

Act XXXIX of 2001 on the entry and stay of foreigners*

Parliament, guided by its commitment for the rule of law and the protection of human rights, enacts the following Act in order to perform the obligations undertaken by the Republic of Hungary in international agreements and to protect the internal order and public security of the Republic of Hungary: **Chapter I General Provisions Article 1** (1) This Act regulates rights and obligations in matters related to the entry and stay of foreigners (hereinafter referred to jointly as matters of “alien policing”), the functions and powers of the Hungarian authorities and the order of alien policing procedures. (2) The following alien policing authorities shall take action in matters of alien policing within their respective scopes of authority determined in this Act and the government decree governing its implementation: (a) the central alien policing authority (hereinafter referred to as the “Office”), (b) the regional agency of the Office (hereinafter referred to as the “regional alien policing authority”), (c) the alien policing agency of the Border Guard, (d) the external representation authorised to issue visas and the Ministry of Foreign Affairs. **Article 2** (1) Within the meaning of this Act: (a) *foreigner* shall mean any person who is not a Hungarian national and who is stateless, (b) *stateless* shall mean any person who is not recognised as the national of any state according to its own laws,

** This Act was adopted by Parliament at its session of 29 May 2001.

2

(c) *national of the European Economic Area (hereinafter referred to as “EEA national”)* shall mean any person who is the national of a member state party to the Agreement on the European Economic Area, (d) *third-country citizen* shall mean any person who is not a national of a member state party to the Agreement on the European Economic Area, (e) *family member* shall mean—unless otherwise provided for in this Act—the spouse, dependant offspring, adopted or foster child of the foreigner, the child of his/her spouse, in case of minors the parent and the dependant and the ascendant of the foreigner and his/her spouse, (f) *unaccompanied minor* shall mean—apart from the EEA national—any foreigner who has not yet reached the age of 18 except when he or she has come of age earlier according to the provisions of Hungarian law; if he or she entered the territory of the Republic of Hungary without being accompanied by an adult responsible for his/her supervision by virtue of law or custom or when he or she has remained without supervision following his/her entry until he or she is placed under the supervision of such a person, (g) *admitted person* shall mean any person who, for a transitory period, cannot be returned to his home country—in case of a stateless person, to the country according to his usual place of stay—because there he or she would be exposed to the death penalty, torture, inhuman or degrading treatment and there is no safe third country that would admit him or her, (h) *valid travel document* shall mean a passport issued by a foreign authority entitled to do so and recognised by the Republic of Hungary, valid both in terms of time and space; or any other certificate or document entitling the holder for travelling abroad pursuant to international agreement or legal regulation that verifies the personal identity and nationality (statelessness) of the holder, (i) *readmission agreement* shall mean an international agreement concerning the transfer of persons at the state border and permitting his/her transit with or without official escort. (2) Until his Hungarian nationality is verified, any natural person who has no registered residence in Hungary and uses a valid travel document issued by a foreign state to identify himself shall be regarded as a foreigner. When the Hungarian nationality of the person is verified, the alien policing procedure shall be terminated but the rules applicable to the withholding of the travel documents of foreigners shall be applied. (3) This Act shall apply to foreigners enjoying diplomatic or any other personal exemption or foreigner entering the country for a purpose specified in an international agreement when the international agreement does not provide otherwise.

3

(4) The scope of this Act shall not extend to foreigners who are recognised by the authority for refugee affairs as a refugee or as a person enjoying temporary protection until this legal status is maintained except when such foreigner has applied for a residence permit. **Article 3** (1) The entry, stay and exit of foreigners may be restricted according to the provisions specified in this Act. Within the limits of this Act, foreigners legally staying in the territory of the Republic of Hungary shall have the right of free movement and free choice of the place of stay and the freedom of travel. (2) During their stay in Hungary, foreigners shall respect the constitutional order of the Republic of Hungary, abide by its laws and regulations and comply with the measures of the Hungarian authorities. (3) Foreigners shall make their documents, data and certificates specified in this Act required for the procedure available to the representatives of the Hungarian authorities taking action. (4) In the course of its procedures, the Hungarian authorities shall inform the foreigner of his/her rights and obligations, in particular his/her right to legal remedy, claim for compensation and the mode of the enforcement of his/her rights as provided for in this Act in a language understood by him/her. **Chapter II Rules of entry and stay**
Article 4 (1) Entry and stay may be permitted when the foreigner meets the following condition: (a) he holds valid travel documents or a permit entitling him or her to stay as set forth in Article 7 (2); (b) with the exception of those specified in paragraphs (4) and (5), the foreigner has the visa required for entry; (c) he holds a valid visa required for travelling on or returning; (d) he has the financial means specified under separate legislation required for his/her entry, stay (including health care) and exit; (e) he is not subject to any expulsion or ban on entry or stay, and

4

(f) his/her entry does not threaten the public security or national security of an EEA member state or the international relations of a member state. (2) In the absence of the conditions specified under paragraph (1) above, entry may be permitted only for humanitarian considerations, for reasons of national interest or to meet obligations undertaken in international agreements. (3) In cases specified under paragraph (2) above, the visa may be issued only with a restriction valid for the territory of the Republic of Hungary. (4) Pursuant to an international agreement or legal regulation, foreigners may enter the territory of the Republic of Hungary without a visa and may stay there for a maximum period of ninety days during the six month from the date of his/her first entry without a separate permit provided that he/she meets the conditions required for staying. (5) Third-country nationals, legally staying in the territory of any EEA member state, studying at a primary or secondary educational institution, may enter the territory of the Republic of Hungary travelling on an authenticated document specified in legal regulations without travel documents or visa when entering within the framework of a school excursion as member of a group of students. (6) The minister of the interior may grant exemption from meeting the conditions of entry for reasons of important public interest, in particular for reasons of public health to prevent the threat of an epidemic or in case of a catastrophe. **Article 5** (1) The availability of financial coverage required for entry and stay may be verified by producing (a) Hungarian or foreign currency that may be converted by a financial institution in Hungary; (b) a valid letter of invitation; (c) a document entitling the foreigner to withdraw cash from a financial institution in Hungary (bank account contract, deposit book, etc.); (d) means of cashless payment accepted in commercial traffic in Hungary (cheque, credit card, etc.); (e) existence of board and lodging reserved and paid by way of a travel agency; (f) any other credible proof.

