that clashed with national sovereignty. Italy witnessed a split within its government along party lines, with Prime Minister Giuseppe Conte (Movimento 5 Stelle) expressing support for the Compact at the UN, while Minister of the Interior Matteo Salvini (La Lega) announced that the government would not support it. In the end, Italy abstained from endorsing the Compact. Germany, facing a high-octane debate initiated by the far-right party Alternative for Germany, transferred the decision on approving the Compact to the German Parliament. Throughout this process, the European Parliament was the only institution that criticised the disinformation campaign and strongly opposed countries' decisions to withdraw from the agreement (European Parliament 2018).

[INSERT TABLE 1]

The dynamics of dissent within the EU resulted in fragmentation regarding the significance of the migration norm, as indicated in table 1. Consequently, the EU was unable to attend the Intergovernmental Conference on the Global Compact for Migration held in Marrakech in December 2018. However, the European Commission proposed that the EU could participate by speaking on behalf of EU institutions.

All in all, the UN Global Compact for Migration is a case study dominated by a contestation of norm validity in the form of dissidence. This article's hypothesis was that dissidence would be expected to go hand-in-hand with norm erosion, but this did not prove to be the case. Nonetheless, the EU and its member states have indeed faced critical moments because of the external dissidence shown by the US and internal dissidence shown by Hungary (shielded by the US) and Austria (as a result of an international network against the Pact whose demands were echoed by the country's Chancellor). At the end of the day, however, the EU and member states that supported the Compact found different tools for circumventing this dissidence.

SRHRs in EU foreign policy: from navigating opposition to confronting dissidence

Opposition as the institutionalised practice of contestation

Over the past decade, the EU position on gender equality, particularly SRHRs, has shifted from a permissive consensus to a constraining dissensus. At the international level, gender has long been recognised as a contentious issue, with states falling into two distinct groups. On the one hand, there is the progressive group advocating for women's rights as human rights based on the 1994 Cairo Conference and the 1995 Beijing Platform for Action, and utilising foreign aid to promote SRHRs. On the other is the conservative group, which associates these policies with support for abortion.

Within the EU, progressive actors in the realm of gender equality include the Nordic group, along with Germany, France, the Netherlands and, to a lesser extent, Spain, Portugal and

Italy (interviews 40, 44 and 45). On the conservative side are Poland, Hungary and Malta (interviews 40, 44 and 45). It is worth noting that following its 2018 referendum legalising abortion, Ireland has also joined the progressive group. Malta, which was on the brink of undermining the 2015 common position on SRHRs, is also gradually aligning itself with the progressive group. This diversity of positions has posed challenges in establishing cohesive EU external action on gender equality.

To be more specific, before 2017, countries supporting SRHRs were successful in persuading opposing actors to support their position by highlighting that the norm did not require a change in their national positions. Instead, it called for actions such as providing support for victims of rape and similar situations. This permissive consensus was achieved through a common understanding that foreign policy would be separate from domestic concerns (Elgström 2017). The EU position allowed for flexibility, providing channels through which contestation could be expressed as opposition.

Ireland (then still part of the conservative group) said it could not align with SRHR policies due to its national stance on abortion, but it did not obstruct the EU's position on SRHRs. Similarly, Malta accepted the EU's move towards a more ambitious SRHR agenda while expressing its dissociation by introducing an addendum or footnote explaining the country's position based on national sovereignty. The differences between these actors are nuanced: the progressive group welcomes European Commission activity reports, while the conservative group merely takes note of them. SRHRs were included in the EU's human rights and development agenda primarily because a large group of countries advocated for this. These countries coordinate through informal networks of like-minded nations (interviews 44, 45 and 46).

Paradoxically, the international contestation of the issue led by the US under the Trump administration served as a catalyst for the progressive agenda. It compelled previously silent actors to take a stance, revealing that most member states aligned with the EU's position on

SRHRs, including Romania and Cyprus (interview 43 and 45). At subsequent meetings of the Working Party on Development Cooperation and International Partnerships (CODEV), where SRHRs were discussed, the trend was for twenty-five countries to express support for the agreed language and only Hungary and Poland to oppose it. When the meetings concluded, these two countries ultimately came into alignment with the prevailing position.

