

**SOUTH EAST  
EUROPE  
2020**

 **JOBS AND PROSPERITY IN  
A EUROPEAN PERSPECTIVE**

# Labour Mobility as a Factor of Development in South-East Europe



## Regional Overview



This project is funded  
by the European Union



**IOM Development Fund**  
DEVELOPING CAPACITIES IN MIGRATION MANAGEMENT



Regional **Cooperation** Council

IN PARTNERSHIP  
WITH



International Organization for Migration (IOM)





Group of authors

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Sarajevo, 2015



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This document is prepared and developed in cooperation between  
Regional Cooperation Council and International Organization for  
Migration (IOM) for the Southeast Europe 2020 Strategy

The report with the Regional Overview of the study is a result of a joint cooperation effort between the International Organization for Migration and the Regional Cooperation Council, prepared in support of the implementation of the South East Europe 2020 Strategy, whereby the RCC was leading on the preparation of the socioeconomic part of the study while the IOM focused on depicting the legal aspects of labour mobility in South East Europe. The governments in the region were closely involved in the preparation of the study by participating in expert interviews and discussions, providing comments and guiding the efforts of the RCC and IOM research teams for which the both organizations express their sincere gratitude.

**The socioeconomic analysis**, Part One of the Regional Overview, was prepared by the Vienna Institute for International Economic Studies on the basis of information provided by local experts in seven separate reports on South East Europe (SEE). For the purpose of this study, South East Europe includes Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Kosovo\* and Serbia.

**The Legal analysis of the study**, making up Part Two of the Regional Overview, was prepared within a project funded by the IOM Development Fund and implemented by IOM in partnership with the governments in the region in 2014. IOM's consultant Peter J van Krieken prepared Part Two on the basis of seven separate legal studies carried out by Emirjon Kacaj (Albania), Mirnesa Bajramović (Bosnia and Herzegovina and Montenegro), Helga Spadina (Croatia), Margarita Kola (Kosovo\*), Biljana Nastovska (the former Yugoslav Republic of Macedonia) and Dragana Marjanović (Serbia). The seven reports are available electronically on the websites of the RCC and the IOM.

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\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

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The study Labour Mobility as a Factor of Development in South-East Europe was carried out based on the legislation in action and information available as of June 2014, unless stated otherwise.

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# FOREWORD

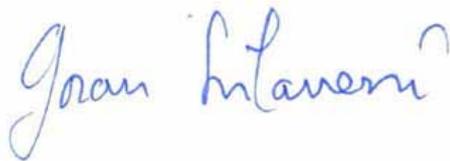
Cross-border labour mobility is an important instrument that can contribute to the improved matching of skills and jobs, transfer of knowledge and technology, increased economic productivity and employment creation. While the current economic situation and limited employment opportunities in South East Europe pose considerable challenges for the creation of a common labour market, putting in place some of the preconditions for enabling mobility will make these small economies more attractive to larger domestic and foreign investors, while at the same time preparing them for future EU membership. At the micro-level, labour mobility will expand the range of individual opportunities for finding a job that matches one's skills and aspirations, contributing to the improvement of population's well-being and, hence, acting as a deterrent to often irregular migration outflows towards more developed neighbours.

Labour mobility in South East Europe has not yet been a topic of regular debate, either in political fora or among academia and experts. A by far larger focus has so far been put on analysing irregularity of migratory processes, as well as identifying ways of how such irregularity could be counteracted through better regulative mechanisms. This regional study is therefore innovative in the way it brings the attention of the stakeholders to the issue not yet high up on the agenda but which will be growing in importance exponentially as the SEE is becoming more integrated with the European Union, including in terms of its labour market.

This study is a result of a strategic partnership between the Regional Cooperation Council (RCC) and the International Organization for Migration (IOM). It aims to inform the regional consultative process on enhancing labour mobility in the region. The process is taking place in the context of implementation of the SEE 2020 Strategy – Jobs and Prosperity in a European Perspective, adopted in November 2013, and has so far included regional working level meetings and consultations in each of the capitals. Ensuring common understanding, building strong political consensus and working with all stakeholders to maximize the development impact and the distribution of benefits from labour mobility are key ingredients for its successful implementation.

The study feeds into the strategic priorities of the International Organization for Migration's Regional Office for South Eastern Europe, Eastern Europe and Central Asia, which in its Regional Strategy for 2014-2020 highlights the importance of working towards facilitation of human mobility and exerting maximum development benefits from it, on the basis of good governance and protection of rights. The importance of regional cooperation on fundamental issues such as competitiveness and growth, including through migration, is stressed as a priority of the SEE's main development partner, the EU, in its Multi-country Indicative Strategy Paper 2014-2020 adopted in June 2014.

The RCC, IOM and other international partners are ready to assist the governments in the region to jointly develop good practices on the topic of labour migration as a pathway towards economic growth, prosperity and sustainable development. Our hope and expectations are that this study will bring its contribution to better understanding of the current features and systems of labour mobility in the region and promote policy actions that can lead to increased workers' mobility with the ultimate goal of enhancing well-being and prosperity for all.



**Goran Svilanović,**  
*Secretary General,*  
Regional Cooperation Council



**Renate Held,**  
*Regional Director,*  
IOM Regional Office for  
South Eastern Europe,  
Eastern Europe and Central Asia

# ACKNOWLEDGEMENTS

The preparation and production of this regional overview has been a challenging exercise, conducted within a relatively short period of time and involving many institutions and individuals.

The report has benefited from comments and view of ministries in charge of labour and employment, members of the RCC Working Group on Social Agenda 2020, ministries of interior and various stakeholders in national consultations.

The report was prepared with the support of the RCC Secretariat, with special thanks to Nadja Greku and Dijana Kešelj-Novaković for editing, and the IOM Regional Office in Vienna under the general guidance of Nand Shani (Senior Expert on Inclusive Growth of RCC), Tanja Dedovic (Labour Migration and Human Development Coordinator of IOM RO Vienna) and Marina Manke, Ph.D., (Labour Migration and Human Development Regional Specialist of IOM RO Vienna).

The Part I: Socioeconomic analysis of labour mobility in SEE was prepared by Hermine Vidovic from the Vienna Institute for International Economic Studies (wiiw). The author would like to thank the local experts Valerija Botrić, Edlira Narazani, Ardiana Gashi, Vojin Golubović, Silvana Mojsovska, Nermin Oruč, Dušan Pavlović and Artane Rizvanolli for their national reports, which were the basis for the synthesis report.

The author of Part II: Legal analysis of labour mobility in SEE, Peter J van Krieken, would like to give sincere thanks to the rapporteurs from the region - Mirnesa Bajramović, Emirjon Kacaj, Margarita Kola, Dragana Marjanović, Biljana Nastovska and Helga Spadina - who did the main job, as well as the respective governmental authorities which cooperated towards analysing the national legislations and practice.

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And last but not least, appreciation should be given to the IOM Development Fund and EU whose financial resources made it possible to conduct this labour mobility study.

# TABLE OF CONTENTS

<b>Executive summary</b>	<b>II</b>
<b>Socioeconomic analysis of labour mobility in South-East Europe</b>	<b>14</b>
<b>Legal analysis of labour mobility in South-East Europe</b>	<b>54</b>

# LABOUR MOBILITY AS A FACTOR OF DEVELOPMENT IN SOUTH-EAST EUROPE: Regional Overview

## Executive summary

This joint report commissioned by the Regional Cooperation Council (RCC) and the International Organization for Migration (IOM) was produced by two research teams assessing (1) socioeconomic and (2) legal aspects of labour mobility in South East Europe (SEE). The reports of the two research teams offer an updated knowledge base on actual labour mobility flows within the region and the legal framework regulating labour mobility. With the help of a gravity model an attempt was made to make a projection of intra- and interregional mobility in SEE for the period 2013–2016.

This regional overview is to be seen in the context of the SEE 2020 Strategy which considers intraregional labour mobility as one of the main drivers of growth. Yet, the report points out important obstacles to labour mobility which still exist both in the legislation regulating access to labour market for workers from within the region, where further alignment with the EU acquis is necessary, as well as in the area of legislation implementation.

Each research team produced seven individual reports and one regional report. This joint regional overview presents the two regional reports in Part I and Part II respectively, while the individual reports are available in electronic version on the websites of the RCC and the IOM.

## Part I

The research report commissioned by the RCC and implemented by the Vienna Institute for International Economic Studies (WiiW) found in general that the share of foreign workers in the individual SEE countries is very low. For instance, it accounts for only 0.4 per cent of total employment in Bosnia and Herzegovina and in the former Yugoslav Republic of Macedonia, and for 0.1 per cent in Serbia. Montenegro is however an exception, with the share for foreign workers accounting for almost 8 per cent in 2013.

The dominance of Montenegro as the main employer of migrant labour becomes even more evident when looking at work permits issued for SEE citizens. Accordingly, Montenegro employs almost three quarters of all migrant workers from the region. Croatia comes next with about 11 per cent, and Albania, by contrast, absorbs only 1 per cent.

Regional migrant workers tend to be young, the majority below 40 years of age.

The qualification structure of regional migrants differs by country. In Montenegro and Croatia migrants from the region have relatively low qualifications, whereas the skill composition of SEE migrant workers in Serbia has changed significantly in recent years.

Mobility hubs defined as geographic areas and economic sectors that attract migrant workers can be found in almost all countries in agriculture, construction and trade. In Croatia and particularly in Montenegro tourism is an important employer for foreigners as well.

Information obtained from work permits leads to the conclusion that mobility in the region is mainly of seasonal character, e.g. for employment in tourism, agriculture and construction.

The results from the forecasting and simulation analysis suggest that lifting restrictions of labour market access strongly increases both migration flows to EU-14 and intraregional flows. If, however, macroeconomic indicators (employment rates and GDP per capita) improved further in the WB-6 region, this would cause a certain amount of redirection of mobility from extraregional mobility (i.e. less migration to EU-14) to more intraregional mobility.

## Part II

The regional report produced by the IOM commissioned expert team deals with various legal aspects of migratory movements within and to the Western Balkans.

The report presents the international legal context. Due attention has been paid to comments and recommendations submitted by relevant committees and gremia (such as the committees set up under human rights conventions, the European Social Charter, and the Universal Periodic Review (UPR)).

Seven separate studies for Albania, Bosnia and Herzegovina, Croatia, Kosovo\*, the former Yugoslav Republic of Macedonia, Montenegro and Serbia assessed the legislative frameworks for regulating the mobility of various categories of migrants, such as the highly skilled, researchers, students and seasonal workers. In these reports, due attention was paid to possible gaps, alignment and approximation to relevant EU regulations and directives, not as a goal per se but rather as a means to foremost attaining regional free movement.

The report submits that the many conventions and charters the governments in the SEE are a party to on their own represent a challenging framework for

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setting norms, rules and regulations for the treatment of migrants and members of their families. Due attention has been paid to the norms, judgments, recommendations and concluding observations in this context in general, as well as the transposition thereof into the national law and practice.

With the signing of the (EU) Association (and Stability) Agreements, alignment with and approximation (or even: accession) to the European Union became key for all governments in the SEE region, which by definition includes freedom of movement of persons, goods, capital and services. **Hence the main question to be answered is not whether regional free movement should be promoted but rather how this could be promoted and best implemented.**

# SOCIOECONOMIC ANALYSIS OF LABOUR MOBILITY IN SOUTH- EAST EUROPE

## Part One

# CONTENTS

<b>List of abbreviations</b>	<b>16</b>
<b>List of tables</b>	<b>17</b>
<b>List of Figures</b>	<b>17</b>
<b>1. Introduction and background</b>	<b>18</b>
<b>2. Institutional setting</b>	<b>21</b>
<b>3. Socio-economic and demographic characteristics of labour migrants</b>	<b>28</b>
<b>4. Intra- and inter-regional mobility of the Western Balkan countries: current trends and projections for 2014-2016</b>	<b>37</b>
<b>5. Conclusions and recommendations for policy action to facilitate regional mobility</b>	<b>46</b>
<b>References</b>	<b>48</b>
<b>Annex</b>	<b>49</b>

# LIST OF ABBREVIATIONS

<b>AMECO</b>	Annual macro-economic database of the European Commission's Directorate General for Economic and Financial Affairs (DG ECFIN).
<b>BiH</b>	Bosnia and Herzegovina
<b>DCM</b>	Diplomatic and Consular Missions
<b>EU</b>	European Union
<b>EU 2</b>	Bulgaria and Romania
<b>EU 8</b>	Czech Republic; Estonia; Latvia; Lithuania; Hungary; Poland; Slovakia and Slovenia
<b>EU-14</b>	Austria; Belgium; Denmark; Finland; France; Germany; Greece; Ireland; Italy; Portugal; Netherlands; Spain; Sweden and United Kingdom
<b>EU-28</b>	Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark; Estonia, Finland, France; Germany, Greece; Hungary; Ireland, Italy; Latvia, Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden; United Kingdom
<b>EUR</b>	Euro
<b>GDP</b>	Gross domestic product
<b>GLS</b>	Generalized Least Squares
<b>ICJ</b>	International Court of Justice
<b>IMF</b>	International Monetary Fund
<b>IOM</b>	International Organization for Migration
<b>LFS</b>	Labour Force Survey
<b>MIA</b>	Ministry of Internal Affairs
<b>MIPEX</b>	Migration Integration Policy Index
<b>NES</b>	National Employment Service
<b>NMS II</b>	New Member States
<b>NMS-10</b>	Bulgaria ; Czech Republic; Estonia; Latvia; Lithuania; Hungary; Poland; Romania; Slovakia and Slovenia.
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>OLS</b>	Ordinary Least Squares
<b>PES</b>	Public Employment Service
<b>PPP</b>	Purchasing Power Parity
<b>RCC</b>	Regional Cooperation Council
<b>RMSPE</b>	Root Mean Squared Percentage Error
<b>SEE</b>	South East Europe
<b>UN</b>	United Nations
<b>UNSCR</b>	United Nations Security Council Resolution
<b>WB6</b>	Albania; Bosnia and Herzegovina; Croatia; The former Yugoslav Republic of Macedonia; Montenegro ; Serbia
<b>WBIF</b>	Western Balkans Investment Framework
<b>WiiW</b>	The Vienna Institute for International Economic Studies

# LIST OF TABLES

<b>Table 1: South East Europe: an overview of economic fundamentals, 2010 and 2013</b>	<b>19</b>
<b>Table 2: Institutions responsible for labour migration and tasks</b>	<b>24</b>
<b>Table 3: Major regulations with regard to labour mobility</b>	<b>26</b>
<b>Table 4: Employment of foreigners: Main economic sectors (based on work permits issued)</b>	<b>34</b>
<b>Table 5: Estimation results of different regressions</b>	<b>39</b>
<b>Table 6: Change in the stock of migrants 2008-1012 and projected change in the stock of migrants under the status quo conditions for the period 2013-2017</b>	<b>43</b>
<b>Table 7: Projected change in the stock of migrants, under the free access to labour market and optimistic scenario, period 2013-2017</b>	<b>44</b>

# LIST OF FIGURES

<b>Figure 1: Regulations regarding labour mobility</b>	<b>23</b>
<b>Figure 2: Total work permits issued in the SEE countries</b>	<b>28</b>
<b>Figure 3: Work permits issued by individual SEE countries, 2013</b>	<b>29</b>
<b>Figure 4: Work permits issued total and by individual countries, 2013</b>	<b>30</b>
<b>Figure 5: Work permits and quotas</b>	<b>31</b>
<b>Figure 6: Work permits by educational attainment of SEE labour migrants, 2013</b>	<b>31</b>
<b>Figure 7: Projected annual average change of migration stocks of WB-6 to EU-14, NMS-10 and WB-6</b>	<b>45</b>

# I. Introduction and background

South East European (SEE) labour markets are characterised by low employment and activity rates, particularly among women and youth, as well as by high and persistent unemployment (see Table 1). Youth unemployment is exceptionally high by European standards and has further deteriorated during the economic and financial crisis. In addition, long-term unemployment has been a salient feature of the labour market in the region for more than a decade and carries direct consequences in terms of social exclusion and further obsolescence of skills. High outward migration and an ageing population present additional constraints on the long-term growth of the Western Balkan countries and pose long-term fiscal challenges.<sup>i</sup>

Also, informal sector employment is high, with levels estimated at between 30% and 40%.<sup>ii</sup> There are large imbalances between labour demand and supply in SEE. During the economic restructuring a significant part of the workforce moved from sectors that were shrinking into unemployment and inactivity. One of the main reasons behind this unfavourable development is the lack of skills and competences. Technological progress creates demand for higher-level skills and this leads to further gaps. The existing mismatch between the competences requested by the labour market and the skills generated by the educational and training systems of SEE countries calls for a coordinated regional approach to address this acute issue.

In responding to these challenges the countries of the region elaborated a strategy on 'Jobs and Prosperity in a European Perspective' which was finally adopted at the Ministerial Conference of the South East Europe Investment Committee on 21 November 2013. The SEE 2020 Strategy is centred, like the Europe 2020 Strategy, on a set of interlinked development pillars – integrated, smart, sustainable and inclusive growth and governance for growth. In the framework of the Inclusive Growth pillar of the Strategy, the SEE countries have agreed to increase the employment rate (15+) for the region as a whole from 39.5% in 2010 to 44.4% in 2020. In reaching this goal the Strategy envisages three main priorities at the regional level: (1) regional actions to ensure labour mobility; (2) enhancement of labour market governance for employment; and (3) the stimulation of social economy initiatives. Overall, one million new jobs should be created until 2020.

The present Study focuses on cross-border mobility, which has been identified in the SEE 2020 Strategy as contributing positively to generating employment, reducing the skills mismatch and increasing the productivity of the countries of the region. It 'focuses on the creation of a regional consultancy process on mobility and the abolition of labour market restrictions in the region'.

i Western Balkans Investment Framework – WBIF (2012), Challenges to successful employment policy in the region: towards more jobs, quality labour force and greater competitiveness, Discussion Paper, November.

ii Estimate by Arandarenko and Vukojevic (2008). Overall, estimates vary considerably depending on the method of measurement used. For example, according to the labour force survey results, informal employment in Serbia and in the former Yugoslav Republic of Macedonia accounted for 19% and 22.5% respectively in 2012/2013.

TABLE 1: SOUTH EAST EUROPE: AN OVERVIEW OF ECONOMIC FUNDAMENTALS, 2010 AND 2013

	Croatia		The former Yugoslav Republic of Macedonia		Montenegro		Serbia		Albania		Bosnia and Herzegovina		Kosovo*		NMS-II <sup>1)</sup>		EU-28 <sup>2)</sup>	
	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013
GDP in EUR at ex-change rates, EUR bn	44.44	43.34	7.06	7.70	3.10	3.34	28.01	31.99	8.87	9.84	12.72	13.43	4.29	5.20	967	1047	12337	13078
GDP in EUR at PPP, EUR bn	63.07	66.27	18.22	19.04	6.30	6.99	61.67	66.19	20.40	22.47	25.69	28.07	9.30	10.40	1594	1788	12337	13078
GDP in EUR at PPP, per capita	14700	15600	8900	9200	10200	11200	8500	9200	7100	7900	6700	7300	5200	5600	15200	17200	24400	25700
GDP in EUR at PPP per capita, EU-28= 100	60	61	36	36	42	44	35	36	29	31	27	28	21	22	62	67	100	100
GDP at constant prices, 2007= 100	92.8	90.0	107.1	113.0	103.4	107.7	101.2	103.8	115.3	121.9	103.6	105.5	114.5	127.6	102.4	107.9	98.0	99.5
Population, thousands, average	4296	4260	2055	2070	619	622	7291	7182	2857	2840	3843	3840	1775	1829	104563	104201	504724	508123
Employed persons, LFS, thousands, average	1541	1390	638	679	208	202	2396	2311	1167	1100	843	822	288	303	44599	44059	217360	216964
Unemployment rate, LFS, in %	11.8	17.2	32.0	29.0	19.6	19.5	19.2	23.6	14.0	15.6	27.2	27.5	45.1	31.0	9.9	10.0	9.6	10.8
Employment rate, LFS, 15+, in % <sup>3)</sup>	41.1	36.4	38.7	40.6	40.0	40.3	37.9	37.7	47.5	50.1 <sup>4)</sup>	32.5	31.6	26.4 <sup>5)</sup>	25.5 <sup>6)</sup>	50.1	49.9	51.8	51.4
Average gross monthly wages, EUR at ex-change rate	1054	1048	491	504	715	726	461	537	252	291	622	660	286 <sup>6)</sup>	362 <sup>6)</sup>	933 <sup>7)</sup>	976 <sup>7)</sup>	2788 <sup>7)</sup>	2958 <sup>7)</sup>

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

**TABLE 1: SOUTH EAST EUROPE: AN OVERVIEW OF ECONOMIC FUNDAMENTALS, 2010 AND 2013**

	Croatia		The former Yugoslav Republic of Macedonia		Montenegro		Serbia		Albania		Bosnia and Herzegovina		Kosovo*		NMS-11 <sup>1)</sup>		EU-28 <sup>2)</sup>	
	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013	2010	2013
Average gross monthly wages, EU-28=100	37.8	35.4	17.6	17.0	25.7	24.5	16.5	18.1	9.1	9.8	22.3	22.3	10.3	12.2	33.5 <sup>7)</sup>	33.0 <sup>7)</sup>	100.0 <sup>7)</sup>	100.0 <sup>7)</sup>
Exports of goods in % of GDP	20.4	21.2	35.9	41.6	11.5	12.1	26.4	34.2	13.2	17.6	17.2	20.8	6.7	6.0	45.3 <sup>8)</sup>	52.6 <sup>8)</sup>	28.9 <sup>8)</sup>	31.7 <sup>8)</sup>
Imports of goods in % of GDP	33.3	35.6	56.4	62.2	52.3	51.9	42.8	46.7	36.7	35.2	47.9	50.6	47.4	44.2	47.7 <sup>8)</sup>	52.3 <sup>8)</sup>	31.1 <sup>8)</sup>	32.9 <sup>8)</sup>
Exports of services in % of GDP	19.5	22.0	9.7	11.3	25.8	31.7	9.5	10.7	19.7	16.8	11.9	11.2	13.4	12.5	9.7 <sup>8)</sup>	10.9 <sup>8)</sup>	10.4 <sup>8)</sup>	11.5 <sup>8)</sup>
Imports of services in % of GDP	6.5	6.3	9.1	10.3	10.8	12.3	9.5	9.7	17.1	16.7	3.2	2.6	9.0	5.8	7.6 <sup>8)</sup>	8.1 <sup>8)</sup>	8.7 <sup>8)</sup>	9.1 <sup>8)</sup>
Remittances in % of GDP <sup>9)</sup>	2.1	2.6	4.2	4.0	7.3	8.1	9.1	8.1	9.7	7.8	10.9	10.7	17.3	14.0	1.8	1.7	0.6	0.6

NMS-11: Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic, Slovenia. PPP: Purchasing power parity (IMF for Kosovo\*).

1) wiiw estimates. - 2) wiiw estimates and Eurostat. - 3) Kosovo\*: Employment rate, LFS, 15-64, in %. - 4) 2012. - 5) 2009. - 6) Average net monthly wages. - 7) Gross wages plus indirect labour costs, according to national account concept. - 8) Data for NMS-11 and EU-28 include transactions within the region. - 9) wiiw estimates and World Bank.

Source: wiiw Annual Database, Eurostat, AMECO, World Bank.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

Data collection for the current Study turned out to be very difficult. Institutions responsible for the collection of labour migrants' data as well as the data availability differ between SEE countries. Thus, any analysis of labour mobility in the SEE countries is hampered by a widespread scarcity of data at the national level, the inaccessibility, unreliability and inconsistency of available data and the difficulty of comparing data from across the region. The tables and data included in this report are subject to this major caveat.

The Study is divided into four major chapters: Chapter 2 describes the current state of play regarding labour mobility including the institutional setting and current policies and trends from a regional perspective as well as an overview of previous studies. Chapter 3 examines the socio-economic and demographic characteristics of migrants, provides an impact assessment of the free mobility of labour and addresses main obstacles to labour mobility in the region. Chapter 4 contains an assessment of the potential for regional labour mobility based on a gravity model. Chapter 5 concludes with recommendations for policy action to facilitate regional mobility.

## 2. Institutional setting

In the context of preparing for the EU accession, all SEE countries have undertaken important steps to align their legislation with the *acquis communautaire*. All governments have adopted guiding documents with regard to migration in general, not focusing specifically on regional mobility, namely: in Albania, the 'National Strategy on Migration and the National Action Plan, 2005-2010' outline the key priorities of the country's migration policy, the basic document in Croatia is the 'Migration Policy of the Republic of Croatia for the period 2013-2015' approved in 2011, the 'Resolution on Migration Policy for the period 2009-2014 and an Action Plan are the main documents in the former Yugoslav Republic of Macedonia, and in Montenegro the Government approved the 'Strategy for Integrated Migration Management 2011-2016' in 2011, followed by action plans for its implementation. The key strategic document regulating migration policies in Bosnia and Herzegovina is the 'Strategy on Migration and Asylum' (2008 and 2012), and the Government of Kosovo\* adopted the National Strategy and Action Plan on Migration (2013-2018). The strategic and legislative framework in Serbia is the 'National Strategy on Migration Management' adopted in 2009.

### Institutions

The major institutions regulating labour mobility (see also Table 2) are the Ministries of Labour, Public Employment Services (national employment agencies), Ministries of Interior and Ministries of Foreign Affairs. Work permits for foreigners are issued by the Employment Agencies in the former Yugoslav Republic of Macedonia, Bosnia and Hercegovina, Montenegro and Serbia, while in Croatia the responsibility is with the Ministry of Interior and with the Ministry of Labour in Kosovo\*. In Albania the issuance of work permits for foreigners is under the

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

responsibility of a) the regional employment offices, b) the General Directorate of National Employment Service, and c) the diplomatic representations of the Republic of Albania. Ministries of Interior are also responsible for temporary and permanent residence permits, while visa issues are handled by the Ministries of Foreign Affairs.

