

# THE MOBILITY OF NATIONALS FROM WESTERN BALKANS WITHIN THE EUROPEAN UNION: NEW CHALLENGES AND OPPORTUNITIES

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*Nous ne coalisons pas des États, nous unissons des hommes.*

**Jean Monnet, Discours, Washington, 30 avril 1952**

## ABSTRACT

Europe is part of a globalized and interconnected world where international mobility is expected to increase. The current European Union (EU) legislation, after entry into force of Lisbon Treaty, is facing new challenges in the field of the Area of Freedom, Security and Justice. There is a significant *Europeanization* of migration policy. The Western Balkan (WB) region is considered as one of the most interesting and challenging regions in Europe regarding the current migration flows. The last EU enlargement shifted the migration from classical working class immigration, to the so-called brain drain immigration, since now younger and highly educated people tend to migrate more in other countries to pursue their professional career. The EU Eastern enlargement and WB migration may go in the same direction. The present article aims to identify the EU legal migration policy for the WB nationals when they decide to enter and/or work in the EU territory legally, pointing out that decision as a challenge or as an opportunity for WB citizens.

**KEY WORDS:** entry and residence rights in EU, mobility, migration flows, Western Balkan citizens

## 1 INTRODUCTION

Migration and mobility are now firmly at the top of the EU's political agenda. Apart the higher EU issue on the agenda of migration priorities which is how to combat the irregular migration flows from and through WB region, we need to look into EU legal channels for legal migration for WB citizens. The WB migration flows into and within EU do not just mean the known "Western Balkan route"<sup>1</sup> migration. The large part of the current into EU migration is characterized by the search for economic survival, accompanied by substantial brain drain phenomena. The news we get from WB shows us that citizens of this region see the EU labor market as a solution of their economical problems<sup>2</sup>. Moreover, most of the EU countries are facing aging population, global competitiveness and growing labour market shortages, as well as vacancies in different fields, mainly in production, agriculture and medicine. The diverse post-enlargement migration flows of a predominantly young labour force constitute an important policy issue that interacts with these challenges in both receiving and sending countries. The data from last enlargement show that EU member states are increasingly attractive to two types of migrants: a larger, better-educated, better skilled group, and a smaller, but not insignificant, uneducated, unskilled group<sup>3</sup>.

1 Due to European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union (FRONTEX), the WB route describes two main migratory flows: from the WB countries themselves, and the secondary movements of mainly Asian migrants who originally entered the EU through the Bulgarian-Turkish or Greek-Turkish land or sea borders and then proceed, through the WB, into Hungary. This route shows the highest relative increase at the EU level in detections of Syrian and Somali nationals. After arriving in the former Yugoslav Republic of Macedonia, migrants typically make use of an *open taxi* system which profits significantly from smuggling people to the Serbian border. More information available at <http://frontex.europa.eu/trends-and-routes/western-balkan-route/>.

2 For more information, see, Murati, A. 2014. "Workers or "welfare tourists"? EU Eastern Enlargement and Western Balkans migration" *Journal of Western Balkans Politics*, 26 (November). Available at: <http://europeanwesternbalkans.com/2014/11/26/workers-or-welfare-tourists-eu-eastern-enlargement-and-western-balkans-migration/>

3 Basham, Patrick. 2013. "Home, sweet home? Balkan Migration, the EU & Liberal solutions" *A Democracy Institute Economic Risk Series Paper*, p. 16. Available at file:///C:/Users/793543/Downloads/DI+EU+migration+paper.pdf. The Commission presented a new Labour Mobility Package and a new Initiative on Skills in 2015, but even with a determined effort over the medium and long term we are unlikely to be able to fully match the needs. Both initiatives are already envisaged in Annex 1 to the Commission's work programme for 2015.

The EU enlargement is not only about the states but is mainly about citizens living in the candidate countries<sup>4</sup>. For the WB countries<sup>5</sup> the clear perspective of EU membership granted by the EU is a key stabilizing factor. For that reason, Turkey and WB countries are developing close partnerships and cooperation with the EU on migration and mobility<sup>6</sup>. These agreements aim at fostering good neighbourly relations by easing the tight visa regime with neighbouring countries in order to externalise a restrictive migration policy<sup>7</sup>. Moreover, the number of asylum applications submitted in the EU by nationals of the five visa-free WB countries has been rising since the visa liberalisation regime was established. But, which kind of migration policy does the EU offer, in order to attract the nationals from WB to choose the European market as their work destination? Do they offer WB citizens any special treatment, as they are citizens from “future EU countries”? The aim of the paper is to discuss the answers to these questions, including short overview of the current migration flows from WB region.

