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SEEKING NEW OPTIONS FOR EU MIGRATION POLICY: LESSONS FROM AUSTRALIA

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Abstract

Regarding international migration, prevailing trend of the last decades has become an increase of migratory movements from the developing countries to the developed states. The European Union is struggling with the migration crisis since 2014 and strives to identify an effective solution to deal with the issue. Some European leaders find parallels between the inflow of the third-countries migrants from the Middle East and sub-Saharan Africa to the European Union with the irregular migration from mostly Asian countries to Australia. Thus, the main goal of this paper is to answer the question: Can the Australian migration and refugee policy become a blueprint for the European Union? The article is structured as follows: First, the European migration crisis is analysed, as well as the currently applied legal measures and policies to tackle the crisis. In the second chapter, the Australian migration policy is presented. Finally, the article confronts similarities and differences of both actors, including their geopolitics; numbers of irregular migrants; legislation of the European Union and the one of Australia; as well as their obligations according to the international law. Comparison of the listed aspects allows us to sum up suitability of the Australian model for the European Union.

Keywords: Australia, European Union, migration policy, refugees

JEL classification: F22, F52, J15, J61

Introduction

Following the outbreak of the European refugee crisis of migrants from the Middle East and sub-Saharan Africa, many European leaders proposed to follow the Australian model on how to deal with irregular migrants. In June 2016, Austrian Foreign Minister Sebastian Kurz said in an interview for the newspaper Die Presse that Europe cannot copy the Australian migration policy, but its basic principles are applicable for the EU. In October 2016, German Interior Minister Thomas de Maizière suggested, that migrants intercepted in the Mediterranean should be sent to processing camps in Africa. Similar statements were made by the politicians from Denmark (Martin Henriksen of the Danish People's Party) and several other European countries. These attitudes are supported also by the architects of the Australian migration policy. Co-author of the Australian asylum policy Jim Molan from the Liberal-National Coalition believes that the EU should adopt three fundamental principles to reverse the crisis: turning back boats on the Mediterranean; processing asylum seekers offshore and resettling them outside of Europe. (see Flood, 2017) However, the EU is hesitant in applying the Australian model in practice and uses other methods to solve the crisis. Thus,

the main research question of this paper is formulated as follows: Can the Australian migration policy become a blueprint for the EU? We built upon a hypothesis which gives a negative answer to the formulated research question. By means of a comparative case study, our aim is to provide sufficient evidence to our claim that Australian migration policy cannot be applied in the EU. First two chapters include analysis of the European and Australian migration profile, yet focusing solely on the third-countries migration and comparing three variables: first, numbers of illegal border crossings and nationalities of irregular migrants; second, most frequently used routes of the irregular migrants; third, currently applied solutions of the European Union on one hand and Australia on the other hand. The final chapter is developed as a theoretical eventuality applying the Australian solution in the EU settings and evaluating legal and political feasibility of the particular steps as undertaken by the Australian government in the European environment.

EU migration crisis

The migration crisis hit the EU in the second half of 2014 when the numbers of asylum applications and detected irregular migrants started to rise, with 282,933 irregular border crossings in 2014 and 1,822,177 in 2015, as shown in the Table No. 1. The EU-Turkish migration deal (as explained lower in the text) caused a rapid decrease of immigration flows in 2016, with only 511,371 detected irregular border crossings. In terms of nationality, most of the detected persons in 2016 came from Syria (17%) followed by Afghanistan (11%), Nigeria (7%), Iraq (6%), Eritrea (4%) and Pakistan (4%). Reflecting the geographical location of Europe, there are more than 8 different routes migrants can use to reach the European Union, including both sea and land routes, with some migrants using even air connection to get from their home country to their final destination. The most important routes used by irregular third-countries migrants to the EU are (see Frontex, 2017; Kuschminder, de Bresser, Siegel, 2015):

1. Eastern Mediterranean Route – between Turkey, Greece, Bulgaria and Cyprus (top 3 origins of migrant detections in 2016: Syria, Afghanistan, Iraq)
2. Central Mediterranean Route – connecting north African states Libya and Tunisia with Italy and Malta (Nigeria, Eritrea and Guinea)
3. Western Balkan Route – connecting Serbia, Bosnia and Herzegovina, Montenegro, Kosovo, Macedonia and Albania with the other EU countries (not specified, Afghanistan, Pakistan)
4. Western Mediterranean Route – between Morocco and Spain (Guinea, Algeria, Côte d'Ivoire)
5. Circular Route - from Albania to Greece (Albania, Afghanistan, Syria)
6. Eastern Borders Route – between Belarus, Moldova, Ukraine, the Russian Federation and the eastern EU Member States - Estonia, Finland, Hungary, Latvia, Lithuania, Norway, Poland, Slovakia, Bulgaria and Romania (Vietnam, Afghanistan, Ukraine)
7. Western Africa Route – from Senegal, Mauritania and Morocco to the Spanish Canary Islands (Côte d'Ivoire, Guinea, Morocco)
8. Black Sea Route – from Turkey to Romania (Belarus, Afghanistan, Syria)