## Regulations

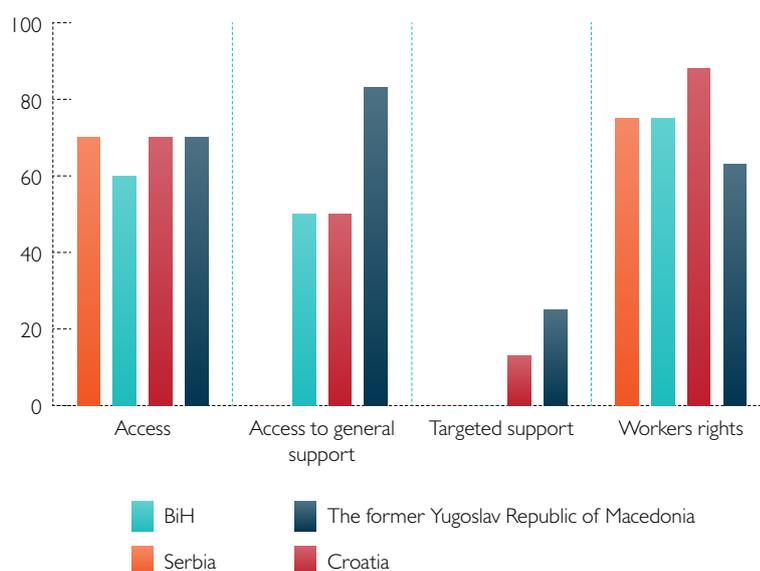
Employment of foreigners in the SEE countries is regulated by the 'Law on Foreigners in Albania' (2013), the 'Law on Movement and Stay of Aliens and Asylum' from 2008 in Bosnia and Herzegovina and the Law(s) on Foreigners at the level of entities. In Croatia labour migration is regulated by the 'Alien Act' (2007, 2009 and 2013) and the 'Law on Employment and Work of Foreigners' regulates this area in the former Yugoslav Republic of Macedonia as well as the related by-laws and the Law on Foreigners, in addition to which, the Government adopted the 'Resolution on Migration' in 2009. In Montenegro, the 'Law on Employment and Work of Foreigners' (2008 and 2011) constitutes the legal basis for foreign workers. A new Law on Foreigners (which is to encompass the provisions of existing Law on Employment of Foreigners) has been finalized to a large degree but not adopted by the Parliament. Therefore its enforcement including issuance of single stay and work permit, though scheduled previously for 1 June 2014 will be delayed due to legal and technical reasons for January 2015. In Serbia labor migration is regulated by the 'Law on Conditions for Establishment of Employment Relations with Foreign Citizens' dating back to 1978 and the Rulebook on Issuing Work Permits to Foreigners of 2010; and it is planned to unify the regulations in the new Law on Employment of Foreigners, which is expected to be adopted by the Parliament by the end of 2014. In Kosovo\*, there was no legislation in place to regulate the employment of foreigners until March 2010. Between March 2010 and April 2014 the employment of foreigners was regulated by the Law on Granting Permits for Work and Employment of Foreign Citizens in Kosovo\* and the Administrative Guideline on the Regulation of Procedures for Issuing Work Permits and Employment of Foreign Citizens in Kosovo\*. The Law on Foreigners and secondary legislation which draws on it is in place since April 2014. For an overview of the main regulations governing labour mobility in SEE see also Table 3.

Regional labour markets continue to be organised to a large extent on the basis of segregated national labour markets. With the exceptions of Serbia and Kosovo\*<sup>iii</sup>, all countries have introduced quota regimes. Quotas are determined on an annual basis and identify industries and occupations in which employment is permitted for foreigners. In the former Yugoslav Republic of Macedonia the quota may not exceed a maximum of 5% of the officially employed citizens. The system is not too restrictive in Bosnia and Herzegovina since there are a number of exceptions to the quotas, such as for all tertiary educated workers, for company key personnel as well as for staff engaged in educational and sports

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iii In Serbia, the draft of the new Law on Employment of Foreigners, which should be adopted by the end of 2014, envisages the introduction of quotas for the first time. Also in Kosovo\*, the Law on Foreigners (2014) provides for a quota regime according to economic activity and occupation by October 2014. The previous law applicable during the period 2010-2014 envisaged a quota based on labour market conditions, but has not been applied (for further details, see Country Report on Kosovo\*).

Figure 1 Regulations regarding labour mobility



Source: MIPEX.

organisations. Serbia envisages the introduction of quota system within the frame of the new legislation on foreign labour.

## Results of the recent MIPEX study

An overview of regulations with regard to the labour market of foreigners – covering Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Croatia and Serbia – is presented in the most recent MIPEX<sup>iv</sup> report (Figure 1). According to the findings of the report, some categories of temporary migrant workers in these countries cannot change jobs or sectors, so they 'could spend years trapped in a job below their qualification'. With certain restrictions, legal workers in Croatia have immediate access to self-employment and have the right to work in any private sector job. Foreign workers have access to certain positions in the public sector in Croatia and Serbia, while this option does not exist in Bosnia and Herzegovina and in the former Yugoslav Republic of Macedonia.

Temporary migrants do not have access to public employment services in Bosnia and Herzegovina and Serbia and do not have equal access to education and training as nationals. With regard to workers' rights, migrant workers, once employed, are entitled to the same working conditions, access to trade unions and social security benefits as nationals, with the legislation being most advanced in Croatia.

iv MIPEX – the Migration Integration Policy Index – is a reference guide and a fully interactive tool to assess, compare and improve migration policy with regard to seven policy areas: labour mobility, family reunion, education, political participation, long-term residence, access to nationality and anti-discrimination. MIPEX is based on public laws, policies and research. A scale between 0 and 100 is used for the ranking, where 100% is the top score.

**TABLE 2: INSTITUTIONS RESPONSIBLE FOR LABOUR MIGRATION AND TASKS**

	Albania	BiH	Croatia	The former Yugoslav Republic of Macedonia	Montenegro	Kosovo*	Serbia
<b>Ministry of Interior</b>	Issues residence permits; shares statistical data on illegal migration in regional cooperation		Administers work permits, registers temporary and permanent residence; publishes relevant statistics; collects migration data, issues other documents (travel related)	Conducts border control during entry/exit of persons to/from country Controls residence and movement of foreigners within the country. Undertakes activities for prevention of irregular migration	Approves temporary residence permits and cancels permanent residence	Assesses applications for residence permits including those for work purposes. Compiles and systematises data on migration.	Issues residence permits; controls the flow of irregular migrants
<b>Ministry of Foreign Affairs</b>	Draws up and implements visa policy	Deals with visa regime; issues visa via the Diplomatic and Consular Missions of BiH (DCM)	Deals with visa regime; issues visa, agreements with other countries	Responsible for visa regime, conclusion of agreements with other countries (free movement of persons), participates in the procedure for granting work permits	Deals with visa regime and certain aspects of irregular migration	Deals with visa regime; issues visa.	Issues work visas via Serbian consulates in sending country.
<b>Ministry of Labour</b>	Responsible for the coordination and monitoring of the National Action Plan on Migration	Labour ministries on the entity level (no such ministry on the state level) carry out activities related to international labour conventions; the RS ministry deals also with temporary employment of workers abroad	Participates in the analysis of labour market conditions, supply and demand for specific occupations (important for the quota), responsible for labour code	Proposes annual quotas for employment of foreigners to the government.	Responsible for employment of foreigners; conclusion and implementation of international agreement on social policy	Issues Certificate for Employment Registration of foreign nationals.	Drafts legislation on foreign labour mobility. Responsible for its implementation.
<b>Ministry of Security</b>		Immigration and asylum policy; produces Annual Migration Profile; collects data on migrants					

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

**TABLE 2: INSTITUTIONS RESPONSIBLE FOR LABOUR MIGRATION AND TASKS**

	Albania	BiH	Croatia	The former Yugoslav Republic of Macedonia	Montenegro	Kosovo*	Serbia
<b>Ministry of Civil Affairs</b>		Coordinates activities of relevant authorities in expert negotiations to conclude international agreements and initiates the procedure for concluding the agreements on social insurance with other countries. Submits a proposal of annual work permit quotas developed based on the needs stated by employment offices.					
<b>National Employment Service</b>	Issues work permits; Migration desks opened at NES responsible to implement migration policies	Issuance of work permits by two entity level employment agencies	Provides analysis of labour market conditions, supply and demand for specific occupations (important for the quota), provides job search counselling	Issues work permits for foreigners Proposes annual work permit quotas to the Ministry of Labour and Social Policy Keeps statistical evidence about the issued work permits	Issues work permits; helps foreigners in finding jobs	On request from MIA, issues certificates, to justify the employment of foreign nationals outside the annual quota.	Issues work permits. Collects partial data on immigrant workers.
<b>Statistical Office</b>			Collects and systematizes labour market and migration data	Collects and systematizes labour market and migration data	Collects data on migration	Does not collect data on migration regularly, but has published a Migration Report based on the results of the 2011 Census	

Source: National experts.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

**TABLE 3: MAJOR REGULATIONS WITH REGARD TO LABOUR MOBILITY**

	Albania	BiH	Croatia	The former Yugoslav Republic of Macedonia	Montenegro	Kosovo*	Serbia
Residence permit	x		x	x	x	x	x
Work permit	x	x	x	x	x	x	x
Law on employment of foreign nationals		x	No - included in Alien Act	x	x	x	x
Quota regimes, for certain occupations	x	x	x	x	For different types of work permits, not occupations	x	no
Bilateral agreements	x	Serbia, Slovenia, Qatar	x - few	Germany, Slovenia and Qatar	x	x	Bosnia and Herzegovina, Belarus
Cross-border arrangements	x	Only on border crossing with Croatia (not labour market related)	Bosnia and Herzegovina, Slovenia	x	x	x	no
Seasonal employment		no	x - quota	x	x	x	no

Source: National experts.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

## Reforms planned with regard to the liberalisation of SEE labour market

Activities related to the liberalisation of regional labour market are not very advanced yet. In Serbia the draft Law on Employment of Foreigners envisages some new regulations for foreign workers that would bring the country closer to the European labour market. By its new legislation, Montenegro will introduce a single stay and work permit in the course of 2015. The former Yugoslav Republic of Macedonia and Kosovo\* have not undertaken any major steps towards the liberalisation of regional labour market and no reforms are planned in the near future. Nevertheless, there have been a few initiatives in this area which facilitate regional cooperation and labour mobility: in recent years there has been cooperation in the area of vocational training between the regional Employment Centre of Prizren (Kosovo\*)<sup>vii</sup> and the PES in Kukes (Albania) across the border. A regional job portal is planned to exchange information on vacancies between Kosovo\*, Albania and the former Yugoslav Republic of Macedonia. Finally, citizens of Kosovo\* and citizens of Serbia part of the Albanian minority are exempted from the obligation to have work permits and work registration certificates (Decision of the Council of Ministers dated 07 May 2014)<sup>v</sup>.

## Results from previous studies

There is an evident lack of research on intra-regional labour mobility in the SEE countries, which might be explained by the lack of reliable and comparable data on migration. Most of the migration research related to the region focuses on international migration, ageing of population, depopulation, brain drain, remittances and the skill mismatch on the labour market.

One of the few studies investigating labour mobility in the Western Balkans is the IOM report by Kupiszewski et al. (2009). The study provides an overview of the evolution of migration in the Western Balkans, an analysis of the availability and quality of data and migration policies and their demographic and labour market effects. A tentative insight into the possible future labour migration flows is offered, based on a survey of migration propensities in all countries under review.

The Public Employment Service of Montenegro carried out an 'Analysis of the possibility of greater employment of local labour in relation to the existing volume of employment of foreigners'. The report included a review of occupations of unemployed persons registered with the Public Employment Service, information on shortage occupations and a summary of the type of occupations of foreigners who were issued permits to work on the territory of Montenegro. The only research related to the topic in Albania is the study conducted by Ikonimi and Ndoci (2012) who analyse the impact of the employment of foreigners on the Albanian labour market and conclude that labour market protection instruments are difficult to be put into practice.

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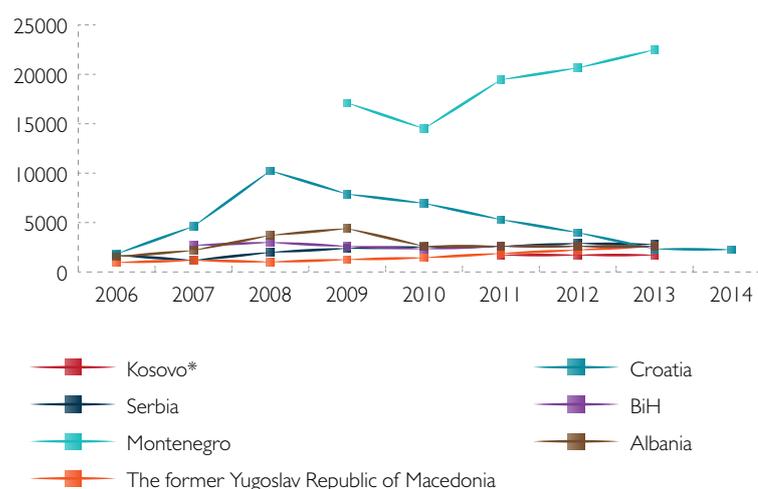
v See also Country Reports on Kosovo\* and Albania.

### 3. Socio-economic and demographic characteristics of labour migrants

The analysis in this section presents data on labour migrants based on work permits issued to foreign workers; when data allow, specific reference to regional migration is provided. Data on work permits cover in most cases the period 2009-2013/14 and have been obtained from employment agencies or the responsible ministries. However, the information available is not detailed and consequently profiling of regional workers according to age, gender, educational attainment and occupation is not always possible. The share of foreign workers in the individual SEE countries is in general very low; for instance, it accounts for only 0.4% of total employment in Bosnia and Herzegovina and in the former Yugoslav Republic of Macedonia, and for 0.1% in Serbia. Montenegro is however an exception with the share for foreign workers accounting for almost 8% in 2013.

As illustrated in Figure 2, Croatia – which was affected strongly by the economic and financial crisis – reduced the issuance of work permits to only one fifth of the pre-crisis level in 2014. The former Yugoslav Republic of Macedonia, on the other hand, which even experienced an improvement of its labour market situation during the crisis, reports a steady increase in the number of issued work permits. Interestingly, in Serbia and Bosnia and Herzegovina – both countries facing a severe rise in unemployment as a consequence of the crisis – the issuance of work permits also grew continuously (although from low levels). In Montenegro, the biggest employer of foreign labour in the SEE region, the number of work permits issued also grew steadily between 2009 and 2013.

Figure 2 Total work permits issued in the SEE countries

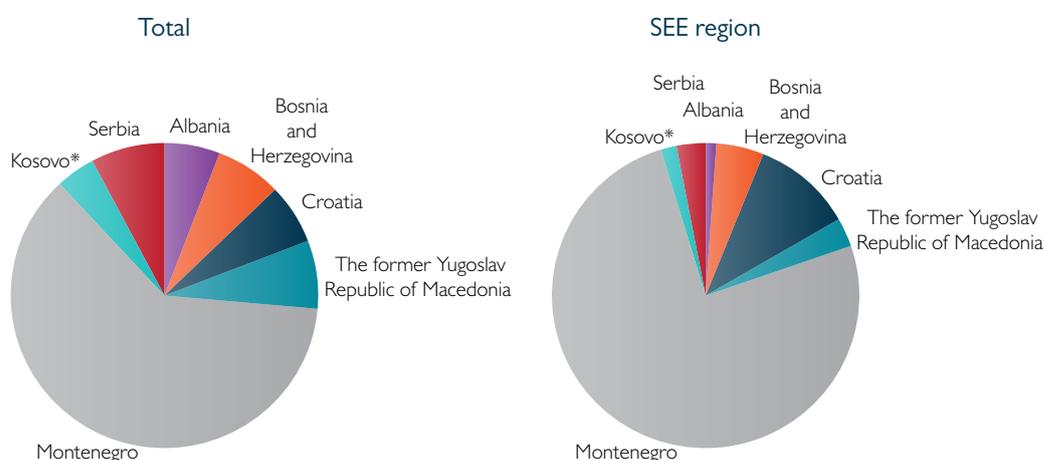


Source: Regional employment agencies and ministries.

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As shown in Figure 3, out of the total number of work permits issued in the SEE region in 2013, the majority was accounted for by Montenegro (62%) followed by Serbia (8%), Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia (close to 7% each) and Albania and Croatia (6% each). Kosovo\*'s share was about 4% of the total work permits issued. Citizens from within the SEE region and citizens from outside accounted for almost equal shares. The dominance of Montenegro as the main employer of migrant labour becomes even more evident when looking at the work permits issued for SEE citizens. Accordingly, Montenegro employs almost three quarters of all regional labour migrants. Croatia comes next with about 11% – and Albania, by contrast, absorbs only 1%.

Figure 3 Work permits issued by individual SEE countries, 2013



Source: Employment agencies and ministries.

As depicted in Figure 4, out of total migrant labour in Montenegro and Croatia the majority originates from within the region, mostly from neighbouring countries (Serbia and Bosnia and Herzegovina). Likewise, Bosnia and Herzegovina reports a high, but declining proportion of regional migrants, mainly from Serbia (70%) and Croatia (20%).

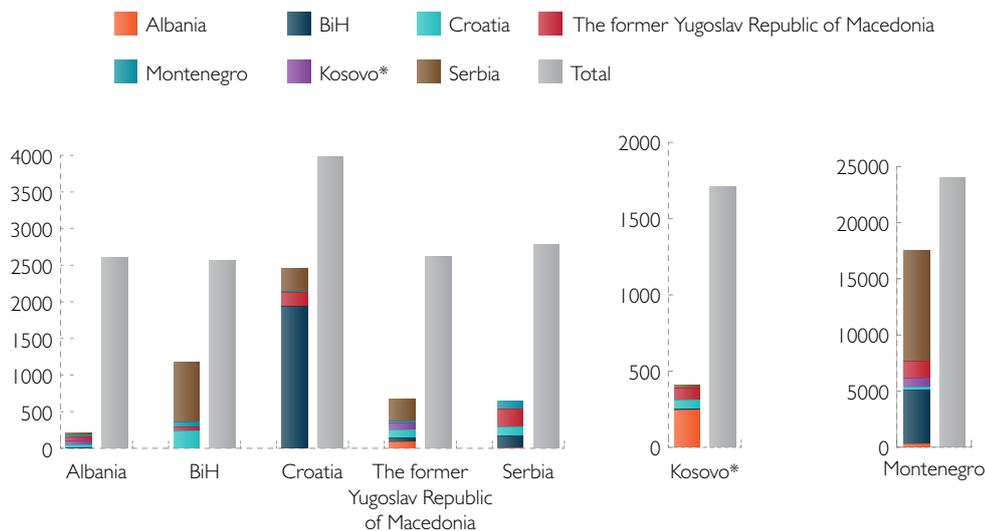
In Albania, the former Yugoslav Republic of Macedonia, Serbia and Kosovo\* the major part (about 80%) of labour migrants comes from outside the SEE region, from Turkey in particular. The share of workers from Turkey accounts for half of all labour migrants in Kosovo\* and for about 20% in the former Yugoslav Republic of Macedonia.

With the exception of 2013 quotas have been higher than work permits issued in the former Yugoslav Republic of Macedonia and particularly in Montenegro,

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while the opposite was the case in Croatia and in Bosnia and Herzegovina for most of the reporting period (Figure 5). In Bosnia and Herzegovina there are number of exceptions to quotas, such as for all workers with tertiary education, for company's key personnel as well as for staff engaged in educational and sports organisations.

Figure 4 Work permits issued total and by individual countries, 2013



Remark: Albania 2010, Kosovo\* 2011, Croatia 2012.

Source: National Employment Agencies and Ministries.

Regional labour migrants tend to be young. In Kosovo\* and Serbia – reporting data on the age of SEE migrant workers – the majority (72% and 64% respectively) are below 40 years. Assuming that the age structure of labour migrants does not differ significantly from that of total migrants, young people aged 20-39 years account for more than 60% in Montenegro and almost half in Albania and probably the same in Croatia.

The qualification structure of regional migrants differs by country. In Montenegro about 87% had first- and second-level education, about 7% of work permits were issued to persons with secondary education and 6% to foreign workers with higher education.<sup>vi</sup> Similarly, in Croatia migrants from the region have relatively low qualifications. In Serbia the skill composition of SEE labour migrants has changed significantly in recent years: between 2007 and 2013 the share of high-skilled workers rose from 16% to 48%, while at the same time the share of low-skilled fell from 66% to 28%. The former Yugoslav Republic of Macedonia reports – despite a rise in the absolute number of university graduates from the SEE region – a decline in the share of SEE workers with tertiary education from 33.6% in 2010 to 29.7% in 2013. (At the same time the share of low-skilled had slightly increased from 20% in 2010 to 22% in 2013.)

Bosnia and Herzegovina provides data on the educational attainment level only of the total number of foreigners employed. Accordingly, more than half of the migrant labour force has tertiary education, while the low-skilled account for

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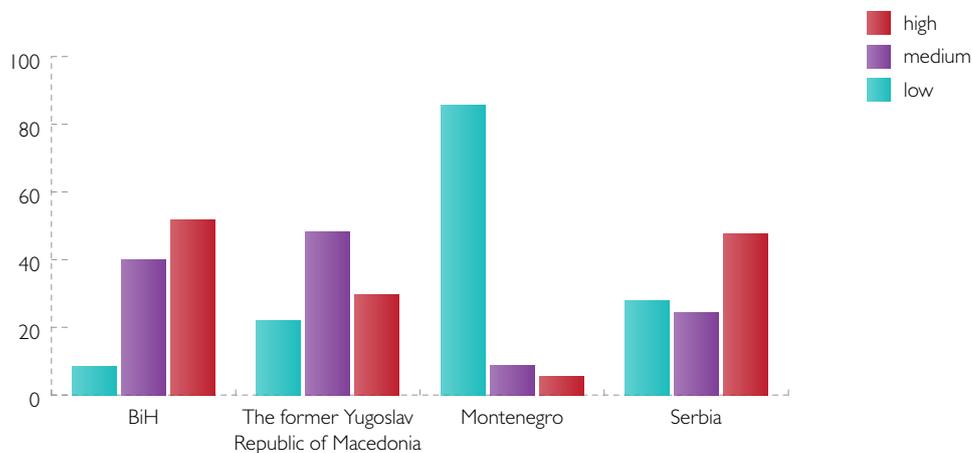
vi Similar results are obtained if considering total labour migrants in Montenegro.

Figure 5 Work permits and quotas



Source: Employment agencies and ministries.

Figure 6 Work permits by educational attainment of SEE labour migrants, 2013



Remark: BIH refers to total labour migrants.

Source: Employment agencies and ministries.



only 8% (Figure 6). The high share of migrants with tertiary education seems to be largely attributable to the practice of foreign investors bringing in their key personnel from abroad, but also to the presence of international organisations.

## Irregular migrant workers

Information on irregular workers from the countries of the region is limited and is mainly based on anecdotal evidence. An in-depth analysis on the issue is missing. Based on the information provided by country experts, undocumented migrants in Montenegro come mostly from Albania and Kosovo\* and to a lesser extent from Bosnia and Herzegovina. Allegedly they enter Montenegro as tourists and stay to work seasonally without registering with the Tax Administration. There is evidence that about 40,000 seasonal workers in Montenegro originate from Serbia and Bosnia and Herzegovina.<sup>vii</sup> A significant number of foreign workers is also supposed to be employed in the informal sector of Serbia. There is some evidence that citizens from Bosnia and Herzegovina are commuting daily to Western Serbian mines near the border. A number of workers who participate in the black market are seasonal workers who come to Serbia to work on construction sites, in the renovation of flats, or in fruit picking, which are primarily seasonal jobs. Croatia has managed to reduce both the number of irregular migrants and the number of irregular workers reported by the State Labour Inspectorate in 2013. Regarding the structure of undocumented migration in recent years, the Migration Policy of the Republic of Croatia for the period 2013-2015 has emphasised significant changes. Nationals of countries from South East Europe (Bosnia and Herzegovina, Serbia, Kosovo\*, Turkey, the former Yugoslav Republic of Macedonia and Albania), for years the most numerous irregular migrants on the Croatian territory, were replaced by nationals of African and Asian countries. Overall, there is also evidence of large irregular and seasonal migration within the region supported by dual citizenship. Irregular (labour) migration is not pervasive in Kosovo\* either and seems to be the result of negligence or lack of awareness of the legal framework; the majority of irregular workers (though very small in numbers) came from Albania.

## Mobility hubs

Mobility hubs defined as geographic areas and economic sectors that attract migrant workers can be found in almost all countries in agriculture, construction and trade<sup>viii</sup>. In Croatia and particularly in Montenegro tourism is also an important employer for foreigners. Shipbuilding, in particular ship assembling and anti-corrosion work, used to be a preferred activity in Croatia in the past, however due to the restructuring process in the wake of EU accession, shipbuilding will attract less foreigners in the future. Construction was very attractive during the boom years, but the number of work permits fell dramatically thereafter. For instance, work permits issued in Croatia for construction (mainly bricklayers and carpenters) dropped from 5330 in 2008 to only 4 in 2011/2012. As for Bosnia and Herzegovina, foreigners are mainly represented in the financial and retail sectors (See also Table 4 for the main economic sectors employing foreigners).

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

vii For further details see Country Report on Bosnia and Herzegovina

viii The ranking of individual sectors however differs from country to country.

In terms of geographic areas, foreign workers are mainly concentrated in capital cities, which may also have administrative reasons, as enterprises are registered in the capital city while their activities might be offered across the country. In Albania more than two thirds of foreign workers are registered in Tirana, followed by Durrës, Shkoder and Vlore. In Croatia, apart from Zagreb, the main destinations of foreign labour are two counties at the seaside – Primorsko-goranska and Istria. Similarly, approximately half of the work permits in Serbia are issued in Belgrade, followed by Novi Sad, Nis, Kragujevac and Subotica. In the former Yugoslav Republic of Macedonia, a share of almost 70% of work permits falls on Skopje, mostly due to the high concentration of economic activities there, as well as on two economic zones (Bunadrzik 1 and 2) where some FDI plants are located. Apart from Skopje, two cities close to the Greek border – Gevgelija and Bitola – account for some important shares of migrant workers. In Bosnia and Herzegovina, Sarajevo and Banja Luka are supposed to be the main geographical mobility hubs, which are also strongly linked to the concentration of FDI; FDI-related patterns can also be observed in Croatia. In Kosovo\* the municipalities with the highest number of foreign workers are Pristina and Prizren, followed by Ferizaj.

Information obtained from work permits leads to the conclusion that mobility in the region is mainly of seasonal character, e.g. for employment in tourism, agriculture and construction.

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**TABLE 4: EMPLOYMENT OF FOREIGNERS: MAIN ECONOMIC SECTORS (BASED ON WORK PERMITS ISSUED)**

	Agriculture	Construction	Shipbuilding	Trade	Tourism	Education	Other
Albania		x		x		x	Mining and industry; health and social activity;
Bosnia and Herzegovina		x		x		x	Manufacturing
Croatia	x	x	x (declining)		x		
The former Yugoslav Republic of Macedonia		x		x			Manufacturing; Financial and insurance services; other activities
Montenegro	x	x		x	x		Scientific and technical activities
Kosovo*							Engineering, banking and financial activities; health
Serbia	x	x			x		

Remark: Information on the former Yugoslav Republic of Macedonia refers to SEE labour migrants.  
Source: National experts. Serbia: Strban (2010).

