

# Mirror, mirror on the wall, who's harshest of them all? Exploring the effects of opposition and dissidence in EU Foreign Policy

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## **Abstract**

The EU has constituted itself as a liberal normative community. It means that liberal norms are central to the way the EU interrelates within and outside the bloc. However, the ambiguity of these norms and the lack of clear authority have paved the way for contestation. While it has been noted that within a normative community contestation is necessary to trigger clarification of norms and legitimacy, this research argues that questioning the need to uphold these norms can also take place within that same normative community. Yet the question remains, what is the effect of this type of contestation for EU foreign policy? Hence, two of the harshest modes of contestation are explored: opposition and dissidence. By focusing on two case studies (2016-2021), the UN Global Compact on Migration and Sexual and Reproductive Health and Rights, this research aims to shed light on this question. Based on document analysis and 46 elite interviews with EU officials, Member State diplomats and NGOs, it shows that the EU's foreign policy system is substantially more robust than we might initially expect. Indeed, at critical moments, the EU foreign policy system can encapsulate opposition or symbolically expel dissenting actors from it.

**Keywords:** contestation, norms, robustness, opposition, dissidence, EU Foreign Policy

## **Introduction**

The European Union is facing a 'polycrisis' that is fracturing the European political system across multiple and simultaneous cleavages (Zeitlin, Nicoli, and Laffan, 2019). Indeed, it has been argued that the European project has moved from permissive consensus to constraining dissensus with an increased role for identity politics (Zürn 2019, p. 977), and EU foreign policy is no exception (Costa, 2019; Biedenkopf, Costa and Gora, 2021). Such a reconfiguration of the political conflict within the EU is taking place at a time where the international liberal order is under heavy contestation. A contestation at the international level that is pitting proponents of a post-national order (the most cosmopolitan facets of the international liberal order) against supporters of a Westphalian order. That is a liberal international community where States are

willing to accept a certain transfer of authority (i.e. sovereignty costs) from the national level to the regional and/or international level; or a Westphalian normative community based on the principle of national sovereignty and non-interference in domestic affairs (Lake, Martin and Risse, 2021; Börzel and Zürn, 2021).

More to the point, this paper suggests that even though the EU is defined as a normative community, the Union might face similar situations where actors are willing to take back control over certain rules and norms. As argued by Stephen and Zürn (2019) and Adler-Nissen and Zarakol (2021) challenges to the international liberal order are also coming from within the liberal community, especially right-wing populists' parties and movements advocating for policies of renationalization (Stephen and Zürn 2019, p. 376; Adler-Nissen and Zarakol 2021). From that point, another one arises, and this is linked to the ultimate purpose behind the contestation exerted against EU foreign policy and its norms. While external contestation, resulting from the global power shift, is leading the EU to adapt itself to the new environment (Costa, Kissack and Barbé, 2016). It is less clear what are effects of contestation when it is exerted against the EU foreign policy system.

On that point, the literature has started to document what are the consequences for the EU system when contestation involves the question of how norms should be implemented. Mapping out different issue areas of EU foreign policy affected by contestation has proven that contestation is not eroding EU norms, quite the contrary (c.f. Johansson, Nogués, Vlaskamp and Barbé 2020; Biedenkopf, Costa and Gora, 2021; Petri, Thevenin and Liebbauer, 2020). However, less attention has been paid when actors from the inside are no longer willing to uphold EU norms. Yet, contestation within the EU can take two forms. It can question the norm's implementation, but also the norm's validity (Deitelhoff and Zimmermann 2020). For that reason, the article will focus on the two harshest strategies of validity contestation: opposition and dissidence (Deiltehoff and Daase 2019). Therefore, it is posited that the weakening of the EU foreign policy norms, and by extension of its system, is a likely scenario.

To do so, it focuses on two case studies. First, the UN Global Compact for Migration that is presented as a case of contestation as dissidence. Second, Sexual and Reproductive Health and Rights (SRHR) is a case of contestation as opposition. In order to account for to what extent the EU foreign policy systems and its norms have remained robust, the article relies on document analysis and data gathered from 47 semi-structured interviews with EU officials, and

Member States representatives based in Brussels and at the UN in New York and Geneva. It shows that in both cases, the EU foreign policy system has remained robust. Concerning the Global Compact, it shows that in the most critical moments the EU when facing contestation as dissidence, it found a way to uphold its norm identity by symbolically expelling dissenters from its normative community. In a similar vein, in the SRHR case, the EU was able to encapsulate contestation that in turn was making the norm more robust within the EU foreign policy system.

The following section presents the conceptual framework on norm contestation and EU foreign policy. The third section delves into the case studies of the Global Compact and SRHR. The fourth section discusses the consequences of the contestation of these two issue areas and further avenues for research in EU foreign policy.

### **Conceptual framework on norm contestation and EU Foreign policy**

Norms are intersubjective standards of appropriateness. In Katzenstein's (1996, p. 5) seminal definition, norms are "collective expectations for the proper behavior of actors with a given identity." Contrary to other types of rules, norms have a "prescriptive (or evaluative) quality of 'oughtness'" (Finnemore and Sikkink, 1998, p. 891). Simply put, norms not only tell actors how to behave but also that their behavior will be scrutinized by other members of the in-group. But for that to happen, two things are necessary. That norm meaning is not ambiguous and the presence of an arbiter who can determine whether actual and prescribed behavior coincide. Yet, in the European Union (EU), norm ambiguity is what has allowed actors to capitalize on the interpretive leeway that they have by pushing for the norm interpretation that benefits them the most while legitimizing such claim by referring to EU norms. In a similar vein, there is no clear authority within the EU establishing when a Member States is in breach with EU values.