This article is based on the EU legal and policy documents relating to the entry and stay of WB citizens in the EU, without entering into further details of every member state's national regulation. The paper is structured as follows. It starts with the examination of the WB citizens' rights in accordance with EU law, to enter and/or stay in the EU legally. This first part discusses the current EU's WB visa liberalisation regime for short stays period in Schengen area, in comparison with the current policy on legal

4 On the road to EU membership, some of the candidate countries have started the membership talk. Candidate country – Albania, The former Yugoslav Republic of Macedonia, Montenegro (Negotiations status – November 2014), Serbia, Turkey, (Negotiations status June 2010), Iceland (Accession negotiations started in July 2010 but were put on hold by Iceland in May 2013), and as potential countries – Bosnia and Herzegovina, Kosovo (\*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence), see [http://ec.europa.eu/enlargement/countries/check-current-status/index\\_en.htm](http://ec.europa.eu/enlargement/countries/check-current-status/index_en.htm).

5 Under the term ‘Western Balkans’, the EU subsumes, Albania, Macedonia, Serbia, Montenegro and Bosnia and Herzegovina, See, e.g., European Commission, *The Western Balkans and European Integration*, COM (2003) 285 final, Brussels, 21.5.2003, p. 2.

6 Dialogues on migration and mobility matters with these countries are already intense and will remain so up to the time of actual accession. See, European Commission, *The Global Approach to Migration and Mobility*, COM(2011) 743 final, Brussels, 18.11.2011, pp. 8–9.

7 Source retrieved from Directorate-General for Internal Policies Directorate C – Citizens' Rights and Constitutional Affairs Policy Department C.: Citizens' Rights and Constitutional Affairs Unit. *EU visa policy and the Western Balkans*. Brussels, 14.05.2008, available at: <http://www.europarl.europa.eu/webnp/webdav/users/jribo/public/JPMP%20Western%20Balkans/EU%20Visa%20policy%20for%20Western%20Balkans.pdf>).

stays for more than 3 months in the EU territory. Further, it provides a brief analysis of the (non)existent intra-EU mobility rights for non-EU citizens due to the lack of comprehensive intra-EU mobility policy. More generally, the article draws attention to current trends on migration flows from WB region into EU. In this part we try to highlight the current legal and irregular migration flow trends from WB into EU. Finally, the concluding chapter summarizes the key findings of previous chapters, identifies the most important challenges and opportunities and offers some policy recommendations.

## 2 THE RIGHTS OF THE WESTERN BALKAN CITIZENS TO ENTER AND RESIDE IN THE EU IN ACCORDANCE WITH THE EU LAW

The European Council at Thessaloniki in June 2003<sup>8</sup> reaffirmed that “(t)he future of Balkans is within the EU”<sup>9</sup>. Some of the current rights and obligations of third-country nationals under EU law represent the result of this affirmation. One example is the current visa policy related to the facilitation of movement of persons from WB into EU<sup>10</sup>. The EU recalled the importance of WB to the perspective of liberalisation of the visa regime, reinforcing the EU’s policy for the region, especially in the areas of mutual interest<sup>11</sup>. All of the WB states are currently on the way of becoming members of the EU family. Individual success stories of people often work as a catalyst. In case of WB nationals, the benefits in EU member states, even though considered low in member states themselves, may still be very appealing to WB nationals, when compared to national standards<sup>12</sup>.

8 The unification of Europe will not be complete until these countries join the EU. See, Thessaloniki European Council, 19 and 20 June 2003, Presidency Conclusions, p. 2.

9 *The hour of Europe has come*. Progress towards EU membership, on the other hand, requires most of all unity of purpose and consistency of efforts. These were the proud words of Jacques Poos, the Foreign Minister of Luxembourg who, as President of the Foreign Ministers’ Council, headed the European crisis management efforts at the beginning of the Yugoslav crisis in June 1991. Batt, J. 2004. “The Western Balkans: Moving On” *Chaillot Paper*, n° 70 (October): 7.

10 According to the article 77(2) of the Treaty on the Functioning of the European Union (TFEU), the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning: (c) the conditions under which nationals of third countries shall have the *freedom to travel within the Union for a short period*.

11 European Commission, *The Western Balkans on the road to the EU: consolidating stability and raising prosperity*, COM(2006) 27 final, Brussels, 27. 1. 2006, p. 2.

12 In the years before the recent economic crisis Albania, Bosnia and Herzegovina, Montenegro and Serbia were among the top twenty countries in the world in terms

Otherwise, the legal entry and stay of WB nationals in the EU depend on many factors besides the fact that the WB countries are “potential” candidates for EU membership.