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## Impact assessment of the free mobility of labour

An evidence-based impact of labour mobility in the region or individual countries is difficult to assess due to the lack of research dealing with this issue. However, some general conclusions can be drawn from the available information.

Overall, the opinions obtained from stakeholders are mostly positive about labour market liberalisation between the SEE countries. It has been emphasised that increased labour mobility would have positive effects on the labour market, e.g. by reducing skills mismatches. This has been confirmed by the IMF in the case of Montenegro, by arguing that further liberalisation of the labour market would contribute to a better matching of labour market demand and supply and consequently to higher productivity and overall economic performance. It would also have positive effects on the competitiveness of the region by making intra-firm mobility of workers from multinational companies less complicated.

Given the fact that countries of the region share common labour market characteristics such as high and persistent unemployment, particularly of the young and women, intra-regional mobility will not have any decisive effects on the labour market.

Country experts believe that regional labour mobility is not likely to exert any pressure on wages.

Opinions differ on whether the employment of foreigners leads to higher unemployment. Some experts believe that lifting of the restrictions could increase unemployment of the domestic population, particularly if the opening of the labour market does not proceed on a reciprocal basis. Others argue that, considering the seasonal character of migrant employment, free labour mobility in the region would not affect unemployment significantly. According to employers' representatives, the domestic labour force is often not adequately skilled to take over certain jobs and the majority of unemployed refuse to work in seasonal jobs. Thus, there is hardly any evidence that migrant workers, mainly those employed on a seasonal basis, displace natives from the labour market. Representatives of employees, however, would advocate investing in the local labour force rather than employing foreign labour.

Overall, the facilitation of the mobility of high-skilled workers could serve to fill the skill gaps and is likely to contribute to the creation of new jobs for domestic workers to the extent that it enhances the competitiveness of domestic firms.

Considering the ageing population in most countries of the region, mobility – particularly of young workers – could provide some relief to the labour market and could contribute to reducing the pressure on public finances to maintain welfare systems (pension, health care).

## Main obstacles to regional labour mobility

The identification of main obstacles in this chapter is based on the opinion of national experts' and stakeholders.

- ❏ **Poor economic situation** coupled with high unemployment and low employment opportunities as well as low wages.
- ❏ **Restrictive legislation.** Complicated procedure for obtaining work permits. Employers (representatives) believe that there are still barriers in terms of labour legislation that represent an obstacle to active regional mobility.
- ❏ **Recognition of qualifications.** As countries from the SEE region are in different phases of the accession process to the European Union, it is expected that all of them will align their national qualification frameworks with the EU legislation. This represents an opportunity for the countries to develop a sound basis for labour mobility in the region, but also a risk given that discrepancies with regard to timelines and quality in developing the individual national qualification frameworks could contribute to further issues in the process of mutual recognition of qualifications.
- ❏ **Transport.** Apart from inadequate infrastructure and poor roads on certain borders (such as between Montenegro and Bosnia), the current traffic lines are not frequent, and there are no direct flights between certain countries at all (e.g. Montenegro and Bosnia and Herzegovina or Albania and Bosnia and Herzegovina).
- ❏ **Lack of bilateral agreements on financial transactions.** There are very high banking costs among the SEE countries that may affect the transfer of remittances.
- ❏ **Limited information on job vacancies.** The publicly available statistical data on the profile of foreigners employed in the country, as well as on needed profiles, are quite scarce, as is the access to job announcement for specific posts.
- ❏ **Housing prices** might be an issue in coastal regions (Croatia, Montenegro).
- ❏ **Language** is generally not recognised as a significant obstacle to current regional mobility since the majority of regional countries have similar languages.

## 4. Intra- and inter-regional mobility of the Western Balkan countries: current trends and projections for 2014-2016<sup>ix</sup>

This section analyses potential migration/labour flows of the Western Balkan countries within the region and into the EU-14 and NMS-10.<sup>x</sup> Intra- and inter-regional mobility will be analysed using a gravity modelling approach. Current trends and potential migration are analysed for the period 2013-2016 under three scenarios: one which assumes that the current institutional conditions such as regimes of visa liberalisation remain unchanged during the whole period; the second scenario assumes the lifting of all restrictions in accessing labour markets for citizens from the WB-6 (so that they, in fact, have the same privileged access to each other's and the EU's labour markets as if they were EU members and, furthermore, lift all mutual labour market access restrictions). Finally, the third scenario assumes the same liberalisation scenario as the second one but on top of that uses a further optimistic view regarding an improvement of macroeconomic indicators such as employment and GDPs in the Western Balkan countries during the same period.

Gravity models are applied to estimate the mobility patterns of WB-6 and NMS-10 within the region and towards EU-14 and NMS-10. The mobility patterns of NMS-10 have been brought into the analysis as a comparator group of economies which have already experienced the impact of transitional arrangements and of the opening-up of free access to EU (and each other's) labour markets.

Gravity models have been intensively used to estimate bilateral migrant stocks taking into account determinants which might have an effect on migrant stocks in bilateral relations between countries. Explanatory variables include population size, geographical distance, contiguity or sharing common borders, language proximity or other cultural ties, migration network effects represented by stock of migrants from that particular sending country, relative level of earnings usually proxied by income per capita, and labour market conditions proxied by un/employment rates. In our context, the model is enriched with other determinants which are a proxy for institutional constraints that condition the mobility of migrants from the WB-6 such as visa liberalisation conditions, the presence of transitional arrangements applied by EU-14 and restrictions in accessing labour markets.

ix This chapter was provided by Isilda Mara in cooperation with Michael Landesmann (both wiiw).

x WB-6 countries include Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia; EU-14 countries include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Portugal, Netherlands, Spain, Sweden, United Kingdom; NMS-10 include Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia and Slovenia. The sending countries are the WB-6 and NMS-10. The destination countries are WB-6, EU-14 and NMS-10 excluding Estonia, Latvia and Lithuania where migration of WB-6 countries is negligible.

The empirical specification follows the basic framework of Brücker et al. (2009) in combination with gravity model determinants as in Landesmann et al. (2013). The model is further enriched by including variables that capture institutional constraints. The migration function is specified in the following form:

eq. (1)

$$\begin{aligned}
 m_{fit} = & \beta_1 * \ln\left(\frac{w_{ft}}{w_{it}}\right) + \beta_2 * \ln(e_{ft}) + \beta_3 * \ln(e_{it}) + \beta_4 * \ln(pop_{ft}) + \beta_5 * \ln(pop_{it}) + \\
 & + \\
 & \beta_6 * dist_{if} + \beta_7 * contiguity_{if} + \beta_8 * com\_language_{if} + \beta_9 * ethnic\_language\_c_{if} \\
 & + \\
 & \beta_{10} * D\_visa\_free_{if} + \beta_{11} * D\_trans\_Ag_{if} + \beta_{12} * D\_rest\_lmkt_{r_{if}} \\
 & + \\
 & + \beta_{13} * m_{fit-1} + \varepsilon_{fit}
 \end{aligned}$$

where  $m_{fit}$  denotes the stock of migrants residing in destination country (f) as a share of the population from the sending country (i). The subscript (f) stands for the destination country and takes values from 1 to 27, representing EU-14 destination countries, NMS-10 and WB-6; subscript (i) stands for the origin country taking values from 1 to 16, representing NMS-10 and WB-6 countries.

The wage rates in the foreign and the origin country, correspondingly  $w_{ft}$  and  $w_{it}$  represent expectations about the level of earnings in the foreign and home country which also depends on the labour market conditions of the respective countries. The latter are denoted as  $e_{ft}$  and  $e_{it}$  and represent the employment rates in the respective foreign and the origin country.  $pop_{ft}$  and  $pop_{it}$  stand respectively for the population of the foreign and sending country, which implies that countries with a bigger population and thus labour forces, as compared to smaller countries, have higher capacities of emigration flows as concerns the sending country and higher capacities of absorbing the labour force coming from abroad as concerns the host country.

The additional gravity model determinants are represented by  $dist_{if}$ , the geographical distance between the sending and host country;  $contiguity_{if}$ , the border proximity or commonality;  $com\_language_{if}$  is about sharing the same official language or  $ethnic\_language\_c_{if}$  when at least 9% of the populations of sending and host countries share the same language. These determinants are country specific and constant over time and control for country fixed effects.<sup>xi</sup>

The impact of different institutional conditions is captured by level dummies such as  $D\_visa\_free_{if}$  representing visa liberalisation applied to WB-6;  $D\_trans\_Ag_{if}$  representing transitional arrangements applied to NMS-10; and  $D\_rest\_lmkt_{r_{if}}$  capturing restrictions in accessing the labour market in the

xi These variables are intensively used in gravity models and we have downloaded them from: [http://www.cepii.fr/CEPII/en/bdd\\_modele/presentation.asp?id=8](http://www.cepii.fr/CEPII/en/bdd_modele/presentation.asp?id=8)

destination country for NMS-10 and WB-6.<sup>xii</sup> Lastly,  $m_{fit-1}$  is the lagged stock of migrants from a particular sending country in a destination country, representing network effects.

The database consists of migration stocks from WB-6 and NMS-10 to WB-6, NMS-7 and EU-14 for the period 2011-2012. The starting database is the Eurostat population statistics. Being subject to missing data we combined it with statistics from other data sources such as the OECD database, World Bank migration database, UN statistics and national statistics of the WB-6 countries. The stock of migrants consists of population stocks by citizenship.

**TABLE 5: ESTIMATION RESULTS OF DIFFERENT REGRESSIONS**

	FE	Pooled OLS	FGLS
ln_mst_o_l	0.783*** (0.00900)	0.591*** (0.0533)	0.692*** (0.00866)
ln_gdp_o_l	-0.612*** (0.0600)	-0.768*** (0.102)	-0.468*** (0.0353)
ln_gdp_d_l	0.498*** (0.0572)	0.746*** (0.0720)	0.581*** (0.0352)
ln_pop_o_l	0.213*** (0.0194)	0.477*** (0.0741)	0.340*** (0.0165)
ln_pop_d_l	0.0959*** (0.0154)	0.0990*** (0.0176)	0.126*** (0.0105)
ln_empl_o_l	-0.0708 (0.167)	-0.278 (0.180)	-0.138 (0.105)
ln_empl_d_l	0.610+ (0.363)	0.285 (0.495)	0.619** (0.203)
ln_empl_d__WB6	-1.775*** (0.377)	-2.312*** (0.415)	-2.593*** (0.254)
contig	0.309*** (0.0660)	0.522*** (0.0728)	0.403*** (0.0395)
lang_of	0.247+ (0.139)	0.651*** (0.127)	0.473*** (0.141)
lang_ethn	0.0487 (0.112)	0.0893 (0.0660)	0.0198 (0.120)
dist	-0.000123*** (0.0000264)	-0.000268*** (0.0000356)	-0.000200*** (0.0000199)

xii Such dummies were constructed using the information about restricted mobility and transitional arrangements between EU-14 and EU-8 and EU-2 derived from <http://ec.europa.eu/social> and information provided by country experts as concerns WB-6. Given the very low employment rates in WB-6 countries, we wanted to capture specific WB-6 effects and a slope dummy has been introduced to distinguish between labour market conditions of WB-6 as destination countries relative to other destination countries.

**TABLE 5: ESTIMATION RESULTS OF DIFFERENT REGRESSIONS**

	FE	Pooled OLS	FGLS
trans	0.0944+	0.121+	0.154***
	(0.0489)	(0.0621)	(0.0319)
rest_lmkt	-0.432***	-0.548***	-0.366***
	(0.0534)	(0.0637)	(0.0341)
free_visa	0.381***	0.387***	0.162***
	(0.0481)	(0.0680)	(0.0252)
dum_al_it	1.175***	2.065***	1.616***
	(0.254)	(0.296)	(0.115)
dum_al_gr	1.455***	2.473***	1.907***
	(0.248)	(0.391)	(0.239)
dum_bh_at	1.113***	1.795***	1.471***
	(0.246)	(0.337)	(0.342)
dum_bh_cr	1.209***	1.451***	1.313**
	(0.272)	(0.280)	(0.476)
dum_bh_de	1.054***	1.943***	1.466***
	(0.246)	(0.359)	(0.261)
dum_bh_sr	0.895***	1.088***	1.105**
	(0.271)	(0.260)	(0.410)
dum_cr_at	1.299***	1.993***	1.645***
	(0.247)	(0.324)	(0.383)
dum_cr_de	1.553***	2.615***	1.984***
	(0.247)	(0.425)	(0.389)
dum_cr_sr	1.489***	1.939***	1.626***
	(0.271)	(0.296)	(0.443)
dum_fy_de	0.842**	1.794***	1.261***
	(0.257)	(0.314)	(0.0816)
dum_fy_it	1.303***	2.069***	1.616***
	(0.245)	(0.310)	(0.264)
dum_fy_sr	1.017***	1.667***	1.433***
	(0.259)	(0.310)	(0.291)
dum_mn_cr	1.269***	1.694***	1.394***
	(0.272)	(0.282)	(0.388)
dum_mn_de	0.630*	1.329***	0.835**
	(0.245)	(0.274)	(0.276)
dum_mn_sr	1.607***	2.583***	2.160***
	(0.260)	(0.487)	(0.556)
dum_sr_at	1.088***	1.760***	1.379***
	(0.246)	(0.300)	(0.252)

**TABLE 5: ESTIMATION RESULTS OF DIFFERENT REGRESSIONS**

	FE	Pooled OLS	FGLS
dum_sr_cr	0.617*	0.579***	0.563*
	(0.270)	(0.148)	(0.277)
dum_sr_de	0.902***	1.523***	1.137***
	(0.245)	(0.214)	(0.129)
_cons	0.432	-0.797	-1.985***
	(0.735)	(1.132)	(0.430)
N	3474	3474	3474
R2	0.888	0.943	
adj. R2	0.887		
RMSPE	0.2619	0,16393	0,16307

Standard errors in parentheses  
 + p < 0.10, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

As an approximation for average earnings, we have used GDP per capita at PPPs obtained from Eurostat statistics and the wiiw database. For the calculation of the employment rates in each of the WB-6, NMS-10 and EU-14 countries, we also used Eurostat statistics and the wiiw database. This concerns both the period 2001-2012 as regards the estimation of the model as well as the forecasts of these variables for the period 2013-2016 in order to undertake the forecasting exercise of potential migration.

With regards to the estimation approach, we started with a simple pooled OLS and continued with two versions of fixed effects estimators for panel data, e.g. GLS estimators such as those used by Brücker et al. (2009). Similarly as in Brücker et al. (2009) GLS estimators turned out to produce better and more efficient estimates compared to pooled OLS. In particular we used GLS allowing for first order correlation of the error terms and Feasible GLS, which in terms of Root Mean Squared Percentage Error (RMSPE) and the significance of estimated coefficients performed better than the former one. The results are presented in Table 5 above. The predicted value of the dependent variable is much closer to the actual value of migrant stocks when using the FGLS estimates rather than other models. Hence, for the projection of potential migration stocks we use the estimated coefficients obtained with FGLS estimators, which performed better compared to the other estimators.

The estimates obtained from the gravity model are used for the projection of WB-6 inter- and intra-regional labour mobility between 2013 and 2017 using projections of explanatory variables by simulating the change in stock of migrants under the three scenarios discussed above.

## Projection of future potential stocks of migrants

The projection of the future stock of migrants from WB-6 to WB-6, WB-6 to NMS-10 and WB-6 to EU-14 follows different scenarios with respect to restrictions, transitional arrangements and projections of explanatory variables such as employment rates, population and GDP per capita in EU-14, NMS-10 and WB-6 for the period 2013-2017.

Firstly, we present the results of a baseline scenario which forecasts the future stocks of migrants from WB-6 countries to destination countries between 2013 and 2017, maintaining the institutional conditions which correspond to a free visa regime unchanged. The second scenario forecasts the stock of migrants assuming the lifting of restrictions in accessing the labour markets of destination countries for migrants originating from WB-6. The third scenario assumes an improvement of macroeconomic conditions in the WB-6 region such as better employment opportunities and higher GDP per capita growth rates. The status quo results are presented in Table 1 and projections under the second and third scenarios are presented in Table 6.

The results of the status quo scenario indicate that maintaining the institutional constraints on the mobility of citizens from WB-6 unchanged between 2013 and 2017 will be accompanied by an increase in the stock of migrants into the EU-14 from 2.4 million to a level of 2.8 million. However, this increase will occur at a slower pace compared to the previous five-year period. Migration to NMS-10 countries is expected to decline further by an annual average of 1816 migrants, moving down to 80,313 migrants in 2017 compared to 89,393 in 2013. On the other hand, even under the status quo scenario intra-regional mobility of WB-6 countries for the next five-year period is expected to experience an increase in the total stock of migrants by an annual average of 3852 migrants, compared to the significant annual decline by 23,447 migrants characterising 2008-2012. Thus, if migration regimes are kept unchanged, inter-regional mobility of WB-6 migrants will continue to be predominantly towards EU-14 countries but at a slower pace, migration towards NMS-10 will continue to shrink while intra-regional mobility is expected to gain grounds but still be below the 2008 level. Such mobility patterns suggest that under the status quo scenario, mobility outside the region will continue to dominate by a large margin the mobility inside the region. The WB-6 countries which are expected to drive inter-regional mobility appear to be Albania and Croatia (the latter particularly due to poor economic growth forecasts) while the main contributors to intra-regional mobility seem to be BiH and Croatia.

The second scenario shows that fully free access to the labour market for citizens of WB-6 towards destination countries is going to generate a much higher flux of migrants towards EU-14 during 2013-2017, at an annual average level of 130,961 migrants, a flux which is more than two times higher compared to the status quo scenario. As concerns the mobility towards NMS-10, the generated effect will turn from a negative and declining annual average level of 1816 migrants under the status quo scenario to a positive and increasing level of 7300 migrants under the free access to labour market scenario.

**TABLE 6: CHANGE IN THE STOCK OF MIGRANTS 2008-2012 AND PROJECTED CHANGE IN THE STOCK OF MIGRANTS UNDER THE STATUS QUO CONDITIONS FOR THE PERIOD 2013-2017**

		2008	2012	STATUS QUO AVERAGE ANNUAL CHANGE 2008-2012	2013	2017	STATUS QUO AVERAGE ANNUAL CHANGE
EU-14	Albania	814646	1000662	37203	1068615	1156479	17573
	BiH	329256	327274	-396	338494	363378	4977
	The former Yugoslav Republic of Macedonia	179335	205764	5286	209271	203579	-1138
	Montenegro	8530	24567	3207	26813	28794	396
	Serbia	341697	452984	22257	444310	463164	3771
	Croatia	336136	336585	90	398375	566986	33722
	<b>Total</b>	<b>2009600</b>	<b>2347836</b>	<b>67647</b>	<b>2485879</b>	<b>2782381</b>	<b>59300</b>
NMS-10	Albania	4432	1337	-619	1597	2611	203
	BiH	41908	41578	-66	41908	34093	-1563
	The former Yugoslav Republic of Macedonia	11025	12785	352	11541	8915	-525
	Montenegro	279	910	126	574	413	-32
	Serbia	26356	22659	-739	21851	21789	-12
	Croatia	10560	11765	241	11922	12493	114
	<b>Total</b>	<b>94560</b>	<b>91034</b>	<b>-705</b>	<b>89393</b>	<b>80313</b>	<b>-1816</b>
WB-6	Albania	24265	25185	184	24959	28717	752
	BiH	496514	440161	-11271	435676	428207	-1494
	The former Yugoslav Republic of Macedonia	71769	71729	-8	71185	69422	-353
	Montenegro	125894	134449	1711	143946	140505	-688
	Serbia	105847	103313	-507	104114	101154	-592
	Croatia	237721	169938	-13557	180337	211472	6227
	<b>Total</b>	<b>1062010</b>	<b>944775</b>	<b>-23447</b>	<b>960217</b>	<b>979477</b>	<b>3852</b>

Similarly, projections under such a scenario suggest a higher intra-regional mobility compared to the one under the status quo regime. Accordingly, the stock of migrants might reach a level of 3.4 million if full access to the labour market is granted to EU-14 countries compared to 2.8 million projected if the same conditions are maintained. At the intra-regional level the stock is expected to go up to 1.3 million under a liberalised regional labour market versus 1 million projected when

maintaining the current labour market access conditions. The WB-6 countries expected to make the largest contribution to intra-regional mobility are Serbia and Croatia while Albania will continue to be the country with the lowest contribution within the region under this second scenario, too.

The results obtained from the optimistic macroeconomic development scenario for the WB-6 region, which assumes an improvement of labour market conditions and of GDP growth within the region, suggest that better employment opportunities and of income growth in the region are estimated to boost further intra-regional mobility more than inter-regional mobility. At the intra-regional level, the optimistic scenario is expected to generate an increase in the stock of migrants by an annual average level of 55,997 migrants, against 48,162 migrants projected under the less optimistic opening of the labour market scenario. This compares with the pattern for inter-regional mobility, which under the optimistic scenario expects an increase in the stock of migrants by an average level of 130,961, instead of 139,249 projected under the less optimistic scenario. This results from a stronger relative attractiveness of WB-6 countries under the optimistic scenario.

**TABLE 7: PROJECTED CHANGE IN THE STOCK OF MIGRANTS, UNDER THE FREE ACCESS TO LABOUR MARKET AND OPTIMISTIC SCENARIO, PERIOD 2013-2017**

		2013	2017	FREE ACCESS TO LABOUR MARKET ANNUAL AV. CHANGE 2013-2017	2013	2017	OPTIMISTIC SCENARIO ANNUAL AV. CHANGE 2013-2017
EU-14	Albania	1281533	1351015	13896	1113683	1246353	26534
	BiH	341797	602682	52177	416332	604760	37686
	The former Yugoslav Republic of Macedonia	256943	356456	19903	256943	337618	16135
	Montenegro	32902	50384	3496	32902	47820	2984
	Serbia	499008	686453	37489	545291	768493	44640
	Croatia	361167	422560	12279	336045	350955	2982
	<b>Total</b>	<b>2773350</b>	<b>3469550</b>	<b>139240</b>	<b>2701195</b>	<b>3355999</b>	<b>130961</b>
NMS-10	Albania	1959	4560	520	1959	4339	476
	BiH	41908	56824	2983	41908	55167	2652
	The former Yugoslav Republic of Macedonia	14156	15571	283	14156	14748	118
	Montenegro	704	721	3	704	684	-4
	Serbia	26129	35784	1931	26801	36063	1852
	Croatia	8479	6841	-328	15095	26123	2206
	<b>Total</b>	<b>93334</b>	<b>120300</b>	<b>5393</b>	<b>100622</b>	<b>137123</b>	<b>7300</b>

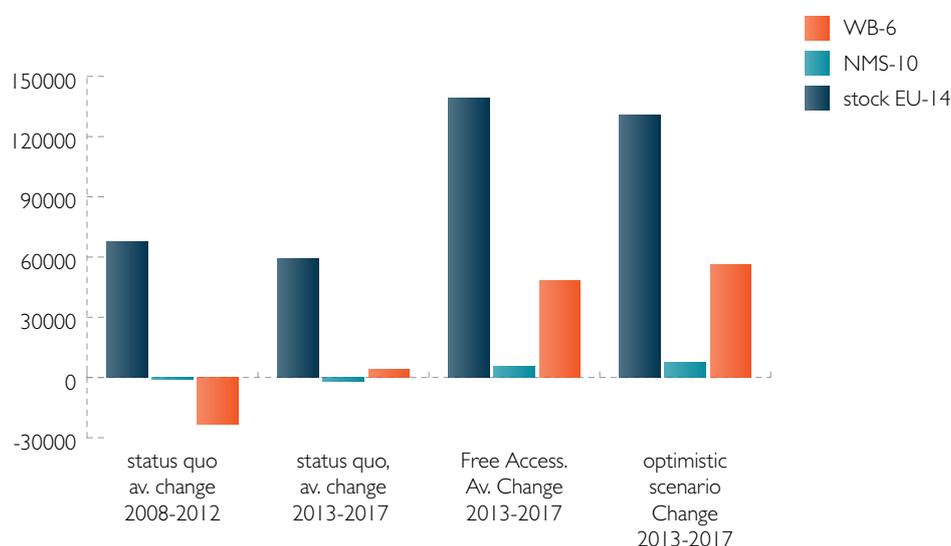
**TABLE 7: PROJECTED CHANGE IN THE STOCK OF MIGRANTS, UNDER THE FREE ACCESS TO LABOUR MARKET AND OPTIMISTIC SCENARIO, PERIOD 2013-2017**

		2013	2017	FREE ACCESS TO LABOUR MARKET ANNUAL AV. CHANGE 2013-2017	2013	2017	OPTIMISTIC SCENARIO ANNUAL AV. CHANGE 2013-2017
WB-6	Albania	21001	29993	1798	25898	27463	313
	BiH	493553	618316	24953	534375	556281	4381
	The former Yugoslav Republic of Macedonia	84661	115182	6104	84661	123629	7794
	Montenegro	142759	151880	1824	142759	134325	-1687
	Serbia	120559	154535	6795	123177	162923	7949
	Croatia	183362	216801	6688	224630	410863	37247
	<b>Total</b>	<b>1045896</b>	<b>1286707</b>	<b>48162</b>	<b>1135499</b>	<b>1415484</b>	<b>55997</b>

Figure 7 summarises the overall results under the various scenarios.

The results from our forecasting and simulation analysis suggest that lifting restrictions on labour market access strongly increases both the migration flows to EU-14 and intra-regional flows. Furthermore, if macroeconomic indicators (employment rates and GDP per capita) improve further in the WB-6 region (beyond the central forecasts) then this causes a certain amount of redirection of mobility from extra-regional mobility (i.e. less migration to EU-14) to more intra-regional mobility.

**Figure 7** Projected annual average change of migration stocks of WB-6 to EU-14, NMS-10 and WB-6



## 5. Conclusions and recommendations for policy action to facilitate regional mobility

Based on the information available, labour market liberalisation in the SEE region has made little progress so far. Almost all countries rely on quota regimes, with Serbia and Kosovo\* being the only exceptions but envisaging the introduction of a quota system in the framework of the new employment law for foreigners. The majority of SEE countries will stick to the current legislation mainly because of high unemployment. Montenegro and Serbia announced to open their labour markets to EU citizens. The Albanian Government signalled its intention to liberalise the labour market for citizens of Kosovo\* and Serbia with respect to Albanian nationals. With the exception of Montenegro and Croatia the majority of labour migrants come from outside the region, a significant share of them with higher education. Regional migrants are generally lower skilled than workers from outside. Montenegro attracts the major part of regional migrants, while Serbia and Bosnia and Herzegovina are the biggest sending countries. As a consequence of the economic and financial crisis the issuance of work permits dropped drastically in Croatia, while a steady increase was observed in other countries.