That is why, the best approach to understand the relationship between the EU and norms is found in the study of EU norm contestation. Norm contestation means that political actors acknowledge that they are bound by the norm but disagree as to what that looks like in practice. Such an understanding of contestation implies that contestation within the EU is related to how the norm should be implemented. But as considered by with Hoffman's (2010), we can posit that it does not have the same effect a contestation of norms exerted by an actor that belongs to the same normative community than a contestation coming from an actor located in a

different normative community (Hoffmann 2010, p. 12). Following this argument, Stimmer and Wisken (2020) consider that an open contestation of a norm indicates that the actor raising that objection is identifying itself outside the shared normative community since the actor is noting its disagreement with the established interpretation of the norm's meaning and/or the importance given to the norm (Stimmer and Wisken 2020, p. 520).

More to the point, this paper suggests that even though the EU is defined as a normative community, we might encounter similar situations within the EU where actors are willing to question the need to uphold certain norms. As argued by Stephen and Zürn (2019) and Adler-Nissen and Zarakol (2021) challenges to the international liberal order are also coming from within the liberal community, especially right-wing populists' parties and movements advocating for policies of renationalization (Stephen and Zürn, 2019, p. 376; Adler-Nissen and Zarakol, 2021). For instance, the Hungarian Prime Minister Orbán illustrates a case of validity contestation, as it is shown by his unwillingness to implement the EU law regarding refugees, or the UK claim to take back control of its sovereignty by leaving the EU.

Yet, one could argue that internally a EU of 27-member states is by nature open to disagreement and divergence, where normative contestation is inevitable. In Wiener's words, disagreements would help the EU to find more legitimate solutions (Wiener 2017). Indeed, in the first half of the nineties, the European Union comprised of 15-member states in regard with some issues, such as landmines and cluster munitions, presented an image dominated by normative consensus, but achieving that was extremely hard and not assured sometimes until the very last moment (Costa, 2009). Both cases draw the idea that consensus in the EU is not always taken for granted, and thus an area that needs further study. But again, what would happen if a Member State no longer complies with the *acquis communautaire* and, for example, refuses to combat discrimination based on gender or sexual orientation as stated in article 19 of the TFEU. That is, what would happen to the EU liberal identity if non-liberal norms are advocated.

Coming right to the point, research has highlighted that the contestation of norms has accelerated within the EU and set in opposition 'those in favour of universal values and/or strong, pro-active EU actions in the international arena' against those who 'seek increased devolution of power and foreign policy initiative from EU institutions back to national capitals' (Johansson-Nogués, Vlaskamp and Barbé 2020, p. 2). Such a process can be triggered by external actors, for instance when the UN turns away from the most cosmopolitan traits of the international order, including the adherence to liberal norms, and the EU is expected to struggle

(Jørgensen and Laatikainen 2013, p. 6; Costa, Kissack, and Barbé 2016). Or it can be shaped from the inside towards a less liberal Union (Rivera 2020). But at the end of the day, the boundary between the external and the internal is blurred as ‘inside and outside contestation dynamics are often intertwined [...] outside contestation can trigger inside contestation and vice versa’ (Thevenin, Liedlbauer and Petri 2020, p. 456).

More importantly, according to Scott and Bloomfield (2017), we can associate contestation inside a normative community with the concept of applicatory contestation; and contestation outside the normative communities with the concept of validity contestation (Scott and Bloomfield 2017). Having clarified this, applicatory contestation addresses three questions ‘whether a given norm is appropriate for a given situation [...] which actions the norm requires in the specific situation and which norm must be prioritized in a specific situation if several norms apply, without making such a ranking permanent (Deitelhoff and Zimmermann 2018, p. 7). Therefore, applicatory contestation is about when and/or how to apply a norm in specific circumstances, which tends to strengthen a norm as it implicitly suggests that the norm is necessary (Deitelhoff and Zimmermann 2018, p. 8). Validity contestation questions ‘whether (existing) normative claims are righteous’ (Deitelhoff and Zimmermann 2018, p. 6). It sheds light on two questions ‘are the norm’s claims congruent with our moral standards? Are they fair? And should a different norm be given permanent priority?’ (Deitelhoff and Zimmermann 2018, p. 6). In other words, validity contestation is about the norms that a group of actors wants to uphold, and in turn the exercise of this could lead to the weakening of the existing norm.

With regard to validity contestation, the work of Daase and Deitelhoff (2019) seems to emphasise the notion of resistance by proposing two concepts: dissidence and opposition. Regarding the concept of opposition, Daase and Deitelhoff consider that an actor, even if willing, may not have sufficient agency to fully engage in validity contestation. When faced with such a situation, the actor will be forced to exercise contestation of validity in the form of opposition, in which the actor “accepts the ruling order as such and makes use of the institutionalized forms of political involvement to express its dissent” (Daase and Deitelhoff 2019, p.12). That is, the actor accepts and complies with the rules of participation. In other words, the actor has neither the mechanisms nor the resources that can lead to a change in the established norm and ends up contesting the application of the norm. The actor is, in other words, powerless. In the case of dissidence, the actor has not only the will but also the capacities and mechanisms to bring about a change in the norm established. In that situation, the actor

openly rejects or violates the norms in which it exercises a validity contestation in the form of dissidence. In effect, in contestation as dissidence the actor in addition to rejecting the norms of the order “chooses unconventional forms of organization and articulation to exercise radical critique of rule” (Daase and Deiteholff 2019, p. 12-13). In effect, the actor rejects or deliberately violates the existing rules.

This brings us to present one of the main assumptions of this paper, that contestation inside the same normative community is usually done through established mechanisms and rules of procedure and may lead to a potential norm refinement making the norm more legitimate and stronger (Barbé and Badell 2020). But this paper also considers that both types of contestation can be noticed at the EU level. That is the presence of applicatory contestation and validity contestation (either opposition or dissidence). All of which suggests that within the Union there is an emerging group of actors that are starting to dissociate themselves from the values and norms internalised through the *acquis communautaire*.