5

(2) The financial coverage of exit may be verified in addition to those specified under paragraph (1) by producing a valid ticket required for travelling on or returning or the means of transport legally used by the foreigner and appropriately insured. **Article 6** (1) A letter of invitation issued by a Hungarian national, a foreign natural person having a valid immigration permit issued prior to the entry into force of this Act (hereinafter referred to as the "immigration permit") or a residence permit or a permit to

stay, or by some Hungarian legal entity or a foreign legal entity having its registered office in Hungary, using the prescribed form, may be accepted as verification of financial coverage when: (a) the person issuing the invitation makes a written commitment to provide the invited foreigner with accommodation and maintenance during his stay in Hungary and, unless otherwise provided for in international agreements, to cover the costs of his health care and exit; and (b) unless otherwise provided for under the provisions of law, the regional alien policing authority has attached its clause verifying its official consent. (2) Remedy against the refusal to grant the official consent may be sought in accordance with the general rules of administrative procedures. (3) The person sending the invitation shall reimburse the costs and damage caused to others by failing to meet his/her obligation undertaken in the letter of invitation. **Chapter III Permits entitling the holder to enter and stay Article 7** (1) Unless otherwise provided for in legal regulation or international agreement, a permit is required for the entry and stay of foreigners. (2) Permits entitling the holder to enter and stay include: (a) the visa; (b) the permission to stay; (c) the residence permit or the immigration permit.

6

(3) The permit to enter or stay issued by the competent authority of an EEA member state entitles the holder to enter, transit or stay in accordance with the provisions set forth therein without any additional, separate permission. (4) The foreigner is entitled to stay in Hungary pursuant to the certificate entitling the holder for temporary stay. (5) The permission to stay, the residence permit and the certificate entitling the holder for temporary stay authentically verify the personal identity and right of the foreigner to stay, while valid. **Visa Article 8** (1) The visa is a permission to enter, transit or stay for the purpose and period specified therein and exit. (2) The visa may be issued with or without geographical restrictions. (3) The visa may be issued when the foreigner meets the conditions specified under Article 4 (1). (4) There is no legal remedy against the resolution to refuse to issue the visa through public administration. (5) When the issuing authority issues a visa with a geographical restriction, it shall inform the EEA member states thereof. **Article 9** (1) Depending on the purpose of entry and stay, the visa may be: (a) *an airport transit visa*: which entitles the holder to enter the international zone of the airport and to stay there until the departure of the flight to the state of destination (“A” type visa); (b) *a transit visa*: which may be single or multiple, entitling its holder to transit through the country in a period not exceeding five days on each occasion (“B” type visa); (c) *a short-term entry visa*: entitling the holder for single or multiple entry within six months and in case of an uninterrupted stay for a stay of maximum ninety days from the date of entry or in case of an interruption for a stay totalling no more than ninety days within six months from the date of the first entry taking all the entries into account (“C” type visa);

7

(d) *a residence visa*: entitling the holder for single or multiple entry and for a stay exceeding ninety days but not exceeding one year with the exception of the provisions of paragraphs (3) and (4) for a specified purpose in Hungary without any additional permit (“D” type visa). (2) Unless otherwise provided for by legal regulation, the multiple entry visa according to paragraph (1) (a)-(c), shall be valid for maximum one year. (3) The residence visa issued for undertaking seasonal employment entitles the holder for a continuous stay of no more than six months within twelve months. (4) When the residence visa is issued for humanitarian reasons, it entitles the holder for a stay not exceeding six months. (5) The visa may be used within its period of validity. The period of validity of the visa shall be calculated from its date of issue. **Article 10** (1) The visa issued shall be invalid if the foreigner is subject to a ban to enter and stay. The invalid visa shall be rendered null and void and there shall be no remedy against its nullity. (2) The visa issue shall be invalidated and rendered null and void also when upon entry the foreigner does not meet or in the course of his stay he or she no longer meets the other conditions for the issuance of the visa or when the visa is issued in contravention of the provisions of

this Act or by error. (3) The competent authority of the state issuing the visa shall be notified of the annihilation of the invalid visa. **Article 11** (1) The visa application shall be submitted in person using the prescribed form to the Hungarian foreign representation competent according to the permanent or usual place of stay of the foreigner. Apart from the visa according to Article 12, the application may also be submitted at another visa issuing authority specified in government decree and the visa issuing authority may waive the obligation of personal submission in extraordinary cases calling for particular consideration. (2) The documents verifying the purpose of entry and stay shall also be attached to the application.

8

Article 12 (1) Unless otherwise provided for by international agreement, the foreigner may enter with a view to performing work subject to licensing according to legislation or to pursue other income generating activities with a residence visa only. (2) The application for a residence visa for purposes specified under paragraph (1) above may be granted when: (a) the competent employment authority has agreed to the performance of work by the foreigner, (b) the foreigner is subject to the Act on the establishment of foreigners as self-employed persons for business purposes and meets the conditions specified therein, and (c) the income generating activity of the foreigner who is not subject to point (b) brings economic benefit to the Republic of Hungary or represents scientific or cultural value.

Permission to stay **Article 13** (1) Upon request from the foreigner staying in Hungary with a valid visa, the alien policing authority may issue permission to stay to extend the period of stay. (2) The Ministry of Foreign Affairs shall issue and extend the permissions to stay to members of the diplomatic or consular representations in Hungary. (3) The validity of the permission to stay shall be for the period according to the application but for a maximum period of two years with the exception of the provisions of paragraphs (4) and (5) and may be extended by maximum two years on any one occasion with the exception according to paragraph (5). (4) When the purpose of stay is the performance of work or any other income generating activity, the permission to stay may be issued on the first occasion for a term of maximum four years. (5) For foreigners pursuing studies in higher education or participating in professional training or professional practice (hereinafter referred to as the “student”), the period of validity of the permission to stay may not exceed one year on the first occasion and may be extended by one year on each occasion until the studies or the professional practice are completed.

9

Article 14 (1) The spouse, the under-age child of the Hungarian national or the foreigner who has a permission to stay, a residence permit or an immigration permit or if they are recognised as refugees staying in Hungary and the under-age child of the spouse (including the adopted child) shall—upon his/her request—be entitled to a permission to stay with a view to family unification when (a) he or she has a valid residence visa issued for this purpose; (b) his livelihood in Hungary is assured out of the income or property of the spouse staying in Hungary or in the case of minors the income or property of the parent or his/her own means; (c) he has comprehensive health insurance cover or financial coverage commensurate to making use of health care services; (d) appropriate accommodation for the family unification is guaranteed; (e) excluding reasons specified in law do not obtain. (2) The period of validity of the permission to stay issued to the spouse and the under-age child shall not exceed the period of validity of the permission to stay issued to the foreign spouse or parent staying in Hungary. (3) When the marriage is dissolved after entry, the former spouse shall not be entitled for additional stay except when the under-age child produced from the marriage is a Hungarian national and the former spouse exercises the right of parental supervision or when five years have already passed since the issue of the permission to stay and he/she meets the conditions required for additional stay. (4) The provisions of paragraph (3) shall apply in the case of the death of the spouse. (5) When a child is born to a foreigner having a permission to stay in Hungary, he/she shall notify the fact of the birth with 30

days from the birth of the child. The permission to stay for the child shall be issued without the examination of the conditions according to paragraph (1). (6) The foreigner who entered the country as a minor for the purposes of family unification, and has in the meantime come of age, shall be entitled for continued stay for the purposes of family unification when he has had a permission to stay issued with a view to family unification for the five years preceding his coming of age and the conditions of additional stay are ensured. **Article 15** (1) For humanitarian reasons, the Office and the regional alien policing authority may issue a permission to stay even when the conditions of stay according to the law do not obtain:

10

(a) to the admitted person; (b) to the foreigner who applied to the authority responsible for refugee affairs to be recognised as a refugee or as a person under temporary protection; (c) for important reasons of national security or law enforcement upon the proposal of the national security or law enforcement agency, to the foreigner and with respect to him to the other foreign person who has cooperated with the authorities in the interdiction of crime in a manner that substantially facilitated the furnishing of evidence; (d) to the foreigner of whom it was established in the course of this procedure that he or she was stateless; (e) to the person who was born in the territory of the Republic of Hungary and thereafter remained without supervision by a person responsible for him or her according to Hungarian law provided that he or she has not obtained Hungarian nationality or a right to stay under another heading. (2) The admitted person shall have the rights guaranteed under separate law for those in possession with a permission to stay and the admitted persons. The admitted person shall facilitate the establishment of his or her personal identity; however, the issuance of the permission to stay may not be refused owing to an absence of proof of personal identity. (3) The admitted person shall be entitled to personal care, cash benefits and support in accordance with the provisions of the government decree and he may undertake work in accordance with the general rules applicable to foreigners.

Article 16 (1) The application for the issue of a permission to stay or its extension shall be submitted within fifteen days at the latest prior to the termination of legal stay, using the prescribed form. (2) The personal identification data of the foreigner, his/her nationality (statelessness), other data of his passport, school qualifications, occupation, family status, the purpose, place and financial coverage of and the reasons for his/her stay, and when using a vehicle registered abroad during his stay in Hungary, the data of the traffic license of the vehicle, shall be indicated in the application; an official medical certificate, stating that the foreigner does not suffer from a disease that would threaten public health, shall also be enclosed. (3) The application for a permission to stay shall be evaluated within fifteen days from its receipt. **Article 17**

11

(1) The issue of the permission to stay or the extension of the period of stay stated in the permission to stay may be refused if the foreigner (a) has failed to submit the application within the due date specified, and was found unable to justify his failure; (b) is unable to verify that the conditions required for stay and exit as specified under the provisions of the relevant legislation obtain; (c) is unable to verify the purpose of his continued stay; (d) suffers from a disease endangering public health or fails to comply with Hungarian legal regulations in force applicable to health care during his stay in Hungary; or (e) the conditions for ordering expulsion under alien policing procedures or the ban of entry or stay obtains vis-à-vis the foreigner. (2) With the exception of the permission to stay issued for humanitarian reasons, the issue of the permission to stay and the extension of the period of stay specified in the permission to stay shall be refused or the permission to stay shall be withdrawn if the foreigner (a) is subject to expulsion or a ban to enter and stay; (b) does not have a valid visa for stay or permission to stay; (c) the purpose of his stay has changed or has failed with the exception of the provisions of paragraph (3). (3) Exceptionally, the permission to stay may be extended when the purpose of stay has

changed owing to medical treatment, family unification or extraordinary reason deserving other special consideration. (4) The obligation to leave the country shall be prescribed in the operative part of the resolution concerning the refusal of the application or the withdrawal of the permission indicating the due date for performance and simultaneously with the communication of the valid resolution refusing the application shall be entered in the passport. (5) An appeal against a resolution rejecting the application to issue or extend the permission to stay or against the withdrawal of the permission to stay shall be submitted orally upon the announcement of the resolution or in writing within three days from such an announcement. (6) When the permission to stay is issued pursuant to Article 15(1)(c), the permission to stay may be withdrawn or its extension may be refused only upon the proposal of the agency authorised to do so.

12

(7) The permission to stay of a minor subject to Article 15(1)(e) may be withdrawn or its extension may be refused only when the unification of the family or care by the state or other institution is guaranteed in the country of origin or another admitting state. *Residence permit* **Article 18** (1) The foreigner (a) who has legally and regularly lived in Hungary without interruption for at least three years from his/her entry except if the purpose of legal stay has been to pursue studies; (b) whose accommodation and livelihood in Hungary is guaranteed; (c) against whom excluding reasons specified in this Act do not obtain; or (d) whose residence has been permitted by the minister of the interior for exceptional reasons may be granted a residence permit. (2) For the purposes of paragraph (1)(a), leaving the country for maximum ninety days a year shall not qualify as interruption. (3) The foreigner having a visa to stay and a permission to stay and (a) who applies for permanent residence as a family member for the purposes of family unification provided that he has been legally staying in Hungary and has been living in matrimony with a Hungarian national or foreigner having a residence permit or immigration permit or a foreigner recognised in Hungary as a refugee for at least one year since his/her entry; (b) had been a Hungarian national but his nationality has ceased or whose ascendant had been a Hungarian national may be granted exemption from meeting the condition according to paragraph (1)(a). (4) The application for a residence permit may be refused without any examination of merit when the applicant failed to verify that the conditions specified under paragraph (1)(a) and (b) obtained and pursuant to paragraph (3) he/she may not be granted an exemption. (5) The applicant spouse may obtain an exemption according to paragraph (3) only when he/she had married a Hungarian national, a foreigner having a residence permit or immigration

13

permit or a foreigner recognised as a refugee at least two years prior to the submission of the application. (6) When a child is born to a foreigner having a residence or immigration permit in Hungary, he or she shall notify the fact of the birth within 30 days from the birth of the child. The permit shall be issued to the child without examination of the conditions specified in paragraph (1). **Article 19** (1) An application for a residence permit shall be submitted in person or in case of a joint application by way of the adult family member by submitting the prescribed form to the regional alien policing authority competent according to the future Hungarian residence of the applicant. (2) The following shall be enclosed with the application for a residence permit: (a) the personal identification data and the document verifying nationality (statelessness); (b) the birth certificate, in case of a married applicant the marriage certificate, in case of the dissolution of a marriage the valid official resolution establishing the dissolution of the marriage and an authentic document according to the law of the under-age applicant concerning the fact that there is no legal impediment to the settlement of the minor abroad; (c) a document verifying no criminal record, issued not earlier than six months before the submission of the application; (d) an official medical certificate issued not earlier than three months before the submission of the application concerning the fact that the foreigner does not suffer from a

disease endangering public health; (e) documents verifying school qualifications or professional qualifications; (f) documents verifying accommodation and livelihood in Hungary. (3) Copies attested by the competent foreign authority may also be enclosed instead of the documents listed under paragraph (2). An exemption may be granted on the basis of a statement by the applicant from meeting the obligation set forth in paragraph (2)(b) and (c). The document or certificate issued by a foreign authority or copies thereof shall be enclosed together with an attested translation thereof into Hungarian. (4) The National Security Office and the Police shall deliver an opinion concerning the matter of a residence permit as specialised authorities. **Article 20**