The results from our forecasting and simulation analysis suggest that lifting restrictions on labour market access strongly increases both the migration flows to EU-14 and intra-regional flows. Furthermore, if macroeconomic indicators (employment rates and GDP per capita) improve further in the WB-6 region (beyond the central forecasts) then this causes a certain amount of redirection of mobility from extra-regional mobility (i.e. less migration to EU-14) to more intra-regional mobility (Chapter 3 and Annex).

Based on the information obtained and the obstacles identified regarding the labour mobility in SEE region, policy recommendations have been developed in detail in individual country reports. The recommendations address the national and regional levels in the SEE region.

- 🔗 Visa facilitation for business people, professionals and skilled labour where visa regimes are in place (i.e. between Kosovo\* and Bosnia and Herzegovina, and Kosovo\* and Croatia).
- 🔗 Creation of a sound statistical database on migration flows in all SEE countries, particularly in terms of demographic and socio-economic characteristics of migrants. This would enable more research in this area, contributing to better policy-making.
- 🔗 Establishment of a regional pool of experts on labour market research and forecasting, which should produce regular reports to the National Employment Agencies.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

- 🔗 Regional coordination among national authorities for further development of National Qualification Frameworks, aimed at establishing the ground for smoother recognition of qualifications among countries in SEE region.
- 🔗 Strengthening cooperation between the Public Employment Services (Agencies) and private employment services in terms of exchange of information about the skills needed on the domestic market(s) and wider dissemination of information about available job posts in the region to interested job seekers (establishment of a regional web-portal for announcement of available posts, etc.).
- 🔗 Development of a regional concept for the advancement of labour mobility in SEE region, with clear identification of the level and dynamics of liberalisation. Given that all SEE countries are suffering from high unemployment rates and, therefore, apply restrictions on their labour markets, the development of a regional concept for gradual liberalisation of markets could yield results in this sphere. In this context, a regional driving force is needed (a working group at high political level) that would define the level of liberalisation, target groups (sectoral approach based on the diversity of qualifications/skills) and other relevant criteria.
- 🔗 Development of mechanisms/instruments to alleviate the procedure of obtaining work permits for 'regular' migrants (persons working in a specific country for several years), such as the introduction of a specific card, etc.
- 🔗 Improvement of portability of social benefits in order to enhance circular migration.
- 🔗 Cooperation with large multinational and regional companies on simplifying procedures that would enable better within-firm mobility.
- 🔗 Greater capital mobility may trigger freer flows of human capital. Based on the EU good practices, the cancellation of restrictions on capital flows (such as bank transfer commissions) and the cancellation of bank account and transaction costs in the region may help capital and labour mobility through several channels (remittances, foreign direct investment, capital market development, etc.).

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## Annex

<b>AVERAGE MONTHLY WAGES</b>									
	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>AVERAGE MONTHLY GROSS WAGES</b>									
EUR AT EXCHANGE RATE									
Croatia	844	906	961	1044	1051	1054	1049	1048	1048
Albania	161	177	221	279	273	252	260	283	291
Bosnia and Herzegovina	405	444	488	569	615	622	650	660	660
Kosovo*	.	.	.	.	.	.	.	.	.
The former Yugoslav Republic of Macedonia	348	376	394	428	488	491	497	498	504
Montenegro	326	377	497	609	643	715	722	727	726
Serbia	308	377	484	561	470	461	517	508	537
<b>AVERAGE MONTHLY NET WAGES</b>									
EUR AT EXCHANGE RATE									
Croatia	591	629	660	717	724	733	732	729	728
Albania	.	.	.	.	.	.	.	.	.
Bosnia and Herzegovina	274	299	330	384	404	408	417	422	423
Kosovo*	192	192	197	205	246	286	348	353	362
The former Yugoslav Republic of Macedonia	206	221	238	263	326	334	339	340	343
Montenegro	213	246	338	416	463	479	484	487	479
Serbia	210	258	347	402	338	332	372	366	388

Source: National Statistical Offices.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

<b>EMPLOYMENT RATES, TOTAL</b>									
	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>EMPLOYED PERSONS IN % OF POPULATION 15+</b>									
Croatia	43.3	43.6	44.1	44.4	43.3	41.1	39.5	38.1	36.4
Albania	.	.	50.0	46.2	47.4	47.5	51.9	50.1	.
Bosnia and Herzegovina	.	29.7	31.2	33.6	33.1	32.5	31.9	31.7	31.6
Kosovo <sup>*1)</sup>	28.9	29.0	26.5	24.3	26.4	.	.	25.5	.
The former Yugoslav Republic of Macedonia	33.9	35.2	36.2	37.3	38.4	38.7	39.0	39.0	40.6
Montenegro	34.8	34.8	42.7	42.3	41.2	40.0	39.0	40.0	40.3
Serbia	42.3	40.4	41.8	44.4	41.2	37.9	35.8	35.5	37.7

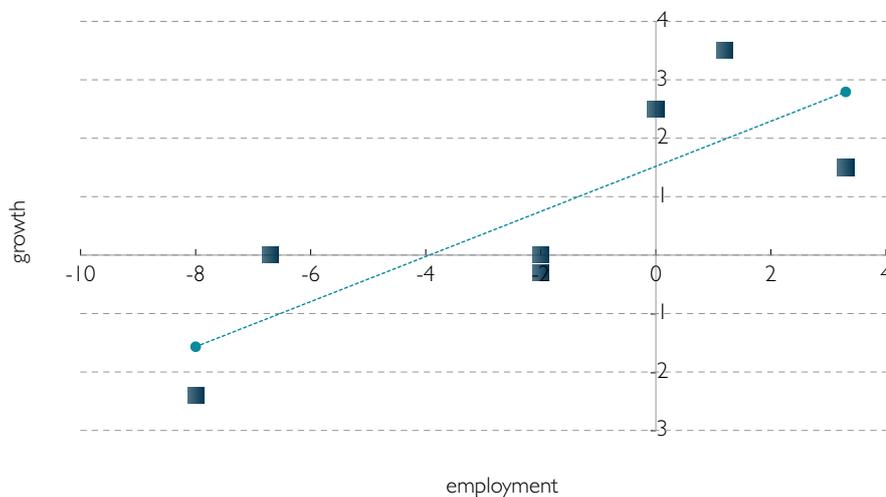
1) Percentage of employed persons in the working age population (15-64).

<b>UNEMPLOYMENT RATES, TOTAL</b>									
	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>UNEMPLOYED IN % OF LABOUR FORCE</b>									
Croatia	12.7	11.1	9.6	8.4	9.1	11.8	13.5	15.9	17.2
Albania	.	.	13.4	13.1	13.7	14.0	14.0	13.4	15.6
Bosnia and Herzegovina	.	31.1	29.0	23.4	24.1	27.2	27.6	28.0	27.5
Kosovo <sup>*1)</sup>	41.4	44.9	43.6	47.5	45.4	45.1	44.8	30.9	30.0
The former Yugoslav Republic of Macedonia	37.3	36.0	34.9	33.8	32.2	32.0	31.4	31.0	29.0
Montenegro	30.3	29.6	19.3	17.2	19.3	19.6	19.7	19.7	19.5
Serbia	20.8	20.9	18.1	13.6	16.1	19.2	23.0	23.9	23.6

1) New methodology from 2012; not comparable with previous years.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

Picture 1 Change in the rate of employment 2013/2008 and average real growth rate 2009-2013



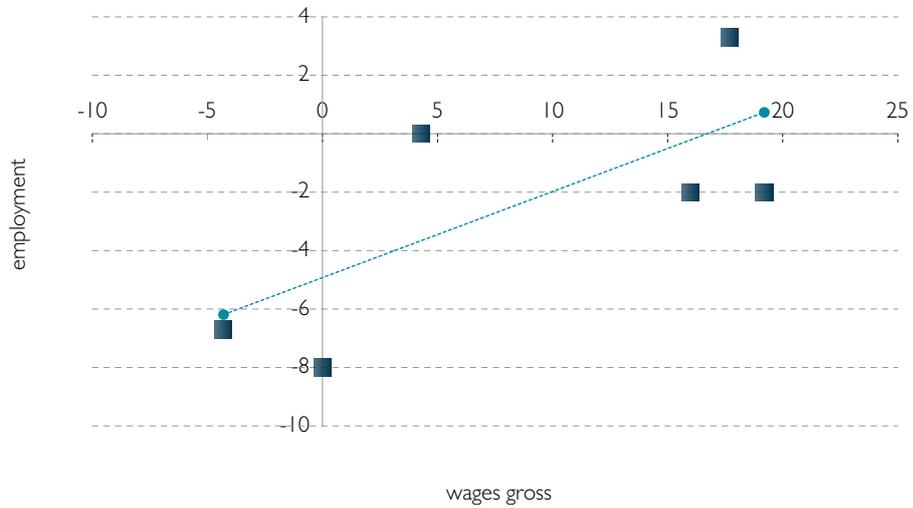
Picture 2 Change in rate of unemployment 2013/2008 and change in the net wage in euro 2013/2008



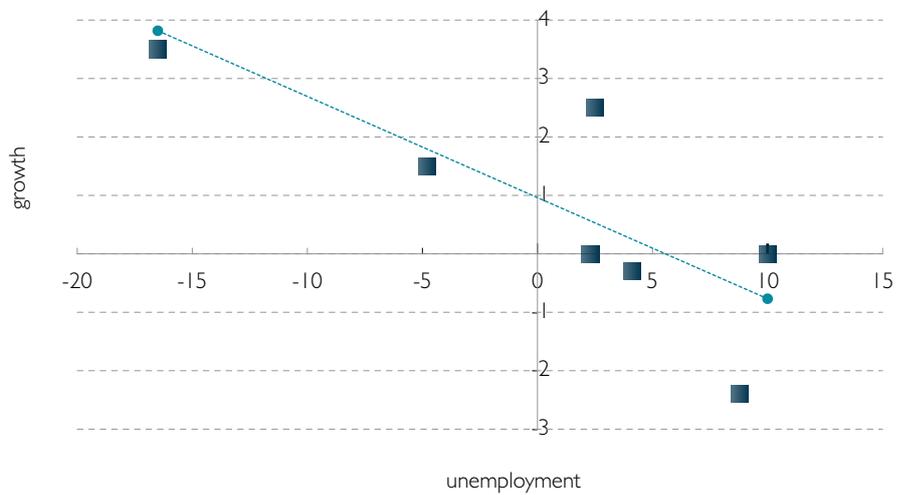
Source: wiiw Database.



Picture 3 Change in rate of employment 2013/2008 and change in gross wages in euro 2013/2008



Picture 4 Average real rate of growth 2009-2013 and change in rate of unemployment 2013/2008



Source: wiiw Database.

There is significant divergence of wages in the region. With convergent growth, that should support intra-regional mobility. In the past five or so years, growth has been slow and labour markets have been even more depressed than previously. The former Yugoslav Republic of Macedonia is an exception, but its inherited level of employment is low and the unemployment rate is high. In most other countries, employment has declined, though in Kosovo\* the unemployment rate has declined quite significantly, which must be due to outward migration and even more to improved statistics.

Interestingly enough, growth of wages (in euro terms), both gross and net, is correlated with better labour market and growth performance. In most countries, gross wages have increased faster than net wages. The former Yugoslav Republic of Macedonia is an exception as net wages have increased much more than gross wages. In Serbia and Croatia, net wages have held up better than gross wages, though they have declined or practically stagnated respectively. These countries have also experienced the largest falls in employment and increases in unemployment, which has resulted from or been the consequence of a negative average growth rate in Croatia and zero in Serbia over the past five years (2009-2013).

So, conditions for intra-regional mobility exist due to differences in employment and unemployment rates and in wages, but the crisis has taken its toll on the labour market and probably led to increased out-of-regional migration rather than mobility within the region. Interestingly enough, better wage developments are associated with better labour market performance and more sustained growth.

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\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

# LEGAL ANALYSIS OF LABOUR MOBILITY IN SOUTH-EAST EUROPE

## Part Two

# CONTENTS

<b>List of abbreviations</b>	<b>56</b>
<b>List of tables</b>	<b>57</b>
<b>List of boxes</b>	<b>57</b>
<b>1. Introduction</b>	<b>58</b>
<b>2. Labour mobility in SEE in economic and regulative contexts</b>	<b>60</b>
2.1. Brief socioeconomic context	60
2.2. Regulative and normative context	65
<b>3. International and European frameworks for regulating SEE labour mobility</b>	<b>67</b>
3.1. SEE alignment with key international norms on labour mobility	67
3.1.1. Key international instruments	68
3.1.2. Monitoring mechanisms	71
3.1.3. National human rights institutions	75
3.1.4. Conclusions on international obligations	77
3.2. SEE alignment with key European norms on labour mobility	77
3.2.1. CoE monitoring mechanisms and bodies	80
3.2.2. Conclusions on SEE alignment with European norms	82
3.3. Joint conclusions on international and CoE norms	83
<b>4. SEE labour mobility regulation in light of EU acquis</b>	<b>84</b>
4.1. EU acquis on labour mobility: Overview	86
4.2. SEE alignment with EU acquis	95
<b>5. Legislation implementation and regional cooperation</b>	<b>100</b>
5.1. Migration governance and legislation implementation	100
5.2. Regional cooperation	102
<b>6. Conclusions and recommendations</b>	<b>106</b>
<b>Endnotes</b>	<b>108</b>

# LIST OF ABBREVIATIONS

<b>BiH</b>	Bosnia and Herzegovina
<b>CAT</b>	Convention against Torture
<b>CEFTA</b>	Central European Free Trade Agreement
<b>CoE</b>	Council of Europe
<b>CRC</b>	Convention on the Rights of the Child
<b>EC</b>	European Community
<b>ECHR</b>	European Convention on Human Rights
<b>ECJ</b>	European Court of Justice
<b>ECSR</b>	European Committee of Social Rights
<b>ECtHR</b>	European Human Rights Court
<b>ESF</b>	European Social Fund
<b>EU</b>	European Union
<b>FDI</b>	Foreign Direct Investment
<b>FYROM</b>	Former Yugoslav Republic of Macedonia
<b>HRC</b>	Human Rights Council
<b>HRC</b>	Habitual Rights Condition
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of their family
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>MFA</b>	Ministry of Foreign Affairs
<b>MoI</b>	Ministry of Interior
<b>NHR</b>	National Human Rights Institution
<b>OSS</b>	One Shop Stop
<b>PRA</b>	Private Recruitment Agency
<b>RCC</b>	Regional Cooperation Council
<b>SEE</b>	South East Europe
<b>SEIO</b>	Serbian European Integration Office
<b>TCN</b>	Third-country national
<b>TFEU</b>	Treaty on the functioning of the European Union
<b>UN</b>	United Nations
<b>UPR</b>	Universal Period Review
<b>WB6</b>	Western Balkan Six (Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Kosovo*, Montenegro, Serbia)

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

# LIST OF TABLES

<b>Table 1: SEE adherence to labour mobility global international norms</b>	<b>69</b>
<b>Table 2: UPR in SEE Overview</b>	<b>73</b>
<b>Table 3: SEE countries parties to relevant core European Instruments</b>	<b>76</b>
<b>Table 4: EU acquis chapters of relevance to labour mobility</b>	<b>86</b>
<b>Table 5: EU legal migration acquis overview</b>	<b>88</b>
<b>Table 6: SEE incorporation of EU legal migration acquis</b>	<b>97</b>
<b>Table 7: Overview of regional treaties/agreements</b>	<b>104</b>

# LIST OF BOXES

<b>Box 1: SEE 2020 Strategy Goals. Selected headline targets</b>	<b>62</b>
<b>Box 2: Key global international norms of relevance to labour mobility</b>	<b>67</b>
<b>Box 3: ICRMW observations on BiH and Albania</b>	<b>70</b>
<b>Box 4: Key committees of relevance to labour mobility</b>	<b>72</b>
<b>Box 5: ILO Multilateral Framework on Labour Migration</b>	<b>74</b>
<b>Box 6: Competence and responsibilities of NHRIs</b>	<b>75</b>
<b>Box 7: “Migrant” Article 19 of the ESC</b>	<b>78</b>
<b>Box 8: Examples of ESC Conclusions on Migrant Issues</b>	<b>80</b>
<b>Box 9: Key directions of EU migration policy as per TFEU</b>	<b>85</b>

# I. Introduction

Over the last 100 years, South-Eastern Europe (SEE) has been exposed to a great many dramatic developments. At this juncture, in 2014, the region's priority is sustainable economic and political development, as stated in the South East Europe 2020 regional strategy (SEE 2020), developed with the support of the Regional Cooperation Council (RCC) and adopted by the ministers of economy in November 2013<sup>1</sup>. With this Strategy, the governments in the region chose a new development path along four pillars - inclusive, sustainable, integrated and smart growth, which shall allow the region as a whole to make economic and social progress, but also to attain political and economic approximation to the EU, the ultimate goal of which being EU membership.

EU integration in the region is happening at varied pace: Croatia is a member since mid-2013; accession negotiations have been opened between the EU and Montenegro and Serbia; a stability and association agreement (SAA) was signed with the former Yugoslav Republic of Macedonia in 2001, but formal negotiations have yet to be started officially; Albania was accepted as a candidate member in June 2014, while this is not yet the case for Bosnia and Herzegovina (BiH) or Kosovo\*. The process of socioeconomic integration within the region and with the EU is happening at varied pace depending on which one of the four freedoms of movement – capital, goods, services and persons one focuses. Labour market integration associated with the latter, in political, structural and legal terms, is somewhat lagging behind, which is increasingly perceived as a significant barrier to the economic growth at national and regional levels.

Upon his appointment as the new President of the European Commission in July 2014, Jean-Claude Juncker indicated that during his tenure the EU is unlikely to welcome new members<sup>2</sup>. However, discussions among observers are not about *whether* the countries concerned will become EU members, but rather *when* this will happen, and whether this would happen in 'one go', or country by country<sup>3</sup>. The rationale behind the present study is a proposition that, ***while awaiting further steps on the accession front, the region has a unique opportunity to focus on sustainable economic and political development whilst at the same time align themselves with EU principles (like free movement of capital, goods and services, but also persons) and striving for approximation of legislation and administration with those of the EU. And whilst doing so, they may wish to focus on regional (i.e. SEE) free movement of persons.***

Labour mobility can be seen as an important contribution to and a factor of sustainable economic development in South-Eastern Europe, given persistent historical and cultural ties within the region and increasing integration of goods, capital and labour markets. In the SEE 2020 strategy, the governments in South-Eastern Europe recognize labour mobility as an important development factor which needs to be addressed at the regional level through common and coordinated actions<sup>3</sup>. It is believed that by setting up a proper regional system

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

I See, for instance, materials from a 16 July 2014 seminar at the Hague Institute for Global Justice (Finishing the job in the Balkans) with among others Pieter Feith, Stefan Lehne and Daniel Serwer.

dire improvements can be made – a conclusion very much in line with the proposition of the SEE 2020 regional strategy, which specifically calls for the development and implementation of a common regional action (with inter alia a regional observatory, a regional consultative platform, and a skills matching network) which would aim to promote regional labour mobility within SEE, within the Strategy's inclusive growth pillar.

Being a part of a broader IOM/RCC initiated research on labour mobility in the SEE region, this report deals with the various legal aspects of migratory movements within and to South East Europe. It covers free movement of persons, with a focus on workers, and to a great extent on migration governance. It will be submitted that an organization like the Regional Cooperation Council may wish to assist towards regional agreements on free movement, social welfare, pensions and return in the stead of (4x) 36 bilateral ones. Indeed, it is herewith proposed that the emphasis shall be with the notion of a single economic space and freedom of movement, and that whilst striving for those goals, regard shall be had to the EU *acquis*, as that may prove useful for not only reaching those goals, but also as a preparation for EU membership. Approximation should hence not be seen as a goal, but rather as a means.

The international legal context (international and Council of Europe norms and approaches) will be presented, including comments and recommendations submitted by the relevant committees and gremia (like the UPR). Attached to this report are detailed studies of the SEE governments' legislative approach in regulating the mobility of the various relevant categories of migrants, like the highly skilled, researchers and students. Due attention shall be paid to the gaps, alignment and approximation to EU regulations and directives, - not as a goal per se, but rather as a means to foremost attain regional free movement, as the latter accomplishment is – as indicated above - believed to contribute to regional economic development. It will be submitted that the many conventions and charters the WB6 governments are party to already represent a challenging framework for setting the norms, rules and regulations for the treatment of migrants and members of their families. Similarly important are judgements, recommendations and concluding observations in that very context, as well as the transposition thereof into national law and practice.

This report, therefore, will first pay attention to the wider context of labour mobility in socioeconomic and regulative contexts. It will then focus on the (i) international norms, (ii) the Council of Europe (CoE) norms, (iii) the relevant EU directives and, in a later chapter, (iv) legislation implementation and regional cooperation. It will conclude with some observations on regional free movement of labour and the challenges involved.

## 2. Labour mobility in SEE in economic and regulative contexts

### 2.1. Brief socioeconomic context

Europe, and the South-East Europe in particular, has witnessed an eventful history. In the summer of 1914, Sarajevo was the scene of what afterwards was considered the start of the First World War, imposing violent changes on the region. The implosion of the Habsburg and Ottoman empires might have been long in the making, but the actual events were ground breaking, creating new power structures and new entities. Less than 75 years later, some of the new entities had themselves disintegrated, often in the most violent of manners. During all these events people were victims and sometimes offenders alike. The events resulted in the massive movement of people, some of it on a voluntary basis, most of it forced. The number of refugees and otherwise displaced persons was enormous. Also many others migrated looking for better opportunities and a better life. And with these movements individual identities were at stake. The sense of belonging was often questioned. Cultural identity, not to mention religious identity, was sometimes an asset, sometimes a burden. Reconciliation and confidence building were ongoing concerns. Mutual trust was often replaced by mistrust. Scars could be found virtually everywhere.

Yet, by 2014 positive prospects can be identified. 100 years after the beginning of the First World War, new regional political and economic structures have emerged - a clear sign of ongoing political and economic processes. The consequences of the 2008 global economic crisis are about to be overcome, and the appeal of EU is enormous: living in liberty, enjoying the rule of law, separation of power, absence of corruption, freedom of speech, as well as possibilities to make one's ambitions come true.

The association agreements with EU recently signed by the countries neighbouring the SEE region to the East show that EU alignment is not necessarily about joining the EU (albeit a long-term prospect) but very much about sharing and striving for EU-norms and values. The freedom of movement is one such core value intrinsic to the very EU existence. It was and is believed that such freedom greatly assists towards building peace and promoting integration as well as economic growth. EU's history over the last 50+ years would give reason to subscribe to those propositions. Irrespective of the economic and social aspects of migratory movements, it is herewith submitted that the road towards EU membership includes those freedom of movement principles.

Both the SEE Strategy 2020 and the World Bank views focus on economic growth and touch upon effectiveness, a qualified workforce, FDI, trade, a region without barriers and hence the benefits of a single economic space. Some challenges to the region's economic development, as per the World Bank, include:

*"Many countries in Western Balkans have witnessed significant growth since the mid-1990s. However, these countries are now challenged to*

*keep the growth and improve it. This is now harder than in the past. Sustainable future growth should now be more export-driven and focus more on trade integration with the European Union.*

*Trade flows of the South East Europe (SEE) countries have steadily grown, despite disruptions from regional conflicts and sanctions. However, overall trade patterns in the region need to improve to promote the sustainable growth of exports. High labour costs in the region mean that lower-wage countries can undercut the SEE countries. Skill acquisition is clearly an urgent need.*

*For small countries of Western Balkans, sustainable economic growth should be driven by exports. The benefits of deeper integration and creation of a single economic space in Western Balkans, will include fostered competition, larger markets and economies of scale and increased foreign direct investment.*

*Services play an increasingly important role in the development of an economy. Liberalization of trade in services could become a powerful driver for growth in SEE. In many cases, an appropriate regulatory framework with safeguards and regional coordination will also help attract private investment in services.*

*Foreign Direct Investment (FDI) could be considered the centrepiece of efforts to maintain and accelerate the growth of exports and thereby the economic growth. The SEE countries also need to improve the quality and quantity of human skills in order to prepare for faster and more export-oriented growth and for the demands of increasingly privatized economies".<sup>4</sup>*

Regarding imbalances of the labour markets, in the description of the inclusive growth pillar<sup>ii</sup> of the SEE 2020 Strategy, it is clearly stated that:

*"Labour markets in the SEE region chronically feature low employment and activity rates, particularly among women and the young, as well as high and persistent unemployment. Youth unemployment is exceptionally high by European standards and has further deteriorated during the economic and financial crisis. In addition, long-term unemployment has been a salient feature of the labour markets in the region for more than a decade and carries direct consequences in terms of social exclusion and the further obsolescence of skills. Employment in the informal sector is high, with levels estimated at between 30 and 40%.per cent. There are significant imbalances between labour demand and supply in the SEE region. Among the main reasons for these unfavourable developments is the lack of skills and competences. Moreover, technological progress creates demand for higher-level skills and this leads to further gaps".<sup>5</sup>*

And where it concerns the smart growth pillar it can be read:

*"In order to ensure a long-term economic growth perspective, the region is looking for ways to change its development path towards*

ii The other three pillars deal with integrated, smart and sustainable growth.

*more value added, moving away from low-cost labour to other sources of competitiveness. Smart growth needs to be fostered in the framework of a "knowledge-based economy" – an economy founded on the production, distribution and use of knowledge and information".<sup>6</sup>*

Economic integration, and in particular integration of labour markets in the region, is viewed as a way of overcoming some of the persistent market imbalances. Mobility of labour within and across national borders in the region can serve as an important adjustment mechanism of labour markets, improving their resilience, flexibility and capacity to react to internal and external shocks from both supply and demand sides. Labour mobility can be a short-term remedy to such internal structural problems as skill mismatches - both skill gaps and skill over-supply, or market segmentation. Intraregional mobility leads to national labour markets integration, making them more competitive in comparison to neighbouring larger and more efficient labour markets, attracting a larger share of foreign investors, promoting trade in services and, hence, contributing to overall development.