However, Hungary and Poland have taken a different approach to Ireland and Malta, displaying strong opposition whenever SRHRs are addressed during meetings of CODEV or the Working Party on Human Rights (COHOM) (interviews 40, 42 and 44). This was evident during the negotiations for the 2016 Gender Action Plan II and, to a greater extent, the 2017 European Consensus on Development (ECD). The ECD outlined the EU's policy on development and cooperation, presenting member states with two options: reopening the discussion on the 2015 common position on SRHRs, which was described as a traumatic process (interview 44), or maintaining the status quo. During the ECD negotiations, those in favour of advancing the SRHR agenda and those advocating for a more conservative direction supported maintaining the agreed language of the 2015 common position. Subsequently, resources have solely been allocated to maintaining the agreed language.

Similar tensions emerged during negotiations of the post-Cotonou agreements, signed in April 2021. Progressive countries such as Finland, Sweden and Denmark aimed to expand women's rights by introducing a new section on SRHRs, while Hungary, Malta and Poland expressed concerns about the connection between reproductive rights and abortion. Poland placed a reservation on the SRHR clause, which was later lifted after an official declaration ensured that this clause would not result in changes to member states' legislation (Carbone 2019, p. 145). In this sense, the EU's position on SRHRs remained flexible enough to accommodate contestation without impeding the EU's role on the international stage.

All the same, Poland and Hungary's actions during EU discussions on SRHRs have attracted criticism: the two countries have been accused of not acting in good faith as they appeared

to prioritise domestic issues and appeal to their domestic audiences rather than seeking genuine engagement at the EU level (interviews 40, 43, 44 and 45). This suggests that the two countries are open to pursuing a shift in the norm rather than solely protecting their national interests. At first glance, Poland appeared to be safeguarding its conservative position on women's rights without impeding the EU's international commitment to SRHRs. In fact, Poland's contestation aligns with Malta's opposition on this issue. Hungary, on the other hand, has taken a stronger stance, showing less willingness to compromise. The country seeks to redefine the language on SRHRs within the EU to align with its own normative perspectives. This has particularly been the case since the Trump administration aimed to undermine the norm by contesting it internationally.

Despite these challenges, discussions within CODEV and COHOM have generally maintained a consensus, only rarely escalating to higher decision-making levels such as the Political and Security Committee or COREPER, which typically only occurs for matters concerning human rights or the Human Rights Council. It has also been emphasised that the level of agreement achieved within the working parties, which are dominated by technical expertise, would not have been possible if the issue had been discussed at the ambassadorial level (interviews 41, 42 and 43).

Dissenting and bouncing back: from the 2020 Gender Action Plan III to the 2021 Team Europe Conclusions

The international polarisation of positions on SRHRs had a direct impact on the EU, which became evident in December 2020. The US presented its revised vision of the norm, known as the Geneva Consensus, which advocated for the fragmentation of the norm. While it maintained reproductive health as an international norm, it called for reproductive rights to be renationalised. Specifically, the Geneva Consensus sought to reframe the reproductive health norm as care rather than services, thereby undermining individuals' rights. In the field of reproductive rights, renationalising the norm meant revising it based on an anti-

multilateralism stance, arguing that such rights should only be provided by the sovereign state and should not be subject to international discussion. Essentially, the US created an illiberal international alternative to the existing norm, leading Hungary and Poland to dissent from their existing commitment to SRHRs. As proof of this willingness, Hungary cosponsored the document while Poland signed it.

Shielded by their alliance with the US and the illiberal international norm, Hungary and Poland targeted the EU Gender Action Plan III, which included a dedicated chapter on SRHRs. The meeting to address this action plan was held online due to the COVID-19 pandemic. Hungary's actions during the meeting included constant negotiations and the receipt of instructions from Budapest. Ultimately, it and Poland blocked CODEV from adopting the Gender Action Plan III as Council conclusions.

As a result, Germany, then Chair of CODEV, downgraded the final document by adopting the Gender Action Plan as Presidency conclusions. This was a bold move, as the German delegate had initially intended to raise the issue at the ambassadorial level but feared that at that level, member states would have opted for accommodating the views of the two dissenting countries. Ultimately, adopting the Gender Action Plan III as Presidency conclusions was seen as the only option for Germany to safeguard the plan's content without accommodating the perspectives of the two dissenting countries. Indeed, the Gender Action Plan III aligns with the 2015 common position on SRHRs and emphasises the following principles:

> 'The EU remains committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences and remains committed to SRHR, in this context.'