14

(1) The residence permit is a permit entitling the holder to stay in Hungary for an unspecified period. Foreigners with resident permits shall be entitled also to the rights specified under separate legislation for those having permission to stay. (2) The licensing authority shall enter the fact of residence (settlement) in the travel document of the foreigner. (3) The foreigner residing in Hungary shall be entitled to leave the territory of the country and to return there. (4) The foreigner having a residence permit shall, in accordance with the provisions of separate legislation, notify his place of residence including his personal data. (5) The Office and the regional alien policing authority shall check the conditions of the stay of the foreigner having an immigration or residence permit at least once every five years. **Article 21** (1) The foreigner (a) whose accommodation and livelihood in Hungary is not guaranteed; (b) against whom a penal procedure is in progress in front of the Hungarian authorities or he is wanted in relation to a penal procedure; (c) who is suffering from a disease endangering public health unless he/she is applying for the residence permit as a family member with a view to living with his/her spouse or under-age child who are Hungarian nationals living in Hungary provided that he/she receives compulsory and regular medical treatment; (d) who has a criminal record and has not yet been exempted from the legal disadvantages linked to such criminal record; (e) whose residence in the country would violate national security or public security may not receive a residence permit. (2) The application for a residence permit of the foreigner whose residence in Hungary would endanger the interests of the Republic of Hungary may be rejected. (3) In accordance with the ban on discrimination, neither the race, nor the colour, sex, mother tongue, religion, political or other opinion, national or other social affiliation nor the birth status of the foreigner may be presumed to be a fact endangering the interests of the Republic of Hungary.

15

Article 22 (1) The livelihood of the foreigner may be regarded as guaranteed when he or she has an income or property sufficient for maintaining himself/herself and his dependant family members for whose maintenance he or she is responsible or when he has a relative living in Hungary who, pursuant to Hungarian law, may be obliged to maintain him/her. (2) The accommodation of the foreigner is not guaranteed when the per capita space in his future residence indicated by him is less than six square metres living room area. The authority taking action may waive this condition for exceptional reasons.

Article 23 (1) The Office or the regional alien policing authority may withdraw the residence or immigration permit if (a) the foreigner has communicated false data or facts to the alien policing authorities with a view to obtaining the permit; (b) the conditions on the basis of which the permit was issued have changed so substantially that they would now exclude the issue of the permit provided that less than five years have passed since the issue of the residence or immigration permit; (c) in case of a permit issued under the heading of family unification, the marriage ceased within three years from receipt of the permit not because of the death of the spouse or the rights of the foreigner to parental supervision ceased except when the foreigner had been staying in Hungary with a residence or immigration permit for at least four years; (d) the foreigner has left the territory of the Republic of Hungary for a period of more than six months or has regularly or permanently undertaken work abroad.

(2) The alien policing authority shall withdraw the permit when (a) in the case of an under-age foreigner, the alien policing authority has withdrawn the permission to stay of the foreign parent exercising the rights of parental supervision and the conditions of continued stay by the minor in Hungary with the other parent exercising parental supervision or in the absence of state care are not guaranteed; (b) in case of a permit issued under the heading of family unification, the Hungarian national spouse of the foreigner has left the territory of the Republic of Hungary with the intention to reside abroad or the legal stay of the foreign spouse in Hungary has ceased; (c) the foreigner was expelled or a prohibition on entry and stay was ordered against him.

16

Certificate entitling the holder for temporary stay **Article 24** (1) With the exception of the admitted person, the Office or the regional alien policing authority shall provide—ex officio—the foreigner in Hungary (a) who is not in possession of a permit entitling the holder to enter and stay; (b) whose travel documents have been retained in order to carry out a penal or petty offence procedure initiated against him/her; (c) has been obligated to stay in a designated place with a certificate entitling the holder for temporary stay. (2) In the case according to paragraph (1), the alien policing agency of the Border Guard shall issue the certificate entitling the holder for temporary stay when the foreigner entered the country pursuant to the provisions of Article 4(2). (3) The certificate according to paragraph (1) shall contain the personal identification data, nationality (statelessness), place of accommodation in Hungary, photo of the foreigner, the reasons for issuing, the serial number of the certificate, its period of validity and the name and entries of the issuing authority. (4) The certificate may be issued with a validity of maximum one month in the cases according to paragraphs (1)(a) and (b) or of maximum six months in the case according to point (c) which may be extended. **Special rules of stay** *Entry and stay of EEA nationals and their family members* **Article 25** (1) The rules applicable to the entry and stay of foreigners shall—in the case of EEA nationals and their family members—apply with the differences according to paragraph (2) hereof and Articles 26-30. (2) The following persons shall qualify as family members:

17

(a) for the purposes of Article 27(1), the spouse of the EEA national, the descendant of the national and of the spouse who has not reached the age of 21 and their dependant child below the age of 21 and the dependant ascendant of the EEA national and his/her spouse; (b) for the purposes of Article 27(2), the spouse of the EEA national, the dependant child and dependant ascendant of the EEA national and his/her spouse; (c) for the purposes of Article 27(3), the spouse of the EEA national and his/her dependant child. **Article 26** (1) The EEA national may enter the country without a visa with a valid passport or valid personal identity card and may stay in the territory of the Republic of Hungary for a period not exceeding ninety days without any special permit. (2) The stay of the EEA national in excess of ninety days shall be exempt from a visa requirement and the EEA national shall enjoy the right of residence in the country verified by his/her permission to stay. (3) The student who is an EEA national and verifies his admission to a Hungarian educational institution and has sufficient financial means and comprehensive health insurance shall have the right to reside in the country. (4) The EEA national who does not have financial means sufficient for residence or who does not have a comprehensive health insurance shall be entitled to reside in the country if he/she (a) verifies that he/she has entered into a legal relationship aimed at the performance of work (not related to the exercise of public powers); (b) verifies that he/she is an entrepreneur or self-employed within the meaning of the Act on the establishment of foreigners as self-employed (hereinafter referred to as “self-employed”) or is the owner, managing director or member of the management, representative or supervisory body or a business organisation, co-operative or other legal entity established with a view to generating income; (c) supports with documents that he/she is seeking work and demonstrates the probability of having

well-grounded prospects of commencing any income generating activity according to points (a)-(b) within six months from his/her entry; (d) verifies that an EEA national already entitled to stay will ensure his/her maintenance as family member.

