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**PC 4: DISCUSSION PAPER**

**SUBMITTED BY DR ANDREY KOVATCHEV**

**Europe Needs a Strong Communitarian Immigration, Asylum and External Border Security  
Approach  
A Step to European Internal Affairs Government**

7 November 2011

by Dr Andrey Kovatchev, Vice-president of the Union of European Federalists

The ongoing process of transformation in Europe's closest neighborhood is a historic opportunity but also brings important challenges for our continent. Political uncertainty and conflicts in these countries force many to leave their homes for Europe in search for a better life. Increase in the rise of extremism and right-wing populism all over Europe testifies increasing popular unease and fear of the intensification of migratory flows, as well as of threats to public security and social order.

This fear of immigrants with different cultural and religious background is the underlying platform for extreme ideas all over Europe, magnified in times of economic and financial crisis. Opposition to multi-cultural society model is gaining speed. Sadly, this trend found its most sinister expression in the terrorist attacks in Norway from July 2011.

Are European public's worries justified? This is to ask whether Europe has the adequate resources to properly face the challenges posed by migration.

This is the key question in the current debate on the future of the common EU immigration and asylum policy as well as on the changes to the Schengen acquis. The Union of European Federalists (UEF) should welcome this debate. We are already witnessing concrete measures taken by the national authorities of some Member States. The reestablishment of internal EU border controls by Denmark, considered also by some other Member States, is unacceptable. These actions are integration reversal! European problems need a European answer. Better policy solutions are needed and EU political, NGOs' and civil society voices should be able to make themselves heard.

**What do we defend?**

Migration is not an isolated national issue. It affects all European citizens, albeit to a different degree. Joint management should be ensured within the framework of *common* institutions and mechanisms. Political approach prone to "national egoism", hidden under declared national security threats, should be rejected. The European Union - and its principles of *solidarity* and *shared responsibility* - provides the right institutional framework, which could properly face the challenge of migration and integration of immigrants in Europe and could provide for effective external border security management.

52 The tools that the EU currently uses to implement its policy in the field of migration must be enhanced  
53 in line with the above-mentioned principles. Member States should be ready to guarantee the  
54 functioning of effective burden-sharing mechanisms. This should be used by every EU Member State  
55 to the benefit and security of every European citizen. At the same time, the policy reform should not  
56 happen at the expense of the planned Schengen enlargement to new countries, provided naturally  
57 that all conditions to accession are met.

58  
59 The Schengen area with Bulgaria and Romania, effectively incorporated within, will provide more  
60 security and sustainability to the Schengen framework. However, in September 2011 the accession of  
61 Bulgaria and Romania was blocked by two EU Member States. The fact-free policy of the Dutch and  
62 Finnish governments, kept in power by far-right populist parties, didn't take into account the  
63 assessment of the Council experts recognizing that both Bulgaria and Romania have fulfilled all  
64 accession criteria thus proving their capability of securing the external borders of the EU<sup>1</sup>. Something  
65 more, the participation of the latter countries in the Schengen Information system (SIS) already proves  
66 successful thus strengthening the security within the Schengen area<sup>2</sup>. The two countries have also  
67 established best practices for Black Sea maritime border control, which can provide a good example  
68 for current Schengen Members, especially in the Mediterranean area.

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70 The steady support of the European Parliament<sup>3</sup> regarding the accession of Bulgaria and Romania to  
71 Schengen must be warmly welcomed. Its second resolution of 13 October 2011 supporting the  
72 accession of Bulgaria and Romania to Schengen is an important message to the European Council to  
73 finalize this process at its meeting in December 2011.

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#### 76 **What should be done?**

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78 Europe must ensure that it has the right tools to respond to the increased migration pressure based on  
79 the world's economic and political situation and inadequate distribution of welfare, not a topic of this  
80 discussion paper. Communitarian approach, when applied to the field of **EU common immigration  
81 and asylum policy** and external border control (Schengen acquis), could bring a solution to the

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<sup>1</sup> Draft Council Decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania of 29 September 2010 presuming Bulgaria and Romania's preparedness to join the Schengen area based on the Council experts' evaluation reports on Bulgaria and Romania which are "classified" documents. The approval of the former document, which found also the unanimous support of the European Parliament on 8 June 2011 by the adoption of its legislative resolution, was blocked during the Justice and Home Affairs Council meeting of 22-23 September 2011.