Unlike previous episodes of contestation concerning SRHRs, this time the contestation took the form of dissidence rather than opposition. As with the UN Global Compact, the alliance between Hungary, Poland and the US aimed to erode the role of SRHRs as underpinning EU foreign policy. However, having learned a lesson from the previous episode of dissent, the EU did not fracture into different normative blocs this time. Instead, the block symbolically expelled Poland and Hungary from the EU normative community (interview 32). This expulsion was explicitly mentioned in the Presidency conclusions, which contained an analysis of the current state of the norm for the first time.

The analysis was signed by 24 member states – Bulgaria also refrained from adhering to the norm's content, albeit for different reasons than Poland and Hungary. Consequently, the conclusions emphasised the need to safeguard and protect gender equality, the empowerment of women and girls and their enjoyment of all human rights, including SRHRs, expressing deep concern and regret regarding the threats, questioning and pushback against these principles in the face of shrinking civil, democratic and civic space globally (Council of the EU 2020). In other words, the Presidency conclusions demonstrated that the vast majority of member states, the European Commission and the European Parliament were prepared to defend and protect SRHR.

The EU's response to Poland and Hungary appeared to bear fruit when the international scenario changed direction in 2021. The Trump factor disappeared in January 2021, when President Joseph Biden took office and expressed a willingness to recommit to multilateralism and reinstate the country's support for SRHRs. Consequently, the illiberal alternative to SRHRs lost a significant supporter and Poland and Hungary no longer had international protection. One could argue that it became very cold outside the EU, especially without the international backing of the US. With less contestation in the international sphere, the EU was able to restore the normative consensus on SRHRs. This was evident in the unanimously adopted Team Europe 2021 conclusions, which stated the following:

> 'The Council recalls the EU's commitment, under the European Consensus on Development, to remain committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development (ICPD) and the outcomes of their review conferences and remains committed to SRHR, in this context'.

The Team Europe conclusions reveal that EU foreign policy on SRHRs was stronger than initially anticipated. Contestation of SRHRs within the EU has been ongoing. Indeed, in the first section of this case study, it was observed that validity contestation in the form of opposition has not eroded the EU's commitment to SRHR. Instead, a few member states individually voicing their concerns helped the EU learn to navigate resistance, ultimately strengthening SRHR within its foreign policy. However, Poland and Hungary exerted dissent during the meeting to approve the Gender Action Plan III. This happened at a time when the two countries were helping to build an international network led by the US, seeking to change the norm radically. Nevertheless, the presence of a chair who was well-versed in the various procedural rules enabled the EU to uphold its commitment to SRHRs. Again, this goes against the initial hypothesis, proving that dissidence does not always undermine SRHRs.

Conclusions

This article set out to investigate the implications of contestation for the norms that underpin the EU's foreign policy. It focused on two distinct contestation strategies: contestation as opposition and contestation as dissent. It examined the presence and impact of contestation by comprehensively analysing two case studies, namely discussions around the UN Global Compact for Migration and SRHRs. By examining pertinent documents and interviews, the study discerned that contestation in the form of opposition does not have a significant detrimental effect on the established norms that underpin the EU's foreign policy. However,

dissidence-based contestation, which involves more active and defiant opposition, has the potential to exert a stronger influence and potentially challenge or undermine those norms.

In the case of the UN Global Compact for Migration, contestation unfolded in three distinct forms. Initially, a period of consensus prevailed, wherein the EU and its member states collaborated closely to establish the foundational elements of the document. Subsequently, Hungary deviated from its initial agreement to negotiate and endorse the Compact's general lines, vehemently opposing a vision aligned with the EU's views. Notably, Hungary's dissidence echoed the rhetoric employed by the US to safeguard national sovereignty against the Compact; however, it did not establish a formal alliance to obstruct the document. In response, the EU and the remaining member states chose to preserve unity by symbolically excluding Hungary from the EU normative community. During the third stage, Hungary and the United States forged a closely-knit alliance, particularly after the US lost the directorship of the IOM to a European candidate. The two countries' contestation eroded the Compact and undermined the EU's commitment to upholding it, as evidenced by Austria's withdrawal, which further fragmented the EU into five normative blocs. Presently, member states only agree on acknowledging the existence of the Global Compact for Migration. This case study illustrates the EU's ability to address dissent when a member state has not established alliances beyond the EU. However, it also reveals the EU's limitations in effectively channelling or containing dissent when a member state has managed to form alliances outside the bloc.