18

(5) The EEA national shall notify his/her residence—the communication of his personal data—in accordance with the provisions of separate legislation. **Article 27** (1) The family member of the EEA national who is a third-country national and who is an employee, an entrepreneur or a self-employed person shall be entitled to stay. (2) When the resident EEA national is the beneficiary of a pension or maintains himself/herself out of his/her own resources, his/her third-country national family member shall be entitled to stay. (3) When the resident EEA national is a student, his/her third-country national family member shall be entitled to stay. (4) The right to stay of the third-country national according to paragraphs (1)-(3) shall be verified by his permission to stay. **Article 28** The EEA national who terminated his/her activities as self-employed shall be entitled to continue to stay in Hungary when (a) at the time of the termination of his/her activities he/she became entitled to old-age pension according to Hungarian law or failing that, he/she has reached his/her 65th year of age, provided that he/she had acted as a self-employed person in Hungary for at least twelve months before that and has continuously stayed here for at least three years; (b) he/she terminated his/her activities as self-employed because he/she has become permanently disabled provided that he has been continuously staying in Hungary for at least two years; (c) he/she has continuously stayed in Hungary for at least three years and pursued self-employed activities but following the termination of his activities as self-employed will pursue business activities in the territory of a member state party to the agreement on the European Economic Area provided that he continues to maintain his residence in Hungary and returns there daily or weekly. **Article 29** (1) With the exception of the provisions of paragraphs (2)-(6) the period of validity of the permission to stay shall be five years, which may be extended.

19

(2) In the case of stay with the purpose of performing work or the exercise of other income generating activity for a specified period, the validity of the permission to stay may be restricted to the period of the performance of work or the exercise of the activity. (3) In the case according to Article 26(4)(c), the period of validity of the permission to stay shall not exceed six months. (4) The period of validity of the permission to stay of the student shall be the period of pursuing studies or professional practice; in the case of a longer period of study, it shall be one year, which may be extended. (5) The period of validity of the permission to stay of the family member who qualifies as a third-country national shall correspond to the period of validity of the permission to stay of the EEA national by whose right the family member received his/her permission to stay. When the EEA national has deceased, the validity of the permission to stay of the family member shall be two years. (6) The period of validity of the permission to stay of the family member who qualifies as third-country national of the self-employed person terminating his/her activities shall be two years from the termination of the activity. **Article 30** (1) The right to reside shall cease and because of this the extension of the permission to stay shall be refused or the permission to stay shall be withdrawn when (a) the foreigner's stay violates or endangers national security or public security; (b) the foreigner had suffered from a disease endangering public health prior to the first issue of the permission to stay; (c) the permission to stay was issued to a third-country national with a view to family unified and matrimony has ceased within six months thereafter provided that the parties married only in order to obtain the permit. (2) The provisions of paragraph (1)(c) shall be applied also to the EEA national when his/her permission to stay was based on Article 26(4)(d). (3) In case of a refusal to issue or the withdrawal of the permission to stay, the person concerned shall be placed under the obligation to leave the country within thirty days and in case of his behaviour severely endangering public order, exceptionally within fifteen days. (4) There shall be no

appeal against the resolution obligating a person to leave the country but a review of the resolution by the court may be applied for.

20

(5) The government shall determine the additional conditions of the stay of the EEA national and his/her family member qualifying as a third-country national by decree. The entry to and stay in Hungary of the members of the civilian staff and their relatives subject to the Agreement between the Member States of the North Atlantic Treaty concerning the legal status of their armed forces dated 19 June 1951, London **Article 31** (1) The provisions of this Act shall apply to the entry and stay of the members of the civilian staff and their relatives (hereinafter referred to as “civilian persons”) subject to the Agreement between the Member States of the North Atlantic Treaty Organisation concerning the legal status of their armed forces, concluded in London, 19 June 1951 (hereinafter referred to as the “NATO-SOFA Agreement”) specified under Article I (a), (b) and (c) thereof with the differences according to paragraphs (2)-(4) hereof provided that they verify their status according to Article III (3) thereof. (2) Civilian persons shall be exempt from the obligation to obtain a visa, to enclose an official medical certificate of public health and of verifying the conditions of livelihood and accommodation in Hungary and of leaving the country. (3) The alien policing authority shall inform the competent agency of the Ministry of Defence concerning any penal procedure initiated against civilian persons and the completion thereof with a view to informing the sending state. (4) When the alien policing authority expels a civilian person from the territory of the country for having committed an act in violation of the law, it shall inform the competent agency of the Ministry of Defence by sending the resolution on expulsion in order to inform the sending state. **Chapter IV Policing rules applicable to foreigners**
Alien policing expulsion, ban on entry and stay **Article 32** (1) To protect the sovereignty of the state, national security, constitutional order and public security, alien policing expulsion and ban on entry and stay, or when the foreigner is staying in an unknown location or not in the territory of the Republic of Hungary, a ban on entry and stay shall be ordered against the person

21

(a) who pursues an activity endangering the constitutional order or security of the Republic of Hungary or is a member of an organisation pursuing such activities; (b) who is a member of a terrorist organisation or is involved in the smuggling of firearms, explosives, radioactive materials or narcotic drugs or is a member or proxy of an organisation of this type and who participates in the illegal trafficking of materials and equipment required for the manufacturing of arms of mass destruction or who manufactures or possesses for commercial purposes narcotic drugs or psychotropic substances; (c) who organises or facilitates the illegal entry, exit (crossing of the border) or stay of persons or groups or is engaged in man trafficking; (d) with respect to whom the Republic of Hungary has undertaken a commitment by international agreement or within the framework of international co-operation to enforce a ban on entry and stay; (e) who has been sentenced by a court as a result of having committed a deliberate crime sanctioned by Hungarian law by loss of freedom of at least one year; (f) against whom a Member State of the European Union has ordered a prohibition on entry and stay. (2) Alien policing expulsion or ban on entry and stay may be ordered against the foreigner (a) who has violated or attempted to violate the rules of and entry and exit; (b) who violated the rules of stay; (c) who performed work or pursued any other income generating activity in Hungary without the prescribed official permit (d) who communicated false data or false facts to the authorities taking action with a view to obtaining the right of entry or stay; (e) who has failed to reimburse the Hungarian state the costs paid to him as an advance under the condition of repayment; (f) whose entry and stay violates or endangers national security, public security, economic order, public health or human environment; (g) who has failed to pay the fine validly imposed on him in the course of a petty offence procedure or has failed to pay the on-site penalty imposed by a person acting on behalf of an agency entitled to impose

an on-site penalty until the payment of the fine but at the latest for two years from the date of levying the onsite penalty or the date of the resolution levying the fine becoming valid; (h) who applies for the permit to enter or stay with a view to living with his/her spouse but has failed to live with the spouse or it may be presumed that he/she provided pecuniary benefit in order to be married (marriage of convenience);