The frequency of usage of the particular route differs according to the season of the year (the sea routes are more commonly used in the summer, whereas the land routes are more frequent in the winter months) and according to the development of the bilateral and multilateral migration agreements of the EU or its particular Member States (in 2015, the Western Balkan route was commonly used by migrants with 885,386 detections in 2015; after conclusion of

the EU-Turkish agreement, number of detections on the Western Balkan route decreased to 182,277 in 2016).

Table 1: Number of detected irregular border crossings between Border Crossing Points in the EU, land and sea routes (2012-2017)

Routes	2012	2013	2014	2015	2016
Eastern Mediterranean Route	37 224	24 799	50 834	885 386	182 277
Central Mediterranean Route	15 151	45 298	170 664	153 946	181 459
Western Balkan Route	6 391	19 951	43 357	764 038	130 261
Western Mediterranean Route	6 397	6 838	7 243	7 004	10 231
Circular Route	5 502	8 728	8 841	8 932	5 121
Eastern Borders Route	1 597	1 316	1 275	1 927	1 349
Western Africa Route	174	283	276	874	671
Black Sea Route	1	148	433	68	1
Others	0	4	10	2	1
Total	72 437	107 365	282 933	1 822 177	511 371

Source: Frontex (2017)

The measures adopted by the EU to solve the crisis over the first years were quite inconsistent. Most of them were based on the concept of solidarity – solidarity with the migrants, solidarity with the countries of origin and solidarity with the EU Member States on the external borders, which face the biggest migration pressure. However, the solutions based on solidarity proved to be insufficient and the EU turned its attention to cooperation with the transit states outside of the EU and to the reinforcement of the external borders protection by means of coastal guard. Table No. 2 presents a timeline of most important measures adopted by the EU from 2015 to solve the refugee crisis.

Table 2: Timeline of selected measures adopted to solve the refugee crisis in the EU

Year	Date	Measure
2015	23 April	Reinforcement of operations Triton and Poseidon Rapid reinforcement of operations Triton and Poseidon following the death of more than 800 migrants in the Mediterranean in April 2015.
	13 May	Reinforcement of the civilian mission EUCAP Sahel Niger The Council agreed to reinforce the scope of the EU civilian mission in Niger to support the Nigerian authorities in preventing irregular migration and combating associated crimes.
	22 June	EUNAVFOR Med: launch of the operation The Council launched EU NAVFOR Med, a naval operation against human smugglers and traffickers in the Mediterranean.
	14 September	EU Decision 1523/2015 First Relocation Plan, ministers approve plans to relocate 40,000 refugees across the continent, triggering Article 78(3) TFEU.
	22 September	EU Decision 1601/2015 Second Relocation Plan for 120,000 refugees, adopted despite objections from several eastern European states.
	30 September	New budgetary measures announced The European Commission announced proposals for €1,7 billion in EU funding for 2015 and 2016 to tackle the crisis.
2016	16 March	Council approves financing for emergency assistance within the EU The Council agreed to make available €100 million in commitments and €80,2 million in payments from the 2016 EU budget to support Greece and other Member States overwhelmed by the refugee crisis.
	18 March	Agreement with Turkey Irregular migrants, who came from Turkey to Greece after 20 March and won't apply for asylum, or apply for asylum in the EU, but in the asylum procedure, will be determined as arriving from a "safe third country" or "first country of asylum",

		will be returned to Turkey. For every irregular Syrian migrant returned to Turkey from Greece, EU will resettle another Syrian migrant from Turkey into its Member State. The deal involves also disbursement of €3 billion under the Facility for Refugees in Turkey and mobilisation of another €3 billion by the end of 2018.
	12 May	Schengen internal border controls recommendation The Council adopted a decision setting out a recommendation which allows for the continuation of temporary internal border controls in exceptional circumstances. Austria, Germany, Denmark, Sweden and Norway should maintain proportionate temporary border controls at specific parts of their border for a maximum period of six months.
	6 October	Launch of the European Border and Coast Guard Agency The Agency will closely monitor the EU's external borders and work together with Member States to quickly identify and address any potential security threats to the EU's external borders.

