Pangloss in Brussels

How (not) to implement the Aegean Agreement

Dr Pangloss

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> "It is demonstrable that things cannot be otherwise than as they are; for all being created for an end, all is necessarily for the best end."
>
> Dr. Pangloss, Voltaire's *Candide*

On 28 September the European Commission published its third report on the implementation of the EU-Turkey Agreement.[1] This follows its first *April Report*[2] and its second *June Report*[3]. Like these, the *September Report* argues that the Commission is on top of its game in addressing the refugee situation in the Aegean; that policy makers need not worry; that problems are identified, and that they are being resolved. This has also been the message of the Commission in a series of recent interviews with major European media.[4]

In fact, the *September Report* is a disturbing document, reminiscent of the irrational optimism of Voltaire's Pangloss, professor of metaphysico-theologico-cosmolo-nigology, who believes that all is always for the best. The report makes no effort to warn EU member states of looming dangers. [5] It is full of reassuring statements: "Despite challenging circumstances, the implementation of the EU-Turkey Statement has continued *to deepen* and to *accelerate*."[6] But the facts and figures provided in the report, as well as those omitted, do not back up this claim.

A closer analysis of the Commission's report shows how fragile the EU-Turkey agreement has become, and how little thought and effort is being put into overcoming obvious problems in order to make it work. When it comes to both implementation and communication the current effort falls dramatically short.

Where Pangloss is wrong

To understand what is wrong it suffices to look at two statements and three tables. Take this assertion: "Since the second Report of 15 June 2016, the total number of arrivals from Turkey to the Greek islands was 9,250 – representing an average daily arrival of around 81."[7] What this does not reveal is the clear upward trend in the average daily number of arrivals, which has more than doubled from 50 in June to some 110 in August and September.[8] Concerning the returns of people from Greece to Turkey, the Commission writes that "since the Second Report of 15 June 2016, 116 persons who entered Greece irregularly have been returned."[9] One only

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[1] European Commission, Third report on the Progress made in the implementation of the EU-Turkey Statement, COM(2016) 634 final, 28 September 2016.

[2] European Commission, First report on the progress made in the implementation of the EU-Turkey Statement, COM(2016) 231 final, 20 April 2016.

[3] European Commission, Second Report on the progress made in the implementation of the EU-Turkey Statement, COM(2016) 349 final, 15 June 2016.

[4] See: *Frankfurter Allgemeine Zeitung*, "Brüssel: Vertrag mit Türkei bewährt sich" ("Brussels: Deal with Turkey stands the test"), 27 September 2016; *NRC Handelsblad*, "Falen van deal met Turkije is geen optie" ("A failure of the EU-Turkey deal is not an option"), 27 September 2016.

[5] See also: Rumeli Observer, "Blind in den Sturm: Wie die Europäische Kommission in Griechenland versagt" ("Blind into the storm – how the European Commission fails in Greece"), 27 September 2016.

[6] European Commission, September report, p. 13.

[7] European Commission, September report, p. 2.

[8] UNHCR, Refugees/Migrants Emergency Response – Mediterranean, Daily Estimated Arrivals per Country, 22 September 2016.

[9] European Commission, September report, p. 5.

needs to compare these numbers – 9,250 arrivals on the islands, 116 people returned to Turkey – to see an obvious crisis: compared to arrivals, the number of returns is minimal.

The three following tables make this point obvious. The first shows average daily arrivals on the five Aegean islands:

Daily Arrivals from Turkey in 2016[10]

Date	Daily Greek islands
Daily average January	1,932
Daily average February	1,904
Daily average 1-20 March	1,148
Daily average 21-31 March	333
Daily average April	114
Daily average May	47
Daily average June	50
Daily average July	60
Daily average August	111
Daily average Sept. (until 21 Sept.)	112

The second table looks at capacities to receive migrants and asylum seekers on the islands:

Capacity and occupancy on the Greek islands, 3 October 2016[11]

Island	People	Capacity
Lesvos	5,966	3,500
Chios	3,884	1,100
Kos	1,858	1,000
Samos	1,624	850
Leros	731	1,000
Rhodes	222	0
Megisti	37	0
Kalymnos	6	0
Karpathos	3	0
Total	**14,331**	**7,450**

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[10]   UNHCR, Refugees/Migrants Emergency Response – Mediterranean, Daily Estimated Arrivals per Country, 22 September 2016.