According to the World Bank, fostering labour mobility in SEE should be done whilst maintaining the focus on economic growth, trade, exports, services and FDI. By increasing labour mobility within the region, labour supply and demand will be enhanced and, therefore, addressing skill gaps more efficiently leading to improved labour market flexibility at regional level. Enhanced labour mobility will contribute to a deeper integration between the labour markets within the SEE which will increase market size, improve service quality, thereby enhancing the overall productivity of the economies and help attract FDI. A common SEE market for labour would allow future investors to contemplate hiring from all of SEE, not just the host country. With labour skills emerging as a possibly key constraint, regionalization can help. In the short term, labour would move to locations that offer higher returns. However, the regional market could also create significant demand and incentives for better education (the market for job-seekers, not just employers, would be bigger), which would help address the emerging bottlenecks in- supply of skilled labour. In the World Bank Working Paper on Enhancing Regional Trade Integration in Southeast Europe, it can be read that:

*"Both migrants and temporary workers can act as catalysts for deeper integration and provide a potential pool of skills which home countries can tap into. They establish border-spanning, personal networks which can facilitate the flow of ideas and business contacts. If skill shortages emerge in the home country, migrants can be induced to come back if the investment climate is exciting and growth is dynamic. In fact, returning migrants bring back not only skills but also capital, and often set up firms or work for the subsidiaries of foreign companies".<sup>7</sup>*

SEE 2020 Strategy's targets include labour mobility through the increase of trade in services, including export of services; adding 300,000 highly qualified people to the region's workforce; net enterprise creation (mobility of entrepreneurs); employment rate increase (transforming irregular mobility into its regular forms); FDI increase (through regulation of entry and settlement of foreign investors) (see Box 1).

**Box 1: SEE 2020 Strategy Goals. Selected headline targets**

- 🔗 Increase regional GDP PPP (Gross Domestic Product Purchasing Power Parity) per capita from 38% to 46% of the EU-27 average
- 🔗 Grow the region's total value of trade in goods and services by more than 130%
- 🔗 Reduce the region's trade deficit from 14.1 to 11.6 per cent of regional GDP
- 🔗 Increase GDP per person employed by 32%
- 🔗 Add 300,000 highly qualified people to the region's workforce
- 🔗 Improve governments' effectiveness as measured by the World Bank Governance Index from 2.33 to 2.9 by 2020
- 🔗 Increase net enterprise creation (new businesses per year) from 30,107 to 33,760
- 🔗 Increase exports of goods & services per capita from the region from EUR 1,780 to EUR 4,250
- 🔗 Increase in the overall employment rate, as a percentage of the 15+ population, from 39.5% to 44.4%
- 🔗 Increase SEE intraregional trade in goods by more than 140%
- 🔗 Increase overall annual Foreign Direct Investment (FDI) inflows to the region by at least 160%.

Source: Regional Cooperation Council (RCC), South East Europe 2020 Strategy: Jobs and prosperity in a European Perspective, Sarajevo, 2013.

Labour mobility within SEE primarily takes the form of seasonal employment in agriculture and tourism. At the same time, high-skilled mobility, in particular among accountants, architects, engineers, medical experts and lawyers, also features, albeit to a lesser degree. This is increasingly becoming a subject of *trade in service* negotiations within the Central European Free Trade Agreement (CEFTA). Looking outside of the region, the EU countries are hiring workers from the SEE in the health and domestic care sectors, while several thousands of construction workers from Serbia find employment in the Russian Federation.

Free movement of workers in the SEE context may take place on five levels:

- 🔗 National - urbanization; filling vacancies elsewhere in the country; the relationship between social welfare and incentives to find a job comes to the fore;
- 🔗 Regional - freedom of movement for the nationals (and the long-term residents with a foreign passport) from the region - in this case the WB6;

- 🔗 EU-SEE level - freedom of movement of EU-citizens to the WB6 region;
- 🔗 EU/TCN; freedom of movement of third-country nationals who enjoy the status of an EU-long-term-resident (and are free to move from one EU country to another);
- 🔗 TCNs, third-country nationals

In this report we will foremost focus on category 2 (SEE citizens and long term residents) and to a lesser extent on category 3 (EU citizens).<sup>III</sup>

Labour migration should always be looked upon in the wider context of creating business and creating jobs: migration as an asset towards economic growth and decreasing unemployment. Defining migration policies should keep this bigger picture in mind. In the case of the Western Balkan it can be submitted that the stability and/or association agreements and the wish to join the EU as a matter of fact and strategy result in copying EU-rules on freedom of movement. In the case of capital and goods this is already (being) done by agreeing to and implementing the Central European Free Trade Agreement (CEFTA)<sup>8</sup>. As to services it should be underlined that even within the EU complete freedom of movement of services has not yet been attained<sup>9</sup> and this freedom may hence also be a challenge in the WB6 region. The EU has made big strides where it concerns freedom of movement of persons although recent developments (e.g. domestic transport with foreign drivers still based – salary-wise – in the country of origin) show that some adjustments may be needed.

As indicated above, freedom of movement may greatly contribute to economic growth. Moreover, approximation to EU norms obliges preparations for introducing such freedoms. And irrespective of the social and/or economic aspects, political reality demands such an open approach. The main question is not *whether* free regional movement of persons/workers will be agreed upon, but rather: *when*. Questions to be answered, therefore, are whether this point has been introduced into the public discourse and whether this approach will be duly reflected in the political debate and hence into legislation and administrative practice.

Free movement of labour can be beneficial to all involved: the country of arrival, the country of origin, and, most importantly, the migrants themselves. Yet, this triple-win is not always attained. And apart from economic arguments due regard shall be had to other ones: a multidisciplinary approach shall be welcomed (sociology, political sciences, human geography, and so on). In the case of the focus region of this report, the Western Balkan six, it might be submitted that possible hurdles can most probably be quite easily overcome. However, free movement of labour should not be the goal, but rather an instrument, a tool to attain what the governments in the region strive for: sustainable economic and social development, job-creation, a minimal level of unemployment and maximum growth in many aspects.

III Albania and Kosovo\* have agreed in May 2014 on a common labour market. However, ethnic Serbians would appear to have been excluded (see Albania report, p.x).

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

## 2.2. Regulative and normative context

All countries are sovereign. All countries are free to decide whom to invite to their country, whom to admit, whom to allow permanent residence to and whom to request to return to the country of origin. Sovereign countries are free to enter into contractual relations with other sovereign countries to rule on entry, sojourn and return. Moreover, some principles, like the *non-refoulement* one, have become general principles of international law every country should adhere to, irrespective of having acceded to a convention or treaty in which that principle has been laid down. Also, all individuals enjoy the right to leave their country (and to return to it) but not, in general, the right to enter another country. And the obligation for states to receive their own citizens home is a rule of customary international law.<sup>10</sup>

Migration can be looked upon from various different angles: economics, sociology, political sciences, anthropology, statistics, demography and so on. Legal aspects should be considered as facilitating at best, but may nevertheless play a decisive role. This has to do with the fact that migration has been embedded in a legal system, providing the administration, employers and migrants with a great many rights and obligations. Legalities are therefore to be taken into account but should as such not play an all-defining role.

When it comes to migratory movements, every state should start with some stock-taking, also called a migration profile: how many citizens have left the country (why and for how long); who has entered the country (why and for how long); what are the benefits and constraints involved. Next comes a migration policy: what is it the country wants: prepare its citizens for out-migration, create a climate in which the citizens rather stay in the country; which professionals are needed; does the country attract migrants and/or foreign direct investment. If not, how can this be improved, if that is what the country wants.

Once a migration policy has been agreed upon, the next step should be an action plan, involving all the various stakeholders (line ministries, employers, trade unions, civil society and the public at large). And only then legislation should be put in place to enable the administration to implement the migration policy and action plan of their choice. The freedom to define and adopt legislation, however, is somewhat limited by international norms and regulations, which helps making migration an equal playing field.

Countries tend to have a different policy towards different groups of migrants. As Ruhs explains, the policies are more generous towards migrants more needed. This is quite logical, and not forbidden under international law. The privileges to attract certain groups of migrants may be found in services (access to social welfare, health), permits for longer stay; greater flexibility towards family members, tax-advantages, and so forth:

*"...The design of a labour immigration policy requires policy decisions on three fundamental issues: how to regulate openness i.e. the number of migrants to be admitted (e.g., through quotas); how to select migrants (e.g., by skill); and what rights to grant migrants after admission (e.g., temporary or permanent residence; access to welfare*

*benefits; and limited or unlimited rights to employment). Most countries operate different labour immigration policies for admitting migrants for employment in low-, medium- and high-skilled jobs. Policies for different skill groups of workers are typically associated with different degrees of policy openness and rights for migrants...”<sup>11</sup>*

Yet, migratory movements are not just the result of pull factors (demand; the situation in the country of arrival) but also of push factors (supply; the situation in the country of origin).

Simplistically speaking these migratory movements can be divided in three: economic migration, family migration and protection migration. Of these three, economic migration (which includes labour and for instance students) can, in principle, be ‘governed’ quite well. That is in principle also true for family migration, but this depends heavily on the rules in place (there is no obligation under international law to grant the migrant worker the right to bring his/her family); as to protection migration the rules are well spelled out (international refugee law; in the EU a great many relevant directives dealing with asylum-seekers).

In describing migration governance, due attention needs to be paid to international legal norms. They after all define the parameters a country has to take into account whilst formulating a migration policy, given that international migration concerns movements of persons across national boundaries. These parameters are of relevance whenever migrants are invited and whenever migrants are present in the country. The norms and rules concern entry, sojourn and return, but also long-term residency, family members, access to education, social welfare and health. The norms are actually quite straightforward and greatly assist towards proper migration governance.

What follows below should be seen in the light of these observations. Focus will be on the (international and CoE) legal aspects. An overview will be given of the various international and regional instruments. Due attention will be paid to compliance and enforcement. The role of various committees and the Universal Periodic Review (UPR) will be highlighted. It will be concluded that the instruments, procedures and various forms of supervision in place greatly contribute to a better understanding and implementation of the existing norms.

## 3. International and European frameworks for regulating SEE labour mobility

### 3.1. SEE alignment with key international norms on labour mobility

In July 2013, ten years after the entry into force of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Family (ICRMW), the Committee set up under that Convention issued the following statement:

*"...all migrant workers are, first and foremost, human beings with inalienable rights. They enjoy protection under the international human rights system, regardless of their nationality or immigration status. Migrants are not commodities nor are they just economic or political actors. They are producers and drivers of societal change. Throughout the world migrants are best placed to contribute to society when their rights are respected. (...) [In] addition to providing a framework for state action in relation to migrants, the [ICRMW] is a helpful tool to deal with questions about international migration. (...) Human beings are now recognized as being at the core of migration, no longer seen as merely economic agents. It is only through the protection and respect of the human rights of all migrants that migrant workers are able to contribute to the economic, social and human development of both their countries of origin and host countries. [The] universal protection of human rights, particularly workers' rights, is the best strategy to prevent abuses and address the vulnerability that migrant workers face..."<sup>12</sup>*

Today, no one questions that when dealing with labour migration in abstract terms, one needs to remember that migrants are human beings with inalienable rights. However, the understanding of what these rights entail in practical terms is not homogeneous across countries. There is as yet no complete universal freedom of movement across borders. Indeed, the Universal Declaration on Human Rights, art. 13, talks about the right to leave one's country and the right to return. This, as indicated above, is an incomplete right, as it is not matched with a right to enter another country.

In the context of labour mobility, there is similarly no consistent agreement on whether it automatically leads to the economic development of a country and a region. On the one hand, labour mobility is often seen as a solution when there is a need for special professions or specialists and experts, irrespective of the skills concerned.

Yet, cardiologists may be needed, or skilled mechanics; ICT experts or nurses. It all depends on the level of development and the situation in the particular labour

market. In fact, seasonal work (agriculture, tourism) is, statistically speaking, probably the biggest magnet for migratory movements, albeit temporary, seasonal ones.

Yet, attention needs to be paid to the labour-capital equation. Is freedom of movement of people to be preferred over the freedom of movement of capital? The question should be asked whether labour should move to where the capital is, or rather whether capital should move to where labour is available. As it was stated in the preamble of ILO Convention 143 (1975):

*"... in order to overcome underdevelopment and structural and chronic unemployment, the governments of many countries increasingly stress the desirability of encouraging the transfer of capital and technology rather than the transfer of workers in accordance with the needs and requests of these countries in the reciprocal interest of the countries of origin and the countries of employment... [and emphasize]... the need to avoid the excessive and uncontrolled or unassisted increase of migratory movements because of their negative social and human consequences..."*<sup>13</sup>

### 3.1.1. Key international instruments

The treatment of the migrant worker is the subject of an increasing number of conventions and charters, both international and regional (see Box 2).

#### Box 2: KEY GLOBAL INTERNATIONAL NORMS OF RELEVANCE TO LABOUR MOBILITY

Below is a list of conventions which in one way or another deal with the status, rights and obligations of migrants:

**ICCPR** = International Covenant on Civil and Political Rights (1966)

**ICESCR** = International Covenant on Economic, Social and Cultural Rights (1966)

**CAT** = Convention against Torture (1984); CAT-OP: Optional Protocol, (2002)

**CRC** = Convention on the Rights of the Child (1989)

**ICRMW** = Convention on the Protection of the Rights of All Migrants Workers and Members of their Families (1990)

**ILO C97** = (ILO) Migrants for Employment Convention (1949)

**ILO C143** = (ILO) Migrant Workers Convention (1975)

**ILO C181** = (ILO) Convention concerning Private Employment Agencies (1997); art. 8 refers to migrant workers

**ILO C189** = (ILO) Domestic Workers Convention (2011); art.15 refers to migrants workers

The relevance of being a party to the universal human rights conventions, as far as migrants are concerned, is as follows:

- 🔗 Under CAT, art. 3 and ICCPR, art 7, persons ordered to leave the country enjoy the right not to be exposed to inhuman or degrading treatment, and may wish to approach the respective committees under these conventions under the right of communication or petition (if the protocol concerned has been acceded to; or the declaration concerned made) to prevent to be returned to the country of origin. Under ICESCR and CRC socioeconomic rights can be claimed; these may include the right to remain in the country from where migrants may be told to leave; also (CRC) the interests of the child are to be considered as a primary consideration in an administrative and/or judicial decision-making process.
- 🔗 Under ICCPR all persons enjoy the right to a proper, effective remedy (art. 2)
- 🔗 The ability of individuals to complain about the perceived violation of their rights in an international arena turns the individual from an 'object' to a 'subject' under international human rights law. This is also true for a migrant, irrespective of his status.<sup>14</sup>

All the SEE countries are party to the main international conventions relevant to labour mobility. The main exception is the ICRMW 1990, to which only Albania and BiH have acceded (no EU member state is a party to that convention). Yet, the ICRMW is worth being looked into in depth. As the Committee under this Convention stated in 2013:

*"[ICRMW] does not create new standards for migrants different from those provided by general human rights law. It does not oblige States to regularize the situation of irregular migrant workers or reach above general international human rights standards which protect all human beings, but it does give a specific framework for regulating international migration based on human rights and due process guarantees. Irregular migrants have rights under all human rights instruments, not just [ICRMW] and refusing to ratify the Convention will not release states from the obligation to provide fundamental standards of protection to all migrants regardless of their immigration status. [ICRMW] is one of the core international human rights instruments, and is firmly grounded in the principles and standards of the wider human rights framework. [ICRMW] provides guidance to States on a range of measures related to migration governance based on human-rights which include the dismantling of social barriers that obstruct the full participation of everyone, including migrants, in economic and social life".<sup>15</sup>*

**TABLE 1: SEE ADHERENCE TO LABOUR MOBILITY GLOBAL INTERNATIONAL NORMS**

INTERNATIONAL LAW INSTRUMENT	ALBANIA	BIH	CROATIA	MONTENEGRO	SERBIA	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
ICCPR	x	x	x	x	x	x
ICCPR 1st Protocol	x	x	x	x	x	x
ICESCR	x	x	x	x	x	x
Protocol Communication***	-	x	-	x	-	(s)
CAT	x	x	x	x	x	x
Declaration art. 22	-	x	x	x	x	-
CAT – OP	x	x	x	x	x	x
CRC	x	x	x	x	x	x
Protocol Communication***	x	-	(s)	x	(s)	(s)
ICRMW	x	x	-	(s)	(s)	-
Decl. art. 77	-	-	-	-	-	-
ILO C97**	x	x	-	x	x	x
ILO C143	x	x	-	x	x	x
ILO C181	x	x	-	-	x	x
ILO C189	-	-	-	-	-	-

x = party; (s) = signed (but not [yet] a party)

\*Italy and Germany are the only European countries that are parties to this ILO domestic workers convention (art. 15 of which deals with migrants)

\*\*\* This Optional Protocol establishes an individual complaints mechanism.

All countries are, as a matter of course, obliged to implement conventions and treaties they are a party to. The way this obligation is transposed into the country's legal system differs. In some countries treaties are self-executing, meaning that the administration could apply the treaties without any transposition of the treaties into national, domestic law. In such cases, judges may also use those treaties as a source of law<sup>16</sup>. In most countries, however, parliament, whilst ratifying or acceding to a treaty, needs to amend the national laws concerned so that those will reflect the obligations, rights and norms as agreed upon in that treaty. The administration then implements domestic legislation and judges apply national law, duly amended.

Treaties are foremost contracts, - contracts between countries. This is also the case with human rights conventions. These conventions create contractual relations between states; not between states and individuals (be they citizens or foreigners). In other words, states are the subjects under these conventions, whereas the individuals can be considered objects. The latter, however, become subjects (the holders of rights) thanks to the transposition of these conventions into national law and/or thanks to the possibility to submit a communication or

petition to a committee set up by/under that convention. Such a communication or petition normally amounts to a complaint about the way that individual has been treated by the government where that individual lives or resides. Also under the European Convention on Human Rights (ECHR), the individual can take a case to the European Human Rights Court (ECtHR) and is therefore to be considered a 'subject'. As a matter of course, the ECtHR comes only into the picture after all the national remedies have been exhausted, - administrative and judicial ones. And recent developments increasingly focus on subsidiarity and the margin of appreciation, meaning that 'Strasbourg' agrees that a great many cases shall be dealt with on the national level only.

### 3.1.2. Monitoring mechanisms

On the international level, **committees** set up under human rights conventions play an active role in ensuring proper implementation of those conventions. Most human rights conventions have committees. The task of such a committee is four-fold:

- 🔗 to screen country reports; and to issue concluding observations
- 🔗 to produce general comments (explanations on for instance a specific article)<sup>17</sup>
- 🔗 to deal with state complaints
- 🔗 to deal with individual 'communications' (but only if the states agree to this; often a protocol is annexed to a convention, which needs specific accession; or a declaration needs to be made under a relevant article of the convention).

#### Box 3: ICRMW OBSERVATIONS ON BiH AND ALBANIA

The ICRMW Committee observed in 2010 in the case of Albania: "The Committee notes that, according to the Constitution of Albania, international agreements ratified by law prevail over the domestic laws that are not compatible with it. However, in practice there is no guarantee of primacy of the Convention in case of conflict with national legislation". Further observations included:

10. The Committee encourages the State party to take all necessary measures, including legislative measures, to harmonize its domestic legislation with the Convention. The State party should also take appropriate and effective steps to guarantee the application of the Convention in practice.

11. The Committee regrets the lack of sufficient information on the legislation regulating migration, in particular on the Law on Migration of Albanian Nationals for Employment Purposes, and the law on Foreigners and on its implementation.

12. The State party is invited to provide in its second periodic report effective information on the domestic legislation regulating migration,

including on the Law on Migration of Albanian Nationals for Employment Purposes, and the Law on Foreigners, as well as concrete information on their implementation.

13. The Committee notes that Albania has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

14. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

On BiH, the Committee, in its 2012 Concluding Observations submitted:

12. The Committee recommends that the State party encourage the Entities to harmonize their legislation in order to ensure that migrant workers in the State party fully enjoy the rights enshrined in the Convention, especially in the areas of employment, education and social security.

13. The Committee notes that, in April 2012, a new draft law amending the Law on Movement and Stay of Aliens and Asylum was submitted by the Council of Ministers to Parliament for adoption.

14. The Committee urges the State party to ensure that the new draft law amending the Law on Movement and Stay of Aliens and Asylum fully complies with the provisions of the Convention and to adopt it without delay (...)

18. The Committee recommends that the State party:

(a) Take the necessary steps to ensure access by migrant workers and members of their families to information about their rights under the Convention; and

(b) Continue cooperating with Migrant Service Centres and civil society organizations in promoting and disseminating the Convention among all relevant stakeholders.

The **country reports** are an important instrument to make sure that the countries live up to their obligations under the convention concerned. Such reports need to be submitted every 4 or 5 years. The Committee normally also pays attention to the status of migrants. The **concluding observations** of the Committee under ICRMW are in this respect of the utmost importance. **General Comments** are most useful in that they provide guidelines as to how to interpret and implement specific articles of the convention concerned. In these guidelines due regard is normally had to migrants<sup>18</sup>. Box 3 presents an overview of comments provided by the ICRMW Committee on BiH's and Albania's compliance with the provisions specified in the Convention.<sup>19</sup>

**State complaints** are quite crucial, as treaties create above all contractual relations between states. Yet, there is no or hardly any practice of state complaints. That leaves the committees with the increasingly cumbersome and

labour-intensive task of dealing with individual complaints (communication; petitions). Opinion differs as to the character of the outcome of the interventions involved, but most observers agree that the outcome is binding.

It should be noted that foreigners often address these committees (on the basis of e.g. ICCPR, art. 7 or CAT art. 3 jo art. 22). Also, it is expected that in a not too distant future cases can be submitted to the committees under ICESCR and CRC, as well as ICRMW.

Complaints may also be brought by third parties on behalf of individuals, provided they have given their written consent (without requirement as to its specific form). In certain cases, a third party may bring a case without such consent, for example, where a person is in prison without access to the outside world or is a victim of an enforced disappearance. In such cases, the author of the complaint should state clearly why such consent cannot be provided.

#### Box 4: KEY COMMITTEES OF RELEVANCE TO LABOUR MOBILITY

The **Human Rights Committee** (under ICCPR) may consider individual communications alleging violations of the rights set forth in the International Covenant on Civil and Political Rights by States parties to the First Optional Protocol to the ICCPR.

The **Committee against Torture** (under CAT) may consider individual complaints alleging violations of the rights set out in the CAT by States parties who have made the necessary declaration under article 22 of the Convention.

The Committee on Economic, Social and Cultural Rights (under ICESCR) may consider individual communications alleging violations of the International Covenant on Economic, Social and Cultural Rights by States parties to the Optional Protocol to the ICESCR.

The Optional Protocol (on a communications procedure) to the CRC gives competence to **the Committee on the Rights of the Child** to receive and consider individual communications alleging violations of the CRC and its Protocols (child soldiers; sexual exploitation) by States parties to the Optional Protocol (on a communications procedure). This individual complaint procedure has become operative in April 2014 after 10 states parties had ratified the Optional Protocol concerned.

For the **Committee on Migrant Workers** (under CMW), the individual complaint mechanisms have not yet entered into force. Article 77 of CMW gives the Committee on Migrant Workers competence to receive and consider individual communications alleging violations of the Convention by States parties who made the necessary declaration under article 77. This individual complaint mechanism will become operative when 10 states parties have made the necessary declaration under article 77. Hitherto only two states have made that declaration (one of which: Turkey).

With the creation in 2006 of the Human Rights Council (HRC), a new supervisory system was introduced: **the Universal Periodic Review (UPR)**. This UPR results in a great many (non-binding) recommendations, also in the field of migration, refugees, xenophobia, discrimination, racism and so forth. This UPR is repeated every 4 to 5 years. It normally gives an interesting impression of the way other countries look upon the human rights situation in the country under scrutiny.

**TABLE 2: UPR IN SEE OVERVIEW**

UNIVERSAL PERIODIC REVIEW	ALBANIA	BIH	CROATIA	MONTENEGRO	SERBIA	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
First UPR – year	2009	2010	2010/2011	2008/2009	2008	2009
First UPR – reference to migrants	no	no	minor attention <sup>IV</sup>			No
Second UPR – year				2013	2013	2013
Second UPR – reference to migrants				minor - ICRMW	minor, China's recommendation <sup>V</sup>	reference to ICRMW
Next UPR	2014	2015	2016	2018	2018	2018

x = party; (s) = signed (but not [yet] a party

\*Italy and Germany are the only European countries that are parties to this ILO domestic workers convention (art. 15 of which deals with migrants)

\*\*\* This Optional Protocol establishes an individual complaints mechanism.

It can be taken for granted that the recommendation to accede to or ratify the ICRMW will become a standard one <sup>20</sup>. And it should also be noted that countries will be called upon to ratify or else to accede to the Optional Protocols to CRC and ICESCR as well as to ILO Convention 189 (on domestic workers). <sup>21</sup>

Within the UN, **special rapporteurs** have been appointed (normally by the Human Rights Council) on the situation in a particular country or on a specific subject. These rapporteurs increasingly play an active role in matters relating to migrants. It is to be noted, however, that the recommendations concerned are not binding, although their communications need to be acknowledged.

The **International Labour Office** (1919) has over the almost 100 years it has been in existence contributed greatly to the well-being of the labour force,

IV 97.23. Promote greater tolerance and understanding among the majority population about the rights of the Roma community and migrants (Bangladesh);

V 132.100. Protect the rights of immigrants and take active measures to protect the rights of foreign workers, and promote harmony among all ethnic groups (China);



### Box 5: ILO MULTILATERAL FRAMEWORK ON LABOUR MIGRATION

This Multilateral Framework:

- addresses the major issues faced by migration policy makers at national, regional and international levels;
- is a comprehensive collection of principles, guidelines and best practices on labour migration policy, derived from relevant international instruments and a global review of labour migration policies and practices of ILO constituents;
- addresses the important themes of decent work for all, governance of migration, protection of migrant workers, promoting migration and development linkages, and expanding international cooperation;
- is a non-binding framework which clearly recognizes the sovereign right of all nations to determine their own migration policies;
- accepts the crucial role of social partners, social dialogue and tripartism in labour migration policy; advocates gender-sensitive migration policies that address the special problems faced by women migrant workers.

Source: ILO, 2006. Available from: [http://www.ilo.org/dyn/migpractice/docs/28/multilat\\_fw\\_en.pdf](http://www.ilo.org/dyn/migpractice/docs/28/multilat_fw_en.pdf)

including migrant workers. In 2004, the ILO adopted, by consensus, a Resolution on a fair deal for migrant workers in the global economy. The resolution called for an ILO Plan of Action on Labour Migration. The centrepiece of this Plan of Action has been the development of a rights-based Multilateral Framework on Labour Migration (MFLM). This Framework represents a balanced response to widespread demands for practical guidance and action with a view to maximizing the benefits of labour migration for all parties. It contains 9 themes with 15 broad principles and corresponding guidelines as well as a compilation of 132 good practices.

### 3.1.3. National human rights institutions

In order to fully appreciate migration governance or labour migration management, one needs to be fully aware of the rights and obligations of individuals and administrations. It is herewith submitted that labour migration in general benefits from such awareness<sup>22</sup>. However, before focusing on international institutions and committees, it is preferable to refer the debate on the status of migrants to national commissions, for instance a national human rights institution.