## **Opposition and dissidence in EU Foreign Policy**

### ***Dissidence in the UN Global Compact for Migration***

#### *From the New York Declaration to Puerto Vallarta (September 2016–December 2017)*

Despite that the New York Declaration or the process that led to its adoption was not EU driven, the Union shared that the ultimate goal was to revitalise the IOM and inserted it into the UN system (Interview 16). More importantly, the Global Compact rules of procedure granted the EU a standing status to participate in negotiations (United Nations, 2017). During the consultation stage, EU interventions were based on the task mandated by the Council conclusions but also by the EU Guidelines agreed by CONUN (European Union, 2017c) and endorsed by COREPER (Interview 8). On that note it is important to highlight that the High-Level Working Group on Asylum and Migration, which was predominantly gathering officials from the Member States capitals, was also involved to address the substance of the migration question, while CONUN was decoding the language into UN language (Interview 8).

No internal actor was contesting the process of drafting a Migration Compact, and a shared red line was clear: migration is not a human right and therefore the document should not reflect that idea (interview 6). The EU delegation continued with the task of achieving unity by finding

a middle ground. And it offered to the Member States a degree of ownership allowing the EU position to be hardened by making a clear distinction between regular and irregular migration (interview 8). Indeed, the EU delegation in New York delivered statements on behalf of the 28 Member States that confirmed the existence of a common position regarding the GCM derived from the mandate agreed in Brussels. Also, the EU statements were pinpointing that there was no expected transfer of authority either to the EU level or to the international level as the delegation recalled several times that 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, 2017d, p. 1) while reinforcing ‘the principles of solidarity and shared responsibility in managing large movements of migrants’ (European Union, 2017b, p. 1). This should be developed in line with ‘the core international human rights treaties and States must fully protect the human rights of all migrants, regardless of their migratory status’ (European Union, 2017a, p. 3).

In any case, Member States not only aligned themselves with the statement made by the EU delegation but also pushed to introduce new areas. Bulgaria, which later left the agreement, advocated addressing the rights of the child in the GCM: ‘migrant children are children first and foremost [...and] they [are] entitled to all human rights’ (Bulgaria, 2017).

In other words, during that time, the EU was able to produce joint commentaries and granted the Member States enough ownership to shape the document in line with their interests; it was also clear that the Member States and their national sovereignty would remain the key element after the adoption of the GCM. In the words of one interviewee, the GCM was becoming a successful document integrating a whole of society and whole of government approach (Interview 3). And more importantly, at that time deliberations between the EU and the Member States were constructive and not politicized (Interview 8). But fear was shared, that if the EU had been able to produce a common understanding and keep the Member States on board since it was still in the consultation phase with the GCM not being very high on the political agenda (Interview 2, 3, 8).

And the Puerto Vallarta meeting was key to deciding the fate of the document. The co-facilitators saw the Puerto Vallarta meeting as the turning point moving the GCM from the consultation phase to the negotiation (and last) phase. But a fatal blow was about to take place. Despite the efforts coming from the US State Department to keep the country’s engagement, Stephen Miller a Senior Advisor to the President of the US and White House Director of Speechwriting and known for his anti-immigrant rhetoric persuaded former President Donald

J. Trump to pull out from the agreement (Lynch 2017). That decision was taken days before the Puerto Vallarta meeting where the US Ambassador to the UN explained 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 U.S. sovereignty’ (United States 2017). Such a ferocity against the Global Compact was later explained by the Ambassador where she highlighted that ‘unlike standard titles for international instruments, ‘compact’ has no settled meaning in international law, but it implies legal obligation’ (United States, 2018). Yet, at this point, the US was only dissociating itself from the negotiations without the prospect of hindering the process or the final product.

*From the Zero Draft to the Final Draft (January–July 2018)*

The US contestation of the GCM had no immediate effect but resulted in what can be called an episode of delayed contestation. The first assessment made by the EU was that the US decision would lead the Union to be at the forefront of the negotiations. As put by one interviewee ‘we were hoping the US comes is and is the bad cop. We can be the good cop and then we land somewhere in the middle. But because they were absent, we were sometimes in the position of being the bad cop most of the time. But of course, we talked about return and readmission, and so all the NGOs, Latin America, and Africa said they were so disappointed with the EU being so radical. The US in the negotiations were absent and this had an impact on our position as the EU’ (Interview 8). In other words, the EU suddenly became an unexpected leader to negotiate the agreement. This was risky due to how politicized the issue was at the EU level but also was an opportunity to reach an agreement at the international level that could solve the internal dissensus on migration.

Yet, in March 2018, Hungary started to voice discomfort with the GCM and challenged the EU by claiming that ‘migration is an unfavourable and dangerous process’. The country’s rhetoric followed the normative claims used by the US. Hungary stated that ‘migration is not a basic human right’ and claimed that ‘the international community must realise that migration is not beneficial for anyone’ (Hungary, 2018). And between the first and second round of official negotiations is when the Hungarian dissent became noticeable. But it was also the occasion to see how structuring and robust EU foreign policy norms and procedures are.

As a first move, the EU delegation in New York asked Brussels to do more and be more active. Expecting to get instructions from the EU capital, Brussels just delegated back to New York.



Although the first reaction was of surprise and preoccupation, it became clear that the decision of finding a compromise was more convenient than delegating back to Brussels. As put by one interviewee this decision of having the negotiations being led by New York was positive as in the EU delegation Member States have a different setting due to a different set of dynamics mainly based on the socialization of the group, which was referred to as a family. This resulted in a first attempt to persuade Hungary to re-joining the European consensus. For that matter, different EU coordination meetings were held. The meetings aimed to seduce Hungary by including in the EU negotiatory position any issues that the country considered to be key and was so far disregarded. But it was rapidly seen that the Hungarian position was not seeking to shape the substance of the EU position vis-à-vis the Global Compact. As mentioned by several interviewees, the Hungarian position was about breaking EU unity and using it as a political stage (Interview 8) On that note, the Hungarian Foreign Minister attended several negotiatory rounds, where it was highlighted that he came with his camera team to then go back to Budapest as elections were taking place in April 2018. That is, he was eroding the EU role and the first international agreement on migration for domestic gains.