<sup>2</sup> Between November 2010 and October 2011 Bulgaria, for instance, has provided information to its Schengen partners regarding:

- 323 persons wanted for arrest in the Schengen area
- 1383 motor vehicles, personal identity documents, weapons, and other personal belongings searched in the Schengen area
- 92 missing persons, as well as
- 1208 participants in criminal proceedings.

Next, both Bulgaria and Romania, recently adopted National strategies on migration and asylum. The newly established strategic objectives and measures are based on the Schengen membership related forecast that they will gradually transform from emigration and transit into countries attracting immigrants. Taking this trend into account, detailed analysis of the strengths and deficiencies of the national authorities to manage this challenge was carried out. Specific measures were adopted in order to ensure the proper implementation of border control, visas, and fight against illegal migration, return, and human trafficking, asylum, migration and integration policies. Both countries put the stress on administrative and staff capacity enhancement as well as on state cooperation with the non-governmental sector.

<sup>3</sup> European Parliament legislative resolution of 8 June 2011 on the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania.

82 migration challenge. Similar to the discussed proposal for the establishment of a European Economic  
83 Government, a **European Internal Affairs Government** could be established.

84  
85 External border security - a key element of the Schengen acquis - must be strengthened. The current  
86 debate on "the changes to Schengen" should focus on the effectiveness of the enforcement of the  
87 Schengen rules, in line with the principles of solidarity and shared responsibility between the Member  
88 States. Any reform must guarantee that the Schengen acquis will be applied **in a uniform and**  
89 **consistent manner in all participating countries.**

90  
91 Thus the set of proposals<sup>4</sup> of the European Commission from mid-September 2011 aims at  
92 responding to the latest political events in EU's neighborhood with more efficient management of the  
93 Schengen cooperation system and uniform application of the Schengen rules. If agreed by the  
94 European Parliament and the Council of the EU, the proposals of the Commission will win for the  
95 process of European integration two main results, which in our view constitute a right step in the  
96 federal direction:

97  
98 - firstly, the reintroduction of border controls for foreseeable events will be handled at the European  
99 level by means of an EU-based decision making mechanism, involving the European Commission and  
100 the Member States. In cases of unforeseeable events, the Member States will be able to unilaterally  
101 reestablish border control for a period no longer than 5 days, and

102 - secondly, the management of the Schengen area will be strengthened. A EU-based Schengen  
103 governance will replace the current inter-governmental peer review approach, thus enhancing the  
104 tools for monitoring and remedying deficiencies in Schengen system management.

105  
106 Furthermore, Article 77, Par 1, "c" of the Treaty on the Functioning of the EU stipulates that the Union  
107 should "develop a policy with a view to **gradually introduce an integrated management system for**  
108 **external borders**". In short and medium term the EU institutions should participate, together with the  
109 Members States, in the effective external border security. In the long term, the EU should gradually  
110 replace the Member States and take the responsibility for this task. Considering the historical  
111 development of national borders and the classical 19th century understanding of sovereignty, the  
112 transfer of external EU border security competency to communitarian institutions would be an  
113 enormous integration step, which would bring the EU to another level of **post-national union**. This  
114 policy development is the necessary step that would guarantee a higher degree of proper  
115 implementation of the common EU acquis in this area. Such development, however, requires that the  
116 EU have the adequate tools to properly manage its external borders.

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118 In the light of the above, the European Parliament's decision from 13 September 2011 to approve new  
119 rules on the functioning of the Agency of the EU for the Management of Operational Cooperation at  
120 the External Borders of the Member States of the European Union (FRONTEX)<sup>5</sup> should be welcomed.

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<sup>4</sup> The set includes the following documents:

1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Schengen governance – strengthening the area without internal border control from 16 September 2011

2. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances

3. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances.

<sup>5</sup> European Parliament legislative resolution on the proposal for a regulation of the regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) adopted on 13 September.