[11]   UNHCR, Refugees/Migrants Emergency Response – Mediterranean/Greece, Daily Map indicating capacity and occupancy (Governmental figures), 3 October 2016.

And the third table shows the number of people returned to Turkey:

Number of people returned from Greece to Turkey until 26 September 2016[12]

Date	Transfers
4 April	202
8 April	123
26 April	49
27 April	12
18 May	4
20 May	51
8 June	8
9 June	13
16 June	6
17 August	8
18 August	6
25 August	2
7 September	5
8 September	13
23 September	7
26 September	69
Total	**578**

Where the report is silent

In its report the Commission recognises that "a substantially increased and sustained capacity to return arriving migrants … is considered to be the key deterrent factor for irregular migrants and smugglers."[13] It asserts that "the *structures* are in place that *should* allow effective returns to Turkey once proceedings on the admissibility or merits of asylum applications are concluded."[14] However, returns have,

> "… mostly been *hampered by the slow pace of processing of asylum applications* at first instance by the Greek Asylum Service (even with the help of the European Asylum Support Office) and of *processing of appeals* by the newly-established Greek Appeals Authority."[15]

But is the Commission right to put all the responsibility on the Greek Asylum Service?

There are *two types of decisions* the Greek asylum service might take. It might take decisions on admissibility. In this case it concludes that since Turkey is safe for an applicant, no asylum decision is required in Greece. The application in Greece would be found inadmissible and the

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[12]   European Commission, Operational implementation of the EU-Turkey Statement as of 26 September 2016.
[13]   European Commission, September report, p. 4.
[14]   European Commission, September report, p. 2.
[15]   European Commission, September report, p. 5.

applicant could be returned to Turkey. If the applicant is a Syrian, he or she would get temporary protection in Turkey. If the applicant is a non-Syrian, he or should could submit an asylum claim there. Alternatively, the Greek asylum service could conduct a full asylum procedure in Greece. In that case the applicant can only be returned to Turkey, as an illegal immigrant, if protection is denied.

Given the importance of the pace of processing and the resulting returns – the "key deterrent factor" for new arrivals – one might expect the report to offer a detailed analysis of the structures in place to deal with applications. But there is none.

The *June report* had been vague on what was happening on the islands. It noted that by 12 June

> "1,429 asylum applications had been submitted by persons who crossed from Turkey into Greek islands … 267 were declared inadmissible by the Greek Asylum Service … 252 appeals had been lodged against these decisions before the Greek Appeals Committees which had taken 70 decisions granting the appeal and 2 decisions rejecting the appeal."[16]

In other words: at the time most of the 8,450 migrants on the Greek islands had *not* been able to submit an asylum application; almost all applicants rejected at first instance appealed; and of those who had received a first *and* second instance decision only two found their asylum claims in Greece to be declared inadmissible. There was no information in June on any full asylum decisions ("on merit"). The June report also gave no information on how many Greek asylum case workers were on the islands.