From the persuasion attempt, the EU delegation moved to the legalistic attempt. In that aim, the EU delegation considered that the EU and its Member States could continue to be actively negotiating the Global Compact as the Council conclusions offered enough foundation. It was considered that the 2017 European Consensus on Development but also the Council conclusions on migration and migration-related were the foundation. The point was there is no need to go back to Brussels and wait for a COREPER approval as there is already agreed language on the matter. But the attempt did not succeed as a few small Member States did not want the EU delegation, the EEAS or the EU, in general, to work in that way. They were concerned that isolating Hungary could backfire if those Member States found other issues to be problematic.

By that time the country was already spilling over its dissent by blocking in the Second Committee of the UNGA resolutions on migration that highlighted the existence of fundamental human rights. But the Hungarian actions were not only targeting migration resolutions, but they also focused on other areas such as SRHR (Interview 9). It was perceived that Hungary was willing to break EU unity across the board (Interview 12), leading the Member States to feel hostage as one Member State was weakening the EU at the UN. At that juncture, the EEAS was trying to implement an appeasement policy with Hungary, but opponents were found in the EU delegation and the EU Ambassador that wanted to be tougher

on the country. It was then when the HP/VP Mogherini was involved in a vain attempt to convince Hungary to rejoin the 27-EU block (interview 4).

Neither the persuasion nor the legalist attempt led Hungary to rejoin the group and let the EU speak. In a bold move, the European Commission decided to play the share competences card. It was argued that unanimity was not needed as the Global Compact was speaking to the development portfolio. In April 2018, the European Commission proposed two Council Decisions authorising the Commission to conclude the GCM on behalf of the EU and its Member States. The President of the European Commission may have defended this approach when he claimed that '[i]f one or two or three countries leave the United Nations migration pact, then we as the EU can't stand up for our own interests' (Reuters, 2018). At the end of the day, the Council and European Commission legal services got involved and worked to achieve a compromise. As both services reached different conclusions, the European Commission's proposals were not adopted by the Council and were later withdrawn (interviews 4, 6, 7 and 8).

On the one hand, the EU delegation could not call for a coordination meeting due to Hungary's dissent. On the other hand, the Global Compact continued to be addressed at the CONUN Working Group and the level of COREPER. In light of this situation, there was one thing left and it was related to what extent did the Member States believed in the EU as a political community and the norms that defined it. And a window of opportunity was opened, Hungary made clear that the EU could still do all the work they saw necessary, but the delegation could not speak (Interview 8). It implied that Hungary was clearly against having anything labelled as the EU, but the Union could continue to draft a negotiation position, send it around to all the Member States asking for their feedback, and then call for an EU coordination meeting. The discussion that followed in the room was Member States driven. They concluded that someone should speak on behalf of the group. It was suggested that the country holding the EU presidency should take up the role, but Hungary opposed it as it was granting an official role to the European voice. At that time Bulgaria was holding the presidency. Next in line was Austria as they were the incoming presidency, Hungary did not voice any objection. That is how Austria assumed the role to speak on behalf of 27 Member States, a role kept throughout the negotiations, even though they held the rotatory presidency by the end of the negotiations. To put it differently, an agreement between the remaining 27 Member States authorised Austria to speak on their behalf (interviews 4, 6, 7 and 8), containing the episode of contestation.

During that time, the Foreign Minister of Hungary decided to attend subsequent meetings, the only minister present. In procedural matters, this led Hungary to be the first speaker on the list

followed by regional blocs such as the EU-27 (interview 4). Concerning Hungary's attempts, Bart De Wever, the leader of the New Flemish Alliance (NVA, a right-wing populist party), which party was part of the Belgian coalition government, pointed out 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). In other words, during the official negotiations, neither the US withdrawal nor the Hungarian dissent were key to fragmenting the EU and its Member States.

Member States continued to work in line with CONUN guidelines and the agreed common position. In the negotiating room, Austria counted with the EU delegation's material and logistic support to present a common position in the form of lines to take on behalf of the EU as a whole and the 27 Member States (interviews 5, 6, 7 and), so much so that the EU seat in the General Assembly was empty as EU staff rallied behind Austria seat (interviews 4 and 5). Outside the room, with the green light coming from the 27 Member States, the negotiations were led by the EU delegation staff. But Hungary dissented again when the document was being finalized. Their objection was focusing on the fact that Austria was speaking on behalf of the 27 Member States at a time when the country was also holding the rotatory EU presidency. The 27 omitted the Hungarian claim, also the Austria representative communicated back to Vienna and the instruction coming from the capital was that it would not send the best signal to the world to replace the spokesperson in the middle of the negotiations. More importantly, the Austrian ambassador to the UN discussed the issue with Chancellor Kurz, where Kurz ensured that the country would support the Global Compact as Austria was having a very prominent role in the whole negotiation (Interview 12). Therefore, Austria continued speaking on behalf of the 27 Member States. This was a crucial move for the Visegrad countries as they were being pressured by Hungary. The countries were putting their trust into Austrian hands as it was seen as a reputable Member State (Interview 12), and Kurz's words were key to keep them on the European side and away from the dissenting group.

At the end of the day, the withdrawal of the US (followed by Hungary) left the EU as the main actor during the drafting of the final document. In July 2018 it was presented a list of 23 objectives that were conceived as best practice guidelines (Martín Díaz and Aris Escarcena, 2019, p. 273). And it was a list of actions that according to interviewees the EU was not needed to implement as they were already implemented (Interview 8). Indeed, it was considered that the Global Compact in terms of the EU migration policy would not have made the difference as it was reconfirming what the EU is already doing (Interview 8). The novelty of the Compact

lies in the fact that if third parties adhere to its content, this would facilitate the EU engagement with more countries going beyond, for instance, bilateral agreements such as Karthoum or Rabat (Interview 12). To put it differently, if the EU and its Member States had signed the Global Compact this would have made the management of migration easier as countries of origin, transit and destination would be working under the same framework of action.