22

(i) who has been returned to the authorities of another state waving expulsion pursuant to an international agreement. (3) The alien policing authority may waive the expulsion of the foreigner or the ordering of the prohibition on entry and stay when the foreigner undertakes to leave the territory of the country voluntarily. **Article 33** (1) The regional alien policing authority shall be entitled to order alien policing expulsion and the following alien policing authorities shall be entitled to impose a ban on entry and stay: (a) the Office and the regional alien policing authority for reasons according to Article 32; (b) the alien policing agency of the Border Guard in the cases specified under Article 32 (1) (c) and (f), Article 32 (2), (a), (d), (e) and (i). (2) In the cases according to Article 32(1)(a)-(e) and Article 32(2)(a) and (f), the competent law enforcement and national security agencies; in the case of Article 32(1) (d) and Article 32(2)(d), the Ministry of Foreign Affairs, may put forward proposals to impose the ban on entry and stay to the Office and the authorities competent in matters of petty offences and the agencies entitled to impose on-site penalties may put forward such proposals to the regional alien policing authorities in the case according to Article 32(2)(g). (3) The authority taking action shall determine the period of the ban on entry and stay. With the exception of Article 32(2)(g) and of expulsion, the ban on entry and stay may be ordered for at most five years which may be extended by at most an additional five years on each occasion. When the reasons for ordering it have ceased, the prohibition on entry and stay shall be immediately cancelled. (4) The data management agency according to this Act shall be notified of having ordered a prohibition on entry and stay and the measures according to paragraph (3). (5) There shall be legal remedy against the ordering of the prohibition on entry and stay. With respect to an application aimed at cancelling the prohibition, the rules of the Act on the protection of personal data shall be applied. *Returning* **Article 34**

23

(1) The alien policing agency of the Border Guard shall apply the measure of returning against the foreigner who does not meet the conditions for entry, taking into consideration the ban according to Article 43. (2) The foreigner may be returned to the territory of the country whence he/she arrived or which is under an obligation to readmit him or her or where the habitual place of residence of the foreigner is or any other state which the foreigner may enter. The foreigner shall be informed of the place of the execution of returning. (3) There shall be no legal remedy by way of public administration against a measure of returning. (4) The fact of returning may be entered in the passport of the foreigner. When returning is effecting as a result of having ordered a ban on entry and stay, the visa issued shall be invalid and it shall be annihilated. **Article 35** (1) To ensure the implementation of returning, the foreigner arriving by air, water, rail or road shall stay, in accordance with the instructions of the Border Guard, in a specified location of the border area or the airport or on the vehicle that will carry or return him or her or he/she shall board another departing vehicle of the company under the obligation to transport him or her back. (2) When returning cannot be immediately implemented, the foreigner arriving by water, rail or road, shall be under the obligation to stay in a designated part of the border area or the airport for maximum forty eight hours from his/her arrival, the foreigner having arrived by air, for maximum eight days from his/her date of arrival. (3) When the foreigner cannot be returned within the period specified under paragraph (2) above, the application of the rules governing alien policing expulsion is called for with respect to the foreigner.

24

Refusal of entry **Article 36** (1) The alien policing agency of the Border Guard may, as an official measure, refuse the entry of the foreigner, taking into account the prohibition according to Article 43, who (a) crossed or attempted to cross the state border of the Republic of Hungary illegally and because of this the application of a readmission agreement is called for provided that he or she has been arrested within thirty days from crossing the border; (b) has been taken over from the authorities of another state pursuant to a readmission agreement provided that the foreigner may be returned to his/her country of origin or other state obliged to readmit him or her within thirty days from the date of transfer. (2) There shall be no legal remedy against the measure of refusal by way of public administration. (3) When the foreigner has valid travel documents, the fact of refusal may be entered in the travel document. *Ordering alien policing expulsion* **Article 37** With a view to prevent multiple procedures, the agency ordering alien policing expulsion shall take action to have the fingerprints of the foreigner taken. The agency ordering expulsion shall immediately transmit the fingerprints taken, supplemented with the personal identification data of the person concerned, to the data processing agency designated in the Act on criminal records. **Article 38** The EEA national and his/her family member may be expelled only when he or she failed to meet his/her obligation to leave the country.

Article 39 (1) The foreigner who

25

(a) has an immigration or residence permit and has been continuously residing in Hungary for five years from the issue of his personal identity card or permission to stay; (b) was born in the territory of the Republic of Hungary or entered as a minor without an escort and has a residence or immigration permit; (c) has a permission to stay and is married to or lives in a marital community with a foreigner having a residence or immigration permit or with a Hungarian national may be expelled only when his/her continued stay would endanger national security or public security for reasons specified under Article 32 (1) (a)-(c) and Article 32(2)(d). (2) The minor without an escort who does not meet the conditions of legal stay may be expelled only when the unification of his/her family or appropriate state or other institutional care is guaranteed for him or her in the state of origin or another admitting state. (3) The provisions of paragraph (1) shall also apply in the case of the direct family member of the foreigner specified by separate legislation who has applied for refugee status until his application is finally adjudged and of the foreigner recognised as refugee or person under temporary protection. (4) No alien policing expulsion may be applied as a result of having committed a criminal act for which the court taking action has not ordered expulsion independently without imposing a main penalty or as a subsidiary penalty against the foreigner while adjudging the case. **Article 40** (1) Prior to passing the resolution ordering alien policing expulsion, it shall be examined whether the ban according to Article 43 obtains. (2) In the operative part of the resolution ordering alien policing expulsion, the reasons for the expulsion, its period, in case of deportation, the state where the deportation is to be effected, the due date for meeting the obligation of leaving the country and the obligation to suffer the taking of fingerprints as well as the place of crossing the border shall be indicated. (3) The final expulsion and the period of the prohibition on entry and stay shall be entered in the passport. In exceptional cases, this entry may be waived provided that the foreigner leaves the country under the program of voluntary repatriation. (4) To ensure the implementation of expulsion, the alien policing authority may withhold the travel document of the foreigner against which there shall be no separate legal remedy. (5) The implementation of the expulsion may be suspended until the conditions of expulsion are met, in particular, until the travel document, the visa or the ticket are obtained. There shall be no legal remedy against the resolution ordering suspension.

26

(6) The costs of expulsion shall be borne by the expelled person or, in the absence of financial coverage, by the person inviting him/her. When the obligation to leave the country cannot be met

because neither the expelled person nor the person that invited him have the required financial coverage, the costs of travelling shall be paid as an advance by the authority ordering expulsion. (7) The costs of travelling advanced according to paragraph (6) shall be reimbursed by (a) the foreigner; (b) the person who had invited him case of an invitation; (c) the natural person or legal entity or organisation that is not a legal entity who or which employ the foreigner (hereinafter the employer) when the stay of the foreigner has been illegal and his/her employment has not been licensed. **Article 41** (1) The alien policing expulsion shall be ordered for a specific period, which shall not be shorter than one year and shall not be longer than ten years. (2) The period of the prohibition on entry and stay ordered because of expulsion shall be calculated from the date of the implementation of expulsion. (3) The foreigner subject to expulsion may enter Hungary only with the special permission of the agency ordering his/her expulsion. **Article 42** (1) The appeal against the resolution ordering alien policing expulsion may be submitted within eight days from notification of the resolution. (2) The immediate implementation of the resolution ordering the expulsion may be ordered when the foreigner is unable to maintain himself/herself, does not have adequate conditions of accommodation (place of accommodation or residence), financial coverage or income or a relative who could be called upon to maintain him/her and also when that is necessary in order to safeguard public security. (3) A review of the administrative resolution of the second instance ordering expulsion may be requested from the county (Budapest) court of justice within eight days from communication of the resolution. The court shall adjudge the request for review in an extra-judicial procedure out of turn. The court may alter the resolution.