Gaps and silences – Asylum decisions in the Aegean according to Commission reports

	June report (as of 12/6)	September report (as of 18/9)
Asylum applications submitted	1,429	No information
o/w declared admissible	No information	No information
o/w declared inadmissible	267	No information
o/w appeals second instance	252	No information
o/w decisions second instance	72	311 on admissibility
o/w *confirmed* inadmissible	2	6

The September report, published three months later, is even less detailed. It does not say how many of the 14,000 migrants on the islands had submitted an asylum application; or how many appealed. We only learn that second instance panels had so far taken 311 decisions on admissibility, or which 6 declared the applications of Syrians inadmissible (opening the possibility of a return to Turkey).[17] The Greek asylum service does not even conduct admissibility procedures with non-Syrians such as Afghans, Iraqis and Pakistanis since it does not consider Turkey a safe third country for non-Syrian refugees. This, then, is the single most important fact about the implementation of the agreement: in six months the Greek asylum system concluded that only six asylum applications were inadmissible.

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[16]   European Commission, June report, p. 5.
[17]   We are also told that 42 appeals against decisions on merit had been decided, with 40 confirming the first-instance decision and two reversing it.

So what is to be done? The report does not provide any clues, nor the information that is essential to understand the gaps and challenges. It does not answer the following key questions:

1. Given that full asylum decisions take more time than admissibility decisions, how many of the 14,000 people on the islands at the moment are likely to fall into which category?

2. How long does it take on average for asylum case workers deployed on the islands to take either admissibility decisions or full asylum decisions on merit?

3. Based on which criteria does the Greek Asylum Service decide whether to admit or reject a claim in the admissibility procedure?

4. How many cases do the second instance panels decide in a month on average?

Instead of answers the report offers wishful thinking. Here are two examples:

Asylum case workers at the first instance level

The *June* report explained that there were then 47 "asylum experts" from EU member states on the Aegean islands which, as the Commission wrote then, "corresponds to the current needs that have been identified."[18] There was no explanation how these "needs" were established. The report was silent on the number of Greek case workers on the islands, even though this is crucial information: according to the current Greek law only Greek case workers are competent to take decisions on applications while case workers from other member states only conduct interviews and prepare decisions.

The *September* report tells us that there are now 41 "member state experts" deployed on the islands, and that there should be 100.[19] Thus, while the number of people on the islands has grown tremendously since June, the number of EU asylum experts has declined. It is again silent on the number of Greek case workers on the islands. ESI learned informally that their number on the islands has also decreased and stood at only 16 in mid-September. The fact that this number is not made public and confirmed is one of the many inexplicable features of the Commission report.

Given all these problems at the first instance level, how can the Commission assert that "the structures are in place that should allow effective returns"?

Appeals committees at second instance level

The *September* report notes that there are new appeals committees. It affirms that these committees "need to have the resources required to operate at full pace to speed up the processing of these appeals to ensure that they meet the goal of handling around 500 cases assigned each month (100 per Committee) and should prioritise asylum cases lodged on the Greek islands."[20]

The reader is led to believe that there are five appeals committees - in fact there are six. The assumption that each committee can issue 100 decisions a month is unrealistic. The

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[18]   European Commission, June report, p.2.
[19]   European Commission, September report, p. 3.
[20]   European Commission, September report, p. 5.

Commission itself explained in an interview a few days before it issued its report that it hoped to see "up to 200 decisions a month at the second instance level."[21]

Even this is overly optimistic. The September report tells us that the new appeal committees have issued "at least 35 decisions regarding cases on the islands" between mid-August to 18 September.[22] According to the Commission's report the *old* appeals panels had taken 318 decisions in four months (on average 80 a month) while the new appeals panels have taken 35 in one month. It is not clear why one should expect this figure to leap from 35 decisions a month to 200. At least until now the efficiency has declined further. *Even if* these appeals committees manage to take 200 decisions a month, and *even if* all of these decisions lead to returns to Turkey, this would still only mean that the maximum number of people returned to Turkey by the Greek authorities would be just 200 a month. This is less than the number of people who arrive in two days on the islands. Such a low number of returns will not discourage further arrivals, and the number of people on the island will continue to increase.