#### *The Road to Marrakech (July–December 2018)*

Between the final negotiating round in July 2018 and its final adoption in December of that year, the latent political conflict over migration re-emerged. Although the EU contained Hungary's contestation by appointing Austria as the EU speaker, with support from the EU-27 and the EU delegation in New York, the period between July and December sealed the fate of the GCM (interviews 4 and 6). Once the agreement was concluded, all Member States ambassadors reached out to their capitals to check whether the country was still supporting the document. As a matter of fact, in the final endorsement in July 2018, the missions were joined by high-ranking officials coming from the capitals (Interview 12). None opposed the agreement.

It was then when the US realized that the entire world would be joining the agreement leaving the country alone. The America First policy was turning into America Alone. In parallel to the negotiation of the Global Compact, the IOM was officially inserted into the UN system. And in June 2018 the organization was also the scenario of tensions between the EU and the US. The IOM had always been led by an American, and the Trump Administration tried to get Ken Isaacs, an evangelical with no experience in the world of migration who was close to Vice President Mike Pence. His opponent was the former Commissioner for Justice and Home Affairs, the Portuguese António Vitorino. On that occasion, the Europeans did rally around the Vitorino candidacy, who was elected into the directorship of the IOM. In the end, the US lost control of IOM no longer being a so-called American agency (Interview 16). As a result, the Vice-President of the US, Mike Spence decided to play a bigger role. The US was in close contact with Israel and Hungary. The country being outside the process was regularly consulting the Hungary counterpart, which offered an overview of Eastern Europe. It was then when the Vice-President of the US started phoning Latin American and Eastern European countries to persuade them to pull out from the Global Compact. Such a movement coincided with far-right and right-wing populist influencers who started to spread fake news on Twitter, Facebook, and YouTube (Colliver cited by Cerulus and Schaart, 2019). The US influence could

be noticed as in the case of Ireland the letters sent to the government and parliamentarians were drafted in American English (Interview 12).

This marked a turning point, as it was the first time that the significance of the GCM reached the public sphere. As a result, a political clash took place within the Austrian cabinet: the Foreign Minister was in favour of the agreement and Chancellor Kurz was against it.<sup>1</sup> Ultimately, it was Kurz's vision of the GCM that prevailed, and Austria decided not to support the agreement by claiming that 'migration is not and should not become a human right' (Murphy, 2018).

Austria's decision to withdraw sparked a series of doubts at a time when the deal was closed. The withdrawal is important because Austria was also negotiating on behalf of the EU and its Member States, which is significant. After all, the Member State holding the rotating presidency of the EU usually plays a mediating role and bridges divisions within the bloc (interviews 4, 6, 7 and 8). But more importantly, Austria was the lighthouse of the Visegrad group that avoided succumbing to the Hungarian pressure. This explains why Austria's decision had an immediate impact on the other Member States, rapidly triggering uncertainties and opening the door to greater political conflict, which had been contained up to that point.

As a result of Austria's decision to withdraw, the NVA quit the Belgian cabinet, since it refused to support the GCM, and the Belgian government collapsed. If Austria showed that civil society organisations were starting to take an active part in the GCM debate, Belgian Flemish nationalist parties paved the way to popular mobilisation. Poland and the Czech Republic also echoed Austria in speaking out against the GCM. They felt that the agreement did not guarantee countries' national sovereignty, and Poland also deemed that the agreement was not in line with 'the priorities of the Polish government, which are the security of Polish citizens, and the maintenance of control over the migration flow' (PAP, 2018), while the Czech Republic argued that the document should have stated that illegal migration was undesirable. The countries that referred to the GCM as a norm creating a right to migration that clashed with national sovereignty were seen by their opponents as having laid the groundwork for a more hostile migration agenda (Squire 2019, p. 160). This contestation was also echoed by the Italian government, which split along party lines: the prime minister, Giuseppe Conte (Movimento 5 Stelle), expressed his support for the GCM at the UN, while the former minister of the interior,

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<sup>1</sup>Chancellor Kurz supported the GCM when he was Minister of Foreign Affairs during the grand coalition cabinet and opposed it when he led the government in coalition with the Austrian far-right party.

Matteo Salvini (Lega Nord), announced that the government would not support it. Member States such as Germany decided to transfer the decision to approve the GCM to the German Parliament, due to the polarisation triggered by the far-right party Alternative for Germany. Throughout this process, the only institution that criticized the campaign of disinformation and strongly opposed countries' decisions to leave the agreement was the European Parliament (European Parliament, 2018a).

**Table 1.** Member States and the UN Global Compact for Migration

<b>Voting decision</b>	<b>Member States</b>
Adopting the Compact as such	Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, Portugal, Slovenia, Spain, and Sweden
Adopting the Compact while reinvigorating national sovereignty	Denmark, Malta, the Netherlands, and the United Kingdom
Against the Compact	Czech Republic, Hungary, and Poland
Abstained from voting	Austria, Bulgaria, Italy, Latvia, and Romania
Not voting	Slovakia

Source: own elaboration

It could be argued that the dynamics of dissent emerged at a time when the Global Compact was not on the radar of the EU and its Member States but was high on the US agenda. But more importantly, Chancellor Kurz decision can be framed as dissent contesting several EU's norms with sincere cooperation at its core. Tensions were rising between actors and arenas concerning the expected moral reach of the migration norm, the implementation of which was also contested. This resulted in EU actors dividing into five major blocs according to the degree of normativity given to the migration norm. Some 14 Member States (Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, Portugal, Slovenia, Spain, and Sweden) approved the GCM without an additional note and agreed on the need for a norm on migration to be created. Four Member States (Denmark, Malta, the Netherlands, and the United Kingdom) approved the GCM while attaching an explanatory note that restated that

national sovereignty prevails over migration matters, emphasising that migration normativity had to work hand-in-hand with the norm of sovereignty. The third bloc was made up of the three Member States that opposed the GCM (Czech Republic, Hungary, and Poland), which claimed that migration was merely a norm derived from the fundamental norm of sovereignty. Finally, five Member States abstained from voting (Austria, Bulgaria, Italy, Latvia, and Romania), while the Slovakian Foreign Minister who helped to set the GCM in motion did not attend the vote after the Slovakian Parliament voted against signing the agreement.