Source: EY, (2016); European Council (2017)

Migration policy of Australia

Australia has become a target of immigration flows in a large scale after the World War II., when displaced people from Europe were seeking new home on its territory. Initially, the ethnic structure of migrants was relatively homogenous, with majority of Anglo-Saxon or European origin. The turning point was marked in the 1970s following the civil war in Lebanon in 1970 and the war in Vietnam that ended in 1975, when a large number of refugees from the Middle East and South Vietnam sought asylum in Australia. Since then a new trend appeared regarding migration flows in Australia – the arrival of so called boat people – asylum seekers coming to the Australian coast by boats and seeking a refugee in the country. According to the official statistics of the Parliament of Australia that monitor the situation since 1976, number of people trying to reach Australian coast irregularly every year ranges from several dozens to several hundred, with significant peaks (over one thousand people pro year) detected in 1999 (3721), 2000 (2939), 2001 (5516) after which year the numbers declined to 1 detected person in 2002 and the numbers raised again only since 2009 as noted in Table No. 3. (see Wnukowski, 2016; Parliament of Australia, 2017) Nationality of the irregular migrants differs and includes migrants from south-Eastern Asia, Sri Lanka but also people from Iraq, Afghanistan or Syria. The most frequent route used by migrants is the one from Indonesia as the main transit country.

Table 3: Number of irregular border crossings Australia, sea routes (2008-2016)

	2008	2009	2010	2011	2012	2013	2014	2015	2016
No. of boats	7	60	134	69	278	300	1	0	0
No. of people (excl. crew)	161	2726	6555	4 565	17 204	20 587	160	0	0

Source: Parliament of Australia (2017)

In 1992, Australia adopted a law allowing mandatory detention of all persons who entered or were found on the Australian territory without a valid visa, while their claim to remain in Australia is processed and security and health checks undertaken. The act restricted mandatory detention to 273 days, yet in 1994, indefinite detention was permitted by the law. Detentions take place in onshore (mainland) or offshore detention facilities. Another legislative reaction to the increase of irregular migration between 1999 and 2001 was introduction of the Border Protection Bill in 2001. The Bill gave authorities the power to *“remove any ship in the territorial waters of Australia; use reasonable force to do so; provide that any person who was on the ship may be forcibly returned to the ship; and guarantee that*

no asylum applications may be made by people on board the ship.“ (see Refugee Council of Australia, 2016) Subsequently, the Howard Government introduced the policy known as the Pacific Solution on 1st of September 2001. The Pacific Solution generally brought two important changes into the Australian migration policy:

1. Opening of the Australian-funded offshore detention camps in Nauru and Manus Island.
2. Introduction of the Amendment (Excision from Migration Zone) to the Migration Act. The Amendment excised certain territories (among them Christmas Island) from the Australian migration zone. Thus, *“a non-citizen who first enters Australia at an excised offshore place without legal authorisation is unable to submit a valid visa application and cannot be resettled to Australia unless the Minister for Immigration makes a personal intervention into the case.”* (see Refugee Council of Australia, 2016) These people were sent to detention camps in Pacific Islands without a chance of being granted asylum on the Australian mainland.

The detention centres on Manus Island and Nauru were closed in 2007 by the Kevin Rudd's Labour Party government following his election promise to end the offshore processing system. Their closure is considered to be the official end of the Pacific Solution policy, although the philosophy of the policy continues until nowadays. Yet, the numbers of boat-people started to rise again since 2009 and the Australian government started to implement a stricter policy towards irregular migrants in 2012. Three most important events include (see Wnukowski, 2016):

1. Re-opening of the Manus and Nauru offshore detention centres in 2012 regarding lacking onshore capacities.
2. Extension of the excision policy to the Australian mainland since 16 May 2013. After Australian Indian Ocean territories were excised in 2001, migrants by-passed these islands and attempted to seek asylum directly on the Australian mainland. In order to deter these people from irregular immigration by boat, the new extension imposed *„that asylum seekers who arrive by boat anywhere in Australia cannot lodge a valid protection claim ... and are at risk of being transferred offshore for processing“* and they cannot ever be eligible for resettlement to Australia. (see Refugee Council of Australia, 2016)
3. Launch of the a military-led border security Operation Sovereign Borders on 18 September 2013 – the so called boat turnback policy, which turns back boats carrying illegal migrants headed to Australia to their points of departure (mostly Indonesia, Sri Lanka and Vietnam); intercepts illegal migrants and moves them to Australian offshore camps.