Pangloss' world on fire

The Commission report does not make any reference to growing tensions on the islands. It does not refer to events such as the fire in the overcrowded Moria camp in Lesbos on 19 September which destroyed 50 prefabricated homes and drove 4,400 migrants into nearby fields. On 20 September, Lesbos news reported: "At the entrance of Moria, angry locals and police units hindered migrants from entering the village and sent them back towards the burning camp."[23] UNHCR, the United Nations refugee agency, explained that the fire was linked to poor living conditions and a growing feeling of uncertainty among many in the camp.[24] The week before the fire there were two demonstrations in the island's main town, Mytilene. On 20 September, residents from a village above the camp marched through Mytilene denouncing the mayor as a traitor who had ignored local people in favour of refugees.[25]

There have been many protests and rising tensions on all islands, including large demonstrations on Chios by local residents.[26] On 14 September, Greek police was forced to use tear gas against the residents during one of the protests. The local media reported: "Initially, the demonstration was peaceful. Then protesters decided to hold a protest march towards the Souda camp where about 1,800 migrants and refugees are accommodated … Protesters attempted to break the riot police line to move toward the refugee camp … Riot police used tear gas to contain the angry protesters …"[27]

The current tense situation has already prompted the Greek government to consider moving a large number from the Aegean islands to either the mainland or to other islands, such as Crete.[28]

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[21]   Rumeli Observer, "Blind in den Sturm – wie die Europäische Kommission in Griechenland versagt" ("Blind into the storm – how the European Commission fails in Greece"), 27 September 2016.

[22]   European Commission, September report, p. 6.

[23]   *Keep talking Greece*, "A hell of a night for thousands fleeing fire: 60% of Moria hot spot infrastructure burned down (Updates)", 20 September 2016.

[24]   UNHCR, Fire at Reception Site on Lesvos island, Greece, Briefing Notes, 20 September 2016.

[25]   *The Guardian*, "Thousands flee as blaze sweeps through Moria refugee camp in Greece", 20 September 2016.

[26]   See *NOS* (Dutch public TV), Nieuwshuur, "Griekse eiland Chios verandert in vluchtelingenkamp" ("Greek island Chios turned refugee camp"), 31 August 2016.

[27]   *Greek Reporter*, "Police use tear gas on Chios residents protesting migrant situation", 15 September 2016.

[28]   *Kathimerini*, "Gov't searches for ways to decongest islands", 29 September 2016. *Die Welt*, "Wir werden viele Migranten aufs Festland bringen" ("We will bring many migrants to the mainland"), 29 September 2016.

Such a step would be like pulling a key building block out of a Jenga tower, risking the collapse of the whole agreement. Such a move could easily lead to even higher numbers of daily arrivals, requiring more transfers, and bring down the agreement.

At the heart of the EU-Turkey agreement is the goal to discourage irregular crossings by returning most of those who arrive on Greek islands to Turkey following a credible assessment of their asylum claims. It is hard to explain why there is no more serious discussion in the report on why this is not happening.
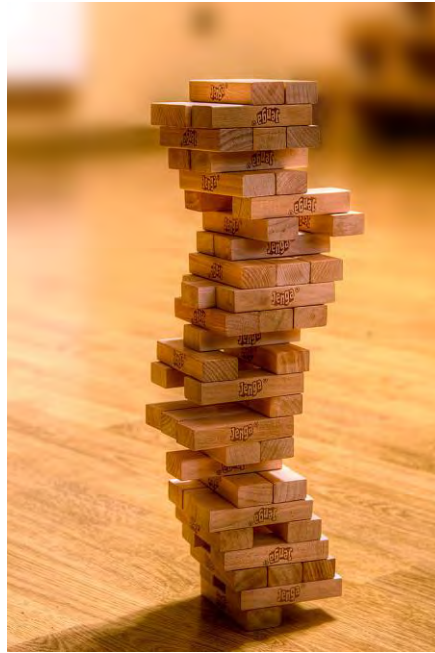
The state of the EU-Turkey agreement in September 2016

