

Contestation of EU Foreign Policy: When in Doubt, Do Politics

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Policy Recommendations

- Avoid eroding the expert culture of Council working groups if they have not been affected by contestation
- But do not fight the fight with technical jargon. Make the political argument explicit and turn contestation into deliberation
- Be responsive if contestation is sizeable
- Shape the response in terms of deep-seated conceptions about what the EU is and what its role in the world should be

The foreign policy of the European Union is increasingly being contested by EU-internal actors. From the Transatlantic Trade and Investment Partnership (TTIP) to lethal autonomous weapons, from the relationship with Russia to the Dutch referendum on the Ukraine association agreement, contestation has intensified in recent years.

At the same time, two seemingly contradictory arguments stand in the way of realizing how relevant this wave of contestation is. To begin with, foreign policy has always been a matter of disagreement and division in the EU. If the transatlantic relationship looks now divisive, the Iraq war of 2003 comes immediately to mind as a reminder of how unsurprising that can be. If you look for a precedent

to the mobilization of Civil Society Organizations against TTIP, you just need to think about their opposition to the Multilateral Investment Agreements in the late 1990s or to the General Agreement on Trade in Services in the early 2000s. Go back in time and even the environment looked contested: Carlo Ripa di Meana, then European Commissioner for the environment, skipped the Rio Earth Summit (1992) in protest for member state opposition to his proposals on climate change.

On the flip side, for some time the role of the EU in the world came to be seen as the externalization of internal consensus. This was always more complicated than it seemed at first sight. To begin with, there are trade-offs between different consensual values and such trade-offs can be fraught with disagreements. Second, below the surface of consensus about fundamental norms, disagreement can exist over the specific ways in which they have to be implemented. Finally, and more substantially, this view reflected a moment in history in which the EU seemed to be at the forefront of the general evolution of the entire international liberal order. This alignment made the conceptualization of the role of the EU in the world more straightforward and less complicated by tough choices and bad options.

So, what is new in this phase of political conflict over EU foreign policy? And what should be done about it? These are the questions addressed in this policy brief.

Substantive and procedural

The increase in contestation points in two different, new directions.

First, contestation has increasingly become part and parcel of a broader politicization of the relationship between the internal and the international spheres – a broader pattern of political conflicts about the standing of boundaries in political, economic and moral terms. International institutions, economic globalization, and migration have all come under attack,¹ and the frames and arguments associated with such debates have shaped the ways in which EU foreign policy is discussed. The implication is that divisions over EU foreign policy have now more potential to resonate with the broader structure of political conflicts. Hence, they can now flare up more frequently to high-salience, high-polarization debates that can be of relevance for actors that had previously been unengaged in discussions about the role of the EU in the world. The Global Compact for Migration, a toothless international treaty, unexpectedly became a controversial topic in late 2018, making agreement within the EU impossible and even toppling the Belgium government. The combination of migration as a topic and the perception of international institutions infringing upon the sovereignty of nation-states (globalists vs the people) made for a political conflict that went much beyond the specific content of that particular treaty.

Second, this new wave of contestation is also procedural. It impinges upon the informal mechanisms that have made agreement easier within the structure of the Council. The literature has pointed out that processes such as the coordination reflex, socialization, group pressure, and the dominance of an expert culture in the lower and middle echelons of the Council bureaucracy (e.g. working groups and the Political and Security Committee) have made decision-making possible, particularly under the harsh conditions imposed by unanimity. In those venues state representatives internalize shared codes and understandings, a

capacity to anticipate the preferences of other member states, some common sense of purpose and a dislike for being isolated. They are not only state representatives, but willing participants in a process geared toward joint problem-solving. Evidence is mounting of instances in which such procedural norms are breaking down. Some national delegates seem ready, even happy, to be isolated and report it back home, as proof of their not going local in the corridors of the Council. Isolation used to be something to save for just a few key national concerns. Not anymore. This does not mean that contesters are rocking the boat of any neutral, objective, purely technical club. Council working groups are not sterilised laboratories. But they are contesting the broad political consensus upon which particular expert cultures and the associated informal mechanisms of group pressure and socialization could emerge in the first place.

To be sure, we are still in the process of completely understanding the map of contestation and the factors that account for it. However, we do have some key insights.