#### THE LEGAL ENTRY OF WESTERN BALKAN CITIZENS INTO EU TERRITORY

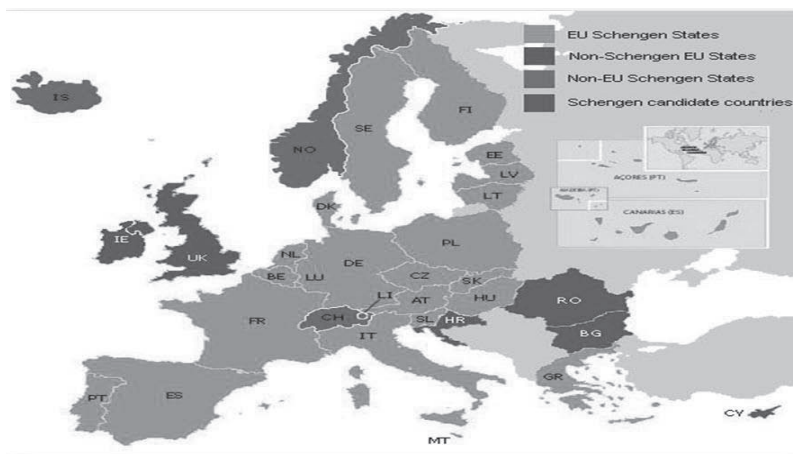
Apart of some benefits, the WB citizens remain as third-country nationals in the EU law regulation once they decide to enter and reside in the EU legally. For this reason, the citizens from WB must comply with the general EU regulation to entry and stay in EU as it is established by the EU law for third-country nationals. Therefore, the EU law provides a very clear and important difference between the entry and residence in EU, for EU citizens<sup>13</sup> and for the third-country nationals<sup>14</sup>. This “third-country nationals” treatment for legal entry and residence of WB citizens sometimes means the obstacle for member states to join EU funding programmes together with WB countries. Then, we must point out differences for WB citizens if they decide to enter the Schengen area<sup>15</sup> or not.

of remittance inflows as a percentage of GDP. In 2010 Albania's stock of emigrants numbered 1.4 million (45.4% of the population), whose countries of destination have been Greece, Italy, FYROM, Germany, UK, France and the US. Bosnia and Herzegovina's stock of emigrants was 1.4 million (38.9% of the population) heading mostly to Croatia, Germany, Austria, Slovenia, Sweden, Italy and Switzerland. See, *Asylum applicants from the Western Balkans comparative analysis of trends, push-pull factors and responses*, European Asylum Support Office, p. 9, available at: <http://www.refworld.org/pdfid/53218ead4.pdf>). For more information, see, e.g., The Impact of the Economic Crisis on the Western Balkans and their EU Accession Prospects. *EUI Working Papers*. RSCAS 2012/64. Robert Schuman Centre for Advanced Studies, p.4.

13 According to article 20 of the TFEU, every person holding the nationality of a member state shall be a citizen of the Union.

14 Third-country national means any person who is not a Union citizen within the meaning of the article 20 (1) of the TFEU.

15 See more about Schengen Area at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm). Due to Croatia's “membership status”, we would like to point out the following: in March 2015, Croatia has officially declared its readiness for Schengen evaluation (as of 1 July 2015), with a view to lifting the control at the internal borders.



Map 1. List of current Schengen countries (as of April 2016) *Source:* [http://ec.europa.eu/dgs/home-affairs/what-wedo/policies/borders-and-visas/schengen/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-wedo/policies/borders-and-visas/schengen/index_en.htm)

Related to this, the legal entry of the citizens from WB to the EU territory depends on many border regulations<sup>16</sup>. Under Schengen Borders Code<sup>17</sup>, for stays not exceeding 3 months per a 6 month period, the entry conditions for third-country nationals shall be as follows: possession of a valid travel document or documents authorising them to cross the border, justification of the purpose and conditions of the intended stay, and sufficient means of subsistence, among others<sup>18</sup>. Under the Council Regulation 539/2001<sup>19</sup> there is a clearer definition of short stay of non-EU citizens in the Schengen area. These stays are sometimes called “*travel stays*”.

16 E.g., Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, Regulation 1052/2013 of 22 October 2013 establishing the European Border Surveillance System (Eurosur), etc.

17 The Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Regulation (EC) No 610/2013 of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

18 Article 5 (1) of the Regulation 562/2006.

19 The Council Regulation (EC) 539/2001, of 15 March 2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. This regulation must be completed with the Regulation establishing a Community Code on Visas (Visa Code),