All of this led to an EU not being able to be present during the intergovernmental Marrakech conference that should have been a celebration of the first international agreement on migration. At that time, the European Commission considered that the EU could be present by speaking under the name of EU institutions. Indeed, the EU was not only existing because the Member States existed. The EU had a corpus derived from the *acquis communautaire*. And in that *acquis* migration was not the exclusive purview of Member States. Alongside Chancellor Merkel from Germany or Primer Minister Michel from Belgium, a delegation led by European Commissioner for Migration, Home Affairs and Citizenship Avramopoulos, which included EEAS officials and several MEPs was able to speak. Commissioner Avramopoulos in a way that was wrapping up the European journey stated that ‘in our globalised world, human mobility can only be addressed effectively by the international community as a whole [...] In this respect, neither a single country nor a region such as Europe, can address migratory challenges alone’ (European Commission 2018).

### ***Opposition to SRHR***

Another issue area that has moved from a permissive consensus to constraining dissensus is gender equality and more precisely SRHR. While at the international it has always been an area described as conflictual where a line divides states framing women’s rights as human rights according to the ICPD 1994 Conference and the 1995 Beijing Platform for Action and using foreign aid to promote SRHR, and states associating such policies with support for abortion (Barbé and Badell 2021). On the side of the progressive actors, we identify the Nordic group together with Germany, France and the Netherlands, and to a lesser extent Spain, Portugal and Italy. On the side of reluctant actors, we identify Poland, Hungary and Malta (Interview 40, 44 and 45). It is worthy to note that since the 2018 referendum legalizing abortion Ireland is now part of the progressive group. Malta who was on the verge of eroding the 2015 common

position on SRHR is also slowly moving towards the progressive group. In any of these cases, it has hindered the building of a strong EU external action vis-à-vis gender equality.

Before 2017, the group of like-minded countries supporting SRHR were able to gain the support of reluctant actors by pointing out that the norm was not asking them to embrace and change national positions but to support, for instance, victims of rape. Indeed, the group of like-minded countries were able to persuade opponents to allow a stronger policy language. Such a permissive consensus was the result of a common understanding to delink foreign policy from domestic concerns (Elgström 2017). The EU position was flexible enough to offer channels by which parties could exert contestation. This was taking the form of opposition. For instance, Ireland was recognizing that the country could not adhere to the policies promoted within the field of SRHR due to its national policy over abortion; while Malta accepted the EU to move towards a more ambitious SRHR agenda while channelling its dissociation in common positions by introducing an addendum or footnote explaining the country's position where national sovereignty was at the core. The fact differentiating these forces lies in the nuances. On the one hand, the progressive group welcomes European Commission activities reports. On the other hand, the group of reluctant actors are taking note of it. In addition to the existence of channels by which an actor can exert contestation, if SRHR continues to be part of the EU human rights and development agenda is due to the existence of a large group of countries favouring the inclusion of this language, and gather through informal networks of like-minded countries (Interview 44, 45 and 46). More importantly, the international politicization of the issue led by the US under the Trump Administration has been seen as a positive element pushing silent actors to pick a side. As noted by interviewees it has shown that the majority of the Member States, including Romania and Cyprus, side with the EU's stance on SRHR (Interview 43 and 45). In subsequent meetings of the CODEV working party, when SRHR is on the agenda the trend is to have 25 countries in favour of the agreed language, and two opposing. But at the end of the meeting, Hungary and Poland sided with the majority.

More to the point, the role of Hungary and Poland has been described as the opposite of the performance displayed by Ireland and Malta in the past. Every time that CODEV or COHOM Working parties address SRHR as part of their agenda, these two countries fiercely object to the issue (Interview 40, 42 and 44). This was the case during the negotiations of the 2016 Gender Action Plan II and to a greater extent of the 2017 European Consensus on Development (ECD). The ECD was setting out the EU policy in development and cooperation and Member



States were presented with two choices. They could either open the Pandora box and renegotiate the 2015 common position on SRHR, which was described as a traumatizing process (Interview 44). During the ECD negotiations, this option was supported by those actors willing to push forward the SRHR agenda and those willing to move backwards. In the end, parties decided to go back to the agreed language of the 2015 common position. The level of commitment by the EU to SRHR was upheld, where the EU position was not going forward but more importantly, not going backwards. Since then, resources were devoted to keeping the EU agreed language at the expense of outreach efforts. The post-Cotonou agreements (signed in April 2021) were also the scenario of such tension. On the one hand, progressive countries such as Finland, Sweden and Denmark wanted to expand women's rights with a new section on SRHR, while Hungary, Malta and Poland shared their concerns about the link between reproductive rights and abortion. Poland placed a reservation on the EU mandate that was lifted after a declaration in the official minutes that the clauses on SRHR would not lead to a change in Member States legislation (Carbone 2019, p. 145). In that sense, the EU position on SRHR continued to be flexible enough to accommodate contestation without hindering the role of the EU abroad.

However, several delegations were clearly stating that Poland and Hungary are by the day not being trustworthy as they play domestic issues at the EU level aiming to reach their domestic audience (Interview 40, 43, 44 and 45). Following the steps of Ireland and Malta, Poland wants to protect its conservative or traditional view concerning women's rights, but that does not impede the role of the EU to talk and address SRHR issues worldwide. Hungary has been described as a way more dogmatic and difficult country to handle ever since the emergence of an international contestation led by the US under Trump aiming to erode the norm. In any case, deliberations within CODEV and COHOM continued to be consensual and on rare occasions have reached the level of the PSC or COREPER, which is usually the case of item 4 related to human rights and the Human Rights Council. For instance, the COHOM working party approved the EU Action Plan on Human Rights and Democracy for 2020-2024, which included a chapter on SRHR. It has also been highlighted that the common understanding reached the level of working parties would not be the case if the issue was discussed at the level of ambassadors (Interview 41, 42, and 43). More importantly, interviewees have repeated several times that even though EU unity and common position on SRHR has been reinstated on several occasions at the EU level, it is not the same case at the UN level (Interview 44, 45 and 46).