Rising numbers of irregular migrants coming to Australia resulted into elaboration of a completely new and extremely complex migration system supervised by a separate ministry - the Department of Immigration and Border Protection (DIBP). Currently, the two main pillars of the system are the Migration Programme and Humanitarian Programme. Main goal of the Migration Programme is to attract skilled foreigners to settle in Australia and to reunite families with members already in Australia. *“In 2013–2014, Australia issued 190,000 visas under the Migration Programme, among which some two-thirds (or more than 120,000 people) was dedicated to the skills stream and around one-third (or more than 60,000) to the family stream... Most migration visas went to citizens of India (39,000, or 21% of visas granted under the Migration Programme), China (26,800, or 14%) and the United Kingdom (23,200, or 12%).”* (see Wnukowski, 2016, p. 2) The Humanitarian Program

deals with irregular migrants and asylum seekers. The quota of visas that can be granted under the Humanitarian Programme is stipulated every year by the government according to the state's perceived capabilities, financial situation and the needs of provincial authorities. In 2013–2014, Australia allotted 13,750 visas for refugees and people in a refugee-like situation, most of them granted to people from Afghanistan (2,531), Myanmar (1,145), Iraq (829), Syria (297) and Bhutan (312). The flexibility of the system was visible in 2015, when Australia accepted an additional 12,000 Syrian and Iraqi regular asylum seekers due to the crisis in the Middle East. (see Wnukowski, 2016).

Australian migration policy applied in the EU – prospects and difficulties

An attempt to apply the Australian migration policy in the European environment would face many severe obstacles. There are several similarities between the both actors. The concept of European Border and Coast Guard might resemble the Australian Operation Sovereign Borders, although the European Agency does not have the authority to turn back boats carrying illegal migrants. Moreover, although the boat turn-back policy seems to work as a deterrence of new irregular migrants, the issue of people in detention on the Pacific islands who cannot be resettled to Australia remained unresolved. Therefore, Australia signed several resettlement agreements with other countries similar to the heavily criticized EU-Turkish agreement. These include:

1. A treaty with the Malaysian Government from 7 May 2011, stating that “...800 *asylum seekers who arrived by boat in Australia would be transferred to Malaysia, in return for Australia resettling 4,000 refugees out of Malaysia over the next four years*”. (see Refugee Council of Australia, 2016) However, on 31 August 2011, the High Court of Australia ruled that the arrangement cannot proceed due to the absence of legal protection for asylum seekers in Malaysia.
2. Regional Resettlement Agreement with Papua New Guinea (19 July 2013) regulating transfer of boat-people from Australia to Papua New Guinea and their permanent settlement on the island in case they are found to be refugees.
3. Agreement with Cambodia (26 September 2014) regulating resettlement of recognized asylum seekers from Nauru to Cambodia in exchange for allocation of \$40 million in aid money to Cambodia and \$15.5 million to the International Organization for Migration (IOM) to handle the resettlement. (see Refugee Council of Australia, 2016)
4. In November 2016, Australia signed a deal with the USA. The deal relates to 1,246 refugees held in Australia's offshore detention camps on Nauru and Manus Island, who were granted refugee status by the Australian authorities, but cannot come to the mainland following the excision policy and the fact that they came to Australia irregularly by boat. “*The Papua New Guinea Supreme Court ruled on 26 April 2016, that the detention centres on Manus Island are both illegal and in breach of the right to personal liberty in the PNG constitution.*” (see Refugee Council of Australia, 2016) Australia's immigration minister, Peter Dutton, confirmed on 17 August 2016, that the centre will be closed, but no timescale has been given. The deal with the USA should facilitate the closure process; however, its applicability remains unsure regarding President Trump's anti-immigration rhetoric.