Over the last 20 years most countries have installed a national human rights institution (NHRI)<sup>23</sup>. That initiative was promoted in international fora (for instance through UN General Assembly resolutions). As defined by OSCE:

*"NHRIs are public institutions independent from the executive that promote and monitor states' implementation of and compliance with their obligations to protect human rights. These bodies are state-funded, permanent and independent, and are usually established by constitutional mandate or legislation. The mandate includes the power to protect and promote economic, social and cultural rights as well as civil and political rights, hence also migrants' rights".* <sup>24</sup>

It, however, remains to be seen in how far these (ombudsman-) institutions can effectively live up to such mandates as most of the SEE-based NHRIs are still in a more or less formative phase and need to establish themselves firmly before embarking on migration related issues.

#### **Box 6: COMPETENCE AND RESPONSIBILITIES OF NHRIs**

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities: etc.

In spite of the wording, it should be noted that UN GA resolutions like this one are not binding.

The Paris Principles require NHRIs to:

Protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and

Promote human rights, through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government.

The Paris Principles set out six main criteria that NHRIs require to meet:

-  Mandate and competence: a broad mandate, based on universal human rights norms and standards;
-  Autonomy from Government;
-  Independence guaranteed by statute or Constitution;
-  Pluralism;
-  Adequate resources; and
-  Adequate powers of investigation.

Source: the Principles relating to the Status of National Institutions (The Paris Principles), as Adopted by General Assembly resolution 48/134 of 20 December 1993.

### 3.1.4. Conclusions on international obligations

All SEE countries are party to the main relevant international instruments, but for the ICRMW, to which only Albania and BiH have acceded. Future success on the growth and EU alignment path will be fully dependent on the countries' awareness about the common obligations stemming from the adopted international law instruments, and their ability to analyse and implement the obligations and safeguard the rights involved. Hereto the recommendations and concluding observations as submitted by the Committees under the various conventions are key. A good and recommendable practice may be for the countries to consult each other whilst preparing reports to the relevant committees, ensuring active engagement of the civil society in the preceding consultations. A common approach might be beneficial, which can be supported, for instance under the aegis of the RCC.

Also, it should be underlined that the justifiability of the many rights enumerated under these instruments needs to be ascertained domestically. In this regard, attention needs to be paid to the governance for growth pillar of the SEE 2020 strategy which aims at a significant improvement in the functioning of the judicial system in SEE under the Dimension P 'Justice'.

## 3.2. SEE alignment with key European norms on labour mobility

All the SEE countries are member of the Council of Europe (CoE) and, thereby, party to the main CoE legal instruments, many of which are dealing with human rights, nationality, citizenship and such like, which have an impact on migratory movements as well (see Table 3).

Article 3 of the ECHR has long acted as the European way to acknowledge that most asylum-seekers do not fall under art. 1A2 of the 1951 Refugee Convention but nevertheless need some form of protection (victims of war, victims of indiscriminate violence). The EU recognized this need in 2004 only, by including

**TABLE 3: SEE COUNTRIES PARTIES TO RELEVANT CORE EUROPEAN INSTRUMENTS**

INTERNATIONAL LAW INSTRUMENT	ALBANIA	BIH	CROATIA	MONTENEGRO	SERBIA	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
ECHR = [European] Convention for the Protection of Human Rights and Fundamental Freedoms (1950)	x	x	x	x	x	x

**TABLE 3: SEE COUNTRIES PARTIES TO RELEVANT CORE EUROPEAN INSTRUMENTS**

INTERNATIONAL LAW INSTRUMENT	ALBANIA	BIH	CROATIA	MONTENEGRO	SERBIA	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
ESC (rev.) = European Social Charter (1961; revised 1996) (art. 19 refers to migrants)	x	x	x*	x	x	x
ESC (coll.) complaints	-	-	x	-	-	-
CoE status migrants = European Convention on the Legal Status of Migrant Workers (CoE, 1977)	x	-	-	-	-	-
Recognition Qualifications Convention = Convention on the Recognition of Qualifications concerning Higher Education in the European Region (CoE, 1997)	x	x	x	x	x	x

\*Croatia is party to the original charter (1961), not the revised one (1996)

in the Qualification Directive the concept of subsidiary protection, also known as complimentary protection. Most fortunately virtually all European countries had by that time already included that principle in their domestic legislation. This is also true for the SEE region. Yet, in spite of the adequate domestic legislation, many individuals continue to approach the ECtHR complaining about their status and/or treatment.

One instrument has for a long while been in the shadow but is now seeking the limelight, - and rightly so. It concerns the European Social Charter, to which all SEE countries are a party (Croatia is party to the 1961 version only, rather

than the 1996 revised one). The Charter spells out the social and economic rights that State Parties to the Charter must guarantee for people living within their jurisdiction <sup>25</sup>. All 47 Members of the Council of Europe are party to this instrument, which was adopted in 1961, revised in 1996 and amended by three additional protocols. The Charter complements the European Convention on Human Rights which focuses on civil and political rights and is monitored by the European Court on Human Rights. States must have accepted at least six 'hard core' provisions of the Charter; these are: Articles 1, 5, 6, 7, 12, 13, 16, 19 (an article on migrants) and 20. They must also agree to be bound by a number of other articles or numbered paragraphs which they may select. The total number of articles may not be less than 16; the total number of numbered paragraph may not be less than 63.

### Box 7: "MIGRANT" ARTICLE 19 OF THE ESC

Article 19 reads:

The right of migrant workers and their families to protection and assistance. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
  - a. remuneration and other employment and working conditions;
  - b. membership of trade unions and enjoyment of the benefits of collective bargaining;
  - c. accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

### 3.2.1. CoE monitoring mechanisms and bodies

Strasbourg European Court of Human Rights (ECtHR) cases should be monitored by all European governments, including in the SEE countries, as many of them deal with foreigners. A combined observation post would greatly enhance efficiency. Also, as indicated above, recent developments on subsidiarity and margin of appreciation are also of relevance for cases involving foreigners.<sup>26</sup>

Another European institution to be taken into account is the CoE Office of Commissioner for Human Rights (now: Mr. Muiznieks). The Commissioner often submits relevant and constructive reports.<sup>27</sup>

**The European Committee of Social Rights (ECSR)** was created by Article 25 of the European Social Charter (ESC; or, Charter) to monitor States' compliance with the rights contained in the Charter. The ECSR is made up of 13 independent experts who are elected by the Council of Europe's Committee of Ministers. The Committee monitors how States are implementing the Charter through a State reporting system and a collective complaints system. The Committee has devised a reporting procedure for State Parties to the Charter. These reporting guidelines set out actions needed to bring national legislation in line with the Charter. State Parties to the Charter will report to the Committee every year (on 31 October) on one of the four sets of thematic provisions of the Charter. In this way, each State will report on each set of provisions once every four years. The groupings are:

- 🔗 Employment, training and equal opportunities: articles 1, 9, 10, 15, 18, 20, 24, 25
- 🔗 Health, social security and social protection: articles 3, 11, 12, 13, 14, 23, 30
- 🔗 Labour rights: articles 2, 4, 5, 6, 21, 26, 28, 29
- 🔗 Children, *families, migrants*: articles 7, 8, 16, 17, 19, 27, 31

When the Committee examines State reports, it issues 'conclusions' about a State's compliance with the Charter. These conclusions are available on the European Social Charter database, and are similar to concluding observations issued by UN treaty bodies<sup>28</sup>. A Governmental Committee, which is composed of representatives of State Parties, considers questions of non-compliance in the months that follow the publication of conclusions. If the Committee feels that there is no intention to remedy a violation, it can issue a recommendation to the State concerned through the Committee of Ministers, requesting that it take appropriate measures to do so. The Governmental Committee publishes an annual report on the European Social Charter which it presents to the Committee of Ministers of the Council of Europe.

Complaints of human rights violations may be submitted by individuals to the European Committee of Social Rights under the additional protocol for a collective complaints procedure<sup>29</sup>, which came into force in 1998, *if indeed the State has recognized this power*.<sup>VI</sup> The Committee examines the complaint and, if it meets certain criteria, will declare it 'admissible'. After written exchanges and/or a hearing, the Committee then takes a decision on the merits of the complaint. Finally, the Committee of Ministers adopts a resolution. In some cases it may recommend that the State concerned take specific measures to bring the situation into line with the requirements of the European Social Charter<sup>30</sup>. However, the Committee findings are not binding but merely recommendations.

The "Migrant" article 19 of the ESC gives a clear indication of the various rights and obligations involved. When it comes to migrants, the following examples (see Box 8) indicate the relevance of the ESC and the views of the Committee:

#### Box 8: EXAMPLES OF ESC CONCLUSIONS ON MIGRANT ISSUES

##### **Croatia**, (2013),

*Conclusion* (Source: Council of E [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/CroatiaXX2\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/CroatiaXX2_en.pdf))

*The Committee concludes that the situation in Croatia is not in conformity with Article 13§4 of the 1961 Charter on the ground that it has not been established that all non-resident foreign nationals in need – whether legally present or in an irregular situation – are entitled to emergency medical and social assistance.*

##### **The former Yugoslav Republic of Macedonia**

(2013), *Conclusion* (Source: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/MKDXX2\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/MKDXX2_en.pdf))

*The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 13§1 of the Charter on the grounds that*

- 🔗 social assistance benefits are not adequate as they fall manifestly below the poverty threshold;*

VI States can also recognize the right for national NGOs to lodge collective complaints, though only Finland has done so to date.

-  *certain benefits such as social financial assistance and permanent financial assistance are granted to nationals of other States Parties only subject to an excessive length of residence requirement.*

**Serbia** (2013), Conclusion

(Source: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Serbia2013\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Serbia2013_en.pdf))

*The Committee recalls that foreigners who are nationals of the States Parties lawfully residing in the territory of another State Party and lacking adequate resources, must enjoy an individual right to appropriate assistance on an equal footing with nationals, without the need for reciprocity. It accordingly asks the next report explicitly to indicate what forms of social and medical assistance are available for foreign nationals of States Parties with temporary or permanent resident status in Serbia, as well as to refugees and stateless persons, including people that are de facto stateless because of the lack of documents. It reserves in the meantime its position on this issue.*

*The Committee asks the next report to clarify whether and to what extent nationals of the other States Parties legally resident in Serbia are provided equal access with Serbian citizens to the services concerned; whether and to what extent stateless people, including the people living in Serbia without documents, have access to these services; and whether these services are provided free of charge and are adequately distributed on a geographical basis. It furthermore asks the next report to provide updated statistic data on the budget for social services and the number of beneficiaries.*

### 3.2.2. Conclusions on SEE alignment with European norms

On the CoE level many instruments assist towards dealing diligently with migrants and members of their families. Both where it concerns first generation rights (civil and political rights, covered by the ECHR and adjudicated by the ECtHR) and second generation rights (social and economic rights, covered by the ESC and supervised by the ESC Committee) due attention needs to be paid to the interpretation and implementation of the instruments concerned. Moreover, a trend can be discerned that arguments for entry and/or continued stay of migrants and members of their families increasingly refer to social and economic rights rather than to civil and political rights, as in the recent past. (Institutionalized) regional cooperation is called for, as foreseen under governance for growth in the SEE 2020 strategy, preferably under the aegis of RCC. This would greatly assist towards recognizing these trends and towards transposing them to regional policy and practice.

### 3.3. Joint conclusions on international and CoE norms

There are many international and CoE norms regarding the status of migrants and members of their families. It is foremost to the national authorities to ensure that all these norms be upheld. National human rights institutes may play an important role. Moreover, the judiciary is crucial in adjudicating cases between the authorities and the individuals concerned, which points to the need to build an independent, efficient and accountable judiciary.

International supervisory bodies play an increasingly relevant role: courts, committees and commissions deal with trends, norms and individual cases. Judgments (ECtHR) are always binding. So may be concluding observations and sometimes recommendations. Communications need to be addressed. The ESR Committee is believed to play an increasingly important role.

The above complicated playing field demands duly coordinated responses and reactions. Institutionalized cooperation is called for as a regional approach may be advisable. The RCC is playing an increasingly important role in supporting regional efforts to address the many reporting obligations under the various international instruments under the governance for growth pillar of the SEE 2020 strategy.

It is also important to highlight a beneficial involvement of universities in the process, as they too display an interest in the legal and other aspects of international law and human rights and can play a useful role in analysing the various cases and reports. Universities could increase regional cooperation to strengthen scientific research, to cooperate with governments in order to provide input for policy making, planning and implementation, but also to aim at regional legal publications and to create regional capacities for implementing legal reforms. Regional cooperation needs commitment from the institutions in charge of implementing the national judicial strategies. By institutionalizing regional networking, fields of regional cooperation could be identified, evaluated and monitored in order to involve these institutions in setting up and conducting regional initiatives.

## 4. SEE labour mobility regulation in light of EU acquis

In this chapter due attention will be paid to several EU-legislation linked issues, namely (a) foreigners' general access to labour market; (b) recruitment facilitation and regulation of private recruitment agencies (PRAs) and other stakeholders, involved in recruitment of foreigners in the local market; (c) labour market protection mechanisms and measures ensuring preferential treatment of national labour force; (d) roles and responsibilities of employers of migrant workers as compared to when employing nationals; (e) regulation of employment of special categories of migrant workers and foreigners' access to prioritized sectors of labour market; (f) social protection of foreign workers; (g) mutual recognition of professional qualifications; and (h) legislative framework for capturing, processing and sharing information on labour mobility and migration.

As to **foreigners' general access** to the labour market it should be underlined that it is the prerogative of the state to decide to whom to give access to its labour market. Exceptions to this rule can be found in refugee (subsidiary protection) law, family reunification and family unity law, and as to those foreigners who fall under specific bilateral, regional or international treaties. The main question, therefore, arises what the status shall be of (i) students who complete their studies; and (ii) those foreigners who find themselves without a job after having spent a (long) while in the country concerned. EU directives give directions on these issues and are worth being approximated whilst formulating the relevant policies and legislation.

**Private recruitment agencies** are more often than not geared towards maximizing their profit. There are no altruistic considerations in this field. Yet they may play a useful market-oriented role, but caution is asked for. Even in countries like the Philippines the recruitment agencies, in close cooperation with the Government, do not necessarily take interests of migrant workers into account. Due vigilance is asked for. The free market is in this context not necessarily the best solution. Regulation and close supervision should be in place. Trafficking is not limited to the sex-industry but also part and parcel of labour migration schemes.

**Labour market protection mechanisms** are quite logic and useful, as any administration needs to keep the interests of the country and its inhabitants into account. Before allowing companies to hire foreigners these companies may well be requested to show that their efforts to identify local staff did not bear fruit. Supervision is not always easy and abuse may be around the corner, particularly if the employers are keen to save on salaries and if migrants agree to a lower salary. (EU-) rules on migrant labour working under the same/similar conditions as local labour should be duly considered. Membership of trade unions and the role of trade unions in general are part and parcel of this playing field.

What has submitted in the previous point is also true for **the role of employers in general**. It is therefore suggested that migration governance is discussed and implemented in close cooperation with employer organizations and trade unions alike. Employers are under pressure to increase profits. If this can be accomplished by hiring cheap labour, moral ethical or legal arguments may be fiddled with. Supervision and regulation should be similarly duly introduced.

Inviting **special categories of migrant workers** and foreigners in general to prioritized sectors of labour market may be in the interest of the receiving community. In order to simplify matters, a simplified entry and stay regime may well be introduced.

The **social protection of foreign workers** is in the EU a hotly debated issue, as too generous a system may backfire and may create resentment among the population at large (apart from the financial aspects). Step-by-step access to social welfare, as introduced by for instance Denmark, appears to be a fairly successful approach. Agreeing on the level and timing of social welfare is one of the sensitive issues that should be dealt with whilst filling in the details of a (regional) single market. Related to this issue is the need to agree on the trans-border character of social welfare (and e.g. pensions).

The **mutual recognition of professional qualifications** is a most important aspect to promote and benefit from cross border labour. In general it should be recalled that migration more often than not involves a certain level of loss of capital, i.e. migrants working below their qualifications (an engineer as a taxi-driver; a primary school teacher as a domestic worker). In order to make full use of the many positive aspects of labour migration, the mutual recognition issue needs to be settled at the very earliest convenience.

**Processing and sharing information on labour mobility** and migration deserves a proper legislative framework. Indeed, data are needed to be able to formulate a migration policy and data are needed to evaluate that policy. Moreover, information should be shared among the various stakeholders, also cross border. Yet, data protection is both within the CoE and the EU an important issue, and therefore a legislative framework in this realm is needed, in order to balance the administrations' needs and the individuals' rights.

The EU has no (common or single) migration policy as yet. This means that individual EU MS (still) can invite the migrants they want. In the Treaty on the Functioning of the European Union (TFEU), art. 79, however, it can be read in paragraph 1 that the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings. Apart from various relevant directives covering specific categories of migrants, no definite action has hitherto been undertaken (this is different where it concerns asylum: the EU is slowly but steadily heading towards a common asylum policy).

### Box 9: KEY DIRECTIONS OF EU MIGRATION POLICY AS PER TFEU

TFEU, art. 79, paragraph 1, states that the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

The other paragraphs of article 79 TFEU read:

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) 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;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

## 4.1. EU acquis on labour mobility: Overview

Negotiations between the EU and candidate countries have a chapter by chapter approach. In total, 35 chapters need to be addressed<sup>31</sup>. Three chapters of direct relevance for the purpose of the current legal assessment are chapter 2 (freedom of movement of workers), chapter 19 (social policy and employment) and chapter 24 (freedom, security and justice). Chapters 2 and 19 primarily cover equal enjoyment of labour and social rights by all groups of the population, including foreigners. The legal aspects of regulating foreigners' entry, stay, residence and access to labour markets are dealt with in chapter 24, among other migration

and asylum related matters. The specific issues regulated by the three chapters can be described as follows in Table 4: <sup>32</sup>

EU ACQUIS CHAPTER	REGULATED AREAS
Chapter 2: Freedom of movement for workers	<ul style="list-style-type: none"> <li>▪ Includes a mechanism to coordinate national social security provisions for insured persons and their family members who are moving from one Member State (MS) to another;</li> <li>▪ Provides rights for all EU citizens to work in another EU MS and to;               <ul style="list-style-type: none"> <li>› reside there for that purpose, with their family;</li> <li>› be treated equally as national workers with regards to working conditions, social and tax advantages;</li> <li>› This acquis also includes a mechanism to coordinate national social security provisions for insured persons and their family members who are moving from one Member State to another</li> </ul> </li> </ul>
Chapter 19: Social policy and employment	<ul style="list-style-type: none"> <li>▪ minimum standards in areas of labour law, equal opportunities, health and safety at work and anti-discrimination</li> <li>▪ MS participate in EU policy processes in the areas of employment policy, social inclusion and social protection</li> <li>▪ The social partners of Member States participate in social dialogue at European level</li> <li>▪ The European Social Fund (ESF) is the main financial tool</li> </ul>
Chapter 24: Justice, freedom and security	<ul style="list-style-type: none"> <li>▪ Maintain and further develop the Union as an area of freedom, security and justice</li> <li>▪ Focus areas: external migration, asylum, border control, visas, judicial cooperation in criminal and civil matters, police cooperation, the fight against organized crime and terrorism, cooperation in the field of drugs and customs cooperation.</li> </ul>

Part of Chapter 24 deals with (asylum and) migration, and the directives adopted on these subjects are hence of the utmost importance. The directives concerned might all be taken into due account. Again, it needs to be stressed that these norms do not reflect binding international norms. For the WB6 region, approximation is on a voluntary basis even though is set as a priority by the governments' political decision to join the EU as soon as possible. As we will see below, one of the main recommendations of this report is to strive urgently for free movement of persons in the WB6 region. Whilst setting up such a system of free movement, regard should be had to the main directives concerned. In other words, although enlargement is not on the agenda of the Juncker-Commission, preparedness (in particular where it concerns chapters 2 and 24) is of the utmost importance and relevance.

EU immigration rules and future plans can be divided between coming to the EU and staying in the EU <sup>33</sup>. EU-wide laws (directives) have already been introduced to standardize admission and residence rules for the following categories of non-EU citizens wishing to come to an EU country to work or study:

- 🔗 Posted workers
- 🔗 Long term residents
- 🔗 Highly qualified workers (EU Blue Card scheme)
- 🔗 Students, unpaid trainees, school pupils and voluntary workers
- 🔗 Researchers
- 🔗 Seasonal workers
- 🔗 Employees of multinational companies who wish to move to a branch office in an EU country (intra-corporate transfers).

Special categories of vulnerable migrants (e.g. victims of trafficking) may be granted additional residence rights. For all categories of migrant workers and foreigners in general, simplification of procedures via issuance of a single permit has been undertaken. Non-EU citizens who live legally in an EU country acquire further rights. EU-wide rules enable non-EU citizens to become long-term residents and to bring their family members to live with them in their new countries. The EU's integration policy aims to grant these non-EU citizens rights and obligations similar to those of EU citizens.

Also, regard should be had to the Schengen treaty, to which most EU and some non-EU member states are a party. This results in the issuance of a so-called Schengen-visa, which enables the holder to travel all the Schengen countries. The WB6 region may wish to introduce a similar visa-system, enhancing regional freedom of movement.

What follows in Table 5 is a short description of the relevant European Community or EU Directives. Whereas Regulations are self-executing (meaning that they can and shall be applied directly), Directives need to be transposed into national, domestic law. Only upon such transposition can they be used and are they applicable. The Commission plays an important role in supervising this transposition process. It may start a procedure (with for instance the Luxemburg based European Court of Justice (ECJ)) in case countries are late or incomplete in transposing the Directive. Also the way a country then applies the duly amended national law is subject to a supervision process.

**TABLE 5: EU LEGAL MIGRATION ACQUIS OVERVIEW**

ISSUE	EU INSTRUMENT	REGULATED RIGHTS AND ISSUES	KEY CONDITIONS
Single permit	<p>Directive 2011/98 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of MS and on common set of rights for third country workers legally residing in a MS</p> <p>Date of transposition: 25/12/2013</p>	<ul style="list-style-type: none"> <li>▶ Issues both residence and work permits for TCNs with a single application procedure</li> <li>▶ Ensures all legally residing non-EU citizens enjoy a common set of rights based</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ TCNs seeking to be admitted to an EU State for work purposes and those who are already resident and have access to the labour market or are already working there (family members, students, researchers, etc.)</li> <li>▶ Does not cover posted workers, seasonal workers, au pairs, intra-corporate transferees/beneficiaries of international and national protection, long term residents, foreigners whose removal is pending, self-employed workers, and seafarers</li> </ul>	<ul style="list-style-type: none"> <li>▶ MS decides whether TCNs or employers have to apply for the single permit</li> <li>▶ MS decides whether application needs to be submitted in the MS or country of origin</li> <li>▶ Indicative time limit for examination application is four months</li> <li>▶ Application procedure without prejudice to visa procedure (if required)</li> </ul>
Long-term residents	<p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents</p> <p>Date of transposition: 19/06/2011</p>	<ul style="list-style-type: none"> <li>▶ Grants European resident status to non-EU nationals who have legally and continuously resided for a period of five years within the territory of an EU country</li> <li>▶ Offers long term residents equal treatment with nationals concerning access to employment, education, recognition of diplomas, social security, tax benefits, etc.</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ Applies to all non-EU nationals residing legally in the territory of an EU country</li> <li>▶ Does not cover students, vocational training, temporary protection, subsidiary protection, refugees, au pairs, seasonal workers, cross-border, and diplomats.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Limited periods of absence allowed (up to 10 months)</li> <li>▶ Sufficient and stable means of income and medical insurance prerequisite</li> <li>▶ Many exceptional provisions (like students who later start working may count 50 per cent of their study years towards the 5-year benchmark)</li> <li>▶ Periods of absence allowed if less than 10 months in total (total will then be 5 years plus months of absence); absence of more than 6 months counts as possible disqualification</li> <li>▶ Integration conditions may be required</li> <li>▶ Public policy or public security can be ground for refusal; no refusal on economic grounds</li> <li>▶ Withdrawal or loss of status possible; yet protection against expulsion</li> </ul>

**TABLE 5: EU LEGAL MIGRATION ACQUIS OVERVIEW**

ISSUE	EU INSTRUMENT	REGULATED RIGHTS AND ISSUES	KEY CONDITIONS
<i>Highly qualified employment</i>	<p>Council Directive 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 (blue card directive) Date of transposition: 19/06/2011</p>	<ul style="list-style-type: none"> <li>▶ Grants residence permission to highly qualified employers based on a harmonized fast-track procedure and common criteria</li> <li>▶ Entitles to enter, re-enter and stay, to labour market access, to continued stay during temporary unemployment.</li> <li>▶ Allows for family reunification for the duration of the residence permits issued insofar the validity of the travel documents allows it</li> <li>▶ Ensures equal treatment with nationals as regards working conditions, social security, pensions, recognition of diplomas, education and vocational training</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ Covers highly qualified TCNs seeking to be admitted to the territory of a MS for more than three months for the purpose of employment, as well as to their family members.</li> <li>▶ Does not cover temporary protection, refugees, subsidiary protection, researchers, FR family members, Long-term residents</li> </ul>	<ul style="list-style-type: none"> <li>▶ Valid work contract or binding job offer for at least one year, professional qualifications, valid travel documents, sickness insurance and a minimum salary level required of at least 1.5 times the average gross annual salary paid in the MS concerned (MS may lower the salary threshold to 1.2 for certain professions where there is a particular need for third-country workers)</li> <li>▶ Duration of residence between one and four years; for shorter-period contracts or job offers, the validity is the duration of the contract or job offer plus three months</li> <li>▶ Applicant must not pose a threat to public policy in the view of the MS</li> </ul>
<i>Students, unpaid trainees, school pupils and voluntary worker</i>	<p>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 Date of transposition: 11/01/2007</p>	<ul style="list-style-type: none"> <li>▶ Ensures harmonization of national legislation on the issue of admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary services</li> <li>▶ Ensures that students are entitled to employment or self-employed activities during stay</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ Students; school-pupils; unremunerated trainees; voluntary workers (volunteers).</li> <li>▶ Higher education but also secondary education and trainees (unremunerated), volunteers</li> <li>▶ Does not cover asylum-seekers, persons enjoying forms of protection, TCNs who are family members of Union citizens, long-term residents</li> </ul>	<ul style="list-style-type: none"> <li>▶ acceptance by an establishment of higher education, sufficient resources to cover subsistence, study and return travel costs and sufficient language knowledge required</li> <li>▶ Residence permit students: issued for one year or shorter and is renewable</li> <li>▶ For pupils: max. 1 year</li> <li>▶ For trainees: for as long as duration placement</li> <li>▶ For volunteers: max. 1 year</li> </ul>