This raises concerns about the lack of communication between EU Brussels based diplomats and UN-based diplomats.

The UN level has been described as the scenario where a fierce battle for the survival of SRHR is taking place (Interview 19, 20, 23, 27, 35, 37). The US under the Trump Administration broke several consensus within the UN system and some of them were a first. In the UN General Assembly and more concretely in the third committee the US has pushed the language from its traditional adoption by consensus to adopt it after a roll call. Secondly, the dynamics of negotiation differ from the General Assembly to the Commission on the Status of Women (CSW) and the United Nations Security Council (UNSC), which are the main bodies covering SRHR issues. At the UNSC the US has been successful in resolution 2467 on Women, Peace and Security to erode SRHR by deleting references in the operative clauses. To achieve this result, the country threatened to use its veto power, which led the other p-5 countries and non-permanent members, including France and Germany, to accommodate the US position (Interview 20 and 24). Moreover, the country was also successful in putting an end to the practice of going back to the agreed language when no consensus existed.

In a similar vein, the US has also tried to water down CSW conclusions that contain references to SRHR. In that case, their role has been more passive, relying on like-minded states like Saudi Arabia or Bahrain to strike down the language. This dynamic was noticeable during the CSW 63rd session where Saudi Arabia decided at the very last moment to disassociate itself from the agreed conclusions. This situation was countered by the chair of the session, at that time Ireland, which employed procedural mechanisms to contain the contestation exerted by Saudi Arabia (Interview 19 and 24). In addition to that, the COVID-19 pandemic has also tensioned the role of SRHR services. For instance, during the negotiation of the COVID-19 omnibus resolution at the UNGA, the US requested a vote on the operational paragraph addressing SRHR. The vote was lost by 123 countries in favour and 3 against, while Hungary decided to abstain. In a similar vein, the US-sponsored, in October 2020, an international document called the 'Geneva Consensus Declaration'. The Geneva Consensus gathered cross-regional forces such as Poland, Hungary, Brazil, Egypt, Uganda and Indonesia. This group of states adheres to sexual and reproductive health, but strongly oppose references to reproductive rights as they associate this stance with the promotion of an international right to abortion. That is, they continue to support sexual and reproductive health as an international norm, but seek the return of competences on the reproductive rights chapter. That being said, at the level of EU Member

States, those countries, mainly Hungary and Poland and to some extent Slovenia, that have had a good relationship with the US and hold a normative position close to the Trump Administration have endorsed or supported several initiatives sponsored by the country. This has just happened when the ambassador and not the chargé d'affaires has been involved in the event.

For that reason, it is necessary to delve into the role played by the EU and its Member States and to what extent the Council conclusions on SRHR agreed in Brussels is fully implemented at the UN. One of the forums where it can be assessed to what extent the EU and its Member States accommodate or entrench US actions is the third committee of the UNGA. Since the 72nd session (2017), the US is calling to vote on preambular and operational paragraphs of resolutions addressing SRHR issues. All of the US amendments have been rejected, gathering more than 100 countries around the SRHR language. During the sessions, the EU has remained united in voting against the US amendments in resolutions moving from the African fistula resolution to domestic violence, genital mutilation, rights of the child and trafficking of women. And the major responsibility for this common voice is to be found in the EU delegation in New York (Interview 19, 29, 21, 22, 23 and 24).

More to the point, EU responses defending SRHR have been achieved through regular meetings and consultations with the EU Member States during sessions chaired by the EU delegation in New York. There is a shared agreement that without the logistic support and commitment of the EU chair tasked with the human rights and gender equality portfolio it would not have been possible (Interview 19, 29, 21, 22, 23 and 24). The chair is recognized to be the guardian of EU council conclusions adopted in Brussels. Indeed, their skills have been described as being a proactive listener combined with the proficiency of bridging divisions. This has allowed Member States delegations to avoid reopening, in New York, the debate of the 2015 common position as suggested by the Member States on both sides of the spectrum.

Regular meetings are also seen as a tool to engage with each other's visions concerning SRHR to the extent that there is enough room to accommodate Poland and Hungary in the debate (Interview 27 and 28). Yet, both countries have sometimes endorsed US views on SRHR, but when it comes to casting their votes, during the third committee, they voted in line with the EU agreed position. But that has happened when the Ambassador and not the technical level was involved. Indeed, the group has been referred to on several occasions as a family through

holding formal and informal social encounters, which reduced the likelihood of normative clashes (Interview 19, 23, 24 and 27). For instance, the role of the Polish counsellor was very much appreciated as it continued to work along the lines of coordination and consensus-making despite the instructions coming from the capital to do otherwise (Interview 27). For these reasons, the EU can speak up and counteract polarizing actions concerning SRHR in New York. Yet, when it comes to the promotion of the norm, the EU usually splits. The practice of defending SRHR when we must and promoting SRHR when we can is becoming a well-incorporated practice as it happened during the 2020 High-Level Group on Global Health and Women's Rights or the one on Beijing +25. Yet, EU unity and common voice in Geneva and the Human Rights Council is more difficult to achieve. The main reason lies in the proximity of national capitals, which leads to a major presence of domestic politics (Interview 24, 25 and 26). As stated in the above line, the Human Rights Council is much more politicized than New York bodies.