Yet, there are much more differences making the application of the Australian model - turning back boats and keeping irregular migrants in detention abroad - complicated. Basic difficulties include:

1. **Geographical obstacles.** Effectiveness of the Australian approach is based on the fact, that the country is surrounded solely by the sea borders. Although most irregular migrants come to the EU also by the sea (873,179 out of total 885,386 of irregular border crossings on the Eastern Mediterranean Route in 2015 were on the sea route), there is the possibility to enter the EU by using land routes, too – i.e. segments of the land connection between Greece and Turkey on the Eastern Mediterranean Route or much longer, although more remote territory on the Eastern Borders Route. Thus, the turning back of boats might not be as effective as in Australia if the migrants could use the land routes to get to the EU.
2. **Political obstacles.** Australia is a sovereign state. The EU is a Union of 28 countries, which makes adoption of any policies and legal measures more complicated.
3. **Quantitative obstacles.** The highest number of irregular migrants trying to reach the Australian territory was 20,587 in 2013. The highest number of irregular migrants detected by Frontex was in 2015 – 1,822,177 people.
4. **Financial obstacles.** It is beyond the scope of this paper to analyse the expenses of the measures adopted to solve the migration crisis by both the EU and Australia. Yet, the costs of running detention centres in remote places, such as Christmas Island, Nauru and Manus Island in Papua New Guinea are higher than detention in closer areas. The government's National Commission of Audit found in 2014 that it costs more than \$400,000 to keep a single person in offshore detention for a year, whereas only \$239,000 for each person a year in an onshore detention. In this regard, it is interesting to note, that on 8 September 2009, Australia ended the practice of charging refugees for their time spent in detention. Previously, detainees were expected to pay back around \$100 a day after being granted protection. The total immigration detention regime costs Australia more than \$3,3 billion a year in 2013-2014 with over 20,000 detainees in that period. (National Commission on Audit, 2014; Refugee Council of Australia, 2016) Taking into account the number of asylum seekers in the EU, which was over 1,3 million in 2015 - 65-times higher than the number of asylum seekers in Australia, the expenses would be about \$214 billion if the EU wanted to apply the Australian approach – much higher than the current EU's expenses (including among others €6 billion pledged to Turkey; money allocated for the naval operations - Triton, Poseidon, EUNAVFOR Med; civil operations - EUCAP Sahel Niger; €100 million in commitments and €80.2 million in payments from the 2016 EU budget to support Greece and other Member States overwhelmed by the refugee crisis; or any other expenses). Besides, the EU's expenses keep an added value – they do not only react to the actual situation, but try to remove its initial cause.
5. **Legal obstacles.** Little known fact is, that some European countries were applying the Australian style policy of turning back boats carrying irregular migrants. On 30 August 2008, Italy and Libya signed a Treaty on Friendship, Partnership and Cooperation, which entered into force on 2 March 2009. Among others, Italy contracted itself to investing \$5 billion to basic Libyan infrastructure. On the other hand, Libya agreed to take back irregular migrants intercepted in the international waters by the Italian authorities and accepted common operations of mixed Italian and Libyan guards in Libyan territorial waters. However, according to the ruling of the European Court on Human Rights in the case *Hirsi Jaama and Others vs. Italy* from 2008, this practice was breaching the European Convention for the Protection of Human Rights and Fundamental Freedoms. The ruling mentions among others Article 3 of the Convention because the applicants had been exposed to the risk of ill-treatment in Libya and of repatriation to Somalia or Eritrea. Besides, there had been a violation of Article 4 of Protocol No. 4 and violation of Article 13 taken in

conjunction with Article 3 and with Article 4 of Protocol No. 4. The practice was also breaching the principle of non-refoulment as mentioned in Article 33 of the 1951 Geneva Convention. (see EDAL, 2016) From this reason, policy of push-backs – sending boats with migrants back to the transit countries, is non-applicable in the EU. The Italian policy of push-backs was therefore stopped and later replaced by the rescue navy operations such as Mare Nostrum and Triton. Australia is not bound by the European Convention on Human Rights. Yet, it is signed up to the UN Refugee Convention which states that migrants cannot be sent somewhere where they will be persecuted and that migrants have right to apply for asylum – something Australia denies when it restrains migrants under Australian authority in offshore detention centres from being granted asylum on the Australian territory.

Conclusions

Although the EU is applying certain measures similar to the ones used by the Australian government, especially regarding the usage of readmission agreements; it is not possible to take over neither the policy of returns of the boat-people to the transit countries because of the legal commitments of the EU nor the policy of offshore detention because of the disproportionately higher number of asylum seekers coming to the EU compared to Australia and resulting enormous financial burden. Yet, above all, the Australian stop-the-boats-policy is only illusory and does not solve the core of the problem with irregular migration, but only displaces the flow to the other countries. As noted by Paul Power, the CEO of the Refugee Council of Australia: “*If you look at the countries of origin of people who are on the seas in the Mediterranean, they do include people from Afghanistan and Iraq who are the groups of people we saw attempting to reach safety in Australia*” (Farrell, 2015).

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