In the case study on SRHRs, two episodes of contestation were identified. The first episode entailed contestation in the form of opposition, reflecting a prevailing notion within the EU that member states are not obliged to endorse such norms domestically but are expected to promote them externally. The article highlights instances of opposition, such as Malta's accession to the EU and its support for SRHRs in EU foreign policy, which institutionalised opposition based on the argument that the country is not constrained by the norm at the

national level. A similar instance of opposition was observed in Poland during the negotiations for the new post-Cotonou agreement. Importantly, these episodes of contestation in the form of opposition have not eroded SRHRs – instead, they have reinforced the norm within the EU foreign policy system.

Nevertheless, in parallel with the discussions around the Compact for Migration, the dissent expressed by Hungary and Poland has proven effective at undermining, temporarily, the EU's support for SRHR, particularly when alliances with external actors were forged. This was evident in the two countries' alignment with the US and the alternative SRHR norm represented by the Geneva Consensus. It is important to note that this erosion was temporary. First, despite Hungary and Poland contesting the Gender Action Plan III, this was eventually adopted as Presidency conclusions by member states. Although the document was downgraded from Council conclusions to Presidency conclusions, it demonstrated the EU's ongoing commitment to SRHRs by expelling the two dissenting countries from the consensus. Second, when contestation shrank in the international environment, Hungary and Poland realigned with the EU's consensus on SRHRs, as evidenced in the Team Europe conclusions.

In other words, the case studies provide evidence that EU foreign policy norms display greater resilience in the face of opposition or dissidence than initially anticipated. This finding goes against the hypotheses posited in this paper. It was expected that dissent, rather than opposition, would contribute to the erosion of norms. Further research on this issue may need to move beyond merely scrutinising actors' attributes to encompass the institutionalisation of EU foreign policy procedures as a plausible explanatory factor for the resilience of norms. To advance scholarly understanding in this domain, further research endeavours should seek to unravel the complex interplay of structural and agent factors that effectively deter contestation. It would also be imperative to examine the often neglected policy implementation phase within EU foreign policy.

List of interviews

Migration

#	Position	Date
1	Member state representative	7/9/20
2	EU official	4/9/20
3	Member state representative	14/9/20
4	Member state representative	30/9/20
5	EU official	6/10/20
6	EU official	30/9/20
7	EU official	7/10/20
8	EU official	22/10/20
9	Member state representative	19/10/20
10	EU official	16/10/20
11	EU official	8/10/20
12	EU official	12/11/20
13	Member state representative	4/11/20
14	EU official	30/10/20
15	Member state representative	13/11/20
16	Civil society representative	6/11/20
17	Member state representative	6/11/20
18	Member state representative	8/12/20

SRHR

#	Position	Date
19	Member state representative	22/9/20

20	Member state representative	15/9/20
21	Member state representative	12/11/20
22	Member state representative	26/10/20
23	Member state representative	11/9/20
24	Member state representative	2/10/20
25	Member state representative	16/10/20
26	Member state representative	23/10/20
27	EU official	18/9/20
28	EU official	2/10/20
29	EU official	10/11/20
30	EU official	10/11/20
31	EU official	10/11/20
32	EU official	10/11/20
33	EU official	2/10/20
34	EU official	2/10/20
35	Civil society representative	23/9/20
36	Civil society representative	19/10/20
37	Civil society representative	19/10/20
38	Civil society representative	22/10/20
39	Member state representative	26/11/20
40	Member state representative	8/10/20
41	Member state representative	16/10/20
42	Member state representative	23/11/20
43	Member state representative	26/11/20
44	Member state representative	22/9/20

45	Member state representative	30/10/20
46	Member state representative	15/10/20
47	Member state representative	7/05/21

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