First, this is not a tide that raises all boats. There is quite a lot of variation and while some issues get contested (e.g. sexual and reproductive health rights), others do not (such as trade negotiations and agreements with Vietnam, Thailand, Malaysia, Japan or South Korea). It would also be wrong to look for a single explanation. Authority transfer from member states to the EU or to international institutions, one of the most usual explanations, certainly plays a role. But the TTIP example sits alongside the Global Compact for Migration counterexample. It would also be a mistake to identify contestation with populists alone. EU foreign policies have been challenged by mainstream actors as well. Some social democratic parties and trade unions opposed TTIP. The debate over sanctions on Russia after 2014 has had a remarkable role in domestic political discourses, but has hardly followed the divide between populist-led governments and mainstream ones. Centre-right

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Conservative parties have adopted parts of the far right discourse on migrants too.

There is one useful rule of thumb. The normative standing of an issue in the EU, and its association with a coherent story about what the EU stands for, seems to make a difference. Think climate change. There are of course debates on climate policies and on the emission targets the EU should set for itself in the next round of Nationally Determined Contributions under the Paris Agreement. But the basic approach taken by the EU in the last three decades (to be at the forefront of climate negotiations) seems incontestable. It has actually become a central argument for the self-presentation of the EU to the world and to its own citizens. This is how the European Green Deal has been interpreted by observers too.²

The standing of norms, and their relationship with how the EU justifies its own role, seems to be a factor in shaping responses to contestation too. In the second half of the 2010s the European Commission responded to the contestation of trade policy by bringing ‘Managed Globalization’ back into its discourse. ‘Managed Globalization’ had been proposed in 1999 by Pascal Lamy, then Trade Commissioner, as the guiding doctrine of the EU’s trade policy. According to it, market access was not the only objective –the EU also wanted to canvass globalization and embed it in rules and institutions. This matched the self-presentation of the EU as the repository of the so-called European social model, in which market forces are tamed by the welfare state. This was later abandoned in the face of the paralysis of World Trade Organization trade negotiations, but when trade policy came under the fire of contestation again during the negotiation of TTIP, the Commission had an off-the-shelf response that resonated with what the EU says about its own purpose.

When in need

The fact that contestation poses a threat to the capacity of the EU to build the kind of agreements that EU foreign policy demands should not lead us to look for ways to avoid it, or suppress it. Even if it were possible, the political costs would be too high.

As argued by theorists of democracy,³ the possibility of contesting authority (contestability) is the essence

of non-arbitrariness in the exercise of power; and the latter is the main component of civic freedom. In democratic systems contestation is not to be shunned *per se*, and the act of contesting is not shameful but an indispensable part of democratic life. Beyond states, one level up the ladder, contestation is also part of the legitimacy of international norms. And norms cannot be effective if they are not perceived as legitimate –i.e. as open to contestation.⁴ Therefore, the possibility of contestation needs to be protected, particularly within bodies devised for the purpose of deliberation such as the Council and different expert bodies. This is the first and foremost function of the Council: to serve as a forum for member state deliberation. Contestation of EU foreign policy should not be disdained as such –at the risk of conceding the democratic high ground.

Contestation should rather be addressed in a differentiated manner, because the landscape of political conflict on EU foreign policy is varied too. Some issues have been left untouched so far (e.g. the International Criminal Court), or have experienced an uptick in contestation that has not managed to weaken the basic structure of EU consensuses (e.g. climate change). On some others contestation, either substantive or procedural, has made agreement (even) harder to reach (trade, migration, Russia, or the US). Responses need to take this variation into account. Three broad lines of action seem relevant.

- Avoid eroding the expert culture of Council working groups if they have not been affected by contestation. But Commissioners, Presidents of institutions, the HRVP, visible office-holders and other spokespeople need to use the voice of EU institutions to make the political case explicit. It will raise the normative standing of EU positions and it will protect them from any potential or actual intensification of contestation. The more robust they are, the more able to withstand challenges.

- If the genie of contestation is out of the bottle, then embrace it. The language of debates will have moved anyway outside of the boundaries of the expert culture of Council working groups. Do not fight the fight with the technical jargon of experts. If debates in the Council structure get political, get political too and go public if needed. And explain the political value of procedural norms. Make the political

argument explicit and public and turn contestation into deliberation.

- Finally, be responsive if contestation is sizeable. Research shows that states and international institutions show responsiveness in the face of contestation. EU institutions should be responsive too. This does not mean that the arguments of contesters should be co-opted. It means that they should trigger policy and discursive changes on the EU side –even if such changes are not to the taste of contesters. Shape this response in terms of deep-seated conceptions about what the EU is and what its role in the world should be, and (again) make the political case.

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