Secondly, since December 2009, citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia have been able, if holding biometric passports, to travel visa-free to EU member states (with the exception of Ireland and the United Kingdom) in accordance with Regulation 539/2001 mentioned above. Citizens of Albania and Bosnia and Herzegovina have enjoyed the same visa-free travel status since December 2010<sup>20</sup>. So, the citizens from WB, after long negotiations, enjoy visa-free entry into the Schengen area. As we read in many reports, the visa-free travel scheme has fulfilled its purpose: it has strengthened people-to-people contact between the WB and the EU, enhanced business opportunities and cultural exchanges, and enabled the visa-free countries' citizens to get to know the EU better<sup>21</sup>. By granting the WB visa-free travel, the EU decided that that region is no longer producing refugees<sup>22</sup>. But, the current visa-free measures in this region are not enough. The visa-free agreements pursue the aim of making travel easier for certain categories of citizens from this region. But one needs to have in mind that only short-term visas have been integrated at the EU level, and only to the member states that have joined the Schengen area. So, guaranteed the legal entry into the territory of the Schengen area is only guaranteed for the "traveler" and not for workers, or students. Turning back to the main purpose of this paper, we will show that most of the WB citizens do not associate the EU with short holidays, but mainly as a work destination.

with regulation concerning the Visa Information System (VIS) and the exchange of data between member states on short-stay visas.

20 The Commission emphasised that each WB country had to continue implementing measures set out in its visa roadmap to maintain the integrity of the visa-free travel scheme. It established a post-visa liberalisation monitoring mechanism to evaluate the sustainability of reforms aiming to uphold the scheme's integrity. In November 2014, the visa-free countries submitted a set of narrative reports on the steps taken to reduce irregular migration to the EU. See, European Commission, *Fifth Report on the Post-Visa Liberalisation Monitoring for the Western Balkan Countries in accordance with the Commission Statement of 8 November 2010*, COM (2015) 58 final, Brussels, 25.2.2015, pp. 2–3.

21 Supra note 22, at 8.

22 Petrovic, M. 2010. "Freedom of movement in the European Union: Visa liberalisation in the Western Balkan countries" *Migration Studies Unit Working Papers*, (April): 37, available at: [http://www.lse.ac.uk/government/research/resgroups/MSU/documents/workingPapers/WP\\_2010\\_04.pdf](http://www.lse.ac.uk/government/research/resgroups/MSU/documents/workingPapers/WP_2010_04.pdf).

## THE LEGAL STAY FOR MORE THAN THREE MONTHS

According to the provisions in the Lisbon Treaty<sup>23</sup>, and the priorities set out in the Stockholm Programme<sup>24</sup>, the third-country nationals, including the WB citizens, they have the right to reside legally in the EU for more than 3 months. Nowadays, the hot button issue of East-West legal migration is not dealing only with the entry to the EU territory but is dealing mainly with the legal stay of WB citizens in the EU<sup>25</sup>. While there are, clearly, complex factors at play in any decision to migrate, the primary reason given by most people is work. The family reunification is the second most important cause of EU movements<sup>26</sup>. What we have learnt from the EU experience in the past is, that if labour has the legal right to move freely, this makes people (especially in border areas) more mobile internationally, but it does not in itself induce mass migration from one country to another<sup>27</sup>. Besides, this legal stays depend on plenty of conditions and limitations. There are only some of the “*privileged categories of persons*” invited to stay legally for more than 3 months in EU territory. This stay is not the EU policy competence, but it depends on legal provisions of member states. As we will see below, the EU has many Directives which regulate the legal stay in EU, but every member state establishes its own particular conditions and limitation for persons who can reside in its territory for more than 3 months. It is very challenging for every third-country national to fulfill all the requirements for legal stay in every EU member state. Hence, the EU only establishes “limited” framework to deal with the legal stay in

23 The preamble of the Treaty on European Union (TEU) resolved to facilitate the free movement of *persons*, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of TEU and of TFEU. The Union shall offer its *citizens* an area of freedom, security and justice without internal frontiers, in which the *free movement of persons* is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime. (Article 3 (2) of the TEU)

24 See provisions of Stockholm Programme in: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:jloo34&from=EN>.

25 According to the article 79(2) (b) of the TFEU the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the definition of *the rights of third-country nationals* residing legally in a member state, including the conditions governing *freedom of movement and of residence* in other member states.

26 Benton, M., and Petrovic, M. 2013. “How free is free movement? Dynamics and drivers of mobility within the European Union” *Migration Policy Institute Europe*, (March): 18.

27 Straubhaar, T. 2001. “Migration Policies and EU Enlargement, East-West Migration: Will It Be a Problem?” *Intereconomics*, (July/August): 169.

