

To be in, or to be out: Reflections on the Danish referendum

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Can any referendum on the EU today be won in the current political climate? The results of Denmark's vote on December 3rd suggest that the task facing the organisers of Britain's 'stay-in' campaign is enormous. The Danes said no to changing their blanket opt-out on all justice and home affairs (JHA) cooperation in the EU to the more nuanced opt-in model adopted by the UK and Ireland. The upshot of the result is that Denmark will be legally prohibited from taking part in any existing or future law within this rapidly growing area of EU cooperation. The alternative position, rejected by the voters, would have allowed the Danish parliament to decide on a case-by-case basis which JHA laws to opt into.

The first casualty of this referendum will be Denmark's ability to participate in the activities of the EU police cooperation agency Europol, which, perversely, most Danes have in fact expressed approval of.

The 'no' faction won because the Danes believe that national sovereignty and European cooperation is a zero-sum game. The idea behind the vote was to empower the parliament, but the formal handing over of sovereignty was deemed to be unacceptable. A powerful ambition behind the no-vote was to close the country's borders and shield itself from any negative spillover from the multiple crises afflicting the EU. Some two-thirds of the Danish people believe that border control is efficient in combating cross-border crime.

Aided by the refugee crisis, which became an unexpected factor in the campaign in September, the no-side managed in the course of merely three months to reverse its 20 percentage point handicap in the polls to win the vote. The weak liberal government's promise not to opt-in to any asylum or immigration laws was never fully trusted by the Danes.

The outcome reflected the two separate 'languages' deployed in the referendum – the emotional discussion about sovereignty, which appealed to the heart, and the technical argument about cooperation, which appealed to reason. In using these two languages, the campaigners spoke past one another, failed to understand each other and divided Denmark into two opposing camps.

Danish euroscepticism is evenly represented across social divides. There is a slight underrepresentation of well-educated people among the no-sayers, but income, age, gender and geographical situation do not explain the scepticism of the society.

Neither does knowledge about the EU.

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Few Danes on either side of the issue were able to communicate what was at stake in the referendum. Polls suggest that two-thirds felt unable to explain what it was about, and more than one-third reported that they were more confused by the campaign than they had been before it started. This is not the voters' fault –the problem should be attributed to the referendum instrument itself, which in this case polarised voters by asking them to reduce a highly complex issue to a (not so) simple yes or no response.

Denmark's sovereignty-based euroscepticism trumps that of any other EU member state, including Britain. Throughout recent decades, Eurobarometer polls show that when asked about qualified majority voting in the Council or flying the EU flag on public buildings, the Danes are the European champions in euroscepticism by a wide margin.

Surprisingly, with respect to their assessment of the EU's economic impact, the Danes also rank at the top, but this time as the most enthusiastic EU member state. Denmark also ranks high in terms of general support for EU membership – the no-vote was not a rejection of Europe as such. Curiously, this strong backing co-exists alongside the strong sovereignty-based scepticism. Which side dominates depends on the issue at stake, and the referendum on December 3rd, just like Denmark's previous six EU referenda, happened to activate latent concerns about national sovereignty.

The question now is whether a major EU referendum is able to win at all in a crisis-hit Union. Britain is next. The main difference between Danish and British scepticism is that the latter brand combines strong sovereignty-based euroscepticism with strong economic euroscepticism and widespread criticism of membership as such.

The Danish vote offers three lessons for other EU member states holding referenda in times of crisis:

- *Demystify national sovereignty.* The aspiration to reconsider the balance of competencies between the EU and its member states is a valid political stance. But what use, exactly, can Denmark make of the sovereignty that it preserves within the field of justice and home affairs when in practice it means that the country *cannot* participate in any part of the cooperation, even when it is in its national interest? A Danish law-expert compared it to a footballer who declines to play on a team because he may lose his prerogative to play exactly as he wants. In the public's mind, safeguarding sovereignty has, quite wrongly, become synonymous with maintaining things as they were in a pre-globalised world.
- *Keep it simple.* The yes campaigners should have emphasised trust in the parliament's administration of the opt-in model and not speculated about the nature of cooperation anno 2025 or individual regulations. Tweets on the regulation establishing a procedure for European orders for payment (in Danish: *Betalingspåkravsprocedureforordningen*) never trended in Denmark, despite being part of the referendum package.
- *Know the consequences of a no-vote.* While it was clear to most Danes that a yes implied a hand-over of sovereignty to the EU, the consequences of a no-vote were not so clear. This left ample space for the no-side's 'guarantees' that Denmark could obtain more favourable arrangements with the EU than under the opt-in arrangement. Such speculation did not serve to advance an informed debate.

If a referendum campaign leaves voters more confused than they were initially, one can hardly say that it has served as a valuable instrument of democracy. At the same time, once the instrument is used, the voice of the public can and should be heard. In the case of Denmark's referendum, the outcome should now result in the gradual exclusion of the country from all justice and home affairs cooperation in the EU. The future will not be so black and white, however. Denmark may be able to participate as a third-country signatory to certain specific laws or it may even try to vote again (and would not be the first time).

To be in, or to be out, that is still the question in Denmark – and one that even the referendum failed to fully answer.