What failure might look like

What happens if the agreement fails? Here is a likely scenario for the coming months. The Greek authorities, under pressure and without a credible answer to islanders who fear that Lesbos and Chios are turning into a European Nauru (the Pacific island where Australia moves people who arrive per boat) moves ever larger numbers of people from the Aegean islands to the mainland. This in turn leads to steadily rising numbers of people crossing the Aegean by boat. The Turkish authorities, frustrated by what they see as an EU failure to do what it said it would, blames the EU for increasing pressure on its cost guard. European institutions and other governments in turn blame Greece, both its asylum service and its government, and calls by populist leaders in the rest of the EU to build a stronger wall north of Greece are redoubled. Smugglers, fully aware that their business model depends on large numbers crossing daily, will further lower the price to entice more people to get on boats. Given rising acrimony and deepening distrust between key players – Brussels, Athens, Ankara – there will not be any coherent response.

Once larger numbers of people are moved to Greece the humanitarian situation for refugees on the Greek mainland deteriorates further. Greece will remain unable to cope with larger numbers for the foreseeable future. Moving asylum seekers from the islands to the mainland does not improve their personal situation or reduce their frustration; to see why it is enough to visit some of the refugee camps around the Greek capital Athens today, such as the former international

airport hosting hundreds of people under very bad conditions. And as the number of people wanting to apply for asylum in Greece increases the idea of access to protection in Greece collapses.

According to the website of the Greek asylum service the total number of full asylum decisions (on merit) taken in recent months is below 1,000 a month. If there would be 120,000 people in Greece waiting for an asylum procedure it would take ten years (or longer) to assess their claims. In practical terms the notion of access to a credible, quality asylum procedure would disappear.

Under such conditions the pressure on Greece's northern border would increase dramatically. Already now there are many people who cross into Macedonia every day. Already now the number one topic of conversation among migrants stranded on the Greek mainland is the cost of getting smuggled across the Balkan route, either via Macedonia or via Bulgaria. It is hard to see Greece make a major effort to stop people leaving the country if its government and people feel that they are left alone by the EU.

The Macedonian reception and asylum system would collapse within weeks if more people were to cross the border. Serbia would face a similar crisis. As winter sets in, the Western Balkans would turn into a battleground between migrants, smugglers, border guards, soldiers and vigilante groups, destabilising an already fragile region. And ever larger numbers of people would begin to cross again into Central Europe.

Politically, such a scenario would be a devastating blow to those leaders in Europe who argued that it is possible to combine a humane EU policy on border management that reduces the number of people crossing with respect for the refugee convention and existing EU norms. It would provide a boost to leader such as Hungarian prime minister Viktor Orban, who have long argued that in order to control its external borders the EU ought to be prepared to set aside human rights concerns, treating migrants as an "invading army" and suspending the application of the refugee convention. As election campaigns heat up in France, the Netherlands and (perhaps) Austria in 2017 the political momentum would be with the anti-refugee, populist far-right.

Against the background of a dramatic humanitarian situation in Syria – with events in Aleppo requiring more, not less, support to Syrians trying to escape the hell of their country – a debate in the EU on the future of asylum, dominated by anti-refugee political parties, would be a disaster. Some European countries have long offered by far the most protection in accordance with the refugee convention in recent years (Germany, Sweden, Austria). Once the EU as a whole turns its back on these norms it is uncertain whether the refugee convention itself has a future. For UNHCR this would also be a moment of existential crisis. 2017 could be the year in which the promises of 1951 drowns in the waters of the Mediterranean.

This is unfortunately a very realistic scenario. Given how much is at stake in the Aegean today, for the EU, Greece and Turkey, for the refugee convention and the prospects of a humane policy on borders, for refugees and EU citizens, every effort should be made to avoid such a turn of events becoming reality.