EU. For this purpose, every WB citizen has to respond the following question: *Who you are?*, *What is your legal status?* If you are worker, then due to certain Directives, we have to ask you the following question: *Which type of worker are you?*, as the categories for the third-country nationals' workers to entry and reside legally in the EU are the following:

a) *highly qualified worker*, "EU Blue Card" holder<sup>28</sup>. The Blue Card Directive provides a scheme for attracting highly qualified third-country nationals (brains), although underused, in order to improve the EU's skilled labour migration policies<sup>29</sup>.

b) *seasonal workers*<sup>30</sup>. The 'seasonal worker' means a third-country national who retains his or her principal place of residence in a third-country and stays legally and temporarily in the territory of a member state to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that member state<sup>31</sup>.

c) *intra-corporate transferees (ICTs) as managers, specialists or trainee employees*<sup>32</sup>. Single permit for *non-EU workers* legally residing in an EU

28 Council Directive No 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. Regarding the article 2(b) of the Directive, *highly qualified employment* means the employment of a person who in the member state concerned, is protected as an employee for the purpose of exercising genuine and effective work for, or under the direction of, someone else, is paid, and, has the required adequate and specific competence, as proven by higher professional qualifications. Not entering into more details, just to highlight that nowadays this Directive is under changes, as a point of new migration policy in the EU, because of it had transposition in member states.

29 The Blue Card Directive already provides such a scheme, but in its first two years, only 16,000 Blue Cards were issued and 13,000 were issued by a single member state. In May, the Commission launched a public consultation on future of the Blue Card Directive. A review of the Directive will look at how to make it more effective in attracting talent to Europe. The review will include looking at issues of scope such as covering entrepreneurs who are willing to invest in Europe, or improving the possibilities for intra EU mobility for Blue Card holders. See, European Commission, *A European Agenda on Migration*, COM(2015) 240 final, Brussels, 13.5.2015, p. 15.

30 Directive 2014/36/EU of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

31 Article 3(b) of the Directive 2014/36/EU.

32 Directive 2014/66/EU, of 15 May 2014, on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. Regarding article 3(c) of the Directive, *intra-corporate transferee* means any third-country national who resides outside the territory of the member states at the time of application for an intra-corporate transferee permit and who is subject to an intra-corporate transfer.

state<sup>33</sup>. The main aim of this Directive resides in the possibility of third-country national to apply to reside in a member state for the purpose of work<sup>34</sup>.

The second category of the privileged third-country nationals represents the *students, pupil exchange, unremunerated training or voluntary service*<sup>35</sup>, as well as *researchers*<sup>36</sup>. The European Commission launched new proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing<sup>37</sup>. The objective of the proposal is to entrust the Union with the task of developing a common immigration policy aimed at ensuring efficient management of migration flows and fair treatment of third-country nationals residing legally in member states<sup>38</sup>. Turning back to categories of third-country nationals allowed to reside in the EU territory for more than 3 months, we must mention the *long-term residents*<sup>39</sup>. The long-term residents obtain the residence permit issued by the member state upon the acquisition of long-term resident status<sup>40</sup>. The last category of third-country nationals who can reside in the EU legally are the family members with right to family reunification. For this purpose, we must distinguish

33 Directive 2011/98/EU, of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a member state and on a common set of rights for third-country workers legally residing in a member state. Regarding article 2(b) of the Directive, *third-country worker* means a third-country national who has been admitted to the territory of a member state and who is legally residing and is allowed to work in the context of a paid relationship in that member state in accordance with national law or practice.

34 Article 1 (1)(a) of Directive 2011/98/EU.

35 Council Directive 2004/114/EC, of 13 December 2004, on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

36 Council Directive 2005/71/EC, of 12 October 2005, on a specific procedure for admitting third-country nationals for the purposes of scientific research.

37 European Commission, *Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing*, COM(2013) 151 final, Brussels, 25.3.2013. The European Parliament, in the first reading, introduced some modifications and new concepts to be regulated under the future Directive. On the other hand, the Council presented the comments as well.

38 The present proposal responds to this mandate and aims to contribute to the implementation of the Europe 2020 Strategy. Supra note 39, at 2.

39 Council Directive 2003/109/EC, of 25 November 2003, concerning the status of third-country nationals who are long-term residents.

40 Article 2 (g) of the Directive 2003/109/EC.

between rights to family reunification members of non-EU nationals who reunite with non-EU national family members<sup>41</sup>, on one hand, and, on the other hand, the right to family reunification of EU citizens with non-EU family members<sup>42</sup>.

Besides the personal scope and regulation provided in the Directives mentioned, we must take into account that member states are responsible to establish concrete rules for the legal status of the third-country nationals residing legally in the EU, due to the lack of common EU legislation. We can affirm that this EU policy represents very *“selective group of interest”* policy which invites member states to clarify and make final decision on this *“selection of persons”*. In practice, the third-country nationals, therefore the WB citizens too, must tackle different conditions and limitations in every member state they wish to live and/or work.