27

Article 43 (1) Returning, refusal of entry and expulsion shall not be ordered and shall not be implemented with respect to a country which, with regard to the person concerned, does not qualify as safe country of origin or a safe third country, in particular, where the foreigner would be exposed to persecution owing to reasons of race, religion, national or social affiliation or political views, or to the territory of a state or the border of an area where there is good reason to suppose that the returned, refused or expelled foreigner would be exposed to torture, inhuman or degrading treatment or the death penalty. (2) When the foreigner is subject to an asylum procedure, the returning, refusal of entry or expulsion can be implemented only pursuant to the valid and enforceable resolution of the refugee authority rejecting the application. *Implementation of the expulsion ordered by the court, the petty offence authority or the refugee authority* **Article 44** (1) When the expulsion has been ordered by a court or the authorities responsible for petty offences or refugee affairs, the implementation of expulsion shall belong to the scope of authority of the regional alien policing authority. (2) The court, the penitentiary and the authorities responsible for refugee affairs and petty offences shall inform the regional alien policing authority of a final expulsion. (3) Based on the notification according to paragraph (2) regional alien policing authority shall take action (a) to have the fingerprints of the foreigner taken; (b) to have the fact of expulsion and the period of the prohibition on entry entered in the travel document and to determine the place of crossing the border; (c) to enter the fact of expulsion and the prohibition on entry and stay in its registers; (d) to withdraw the permission to stay, the residence or immigration permit. (4) When the foreigner has been expelled by both the court and the authority responsible for petty offences, the period of the prohibition shall be ordered in accordance with the expulsion for the longer period. (5) When the costs of implementation expulsion cannot be provided in any other way, the regional alien policing authority shall advance them.

28

Article 45 When the foreigner has been expelled by both the regional alien policing authority and the authority responsible for petty offences, the period of prohibition shall be ordered in accordance with the expulsion for a longer term. **Detention Alien policing detention** **Article 46** (1) In order to ensure the

implementation of the expulsion order, the regional alien policing authority may place the foreigner in alien policing detention who (a) has been hiding from the authority or has prevented the implementation of the expulsion order in any other way; (b) has refused to depart or there are other good reasons to presume that he would delay or thwart the implementation of the expulsion order; (c) is subject to expulsion and prior to departure has committed a petty offence or criminal act; (d) has severely or repeatedly violated the prescribed rules of behaviour in the place designated for his mandatory stay, has failed to meet the obligation to appear prescribed for him in spite of being called upon to do so and has thereby impeded the alien policing procedure; (e) has been released after a prison sentence levied owing to having committed a deliberate criminal act. (2) When the foreigner is expelled as a result of having committed a deliberate criminal act related to drug trafficking, terrorism, illegal arms trafficking, man-smuggling, money laundering or organised crime, alien policing detention shall be ordered in order to ensure implementation of the expulsion order. (3) Alien policing detention shall be ordered by resolution and it shall be implemented simultaneously with its notification. The detention shall be terminated once the reasons for having ordered it have ceased. (4) Alien policing detention may be ordered for at most five days, which may be extended by the local court competent according to the place of detention until the departure of the foreigner.

29

(5) When the period of alien policing detention exceeds thirty days, the court shall monthly review the need for maintaining the detention. (6) Only the county (Budapest) court competent according to the place of the detention shall be entitled to extend the alien policing detention in excess of six months. The court shall review the need for maintaining the detention every ninety days. (7) The alien policing detention may last until the conditions of implementing the expulsion order are put in place but at most for twelve months. The detention may last for six months at most when it has been ordered in order to implement a measure taken by the authority responsible for petty offences. (8) Detention shall be terminated when the conditions of expulsion are assured or when it becomes obvious that the expulsion cannot be implemented. The regional alien policing authority ordering detention shall designate a mandatory place of stay for the foreigner. (9) In case of committing another petty offence or criminal act while subject to expulsion, the alien policing detention shall again be ordered against the foreigner staying in a designated place. *Detention for refusal* **Article 47** (1) The alien policing agency of the Border Guard shall, in order to ensure the implementation of the refusal measure, place the foreigner in detention (detention for refusal) whose refusal can be implemented within thirty days from the date of the arrest or transfer on the basis of a readmission agreement. (2) When the refusal cannot be implemented within the period specified in paragraph (1), the rules governing alien policing expulsion shall be applied against the foreigner. (3) Detention for refusal shall be ordered by formal resolution, which shall be implemented simultaneously with its communication. (4) Detention for refusal may be ordered for a maximum of five days which may be extended by the local court competent according to the place of detention until the departure of the foreigner but at most for ninety days.

30

Detention in preparation for expulsion **Article 48** (1) The regional alien policing authority may detain the foreigner for reasons of public security in order to conduct the alien policing procedure whose personal identity or the legality of his stay are not clarified (hereinafter referred to as “detention in preparation for expulsion”) (2) Detention in preparation for expulsion shall be ordered by resolution and it shall be implemented simultaneously with its communication. (3) Detention in preparation for expulsion may be ordered for a maximum of five days which may be extended by the local court competent according to the place of detention until the departure of the foreigner but at most to thirty days. *Ordering detention* **Article 49** (1) There shall be no appeal against the resolution ordering alien policing detention, detention for refusal and detention in preparation for expulsion (hereinafter referred

to as “detention”). An application submitted concerning the review of the compliance of the resolution by the court shall not have a delaying force with respect to the implementation of the detention. (2) When the foreigner requests a court review concerning legal compliance of his/her detention and, when the ordering authority proposes an extension of the period of the detention, the foreigner shall be heard by the court within five days from the date of his detention. (3) Upon the proposal of the initiating agency, the president of the county court may determine the competence of another local court instead of the local court competent according to the place of detention in the case of procedures aimed at reviewing the compliance of the detention. **Article 50** (1) The court shall take action by way of a single judge in the procedures aimed at reviewing the compliance of the detention and at its maintenance. (2) At the hearing, the foreigner shall submit his application and evidence orally, the authority ordering expulsion shall put forward the evidence laying the foundations for its motion in writing or orally.

31

(3) Under its procedure related to detention, the court shall decide on the maintenance of the detention, the extension of its period or its termination by ruling at the hearing based on an evaluation of the condition specified in this Act taking into consideration Article 53 (1). **Article 51** (1) When the court establishes that the detention of the foreigner or his continued detention violates the law, it shall take immediate action to have the detention of the foreigner terminated. (2) When the authority ordering detention has failed in its obligation concerning the temporary measure or the temporary measure becomes necessary owing to circumstances altered since detention or the implementation of the resolution ordering the designation of a place of stay, the court by its temporary measure may order (a) implementation of the temporary measure; (b) subjecting the foreigner to institutional medical care in the case specified by legislation. (3) In all other matters, the rules of the Act on penal procedure governing special procedures shall be applied to the court procedure as appropriate. **Article 52** (1) The authority ordering detention and the foreigner may appeal against the ruling of the court brought concerning detention. (2) The appeal submitted against the resolution terminating detention shall have no delaying force on expulsion and the appeal submitted against the court ruling brought concerning the extension of detention shall have no delaying force on the implementation of detention. (3) An appeal may be lodged orally at the hearing or in writing within three days following the announcement of the resolution at the local court. (4) The appeal submitted against the resolution of the local court shall be adjudged by the county court within five days. (5) Within its powers specified under paragraph (4), the county court may decide without hearing the detained foreigner or the representative of the authority ordering detention based on written applications and evidence; however, upon the request from the foreigner, a hearing shall be held.