How to rescue the Agreement

So what is to be done? ESI has made three concrete proposals in recent months. The EU should create conditions that allow sending a strong asylum support mission to Greece with at least

200 case workers.[29] The EU, in cooperation with UNHCR, should create a mechanism of verification for everyone returned to Turkey; spell out precisely and publicly what Turkey would need to do to be a safe third country for all non-Syrians to be returned from Greece; and make this *the* key condition for visa liberalisation *before the end of the year*.[30] The EU should appoint a senior special representative for the implementation of the EU Turkey agreement – a former prime minister or foreign minister, with the experience and authority to address urgent implementation issues on the ground and to communicate clearly with different audiences, from the citizens on Greek islands to the Turkish public, from human rights organisations and the media to prime ministers across the EU.[31]

The most immediate step to take is for the EU to send a clear signal that it has understood both the frustration of Greeks in the Aegean and the worries of Turkey, that it takes the issues that concern the Greek asylum service seriously, while offering credible support to the Greek and Turkish government to treat the few thousand asylum seekers most concerned in line with all applicable law and international norms. A second key step is for the Commission to stop arguing that Turkey is *already* a safe third country, and admit that the concerns of the Greek asylum service – which prevent it from undertaking admissibility interviews for non-Syrians or take inadmissibility decisions on Syrians – are based on concerns that have to be, and can be, addressed by Turkey. Finally, an EU special envoy – and senior European leaders – should engage on this issue seriously with Turkey. Ankara has a strong interest in the agreement working, which the Turkish government proposed to the EU in early March. The Turkish government does not want to fight smugglers in a fruitless battle along its Aegean coast, nor have more dead children washed up on its shores. Turkey also has a strong national interest in not wanting anti-refugee, anti-Muslim forces get even stronger in 2017 in key EU member states. What the EU needs to do is to persuade Turkey that the steps required to become a safe third country for the people to be returned from Greece are doable, and in Turkey's own interest, and that once Turkey is a safe third country and the agreement is saved visa liberalisation for Turkish citizens will follow without any further delay.

(For more details on this, and a discussion how the Aegean agreement could become a credible and effective blueprint for EU policy on borders and asylum in the whole Mediterranean, see our forthcoming report: ***Merkel Plan versus Nauru Coalition***.[32])

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[29] See ESI newsletter, "Sailing in the dark – 300 with a mission – Visa, terror and the Aegean refugee agreement", 19 May 2016.

[30] *Ibid.*

[31] See recent ESI presentations in Vienna (22 September 2016), Athens (21 September 2016), Amsterdam (7 September 2016); and on Nieuwsuur, "Bedenker Turkijedeal vindt uitwerking een schande" ("The architect of the Turkey deal considers its effects a disgrace"), 1 September 2016, as well as in other media.

[32] The report will be available at www.esiweb.org/refugees.

Annex – Step one: establish what is happening

Any successful implementation requires sound data. The Commission needs to issue a report on the implementation of the EU-Turkey agreement which provides essential information for policy makers and publics across the EU, including on the Greek islands. In early May 2016 ESI suggested that the European Commission should regularly publish on its website the following key data on the implementation of the agreement on the islands:

Essential facts – a weekly check on the agreement[33]

(1) Number of people on the Greek islands / capacity of accommodation centres
(2) Daily arrivals on the Greek islands
(3) Asylum applications on Greek islands:
    a. How many have been lodged?
    b. How many Dublin family reunification cases are there (how many transfers)
    c. How many interviews have been held (admissibility/ full asylum procedure)?
    d. How many first instance decisions have been taken in these two categories?
    e. How many appeals have been lodged against negative decisions?
    f. How many second instance decisions have been taken and what was their outcome?
(4) Number of asylum case workers and interpreters deployed on each island
    a. Greek
    b. Member states/EASO
(5) Number of appeals panels
(6) Number of people returned from Greece to Turkey
    a. Nationality
    b. Reasons for returns: voluntary/no asylum application/application unfounded / application inadmissible
(7) Number of resettlements of Syrians from Turkey/ destination countries in the EU

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