121 The decision is a step ahead in strengthening the resources and tools at FRONTEX disposal. The  
122 reform of the Agency's legal framework allows it to possess assets thus using its own technical  
123 equipment in missions and no longer relying on national contributions only. New European Border  
124 Guards Teams (EBGT) will be set up. The EBGT will not replace the national authorities in ensuring  
125 the EU external border security but Member States will be legally bound to provide staff for the newly  
126 established teams. These changes will enhance the efficiency of FRONTEX operations. These  
127 improvements should be seen as a real embodiment of the EU's shared responsibility principle.  
128 However, it remains to be proven whether the redesigned executive body will be up to its main task -  
129 to ensure the management of cooperation between Member States when protecting external borders.  
130 More specifically, FRONTEX is expected to show its capability of coping with crisis situations faced by  
131 countries under serious migration pressure. The operational capabilities of FRONTEX will be crucial to  
132 the development of a genuine integrated management system of the EU external borders.

133  
134 The future of the EU migration policy should not be reduced to the reform of the rules governing the  
135 protection of the external borders of the EU. Migration requires a complex vision for reforms of related  
136 EU policies, more specifically, an **EU immigration and asylum policy**.

137  
138 The Commission's approach to focus the efforts of the EU on implementing long-term measures on  
139 migration laid down in its *Communication on migration* from 4 May 2011<sup>6</sup> should be welcomed. The  
140 Commission proposal is perfectly in line with the nature of irregular third countries' migration - which is  
141 a permanent, rather than an occasional phenomenon. That is why the flows should be *managed*  
142 *continuously* instead of spending efforts and resources on resolving it once and for all. The debate on  
143 the future of the EU immigration and asylum policy should embrace this long-term vision as a plausible  
144 basis on which further policy initiatives to be built upon.

145  
146 The Commission observes that there is a need for authentic solidarity between Member States in  
147 situation of migration crisis. However, adequate mechanisms aimed at supporting the countries  
148 directly exposed to massive migratory movements are still necessary. They should be firmly  
149 addressed in Commission's future legislative proposals, following the *Communication*, and supported  
150 by the Parliament and the Council. In this regard, the mechanisms impeding the timely use of the  
151 General Program on "Solidarity and Management of Migration Flows", and the four funds under the  
152 program, which are currently not easily operational in crisis situations should be improved.

153  
154 The proposal of the Commission on intensive use of readmission agreements in EU relations with  
155 countries considered a source of irregular migration should be welcomed. These agreements, together  
156 with the Schengen acquis, count for achieving the objective of limiting irregular migration. They should  
157 therefore constitute an element of conditionality within the larger context of the EU neighborhood  
158 policy in both dimensions - Southern and Eastern. However, as correctly stated by the Commission in  
159 its *Communication on migration*, the implementation of this instrument is far from being efficient. This  
160 is quite evident in the case of Turkey which hasn't yet taken the necessary measures to ensure the  
161 finalization of the readmission agreement with the EU.

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163 That is why the efforts of the responsible institutions should focus on planning measures aimed at  
164 increasing the current level of proper implementation of concluded readmission agreements.

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166 Finally, common criteria for immigration are needed as a measure for controlling migration flows. At  
167 the same time, the invaluable contribution of the migrants to the EU societies should not be forgotten.  
168 Qualified immigrants are needed, if the EU wants to continue as a *knowledge-based* economy and a  
169 *competitive* world trade partner. One should also keep in mind that the EU faces serious *demographic*

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<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the regions on migration of 4 May 2011.



170 *challenges*. The brain drain from developing countries remains a serious problem, undermining the  
171 development of the immigration source countries. This recommendation is in line with the commitment  
172 of the Member States to establish the *Common European Asylum System* (CEAS) by 2012. A EU  
173 common asylum policy should reflect the founding values of the EU - democracy, freedom and rule of  
174 law. Along with these values, but also with the international acts in the field of asylum, the EU must  
175 guarantee aid and protection to people "persecuted" in their own countries for reasons of race,  
176 religion, nationality, membership of a particular social group, political opinion or sexual orientation. At  
177 the same time, any policy development in the field of migration and asylum must guarantee that the  
178 rule of EU values on the territory of the Member States is not threatened.

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180 More than ever, Europe should profit from its know-how. Europe not only knows how to survive in  
181 times of crisis. Europe knows how to transform a crisis into its own asset and dialogue is its key  
182 vehicle.

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184 In this dialogue we defend Europe's solidarity and shared responsibility. Europe's asset will be the  
185 prosperity and security of its citizens and a new level of integration ready for the challenges of the 21th  
186 century!