In front of the international backsliding against women's rights, EU institutions have been working on launching initiatives such as the Spotlight Initiative aiming to limit the impact of the US actions through the Gag Rule against women's rights. In a similar vein, the Netherlands, Belgium and the Nordics (i.e. Denmark, Finland, Sweden, Norway and Iceland) have launched different initiatives such as She Decides aiming to counter the US Gag Rule or the Nexus Initiative (a formal alliance of like-minded states at the UN), working hand-in-hand with Civil Society Organizations such as IFPP or IWHC, to reach out to third countries to express their support to SRHR. In light of the 25th Beijing Conference anniversary, a common diagnosis was shared between states and CSOs, it was about time to end pouring resources just to defend the status quo by safeguarding the agreed language. The assessment is shared by the European Commission and the EU Member States such as France, Germany, Sweden, Spain, the Netherlands and Finland. A decision was taken to hold outside of the UNGA framework the Generation Equality Forum with the support of UN Women and two co-facilitators, France and Mexico. President Macron has described the format of the forum as following a coalition of the willing gathering progressive states and CSOs that took place in 2021 in Mexico and France. Although the forum was open to any interested member, it did not expect the participation of reluctant or opposing parties (Interview 19 and 23).

But the international politicization of SRHR was noticed within the EU for the first time, in December 2020. The US presented in October 2020 its normative revision of the norm. It

advocated continuing upholding reproductive health as an international norm, while it called for the renationalization of the norm on reproductive rights. Hungary co-sponsored the document and Poland was a signatory. Such revisionism impacted the most important development policy linked to gender equality, the Gender Action Plan III that includes a specific chapter on SRHR. In the meeting held virtually due to the COVID-19 pandemic, Poland, and to a greater extent Hungary (which was on the phone with Budapest) blocked CODEV from adopting the Gender Action Plan III as Council conclusions and led Germany, at that time chair of the Working Party, to downgrade the final document by adopting the Gender Action Plan as Presidency Conclusions. This was a bold move as the German delegate was planning to raise the issue to the level of ambassadors but feared that at such level accommodating the views of the two opposing countries would have been needed. It also helped the fact that at the upper echelons the agenda was busy already with discussions on the recovery plan. In the end, adopting the GAP III as a Presidency Conclusions was seen as the only option found by Germany to safeguard the content of the Action Plan without accommodating the views of the two opposing countries. The EU was accepting the lack of internal coherence on gender equality and development, but it was doing so by using a financial argument. As noted by one interviewee, the opposition by Hungary and Poland to adopt the GAP III would not have an impact in the implementation phase as they have a small development budget (Interview 47). But it remains to be seen what the long-term impact would be as with the Istanbul Convention that addresses violence against women a considerable number of Member States are not willing to localize the norm.

## **Conclusions**

This article has paid attention to two of the harshest strategies in the arena of validity contestation. These have been contestation as opposition and contestation as dissent. The main objective has been to shed light on the extent to which the EU's foreign policy system and its norms are robust. To this end, two case studies that have coincided in the same timeframe (2016-2021) have been addressed, namely the Global Compact on Migration and Sexual and Reproductive Health and Rights. In both cases, through the study of documents and interviews, contestation has been traced, reaching the conclusion that the foreign policy system and its norms have withstood contestation attacks in its harshest forms.

The Global Compact on Migration is the first international instrument to address migration in a comprehensive manner. Despite unwillingness of the EU and its member states to play a

major role, they ended up being an important actor throughout the negotiation process. As we have seen, the Global Compact has been the site of contestation as dissidence. In contestation as dissidence the actor in addition to rejecting the norms of the order “chooses unconventional forms of organization and articulation to exercise radical critique of rule” (Daase and Deiteholff 2019, p. 12-13). In effect, the actor rejects or deliberately violates the existing rules. And Hungary, at odds with its own actions such as the CONUN's approval of the general lines of negotiation, or the need to jointly negotiate an agreement as agreed in COEREPER, decided to block at all costs a vision of the Migration Compact that bore the EU's stamp. In the face of this dissent that violated any previously agreed standards, the EU and the other member states, decided to continue working as a bloc by symbolically expelling Hungary from the European normative community. However, in the second case of dissent exercised by Austria, the country that held the institutional power of the Council presidency and had been the spokesperson for the European voice during the negotiations, decided to desert the European ship. In this case, there was no institutional mechanism to restrain the actions of the member states, and it ended up fracturing the European bloc. Nowadays the member states allow the adoption of common positions on the existence of the Global Compact on Migration, but do not allow resolutions highlighting the goodness of the Compact. Overall, this case study shows that even when faced with the harshest form of contestation, the system is robust enough to resist weakening actions.

Moving on to the second case study, SRHR is a norm that has been part of EU foreign policy since the 1995 Beijing Conference. It is a norm introduced into the EU system through the institutionalisation of opposition to the norm. Contestation is defined as an opposition in which actors "accept the prevailing order as such and make use of institutionalised forms of political participation to express their dissent" (Daase and Deiteholff 2019, p.12). It is postulated that the actor cannot commit to changing the institutional norm and ends up contesting the application of the norm. And such opposition is based on a classic premise in the field of the EU and human rights, the EU can be seen as a progressive actor on the global stage as long as member states are assured that they have no need to localise such a norm, especially abortion-related aspects. As seen throughout the article, opposition is an element that appears over time, most recently with the Maltese objection in 2017 in the European Consensus on Development and the Polish objection in 2018 in the new EU-ACP (post-Cotonou) agreements. None of these episodes of contestation as opposition has eroded SRHR; on the contrary, it has ended up reinforcing the norm within the EU foreign policy system. And in a fact of events similar to that of the Migration Compact, when SRHR have encountered dissenting actors, the foreign

policy system has symbolically expelled them. This was the case in December 2020 with the adoption of the Gender Action Plan III as Council Conclusions. And as with the global compact, it did not entail any erosion for the EU since it had mechanisms at its disposal to ensure its adoption.

## 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	CSO	23/9/20
36	CSO	19/10/20
37	CSO	19/10/20
38	CSO	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 States representative	7/05/21

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