### 3 (NON)EXISTENT INTRA-EU MOBILITY RIGHTS OF THIRD-COUNTRY NATIONALS WITHIN EU

The free movement of people within the EU area has been one of the biggest achievements of European integration. The EU establishes the freedom of movement and residence for non-EU nationals legally resident in EU<sup>43</sup>. So, the Europeans citizens are not the only population that utilizes the right to free movement and residence within EU. Mobility of third-country nationals across EU borders is of strategic importance, once they enter legally. It applies to a wide range of people, to short-term visitors, tourists, students, researchers, business people or visiting family members<sup>44</sup>. Highly mobile economic migrants typically improve the allo-

41 Council Directive 2003/109/EC, of 25 November 2003, concerning the status of third-country nationals who are long-term residents. However, as made clear by the European Court of Justice (Case C-540/03), EU States must apply the Directive's rules in a manner consistent with the protection of fundamental rights, notably regarding family life and the principle of the best interests of the child.

42 Directive 2004/38/EC, of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of member states.

43 According to the Article 45 of the Charter of Fundamental rights of the EU, 1. Every citizen of the Union has the right to move and reside freely within the territory of the member states. 2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a member state.

44 Regarding to the Global Approach to Migration and Mobility (2011), the mobility means a much broader concept than migration. Mobility and visa policy are interlinked and around 11 million visas were granted by the member states issuing Schengen visas in 2009. Visa policy is an influential instrument for a forward-looking policy on mobility. See more, *supra* note 6, at 3.

cation of production factors, most notably human capital. The migrants often act as agents of knowledge transfer and international trade, and pools of skilled immigrants may attract high-tech investments<sup>45</sup>. The current EU market is a market without internal frontiers when the companies demand the mobility between their employees. After the analysis of the necessity to extend the employment opportunities to third-country nationals, the EU law needs to provide legal instruments to grant to all non-EU nationals' mobility rights within EU. However, given the reality of increased human mobility, further efforts need to be ensured<sup>46</sup>. The third-country nationals benefit from free mobility only in "theory". The implications of this reality, together with the contemporary challenges facing Europe's external borders, have placed significant stress on the free movement within EU territory. Only few EU law provisions regulate the intra-EU mobility of third-country nationals. The EU Blue card holders enjoy the possibility to move to a member state other than the first member state for the purpose of highly qualified employment after legal residence in a first member state for a minimum period of 18 months before moving to a second member state, and in order to do so, they must apply for another EU Blue card. That means that some cross-border companies find very difficult to hire EU Blue card holders in these conditions. For the seasonal workers there are no provisions on movement within EU. The first Directive which clearly establishes the Chapter called Intra-EU mobility is the Intra-corporate transferees (ICTs) Directive<sup>47</sup>. The long-term residents may reside in a second member state (exceeding more than three months) only if they comply with requirements established in the Directive and in every member state<sup>48</sup>. The third-country national researchers benefit from facilitated entry and stay in a second member state if the period of mobility does not exceed three months. If it does, they must comply with a lot of

45 Kahanec, M., Zaiceva, A. and Zimmermann, K. 2009. "Lessons from Migration after EU Enlargement Free University of Berlin" *Discussion Paper No. 4230*, (June): 5.

46 Supra note 31.

47 Third-country nationals who hold a valid intra-corporate transferee permit issued by the first member state may, on the basis of that permit, and a valid travel document, and under the conditions laid down in Directive, enter, stay and work in one or several second member states. Article 20 and following of the Directive 2014/66/EU, of 15 May 2014.

48 Article 14 of the Directive 2003/109/EC, of 25 November 2003. Mobile third-country national long-term residents must apply for a residence permit to reside in a second member state, whereas EU citizens need only to register their right to stay for more than three months.

specific conditions limited to a specific research post<sup>49</sup>. The conditions for student mobility are subject to strict limitations<sup>50</sup>.

As the procedures for access to the limited number of opportunities for legal migration are often non-transparent and over-bureaucratic, the EU must work on new legal improvements. Because, as a consequence, many migrants turn to informal intermediaries, often with links to organised crime. The EU must count with wider concept of mobility. Without question, a single economic market works best when its workers and citizens are mobile<sup>51</sup>. The free mobility can be expected to raise potential growth in the EU as a whole<sup>52</sup>. However, the EU needs to look at how to marry many limitations with the collective needs of the EU economy and with member states' interests.

#### 4 THE CURRENT TRENDS IN MIGRATION FLOWS FROM THE WESTERN BALKANS COUNTRIES

The most common 'push factors' driving migration flows from the WB remained the following: deprivation, unemployment, discrimination, poor access to health care, social benefits, education, etc. We find that last EU enlargement had a significant impact on migration flows from new to old member states<sup>53</sup>. With regard to movement from the WB to the EU, the current trends in migration flows from this region should be divided into two categories. The irregular migration on the one hand, and the legal migration trends on the other. Despite relatively big number of asylum seekers from the Balkans, most of them actually aim at the labor market, not the social benefits from EU countries<sup>54</sup>. Related to the irregular migra-

49 Article 13 of the Directive 2005/71/EC, of 12 October 2005. There are no mobility provisions for the family members of researchers.

