Unravelling a well-tossed bowl of spaghetti, or: Surveying the debate on the Danish Justice and Home Affairs opt-out in the light of the refugee crisis.

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Denmark is approaching a crossroads in the country’s relationship with the European Union. In a few months, Danes will be asked to decide between keeping their current opt-out from EU Justice and Home Affairs, or replacing it with a more flexible opt-in arrangement. The opt-in, as known from the UK and Ireland, would allow Denmark to pick and mix legislation in Justice and Home Affairs on a case-by-case basis.

For a long time, the polls showed consistent support for the opt-in. However, the last couple of weeks have turned everything we thought we knew about the referendum upside down, the polls now suggesting a more ambiguous picture. This raises the question: Will the refugee crisis influence the outcome of the referendum? There are at least two, interconnected ways in which it might.

First of all, the refugee crisis may prove decisive in the on-going referendum frame-game. Proponents of the opt-in are emphasising the merits of specific fields of cooperation – Europol being the most prominent example – whereas Eurosceptics from across the political spectrum have taken a more principled stance, warning that an opt-in is a slippery slope towards a still greater loss of sovereignty. Anti-immigration arguments are also frequently employed by the right wing voters, mirroring a widespread attitude in Europe.

At an early stage, it thus became clear that a key battle of the referendum campaign would concern the framing of the question at hand; whether security and Europol, or immigration and slippery slope-arguments were allowed to dominate the public debate seemed a powerful indicator of what to expect come December.

The massive influx of refugees, along with Mr Juncker’s subsequent call for fundamental changes to the EU’s refugee policies, has now definitively put immigration- and asylum policies on the agenda in Denmark.

Certainly, Denmark will – legally – be neither more nor less obligated to take in any of the disputed ‘quota refugees’ no matter the result on December 3rd, but the prevalence of the topic in the referendum campaign may nonetheless influence the outcome.

Secondly, the prospect of a quota-based distribution of refugees (distinguishing between the Emergency and Permanent Relocation Mechanisms) elevates the issue of the opt-in to a level of complexity beyond the comprehension of those not familiar with the intricacies of EU legislation. In other words, there is a very real risk that some voters will confuse the opt-in with the question of compulsory distribution quotas, prompting reluctant opt-in-voters to stick with the status quo (although arguably there is no such thing as a status quo in the ever-evolving European Union).

Concerns about a mix-up have paved the way for proposals about a second, non-binding referendum on Denmark’s participation in the Permanent Relocation Mechanism, if such an arrangement sees the light of day. To complicate matters further, the mechanism would most likely take the shape of a revised Dublin-regulation (in which Denmark has been participating via a parallel agreement since 2006), which would in fact make the second referendum a question about continued participation in a changing field of cooperation. While the two-votes solution would certainly clarify the questions at hand, consulting the electorate on the matter might complicate an already difficult decision facing the government: Supposing that the other member states succeed in reforming the Dublin-framework, Mr Løkke and co. will have to decide between joining the distribution quotas (which they have thus far refused to do) or leaving the Dublin-system altogether (which they have similarly ruled out). Needless to say, this choice will have to be made irrespective of the outcome of the opt-out-referendum. While this column by no means
does justice to the chaos, tragedy, and political headaches implied by the refugee crisis, it may have clarified slightly the rather messy state of affairs in the present referendum campaign. As is obvious from the above, the campaign does not exist in a vacuum, and might be strongly influenced by developments at the borders of Europe. Whether this turns out to be decisive, we will know in a few months.

*The research column is written in turn by the researchers at the Centre for European Politics. The column does not represent a common CEP position.*