**TABLE 5: EU LEGAL MIGRATION ACQUIS OVERVIEW**

ISSUE	EU INSTRUMENT	REGULATED RIGHTS AND ISSUES	KEY CONDITIONS
<p>Researchers</p>	<p>Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research Date of transposition: 12/10/2007</p>	<ul style="list-style-type: none"> <li>▶ Grants residence permits to TCNs for the purpose of scientific research</li> <li>▶ equal treatment with regard to diplomas, working conditions, social security, tax benefits</li> <li>▶ mobility within EU greatly assured</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ Applies to TCNs for the purpose of scientific research for more than 3 months</li> <li>▶ Does not cover: applicants for asylum, persons under protection; doctoral students conducting research relating to their theses as students; TCNs whose expulsion has been suspended for reasons of fact or law; researchers seconded by a research organization to another research organization in a different Member State.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Valid travel documents, hosting agreement signed with a research organization, statement of financial responsibility issued by the research organization required, sufficient resources to cover subsistence</li> <li>▶ Applicant may not pose threat to public policy, public security or public health</li> <li>▶ Research organization must be approved by the MS concerned; approval valid for minimum 5 years</li> <li>▶ MS must issue a residence permit for one year or more and renew it annually</li> <li>▶ no automatic family reunification, however <b>may</b> be issued</li> </ul>
	<p>Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer Date of transposition: 29/11/2016</p>	<ul style="list-style-type: none"> <li>▶ Facilitates the mobility of intra-corporate transferees between MS during their assignments</li> <li>▶ Provides for a common set of rights to avoid exploitation</li> <li>▶ grants favourable conditions for family reunification in the first MS</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ Applies to TCNs who reside outside the territory of the MS at the time of application</li> <li>▶ Does not cover TCNs who are already residing in a MS to carry out a research project; full time students; carry out activities as self-employed workers; are assigned by employment agencies, temporary work agencies or any other undertakings engaged; enjoy rights of free movement equivalent to those of Union citizens or are employed by an undertaking established in those third countries</li> </ul>	<ul style="list-style-type: none"> <li>▶ The transferee must occupy a post as manager, specialist or graduate trainee</li> <li>▶ Prior employment within the same group of undertakings of at least 12 months, an assignment letter must be produced confirming that the TCN is transferred including remuneration specification; for trainees at least 3 to 6 uninterrupted months</li> <li>▶ Permit allows for carrying out work at the same transnational corporation, including under specific conditions entities in other MS</li> </ul>
<p>Intra-corporate transferees</p>			



**TABLE 5: EU LEGAL MIGRATION ACQUIS OVERVIEW**

ISSUE	EU INSTRUMENT	REGULATED RIGHTS AND ISSUES	KEY CONDITIONS
<i>Seasonal workers</i>	<p>Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers</p> <p>Date of transposition: 30/09/2016</p>	<p>Provides for equal treatment with nationals of the host MS at least with regard to terms of employment, including the minimum working age, working conditions, including pay and dismissal, working hours and branches of social security</p> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>Applies to TCNs who reside outside the territory of the MS applying to be admitted, or who have been admitted to the territory of a MS for the purpose of employment as seasonal workers.</li> <li>Does not cover TCNs who already enjoy rights of free movement equivalent to those of Union citizens; TCNs who carry out activities on behalf of undertakings established in another MS; TCNs who are family members of Union citizens</li> </ul>	<ul style="list-style-type: none"> <li>Work contract/binding offer with salary specification, maximum duration of stay during calendar year and provision of accommodation and explicit obligation to return after that period required</li> <li>Maximum stay for seasonal workers between five and nine months in any 12-month period;</li> </ul>
<i>Family reunification</i>	<p>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification</p> <p><b>Date of transposition: 03/10/2005</b></p>	<p>Provides for family reunification (FR) for TCNs lawfully residing in a MS</p> <ul style="list-style-type: none"> <li>Ensures equal treatment for family members as the sponsors and ensures same access to education, employment and training</li> <li>Preserves the right for MS to adopt or maintain more favourable provisions</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>Applies to TCNs who lawfully reside in a MS; to persons enjoying refugee status</li> <li>Does not apply to persons applying for refugee status; persons enjoying protection</li> </ul>	<ul style="list-style-type: none"> <li>residence permit for 1 year or more AND likely (with reasonable prospects) to obtain in due time permanent residence</li> <li>Right of FR is limited to nuclear family; spouse, minor children, including children adopted and children under custody of the 'sponsor' or the spouse</li> <li>MS may also authorize the FR of an unmarried partner/children and (first degree) dependent unmarried adult</li> <li>In the case of children over 12 arriving independently some conditions may be imposed; minimum age may be required (max. 21) for a spouse and for children a maximum age of 15 may be introduced</li> <li>Polygamy is not recognized</li> <li>After FR, family members receive a renewable one year residence permit and may not go beyond the duration of the permit of the sponsor no later than after 5 years of residence, family members are entitled to autonomous residence permits</li> <li>Refugees exempted from certain conditions considering their situation</li> </ul>

**TABLE 5: EU LEGAL MIGRATION ACQUIS OVERVIEW**

ISSUE	EU INSTRUMENT	REGULATED RIGHTS AND ISSUES	KEY CONDITIONS
<p>Employer sanctions against employers of illegally staying TCNs</p>	<p>Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals <b>Date of transposition: 20/07/2011</b></p>	<ul style="list-style-type: none"> <li>▶ Toughens sanctions for illegal employment of illegally residing TCNs</li> <li>▶ Improves detection mechanisms, while providing for protective measures designed to redress injustices suffered by irregular migrants.</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>▶ Applies to employers of TCNs who are illegally staying in the EU. Requires MS to prohibit the employment of illegally residing TCNs</li> </ul>	<ul style="list-style-type: none"> <li>▶ Key pull factor: illegal migration is possibility of obtaining work without the required legal status</li> <li>▶ Prohibition employment of illegally staying TCNs</li> <li>▶ Infringements of this prohibition subject to sanctions and measures; shall be regarded a criminal offense. However, in case of postponement removal: states free not to impose sanctions</li> <li>▶ Employers obliged to check status and keep copy permits</li> <li>▶ Illegally employed TCNs may claim remuneration and shall be duly informed about this possibility</li> <li>▶ TCNs in illegal employment shall be able to lodge complaints against employers</li> <li>▶ States obliged to carry out effective and adequate inspections</li> </ul>
<p>Return procedures</p>	<p>Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals <b>Date of transposition: 24.12.2010</b></p>	<ul style="list-style-type: none"> <li>▶ Provides MS with common standards and procedures for returning illegally residing TCNs (with certain exceptions)</li> </ul> <p><b>Concerns:</b> Member States of the European Union</p>	<ul style="list-style-type: none"> <li>▶ TCNs with a valid residence permit from another MS must immediately return to that MS</li> <li>▶ MS may decide not to apply this directive to TCNs who are subject to a refusal of entry (Schengen), or apprehended in connection with illegal border-crossing; in case of return as criminal law sanction or extradition special attention to child, family life, state of health, non-refoulement</li> <li>▶ A return decision shall be issued (6.1)</li> <li>▶ TCN pending renewal residence permit: no return decision yet</li> <li>▶ A single administrative and/or judicial decision is possible (combining application, removal, return)</li> <li>▶ After return decision appropriate period (7-30days) for voluntary return; earlier departure possible. During this time certain measures possible to prevent absconding (inclusive obligation to stay at a certain place)</li> <li>▶ In case of risks, or in case of obviously unfounded application, period for voluntary return may be less than 7 days</li> <li>▶ (Actual) removal: MS may adopt separate administrative or judicial decision or act ordering the removal</li> <li>▶ Removal to be postponed: violation non-refoulement principle; as long as suspensive effect has been granted; physical/mental state; technical reasons; lack of identification</li> <li>▶ Special conditions unaccompanied minors</li> <li>▶ Return decisions in principle to be accompanied by entry ban</li> </ul>



**TABLE 5: EU LEGAL MIGRATION ACQUIS OVERVIEW**

ISSUE	EU INSTRUMENT	REGULATED RIGHTS AND ISSUES	KEY CONDITIONS
<p>Statistics</p>	<p>Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (Text with EEA relevance)</p>	<p>Establishes common rules for the collection of Community statistics on migration by the EU</p> <p><b>Concerns:</b></p> <ul style="list-style-type: none"> <li>Statistics relating to immigration to and emigration from a MS, citizenship and country of birth of persons resident in the territories of EU countries and administrative and judicial procedures relating to migration</li> </ul>	<ul style="list-style-type: none"> <li>EU countries required to provide Eurostat with statistics on number of immigrants, emigrants, persons usually resident, residence permits issues (incl. long-term residents), natural persons acquired national citizenship, number applications for international protection, persons covered by applications under consideration, rejected applications, persons with refugee and protection status, unaccompanied minors, persons selected for resettlement.</li> <li>MS required to provide Eurostat with statistics on number of TCNs who have been refused at external borders, who have been found illegally residing</li> <li>Statistics are based on records of administrative and judicial actions, registers relating to administrative actions and population registers, censuses, sample surveys.</li> </ul>
<p>Recognition of professional qualifications</p>	<p>Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications</p> <p><b>Date of transposition: 20/10/2007</b></p>	<ul style="list-style-type: none"> <li>Introduces a scheme for temporary mobility for professionals on the basis of a declaration made in advance</li> <li>Provides three systems for permanent RPQ: Automatic recognition for professions with harmonized minimum training (seven professions; architects, doctors and nurses), recognition based on professional experience (e.g. in the craft, commerce or industry sectors) and a general system for all other professions.</li> </ul> <p><b>Target group concerned:</b></p> <ul style="list-style-type: none"> <li>Applies to MS nationals wishing to practice a regulated profession, on either a self-employed or employed basis in a MS other than that in which they obtained their professional qualifications</li> </ul>	<p><b>Freedom to provide services</b></p> <ul style="list-style-type: none"> <li>if the profession is not regulated in that MS, the service provider must provide evidence of 2 years' professional experience</li> <li>MS may request declaration with insurance cover, proof of nationality, legal establishment and PQ</li> <li>MS may check the PQ for professions that have public health or safety implications and do not benefit from automatic recognition</li> <li>MS may require information concerning insurance cover against financial risks arising from professional liability</li> </ul> <p><b>Freedom of establishment</b></p> <ul style="list-style-type: none"> <li>When profession is regulated in MS, MS is allowed access to PQ</li> <li>When profession is not regulated, MS required proof of 2 years' full-time experience over the preceding 10 years</li> <li>host MS may make recognition of PQ subject to the applicant completing a compensation measure (aptitude test) when training was at least one year shorter than required; training covered substantial differences from host MS; profession as defined in host MS comprises one or more regulated professional activities not existing in the profession in home MS</li> </ul>

## 4.2. SEE alignment with EU *acquis*

As stated earlier, the SEE countries find themselves in different stages where it concerns the relationship with the EU. Irrespective of the legal and/or political relationship with the EU, however, alignment with and approximation to EU-norms might be considered advisable. It helps preparing candidate countries for the accession negotiations and it also creates an equal playing field among the WB6.

As can be seen from the detailed local reports, compliance with the EU *acquis* would prima facie appear to be far from complete. Many aspects deserve due attention. As indicated earlier, the need to fulfil the conditions of chapters 2, 19 and 24 are as yet not apparent in view of the long while before accession may become a reality. Yet, a utilitarian approach may prevail, which aims at creating a single (WB6) economic space with freedom of movement for goods, capital, services and persons. Whilst setting up such a regional free movement 'union', the benefits of approximation are obvious and hence copying the directives into regional and domestic law serves both purposes (regional integration and preparedness for EU-accession).

During the preparations for visa-free travel, due attention has been paid by the European Commission to *acquis*-related aspects, with a focus on illegal entry, trafficking and such like. Moreover, screening of the country's migration legislation will be done regularly by the competent EU bodies in charge of the negotiation processes. Although others (like IOM, for instance through the successful CARDS programme) have been and will continue to be extremely useful in this regard, the final say is and remains with the EU decision makers.

Taking all this into due account, it is quite obvious that the Regional Cooperation Council, also with a view of fulfilling the SEE 2020 ambitions, pays proper attention to the link between free movement and regional economic and social development. As elaborated in the conclusion of this report, aspects like recruitment facilitation and regulation of private recruitment agencies (PRAs) and other stakeholders involved in recruitment of foreigners in the local market; regulation of employment of special categories of migrant workers; and the mutual recognition of professional qualifications deserve due attention and elaboration.

Due attention shall be paid to the gap analysis, as submitted in separate reports prepared by the local experts. In this sub-chapter only some highlights and general findings will be presented. It should be emphasized that not all relevant regulations and directives have been dealt with, like the Project Workers instrument (Directive 96/71/EC)<sup>34</sup>. Details can be found in the country reports (and elsewhere, like the EU commissioned reports, or the pre-enlargement reports, part of the negotiation processes). Again, it should be stressed that the final verdict is with the competent bodies and authorities.

The *acquis*-compliance issue is, of course, to a great extent no longer the case for the SEE country that is now (since July 2013) a member of the EU (i.e. Croatia). **Croatia** shall have all migration related directives concerned duly transposed in accordance with the terms as laid down in those directives and the enlargement treaty. It is in principle obliged to welcome all EU-citizens and its long-term-(TCN-) residents. But it will have to wait to fully make use of the Schengen

advantages (making passport- and border-free travel possible). Moreover, Croatian citizens and long-term TCNs concerned will have free access to all the EU MS labour markets in 2020 only. Yet, Croatians already enjoy such labour-access to roughly half the EU MS (including Hungary, Ireland, Finland, Portugal, and Sweden). Reciprocity in this field counts. Croatia hence indicates restrictions for workers from the countries that hitherto deny Croatians free access to their labour market<sup>35</sup>. All the others are welcome. Because the EU has not yet agreed on a common EU migration policy (in spite of TFEU art. 79), Croatia enjoys the freedom to invite foreigners to its territory, be it third country migrant workers, students or pensioners, and is not limited by any rule or regulation (but for, for instance, terrorists). Once having invited those foreigners, however, it is bound by the directives on e.g. family reunification, long-term residents and return. Croatia is hence free to agree to grant access to its labour market to all citizens of the fellow WB6 countries, if it wishes so.

Quite different from Croatia is the situation in **Bosnia and Herzegovina** (BiH). The prospects for a coherent, effective migration management and early decision-making on for instance free movement of citizens of the rest of the WB6 region are complicated. The administration and decision-making are so diverse (with even the town of Brcko having its own management and legal system which also decides on incoming migrants) that transparency and accessibility are not easily established. It is hence herewith submitted that a regional free movement system in place would greatly assist towards such transparency and accessibility. When it comes to the actual *acquis*-gap, it can be noted that the EU, in its progress report for BiH 2013, indicated that BiH *has continued to make progress in the areas of visa policy, border management, asylum and migration. The adoption of amendments to the Law on Movement and Stay of Aliens and Asylum has further aligned the legal framework with the acquis*. However, as can be found in the national chapter, alignment is at best partial when it comes to the various details; further efforts need to be made to provide for a migration-friendly environment. Yet it is appreciated that the decision-making processes are very much the result of the Dayton-imposed structure, that BiH is as yet not a candidate country and that the focus of attention is on economic growth and fighting unemployment. And in this context it may be emphasized that for instance WB6 free movement of labour may be a useful tool towards reaching those goals.

**Albania**, as indicated earlier, got candidate status in June 2014. This is the result of the many efforts towards alignment and approximation, including in the field of migration. The main *acquis*-elements appear to be in place. Special attention may be paid to issues like the adoption of a national strategy on migration; thereupon amendment of the relevant legislation in particular to ensure proper integration services; further attention to the role of private employment agencies.

**Serbia** would appear to take alignment and approximation very seriously; the Serbian European Integration Office (SEIO) includes chapter 24 in its activities and deliberations and reports. In its 2013 report SEIO submits that a new law on employment of foreigners shall be harmonized with the directives concerned. In law, probably a bit less in fact, Serbia can be considered to be well on the way towards appropriate approximation. Yet, a legal act on the recognition of qualifications is lacking, and no legal provisions are in existence on (temporary) employment agencies. Of the utmost importance would appear to be the need

for simplified harmonized procedures, both for the administration and judicial reviews/appeals. A Single Permit still needs to be introduced. Finally, it is of interest to note that efforts are being undertaken to streamline the existing data collection system, keeping in mind prospects for regional data sharing.

**Montenegro** has been able to align much of its legislation with the *acquis*. However, on a number of issues additional action needs to be taken, like the blue card and similar facilities of the highly skilled, statistics, (transition to) the single permit system, and a number of by-law related issues. In general, however, it should be stressed that the EU Delegation in Podgorica was quite positive in its May 2014 report on the progress made. The Montenegro Parliament is to pass a new law on recruitment of foreigners which will be the foundation for the opening of a One Stop Shop in Podgorica and Budva with partial funding from the IOM's International Development Fund.

The situation in **the former Yugoslav Republic of Macedonia** is quite positive. Since the country became an EU candidate, considerable progress has been made. Yet not all details have been duly transposed into domestic law. Of great importance will be the final version of the new law of foreigners, which is expected to duly reflect the *acquis* concerned. However, apart from migration governance issues, due attention needs to be paid to the high skilled (blue card), data collection, procedures (one stop shop<sup>VII</sup>, single permit, etcetera), family members of the intra-corporate transfers, and such like.

**Kosovo\*** remains the last territory in the Western Balkans whose citizens must get a visa in order to travel to countries in the Schengen Area. This is also the case when they travel on Serbian passports (although the Serbs themselves can now travel visa-free). When it comes to incoming migrants, the Kosovo\* authorities have made considerable efforts to follow up and include most of the relevant migration *acquis*, where feasible, in the Law on Foreigners and respective by-laws, in particular Directive 2011/98 on a single application procedure for a single permit, the EU Directive 2003/86/EC on the right to family reunification, the Directive 2004/114/EC on the conditions of admission of third-country nationals for studies and training, the Directive 2003/109/EC on admitting third-country nationals for research (Directive 2005/71/EC) as well as the Directive 2003/109/EC on long term residents. It is obvious that Kosovo\* will benefit greatly from regional mobility. And the benefits may well be mutual. Table 6 presents a snapshot of EU *acquis* incorporation into the legislation of SEE countries, based on the 7 separate reports prepared by local experts and enclosed to this regional overview as electronic annexes.

VII In September 2014 another project has been approved by the International Development Fund for IOM to, inter alia, undertake a feasibility study for a One Stop Shop in Skopje.

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

**TABLE 6: SEE INCORPORATION OF EU LEGAL MIGRATION ACQUIS**

PROCEDURES AND RIGHTS AS STIPULATED IN EU DIRECTIVES	ALBANIA	B&H	CROATIA	KOSOVO*	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	MONTENEGRO	SERBIA
<b>Single Permit</b>							
Existence of a single procedure for issuing work and residence permit	No	No	Yes	Yes	No	No <sup>viii</sup>	No
<b>Long-term residents</b>							
Long-term resident status awarded after 5-year uninterrupted legal residence. Exceptional provisions apply	Yes	Yes	Yes	Yes	Yes	Yes	No
<b>Highly qualified employment (Blue card Directive)</b>							
Fast track procedure through a unified work and residence permit for highly qualified employment	No	No	Yes	Yes	No	No	No <sup>x</sup>
Permit validity between one and four years, possibility of renewal	Yes <sup>x</sup>	No <sup>xi</sup>	Yes <sup>xii</sup>	Yes <sup>xiii</sup>	No	No	Yes <sup>xiv</sup>
<b>Students, trainees, volunteers</b>							
Students entitled to part-time employment or self-employment with maximum of no less than 10 h per week	Yes <sup>xv</sup>	Yes <sup>xvi</sup>	Yes <sup>xvii</sup>	Yes <sup>xviii</sup>	Yes <sup>xix</sup>	Not regulated	Yes <sup>xx</sup>
Existence of simplified residence status acquisition procedure with possibility of renewal for students	Yes	Yes	Yes	Yes	Yes	Yes	Yes

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence

VIII This shall be taken into consideration by the national government once the Draft Law on Foreigners, expected to be implemented in 2015, is amended.

IX There is no mention of preferential treatment of highly skilled workers.

X Highly skilled workers are issued with an "AL Blue Card" residence permit, issued for a 2-year period and are renewable for an additional 3-year period.

XI No special differentiation with respect to highly skilled TCNs, general rules apply to every TCN worker regardless of his qualifications

XII Up to two years. If the period of employment is shorter than two years, Blue Card will be issued for the period indicated in the work contract plus three months. AA 191 (3), (4).

XIII The validity of residence permits in Kosovo\* is one to two years with the possibility of renewal in the first five years staying in Kosovo\* and after five years the possibility of obtaining permanent residence permit exist upon requirements completion.

XIV The residence permit is issued for one year and may be renewed, but the same conditions apply to all foreigners.

XV The foreign student is provided with a work permit for part-time or fixed-term employment (up to 20 hours a week), in remunerated activity, if regular university studies are pursued.

XVI The foreign students can perform work of temporary nature, without concluding an employment agreement and thus are not required to have a work permit

XVII Students, trainees and volunteers are allowed to work up to 90 days per year (Art. 82 of the Law on Foreigners).

XVIII A foreigner with a status of the pupil or regular student in the event they perform work through an authorized intermediary, without establishment of an employment relationship it is exempted from a work permit or a certificate for employment notification.

XIX Foreigners residing in the former Yugoslav Republic of Macedonia for the purpose of studying may perform short-term or ancillary activities without work permit, if the full period for the performance of those activities lasts up to 10 working hours within one week.

XX Students may work, but only up to 20 hours a week, which is 80 hours a month while school activities are taking place.

**TABLE 6: SEE INCORPORATION OF EU LEGAL MIGRATION ACQUIS**

PROCEDURES AND RIGHTS AS STIPULATED IN EU DIRECTIVES	ALBANIA	B&H	CROATIA	KOSOVO*	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	MONTENEGRO	SERBIA
Student Permit validity of one year or shorter	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Researchers</b>							
Special residence permit allowing work in a specific educational institution with a possibility to change the employer	Yes	Yes	Yes <sup>XXI</sup>	Yes	Yes	Yes	Yes
Permit validity of at least one year or the duration of the research contract	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Intra-corporate transferees</b>							
Clearly defined conditions for entry and residence	Yes	No	Yes	Yes	Yes	Yes	Yes
<b>Sanctions against employers of illegally staying third-country nationals (TCNs)</b>							
Existence of clearly stipulated sanctions	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Irregularly employed TCNs may claim against employer or call on the competent authority for outstanding remuneration.	Yes	No	No	Yes	No <sup>36</sup>	No	Yes
<b>Family reunification (FR)</b>							
Existence of clearly stipulated legislation guaranteeing FR for TCNs	Yes	Yes	Yes	Yes	Yes	Yes	Yes
TCNs are able to take legal steps against refusal of FR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Seasonal workers</b>							
Existence of special single application procedure	No	No	No <sup>37</sup>	No	No	No	No <sup>38</sup>
Limitation of duration of a permit	Yes	No	Yes	Yes	Yes	Yes <sup>39</sup>	No
Possibility of a multi-seasonal permits or re-issuance of permit for the same worker	Yes	No	Yes	Yes	Yes	No	No

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence

XXI The possibility to change employer is not regulated by the Croatian Aliens Act.

## 5. Legislation implementation and regional cooperation

The Western Balkan countries display a fairly coherent and comparable system with more often than not a migration policy in place, a non-implementation of that policy, a complicated coordination structure in view of the many ministries and institutions playing a role in decision-making and implementation (MoI, MFA, Education, Labour, Social Welfare, Health and others); a variety of legal acts (laws, by-laws); multiple procedures and appeal possibilities; lack of single permits, single procedures; and so forth. On paper it may look somewhat acceptable and do-able; in reality, however, effective migration management may be considered an illusion. It is therefore suggested that regional cooperation and harmonization may greatly help. Alignment is a positive development, but the interconnectedness of the various directives needs to be appreciated. Thereto streamlining and preferably merging of the various procedures (and acts) is crucial.

### 5.1. Migration governance and legislation implementation

In most cases in the WB6 region, there is a migration policy or short-term policy document. It would appear that even if such policies are agreed upon, implementation is not or hardly forthcoming because of a lack of proper cooperation and/or coordination amongst the institutions involved. Also, the policy documents involved tend to use demographic trends and future pension realities as a need for inviting migrants, whereas recent research has indicated that migration can only be a partial solution for a declining workforce or declining workforce-pensioners balance.<sup>40</sup>

The entire WB6 has a variety of laws and by-laws covering a broad range of related procedures and institutions. Having a law on asylum, shortly maybe a law on statelessness, a law on foreigners' entry and a law on foreigners' work permits, makes transparent and accessible migration governance an illusion. It is possible (and many countries have done it<sup>41</sup>) to agree on just one (1) legal act covering regular migration, asylum-seekers, family migration and so on. This regulates decision-making greatly, and makes migration governance a possibility. Also, the SEE region may wish to concentrate immigration (labour, students, family, asylum-seekers) in just one governmental body: a state migration service (with either a more or less independent status or falling under the Minister of the Interior).

The EU Fundamental Rights Charter contains an article 41 in which the right to good administration has been laid down: Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time.... This right can be read to mean that the individual should be entitled to effectiveness where it concerns applications: a decision within an acceptable period of time. In fact, the community at large is also entitled to effective procedures. This includes the question whether a foreigner has access to the country and/or to a residence

and/or work permit. This is a question not just for the individual migrant, but also for the receiving society at large: effectiveness works both sides.

Also, due attention needs to be paid to the need to economize on procedures and the use of the judiciary. The application for entry and/or sojourn should include all possible reasons (labour, family, protection). An administrative decision on that application can then be an all-encompassing one, so that no new applications need to be submitted. And the administrative decision should have just one judicial appeal (in case further appeals are the norm, the possibility of denying suspensive effect could then be introduced). Indeed, procedures are at least as relevant as the criteria.

It is herewith submitted that criteria can be more generous and flexible as long as the procedures are effective and limited. Also applications submitted at the border can quite often be dealt with at the border (or: airport), - as long as an effective communication and ICT-system is in place. Even for interpretation use can be made of modern apps. Also if the judiciary needs to get involved (for instance appeals in the case of asylum-seekers) video-conferencing could be used as an effective way of dealing with these challenges.

Most of the seven reports indicate the use of a quota system. This sounds quite logical, but may in fact be a hindrance, rather than an asset. It appears that throughout the region, there are far more migrant workers than the individual national quota would have allowed. Enforcement is lacking, and that way governmental directives are undermined. Employers, trade unions and the relevant administrative bodies are herewith advised to meet yearly to set those quota or to agree that employers can be relied upon to hire labour from abroad if shortages cannot be met with local supply <sup>42</sup>.