50 Article 8 of the Directive 2004/114/EC, of 13 December 2004. The new proposal for Directive on Students and Researchers, aims to give these groups new mobility and job-seeking opportunities.

51 Supra note 5.

52 See, among others, Koikkalainen, S. 2011. "Free Movement in Europe: Past and Present", (April): 21, available at: <http://www.migrationpolicy.org/article/free-movement-europe-past-and-present>. The enlargement was the target of much controversy, as media estimates of the potential wave of economically motivated migration from the Central and Eastern European countries varied from 5 million to 40 million people. The rate of migration was estimated to be high because of the differences in income and the standard of living between the new member states and the EU-15.

53 Kahanec, M., and Zimmermann, K. 2009. "Migration in an enlarged EU: A challenging solution?" *Economic Papers* 363 (March): 2, available at: [http://ec.europa.eu/economy\\_finance/publications](http://ec.europa.eu/economy_finance/publications).

54 Supra note 4.

tion trends, the WB region underwent rapid changes following the introduction of visa-free travel with the EU. Asylum applications from the five WB countries continued to represent a staggering 97% of the total asylum intake for all visa-free countries. The nationals of the five visa-exempt WB countries submitted almost 48 300 asylum applications in EU member states and Schengen associated countries during 2014. This represented 47% increase compared to 2013 and amounted to almost 10% of the total EU asylum intake. Serbians had by far the largest share of the total number<sup>55</sup>. With regard to the legal migration, the main mode for WB citizens to enjoy the rights to enter and stay legally in EU is through travelling. Abuses of legal travel channels and of the EU visa-free scheme are linked to overstay in the EU by WB nationals<sup>56</sup>. But, the EU intends to attract the citizens from WB to reside legally in EU, as the WB countries are considered attractive for EU for a number of reasons: their common EU perspective (the expectation that they will eventually become candidates for EU accession), their geographical proximity to the EU, the fact that applications from most of these countries are processed under an accelerated or prioritised procedure, their common past and similar current economic and social conditions<sup>57</sup>. If people migrate in response to employment and wealth differences then large disparities between countries will induce substantial migration flows unless constrained by legal access restrictions<sup>58</sup>. Nowadays, for example in the field of education, the students and staff from the WB can participate in programmes such Erasmus<sup>59</sup>. This includes the possibility

55 Western Balkans Annual Risk Analysis 2015, p. 23, (FRONTEX), available at: [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/WB\\_ARA\\_2015.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2015.pdf).

56 For example, the use of fraud documents is considered as one way to enter and/or stay illegally in the EU. More precisely, there were detections of WB nationals illegally staying in member states (mainly Kosovars, Serbs and Albanians). The latter group was also the most commonly detected nationality using fraud documents in order to illegally enter the EU/Schengen area from a third-country in 2012. Data retrieved from European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union (FRONTEX).

57 *Asylum applicants from the Western Balkans comparative analysis of trends, push-pull factors and responses*, European Asylum Support Office, p. 14, available at: <https://easo.europa.eu/wp-content/uploads/WB-report-final-version.pdf>.

58 Delbecq, B. A., and Waldorf, B. S. 2010. "Going west in the European Union: Migration and EU Enlargement" *Working Paper 10-4*, (March): 3.

59 Cooperation with WB countries in the areas of *education and research* has been significant in recent years, with a substantial Commission contribution under several programmes: Tempus (higher education), Erasmus Mundus (scholarships for students), Youth, 6th Research Framework programme (FP6) and Joint Research Centre (JRC) activities, as well as through the work of the European Training Foundation (ETF). In 2003-2004, around 2200 young people from the region participated in the Youth

of providing mobility opportunities to third-country nationals working in public administration, public and private enterprises and non-profit organizations. On the other hand, the Commission will further increase the number of scholarships granted to students from the WB to study in the EU<sup>60</sup>. Greater mobility for students and researchers from third countries could also be a promising path towards catering to labour market needs in Europe if some students are to be able to work after completing their studies<sup>61</sup>. But, due to the lack of common, comprehensive mobility policy in EU, the WB citizens must fight with many challenges to comply with all conditions.

## CONCLUSIONS

Globalization, demographic change and societal transformation are affecting the EU, its member states and countries around the world. The WB countries and their citizens, the main focus of this article, have been subsumed under a pre-accession framework that is comparable to previous enlargement rounds. For that, the EU legislation supports flexible forms of integration in different policy fields in WB region. Without any doubt, the migration from WB into EU represents one of the main policies which must be taken into account. Bearing in mind that the persons and not numbers represent the main scope of many agreements in the field of external cooperation between the EU and WB region. *In the flat world of maps, sharp lines show where one country ends and another begins. The real world is more fluid. Peoples do not have borders the way that parcels of land do. They seep from place to place, they wander, they migrate*<sup>62</sup>. The WB citizens do not constitute any exception.

This article presented an overview of current EU legislation dealing with the entry, legal stay and mobility rights of the WB citizens

programme, more than twice as many as during the preceding three years. On its side, the Joint Research Centre has trained in the past years some hundreds experts from the Western Balkans in workshops and courses and has started including Western Balkan organisations within its European research networks and projects. The Erasmus+ Programme is open to the following countries: Programme Countries (former Yugoslav Republic of Macedonia), Partner Countries (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia) The Erasmus+ Programme is open to following countries: Programme Countries (former Yugoslav Republic of Macedonia), Partner Countries (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia). See, The Western Balkans on ..., supra note 14, at 10.

60 Supra note 13, at 22.

61 Supra note 8.

62 The Economist, "Migration and business: Weaving the world together," 19 November 2011.

in the EU territory. As answers to the main questions of this paper we can conclude the following. There is no special treatment for the WB citizens because they are nationals from the “potential EU member states”, apart from the visa free liberalisation. Still, the overwhelming majority of citizens from the visa-free WB countries are *bona fide* travelers with legitimate grounds to travel to the EU; they are not workers, nor are they student. The WB citizens remain as third-country nationals in the EU law regulation when they decide to enter and reside in the EU territory legally.

The most important finding in regard to migration flows is that the immigrants moving from new to old member states are strongly linked to the labour market. But, the EU legislator establishes the ground of labour migration offer in EU by many different and fragmented legal instruments. We conclude that WB citizens who wish to live and/or work in EU must deal with complex set of challenges. Due to the lack of common EU regulation in this field, everyone must know, understand and comply with conditions, requirements and limitations of particular member state.

Migration and mobility is about freedom. It is about giving each and every individual the opportunity and the ability to influence his or her life, economically and socially. As we observed in the article, only a few selective groups of WB nationals, mainly those “attractive and interesting for EU interests” may count with the opportunity to try making their life better, by finding some solutions to their economical problems in EU legally. The current opportunities brought by migration and by mobility leave significant areas of discretions to regional, national and local levels of member states. On legal migration, the added value of EU intervention is questionable, as no instrument of EU cooperation currently includes significant facilitations on the admission of migrants at EU level, while association and cooperation agreements are only being used to strengthen the integration of legal migrants originating from partner countries. Currently, nobody knows if the WB countries will join the EU club one day, when their citizens will be able to enjoy complete citizenship rights. For now, the differences between legal residents from third countries and legal residents from members states differ from the current aims of EU integration process. If we really want to integrate all the countries of the WB in the EU, the younger generation, in particular, has to have a chance to travel, to learn about, and to live the European integration. Finally, we suggest the following policy recommendations. It is well known that mobility rights have economic and social benefits for individuals and for member states, alleviating unemployment and supporting growth at the EU level. The EU must count with more competences to establish a harmonized legal body to solve the dilemma which was neatly summarized by Swiss author Max Frisch: “We asked for workers, but human beings came”. To manage

mobility in a secure environment, the EU needs to continue its prioritised dialogue and cooperation with WB region through (non)existent, unique, comprehensive and common EU migration policy. There is a need for a strengthened EU external action on legal migration, that includes facilitations of legal admission of migrants who want to live and/or work in the territory of the EU legally. The future framework should be simplified, clearly distinguishing EU and WB region objectives.

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## SAŽETAK

### MOBILNOST DRŽAVLJANA ZAPADNOG BALKANA UNUTAR EU: NOVI IZAZOVI I MOGUĆNOSTI

Europa je dio globaliziranog i povezanog svijeta gdje se očekuje povećanje međunarodne mobilnosti. Sadašnje zakonodavstvo EU, nakon stupanja na snagu Lisabonskog ugovora, suočava se s novim izazovima na području slobode, sigurnosti i pravde. Postoji značajna europeizacija migracijske politike. Regija Zapadnog Balkana (ZB) smatra se jednim od najzanimljivijih i izazovnijih područja u Europi po sadašnjim migracijskim tokovima. Posljednje proširenje EU pomaknulo je migraciju iz klasične radničke imigracije, do tzv. odljeva mozgova, jer sada mlađi i visokoobrazovani ljudi imaju tendenciju migrirati u druge zemlje da bi nastavili svoju profesionalnu karijeru. Istočno proširenje i migracija na Zapadnom Balkanu mogu ići u istom smjeru. Ovaj članak ima za cilj identificirati politiku legalne migracije u EU za državljane zemalja Zapadnog Balkana kada se odluče za ulazak i / ili rade na području EU, ističući tu odluku kao izazov ili kao priliku za građane ZB-a.

KLJUČNE RIJEČI: ulazak i pravo boravka u EU, mobilnost, migracijski tokovi, građani Zapadnog Balkana.