Moreover, the possibility of intra-corporate transfers should be the norm, rather than the exception, and the EU directive concerned could well be copied into WB6 regional legislation. <sup>43</sup>

As indicated elsewhere, doing business is a fairly relevant indicator for a country's attraction for **foreign direct investment**. Indeed, if the SEE region wants to create an area in which investors are welcome, a number of conditions need to be met:

- 🔗 Freedom of movement of capital (combined with a stable currency, a strong central bank, alignment to major currencies (basket));
- 🔗 An absence of red tape; single permit shops/stops (for work and residence permits, combined with entry visa in as far as necessary);
- 🔗 An independent judicial system, free from corruption and/or fraud and undue influence.

If indeed WB6 region is keen in being attractive to FDI and consequently display an inviting approach to foreigners to run the factories, institutions or offices that will be set up with the FDI money, a lot will depend on how the countries organize their permit system. A one stop shop is described in this context as a governmental institution (incl. location) that offers a multitude of services to a client or a customer. The idea is to provide convenient and efficient

services and also to create the opportunity for the government to be attractive to outsiders. It should be seen as part of a climate geared towards attracting FDI. Attractiveness depends *inter alia* on a business friendly environment, low levels of taxation and simple tax administration, simplified licensing and permitting requirements, competitive cost of labour and energy, pro-business and corruption-free government, stable banking sector and a low crime-rate <sup>44</sup>. Part of these conditions is a one-stop-shop. This is also true for attracting high qualified migrants and other foreigners needed for the economic development. The need for single permits (as per the EU directive concerned) and a one shop stop (OSS) system is obvious and only a first step.

## 5.2. Regional cooperation

In 2008, the Regional Cooperation Council (RCC) was launched as the successor of the Stability Pact for South Eastern Europe <sup>45</sup>. The by far largest developmental project which RCC was to develop and coordinate within the SEE region is the SEE 2020 strategy, developed with the support of a project funded by the EC and aiming to attain the levels of socioeconomic growth necessary to improve the prosperity of all its citizens and to facilitate eventual integration with the European Union (EU).

The adoption of the SEE 2020 Strategy in November 2013 is a significant step forward in a process aimed at political and economic cooperation that was launched in the region in 2011. The process takes its inspiration from the EU's Europe 2020 Strategy, both in terms of the issues addressed and the concept of expediting progress through better cooperation in areas that are of common interest. Like the Europe 2020 Strategy, it is centred on a set of interlinked development pillars:

- 🔗 **Integrated growth:** through the promotion of regional trade and investment linkages and policies that are non-discriminatory, transparent and predictable.
- 🔗 **Smart growth:** by committing to innovate and compete on value-added rather than labour costs.
- 🔗 **Sustainable growth:** by raising the level of competitiveness in the private sector, development of infrastructure and encouraging greener and more energy-efficient growth.
- 🔗 **Inclusive growth:** by placing greater emphasis on developing skills, creating employment, inclusive participation in the labour market and health and wellbeing.
- 🔗 **Governance for growth:** by enhancing the capacity of public administration to strengthen the rule of law and reduce corruption, the creation of a business-friendly environment and delivery of public services necessary for economic development.

To address socioeconomic aspects of the SEE 2020 implementation, a specialized technical working group was set up which meets on a regular basis and discusses issues of regional relevance. *The Intergovernmental Working Group on Social Agenda* is the dimension coordinator for the pillar on inclusive growth which addresses labour mobility, labour market governance and the promotion of

social economy activities as the main priorities. The Strategy 2020 specifically mentions labour mobility within the context of a need to initiate a joint regional consultative process with the aim to promote mobility and move towards the abolition of labour market restrictions in the region. In the context of labour market governance, the priority actions include enhancing and strengthening capacities of labour market institutions and enabling people to acquire new skills to adapt to new conditions, forging programmes for vulnerable groups and tackling informal employment. A coordinated regional approach to address the existing mismatch between the competences required by the labour market and the skills generated by the educational and training systems of the SEE countries will be essential. Public employment services will play a key role in that respect. As per the SEE 2020 strategy, the following actions would be needed:

- ✎ Build regional capacity for harmonized monitoring of migration and mobility with a view to a gradual lifting of labour market restrictions in the region
- ✎ Apply modern approaches in labour market governance that stimulate employment
- ✎ Tackle informal employment through an exchange of information and experiences, improved inter-institutional and intraregional cooperation and by testing appropriate policy measures
- ✎ Promote social economy initiatives. <sup>46</sup>

All of these issues are central to the socioeconomic policies of each SEE country and are also critical elements of the EU accession process. <sup>47</sup>

Freedom of movement would therefore fit well into the priorities of the RCC (and institutions like WG on Social Agenda 2020), also because of the possible (stabilization-related) peace dividend and reconciliation impact. Hereto RCC might wish to introduce in its 2014–2016 strategy and work programme:

- ✎ Ways and means to introduce effective freedom of movement in the region for WB6 citizens,
- ✎ Migration legislation streamlining (for instance where it concerns criteria and procedures),
- ✎ Institution building (regional and national migration services; one stop services; cooperation between the countries' MFAs and consular services on for instance the issuance of SEE/WB6 visa to TCNs,<sup>XXII</sup>
- ✎ Capacity building (training of civil servants; cooperation between universities and government institutions to ensure high quality government staff and research possibilities),
- ✎ Regional observation posts (on the ECtHR, ECJ judgments; the impact of ESC-Committee recommendations; but also for the benefit of reporting on issues relating to migrants to human rights committees and ILO, as well as for the UPR),
- ✎ Regional return and readmission agreements with Third Countries; as well as implementation of the existing RRAs with the EU,

XXII Similar to for instance 'Schengen-visa'.

- 🔗 Reaching out to the diaspora as a potential force of high-skilled or otherwise needed manpower,
- 🔗 Regional studies on the economic and social situation and the possible need for foreign manpower,
- 🔗 Studies and proposals on the possibility of importing and exporting pension rights and thereto draft a regional WB6 pension-agreement, to replace the possibly 25 bilateral ones,
- 🔗 Studies and proposals on the possibility of providing access to social security and thereto draft a regional WB6 social security agreement, to replace the possibly 25 bilateral ones,
- 🔗 Studies and proposals on return and readmission issues, and therefore draft a regional WB6 RRA to replace the possibly 25 bilateral ones.

Special attention within the context of regional cooperation deserves the issue of **social benefit transferability**. Among the many issues still needing clarification among EU MSs is **the right to social welfare**, once the foreigner is without a job. Is access to welfare automatic, without any limits to the actual time spent working in the country? The discussion is ongoing, particularly in the UK, and the WB6 are herewith advised to closely follow that debate. Also, regard should be had to Denmark, a country which is trying to find its own way in dealing with such questions (not limited by EU directives because it enjoys a special status in this field).

Citizens of other countries who reside in SEE countries and SEE country citizens returning from abroad quite often have difficulty accessing **social welfare benefits**. In general, immigrants and returning people are entitled to social insurance benefits in the same way as people who have lived there permanently. However, problems in getting unemployment benefits, for instance, might arise if the person loses the right to reside in a SEE country due to expiration of a work permit and because the entitlement to remain in the country depends on having the right to work. The main problems which immigrants and returning people face are in respect of means-tested payments. All foreign nationals living in SEE are required to satisfy the Habitual Residence Condition (HRC) which applies mainly to means-tested payments.

It should be noted that the residence qualification for **health services**, including medical cards, is different. The legislation provides that you are entitled to health services if you are ordinarily resident. This is not defined but is treated as meaning having lived in the SEE country for a year or intending to live here for a year. A number of groups are also entitled to health services because of EU legislation. It is possible that a person would qualify for health services, including a medical card, but not qualify for a social welfare payment which is subject to the habitual residence condition. <sup>48</sup>

A major aspect promoting regional labour migration is the agreement to be able to take **pension rights across borders**. Some countries are actively searching for steps forward in this respect and some countries have signed bilateral agreements hereto. Major steps have been taken in the EU that could serve as an example for the WB6 region.

Table 7 presents an overview of where the SEE stands at in terms of signing regional cooperation agreements in social security, pension rights and return. It is hence herewith submitted that the RCC might introduce efforts to make export of social welfare rights a reality.<sup>XXIII</sup>

**TABLE 7: OVERVIEW OF REGIONAL TREATIES/AGREEMENTS**

	ALBANIA	BiH	CROATIA	KOSOVO*	MONTENEGRO	SERBIA	THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
<b>On social security</b>							
Albania	-						
BiH		-	X		X	X	X
Croatia		x	-		X	X	X
Kosovo*				-			
Montenegro		x	X		-	X	X
Serbia		x	X		X	-	X
The former Yugoslav Republic of Macedonia		x	X		X	X	-
<b>On pension transfer</b>							
Albania	-						
BiH		-	X		X	X	X
Croatia		x	-		X	X	X
Kosovo*		-		-			X
Montenegro		x	X	X	-	X	X
Serbia		x	X		X	-	X
The former Yugoslav Republic of Macedonia		x	X	X	X	X	-
<b>On return/readmission</b>							
Albania	-	x	X	X	X	X	X
BiH	X	-	X		X	X	X
Croatia	X	x	-	X	X	X	
Kosovo*	X		X	-	X		
Montenegro	X	x		X	-		X
Serbia	X	x	X		X	-	X
The former Yugoslav Republic of Macedonia	X	x	X	X (In process)		X	-

XXIII Agreements between for instance Albania on the one hand and Belgium and Turkey on the other include the mutual recognition of pension benefits; (see the Albania report, p. 20).

\* This designation is without prejudice to positions on status and in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

## 6. Conclusions and recommendations

South-Eastern Europe is at the brink of taking important and relevant next steps towards sustainable economic development with due attention to growth, optimized labour participation and a duly qualified labour force. It is herewith submitted that labour mobility is a relevant factor of development in the region and that the SEE might wish to have a system in place which promotes labour mobility. Among the challenges as can be discerned from the seven reports are issues like (a) foreigners' general access to labour market; (b) recruitment facilitation and regulation of private recruitment agencies (PRAs) and other stakeholders, involved in recruitment of foreigners in the local market; (c) labour market protection mechanisms and measures ensuring preferential treatment of national labour force; (d) roles and responsibilities of employers of migrant workers as compared to when employing nationals; (e) regulation of employment of special categories of migrant workers and foreigners' access to prioritized sectors of labour market; (f) social protection of foreign workers; (g) mutual recognition of professional qualifications; and (h) legislative framework for capturing, processing and sharing information on labour mobility and migration.

All the above subjects need proper attention and thereto a suitable institutional framework. As most issues have a trans-border character, regional cooperation is called for. It is there that the RCC could and should play a pivotal role.

It is hence proposed that the region cooperates towards:

-  A regional (WB6) migration profile
-  A regional (WB6) migration policy
-  Free movement of SEE/WB6 citizens and workers in the SEE/WB6 region
-  Free movement of long-term SEE/WB6 residents in the SEE/WB6 region
-  Regional cross-border social welfare and pension arrangements
-  Regional return and readmission agreements with third countries
-  Free movement of EU-citizens (also without reciprocity)
-  Approximation of the regional and domestic legislation to the EU acquis

And at a later stage:

-  Free movement of TCNs with a long-term residency permit in the EU
-  Selective free movement for TCNs with the qualifications needed.

The key measures identified and adopted as such in the SEE 2020 strategy seem to be a good and comprehensive approach to tackle all these issues by first of all creating harmonised data on migration and build capacity to assess labour market developments and future skill needs. Key measures related to data collection could result in the establishment of a regional observatory on labour migration which would provide the policymakers and data users at all times with updated and harmonized information on the labour market developments and the migration trends within and from and to the region.

Another proposed key measure is the creation of a regional consultative process on mobility which could under the guidance of the WG on Social Agenda 2020 tackle the Policy issues listed above, ensuring not only that all concerned countries come to an agreement on how to best solve some of the issues jointly at regional level, but also that all involved line ministries from each of the countries are involved in the development of regionally coherent policies. The observatory and platform should also assist towards migration governance and effective administrations, ensuring that policies can be effectively implemented.

Regional free movement of WB6 citizens (and long-term residents) could be greatly assisted by creating and enhancing a skills matching network which would pilot test some of the schemes and agreed procedures developed by the members of the regional consultative platform thereby reducing labour market restrictions in the region by e.g. replacing a growing number of bilateral treaties/agreements on cross-border pension, facilitating access to social welfare and return and readmission agreements by regional ones is an essential part of successful regional mobility.

Finally, where it concerns possible gaps with international and European norms (both CoE and EU) it can be noted that:

- 🔗 Scrutiny of international norms (human rights conventions) takes place on a regular basis; regional cooperation and coordination towards submitting the various four-yearly reports to the Committees and other gremia (UPR) concerned should be promoted, as well as a regional approach towards analysing the outcome of the various recommendations and concluding observations;
- 🔗 On the CoE level many de-facto supervision mechanisms exist (for instance the ESC Committee and the ECtHR); an observatory focusing on these institutions should be welcomed; in-depth studies should be made of the many relevant ECtHR cases; not just the judgments themselves but also the cases considered non-admissible should be studied, preferably in a regional setting;
- 🔗 On EU-level the relevant regulations and directives may serve as a guide towards proper and effective migration governance. The EU-norms do not necessarily reflect international norms, but could serve its purposes, - not least as a step towards EU-membership.

Cooperation, coordination, harmonization, approximation and alignment serve a number of goals, of which regional social and economic development is the most crucial one. The region deserves this.

## Endnotes

1. Regional Cooperation Council (RCC). South East Europe 2020 Strategy: Jobs and prosperity in a European Perspective. (Sarajevo, 2013). Available from: <http://www.rcc.int/files/user/docs/reports/SEE2020-Strategy.pdf>
2. Jean-Claude Juncker, Speech to the European Parliament on July 15th, 2014, <http://www.euractiv.com/sections/eu-elections-2014/bildt-slams-juncker-over-absence-enlargement-portfolio-308245>.
3. On p. 28 of the SEE 2020 report it can be read: The 'Employment' dimension addresses labour mobility, labour market governance and the promotion of social economy activities as the main priorities. Labour mobility focuses on the creation of a regional consultancy process on mobility and the abolition of labour market restrictions in the region, while labour market governance prioritises the flexicurity approach, enhancing and strengthening the capacities of labour market institutions and enabling people to acquire new skills to adapt to new conditions, forging programmes for vulnerable groups and tackling informal employment.
4. The World Bank. Western Balkan Integration and the EU. An Agenda for Trade and Growth. Directions in Development. (Washington D.C., 2008) Available from: <http://go.worldbank.org/JN7WQ6JHR0>
5. Regional Cooperation Council (RCC), South East Europe 2020 Strategy: Jobs and prosperity in a European Perspective. (Sarajevo, 2013). P. 30. Available from: <http://www.rcc.int/files/user/docs/reports/SEE2020-Strategy.pdf>
6. Ibid, p.17.
7. Handjiski, B. Et Al. Enhancing Regional Trade Integration in Southeast Europe. World Bank Working Papers. (Washington D.C., 2010). Available online from: <http://dx.doi.org/10.1596/978-0-8213-8259-2>
8. The Central European Free Trade Area (CEFTA) has been set up in 2008. Since then major progress has been made on a number of areas with current negotiations held on trade in services. See <http://www.rcc.int/interviews/73/interview-with-renata-vitez-director-of-the-central-european-free-trade-agreement-cefta-secretariat>
9. See for instance the 2012 proposals for Directive concerning the enforcement of the provision applicable to the posting of workers in the framework of the provision of services - COM(2012) 131; and for a Regulation on the exercise of the right to take collective action within the context of the economic freedoms of the single market - COM(2012) 130; also: Commission Staff Document: Impact Assessment, Revision of the legislative framework concerning the posting of workers in the context of the provision of services - SWD(2012) 63 - Part I / SWD(2012) 63 Part II / SWD(2012) 64 Executive Summary.
10. Council of Europe. Twenty Guidelines on Forced Return. (Strasbourg, 2005). Available from: [http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20\\_Guidelines\\_Forced\\_Return\\_en.pdf](http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf)
11. Ruhs, M. Ten features of labour immigration policies in high-income countries. (2013). Available from: [http://www.priceofrights.com/blog/post.php?s=2014-01-15-ten-features-of-labour-immigration-policies-in-highincome-countries#.VGsnV\\_mG-Pt](http://www.priceofrights.com/blog/post.php?s=2014-01-15-ten-features-of-labour-immigration-policies-in-highincome-countries#.VGsnV_mG-Pt)
12. United Nations Office of the High Commissioner for Human Rights. Statement by Committee on Migrant Workers on Migrant workers' rights: 10 years of progress but huge challenges remain. (Geneva, 2013). Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13502&LangID=E#sthash.gefvbcXa.dpuf>. See also the General Comment issued by the Committee on irregulars.
13. C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (Entry into force: 09 Dec 1978). Available from: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312288](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312288)
14. The following paragraphs are based on <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>
15. United Nations Office of the High Commissioner for Human Rights. Statement by Committee on Migrant Workers on Migrant workers' rights: 10 years of progress but huge challenges remain. (Geneva, 2013). Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13502&LangID=E#sthash.gefvbcXa.dpuf> & United Nations Office of the High Commissioner for Human Rights. Statement by Ms. Flavia Pansieri Deputy High Commissioner for Human Rights at the 20th session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. (Geneva, 2014). Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14480&LangID=E>
16. The CMW Committee observed in 2010 in the case of Albania: "*The Committee notes that, according to the Constitution of Albania, international agreements ratified by law prevail over the domestic laws that are not compatible with it. However, in practice there is no guarantee*

- of primacy of the Convention in case of conflict with national legislation". See United Nations (2010). Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Available online from: [http://www.bayefsky.com/pdf/albania\\_t4\\_cmw\\_13.pdf](http://www.bayefsky.com/pdf/albania_t4_cmw_13.pdf). In Montenegro, art. 9 of the Constitution would appear to indicate that international conventions are self-executing.*
17. See for instance: General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation and Members of their Families (28 August 2013) [http://www2.ohchr.org/english/bodies/cmw/docs/CMW\\_C\\_GC\\_2\\_ENG.PDF](http://www2.ohchr.org/english/bodies/cmw/docs/CMW_C_GC_2_ENG.PDF)
  18. The general comments of all human rights treaty bodies are compiled annually in the document HRI/GEN/1/Rev.7.
  19. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Report on International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158. (2010). Available from [http://www.bayefsky.com/pdf/albania\\_t4\\_cmw\\_13.pdf](http://www.bayefsky.com/pdf/albania_t4_cmw_13.pdf) and [http://www.bayefsky.com/pdf/bosnia\\_t4\\_\\_17\\_2012.pdf](http://www.bayefsky.com/pdf/bosnia_t4__17_2012.pdf)
  20. Montenegro report 119.1. Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Chile); Consider ratifying ICRMW (Indonesia); 119.2. Ratify the ICRMW (Turkey); Ratify ICRMW (Guatemala); Accede to the ICRMW (Belarus); 119.3. Consider accession to the ICRMW in order to prevent discrimination, and to ensure equal access to just conditions of work and basic social services, particularly for migrants in vulnerable situations (Philippines);
  21. Montenegro report, 119.4. Consider ratifying OP-CRC-IC, OP-ICESCR as well as the ILO Convention 189 (Costa Rica);
  22. In the literature, however, the question has recently been raised whether migrants' rights contribute to labour migration or rather hinder it. Martin Ruhs (in **his** *The Price of Rights, Regulating International Labour Migration*, Princeton Press 2013) submits that less is more: "*Ruhs analyzes how high-income countries restrict the rights of migrant workers as part of their labour immigration policies and discusses the implications for global debates about regulating labour migration and protecting migrants. The book comprehensively looks at the tensions between human rights and citizenship rights, the agency and interests of migrants and states, and the determinants and ethics of labour immigration policy*". (2013, available from: <http://www.priceofrights.com/> )
  23. \*\* Albania: Republic of Albania People's Advocate; BiH: Law on Amendments to the Law on Ombudsman for Human Rights (2006); Law on the Human Rights Ombudsman (2004); Croatia: Ombudsman's Act (2012); Montenegro: Law on the Protector of Human Rights and Freedoms (2011); Kosovo\*: Law on Ombudsperson of Kosovo\* (2010); Serbia: Ombudsman. On 04 August 2012, the National Assembly of the Republic of Serbia re-elected Mr Saša Janković as Protector of Citizens (Ombudsman). See the Law on the Protector of Citizens which was published in the "Official Gazette of the Republic of Serbia", no. 79/2005 and 54/2007. The former Yugoslav Republic of Macedonia: Book of Regulations on the manner of prevention by the Ombudsman as a National Preventive Mechanism (2010); Law on supplementing and amending the Law on the Ombudsman dated 2003 (2009); Ombudsman Law (2003). Source: <http://www.legislationline.org/topics/country/31/topic/82>. See also: UN Human Rights Council, *National institutions for the promotion and protection of human rights: Report of the Secretary-General*, UN Doc A/HRC/23/27 (2 April 2013).
  24. OSCE Office for Democratic Institutions and Human Rights. National Human Rights Institutions. (2014) Available from: <http://www.legislationline.org/topics/topic/82>.
  25. Council of Europe, European Social Charter, 18 October 1961, ETS 35. Available from: <http://www.crin.org/en/library/legal-database/european-social-charter-revised>
  26. A new Protocol to the ECHR has recently been agreed upon reflecting new thinking on subsidiarity and margin of appreciation.
  27. See, for instance, an example of a report for the Netherlands available at [http://www.coe.int/web/commissioner/view/-/asset\\_publisher/ugj3i6qSEkhZ/content/the-netherlands-should-improve-protection-of-the-rights-of-asylum-seekers-migrants-and-children](http://www.coe.int/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/the-netherlands-should-improve-protection-of-the-rights-of-asylum-seekers-migrants-and-children)
  28. The European Social Charter Database can be found on <http://hudoc.esc.coe.int/esc2008/query.asp>.
  29. The additional protocol for a collective complaints procedure can be found on <http://www.crin.org/en/library/legal-database/additional-protocol-european-social-charter-providing-collective-complaints>.
  30. The above paragraphs are based on <http://www.crin.org/en/guides/un-international-system/regional-mechanisms/european-committee-social-rights>
  31. See more on 35 chapters at [http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm)
  32. European External Action Service. Delegation of the European Union to Iceland. Negotiation Chapters. Available from: [http://eeas.europa.eu/delegations/iceland/eu\\_iceland/iceland\\_road/eu\\_enlargement\\_policy/negotiation\\_chapters/index\\_en.htm](http://eeas.europa.eu/delegations/iceland/eu_iceland/iceland_road/eu_enlargement_policy/negotiation_chapters/index_en.htm)

33. European Commission. The Future of EU Migration Policy. (2012). Available from: [http://ec.europa.eu/immigration/tab1.do?subSec=37&language=7\\$en](http://ec.europa.eu/immigration/tab1.do?subSec=37&language=7$en)
34. This is also due to the new legislation in the pipeline. See for instance: (a) Proposal for Directive concerning the enforcement of the provision applicable to the posting of workers in the framework of the provision of services - *COM(2012) 131*; (b) Proposal for Regulation on the exercise of the right to take collective action within the context of the economic freedoms of the single market - *COM(2012) 130*; and (c) Commission Staff Document: Impact Assessment, Revision of the legislative framework concerning the posting of workers in the context of the provision of services - *SWD(2012) 63 - Part I / SWD(2012) 63 Part II / SWD(2012) 64 Executive Summary*.
35. For the first phase, 30 June 2015, the following countries have informed the Commission that they will not apply EU law on the free movement of workers and that Croatian workers will have to obtain a work permit to work there: Austria, Belgium, Cyprus, France, Germany, Greece, Italy, Luxembourg, Malta, Netherlands, Spain, Slovenia, United Kingdom. For the second phase, 1 July 2015 – 30 June 2018 EU countries must notify the EC if they intend keep applying their own national law for a further three years and not apply the principles concerning the free movement of workers For the final phase, 1 July 2018 – 30 June 2020; EU countries may continue to apply their national law only in the case of serious disturbance of their labour markets or a threat thereof and after notification of such to the EC. Thereafter, from July 1st, 2020 are no further restrictions imposed. European Commission, 2014. Available from: <http://ec.europa.eu/social/main.jsp?catId=1067&langId=en>
36. This shall be taken into consideration by the national government once the Draft Law on Foreigners, expected to be implemented in 2015, is amended.
37. They apply for temporary single permit as all other categories of migrants and are subject to pre-determined labour quota, as per Art. 47-54 of the Aliens Act.
38. No special provisions for seasonal workers.
39. Regulated under labour law.
40. See, among others, [www.sciencedirect.com/science/article/pii/S0047272702001329](http://www.sciencedirect.com/science/article/pii/S0047272702001329); <http://fpj.portier.free.fr/events/T2MWebsite/papers/Magnani.pdf>; and <http://www.questia.com/library/journal/1P3-2446102681/public-pensions-sustainability-and-population-ageing#/>; Italian scientists concluded that the increase in the number of yearly immigrants necessary to achieve the pension system's long-run financial balance is too high to be politically feasible. It seems therefore that, unpopular as such reform may be, a reduction in pension benefits is necessary to reach the long-run equilibrium of the pension system. The conclusion that seems to predominate in the literature is that migration can alleviate but not counter the demographic shock. A partial equilibrium analysis by the European Commission and Eurostat (2002) suggests that even doubling immigration and fertility rates will not be sufficient to compensate the increase in the old-age dependency ratio and then to guarantee a significant contribution to securing sustainable pension systems.
41. For instance Germany, Netherlands, Sweden.
42. Some EU MS grant companies certificates on the basis of which they can easily bring into the country migrant labour from abroad.
43. Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. Available from: <http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%2058%202014%20INIT>
44. Georgia has made great strides in this context; see for instance <http://investingeorgia.org/index.php?m=234>.
45. RCC's key role is to generate and coordinate developmental projects of a wider, regional character, to the benefit of each individual participant, and create an appropriate political climate susceptible to their implementation. The areas of cooperation in the framework of the RCC are economic and social development; energy and infrastructure; justice and home affairs; security cooperation; building human capital, as well as cross-cutting issues such as parliamentary cooperation, media development, civil society activities and gender mainstreaming.
46. See Regional Cooperation Council (RCC). South East Europe 2020 Strategy: Jobs and prosperity in a European Perspective. 2013.
47. Regional Cooperation Council (RCC). South East Europe 2020 Strategy: Jobs and prosperity in a European Perspective. 2013.
48. Citizens Information Board (2010). Immigrants and people returning to Ireland accessing social welfare. Available from: [http://www.citizensinformationboard.ie/publications/relate/relate\\_2010\\_2.pdf](http://www.citizensinformationboard.ie/publications/relate/relate_2010_2.pdf)





Regional Cooperation Council



International Organization for Migration (IOM)

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