32

Implementation of the detention **Article 53** (1) The combined period of the alien policing detention, detention for refusal and detention in preparation for expulsion, applied against the foreigner, shall not exceed twelve months. Detention shall be terminated immediately when the reason for ordering it has ceased. (2) Upon his/her admission, the detained foreigner shall be informed of his/her rights and obligations in his/her mother tongue or any other language known to him/her. **Article 54** (1) Alien policing detention shall be implemented in a penitentiary when the foreigner has been released from a penalty of loss of freedom levied owing to having committed a deliberate criminal act; in other cases, the Border Guard shall implement detention in the place designated for this purpose. (2) In the course of implementing detention (a) men shall be separated from women; (b) in the case of implementation in a penitentiary institution, the detained foreigner shall be separated from those in custody, in preliminary arrest and the convicts. (3) The detained foreigner shall be entitled: (a) to accommodation and board, to wearing his/her own clothes—when needed, to clothing appropriate to the season—and to emergency and primary health care; (b) to maintain contact with his/her legal representative or a member of his/her

consular representation without being controlled; (c) to receive and send packages, conduct correspondence and to receive visitors in accordance with the provisions of separate legislation; (d) to supplement his/her food at his/her own costs; (e) to exercise his/her religion in accordance with the provisions of separate legislation; (f) to make use of the available cultural facilities; (g) to make requests, complaints and reports in the public interest; (h) to stay in the open air for at least an hour a day. (4) The detained foreigner shall:

33

(a) abide by the order of the penitentiary institution or the facility of the Border Guard where detention is implemented and to obey the related instructions; (b) to behave so as not to violate the rights of other detained persons and not to disturb their peace; (c) to participate in the cleaning of the rooms used by him/her without remuneration; (d) to subject himself/herself to the examinations affecting his/her person and to suffer an examination of his/her clothing and the taking away of his/her personal belongings which cannot be kept in possession; (e) to reimburse the costs of the damage wilfully caused by him/her and the amount put towards maintaining him/her. (5) In the course of implementing detention, the member of the regular staff of the penitentiary and the Border Guard shall be entitled to use a coercive instrument or arms in accordance with the provisions of separate law specifying his powers. **Article 55** (1) Upon the request of the foreigner or when prescribed by a bilateral consular agreement, the authority ordering detention shall inform the agency performing the consular or diplomatic representation of the foreigner in Hungary by way of the Ministry of Foreign Affairs about having taken the foreigner in detention or having placed him under the obligation to stay in a designated place and of the extension of the period of detention without delay. (2) By way of a temporary measure, the authority ordering detention shall take immediate action concerning the care of the family member of the detained foreigner remaining without supervision or who is dependant and of the safekeeping of the valuables of the foreigner left without guard. **Ordering stay in a designated place Article 56** (1) The regional alien policing authority may, by resolution, order the foreigner to stay in a designated place by way of a measure restricting personal freedom which does not qualify as detention when (a) the return, refusal or expulsion of the foreigner cannot be ordered or implemented owing to an obligation of the Republic of Hungary undertaken in an international agreement;

34

(b) the period for detention has expired but the reason owing to which the detention had been ordered still obtains; (c) the foreigner has a permission to stay for humanitarian reasons; (2) The operative part of the resolution shall determine: (a) the place of mandatory stay, (b) the rules of behaviour of stay, (c) when the place of stay is not a community shelter, the obligation of regular appearance in front of the authorities. (3) The foreigner whose personal identity is unclear shall suffer that his/her fingerprints be taken and the recording of his/her photo. (4) The mandatory place of stay may be designated in a community shelter when the foreigner is unable to maintain himself/herself and does not have appropriate accommodation, financial coverage or income or a person who had invited him/her under the obligation to maintain him/her or a relative who could be placed under the obligation to maintain him/her. (5) With the exception of the foreigner having a permission to stay for humanitarian reasons, the costs incurred in relation to staying at a community shelter shall be borne by the foreigner. (6) There shall be no appeal against the resolution ordering stay in a designated place but the foreigner may request a court review of the resolution. The provisions concerning the court review of the compliance of alien policing detention shall be applied to the procedure. **Article 57** (1) When eighteen months have passed since ordering mandatory stay at a community shelter but the circumstances due to which it has been ordered continue to obtain for reasons outside the control of the foreigner, another place of stay shall be designated for the foreigner. (2) In the case specified in paragraph (1), the Office may, upon the request of the foreigner, permit continued stay at the community shelter for

humanitarian reasons. **Article 58** (1) The Office shall enter the place of mandatory stay, the prescribed rules of behaviour and the obligation to appear in front of the authorities in the certificate entitling the holder for temporary stay.

35

(2) In possession of the certificate entitling the holder for temporary stay and with the consent of the regional alien policing authority having ordered the mandatory place of stay, the foreigner shall be entitled to perform work with the permit specified in separate legislation. (3) The provisions of paragraph (2) shall have no impact on the obligation of the foreigner to leave the country except when five years have passed since the date of the valid expulsion by the authority responsible for refugee affairs or the valid expulsion by the alien policing authority becoming enforceable or two years have passed since the effective date of the expulsion measure brought under a petty offence procedure and implementation has failed for reasons other than the behaviour of the foreigner. (4) The court review of alien policing detention and the resolution ordering the obligation to stay in a designated place shall be free of charge (objective exemption from charges). *Deportation* **Article 59** (1) Taking the prohibition according to Article 43 into consideration, the resolution of the court or of the authorities responsible for petty offences, refugee affairs or alien policing ordering the returning, refusal or expulsion of the foreigner shall be implemented by escorting the foreigner out of the country (hereinafter referred to as “deportation”), when (a) the expelled foreigner has been released from serving his/her sentence of loss of freedom owing to a criminal act committed deliberately; (b) the foreigner has been under alien policing detention or detention for refusal; (c) the control of his/her departure is necessary for reasons of national security, to meet an obligation undertaken in international agreements or to protect public security. (2) In case of an alien policing expulsion, deportation shall be provided for in the resolution concerning expulsion, in other cases it shall be ordered by a separate resolution. (3) The foreigner may submit an objection to implementation against implementation by deportation which may be submitted within the appeal against the resolution on expulsion or independently.

36

Article 60 To cover the costs of travel, the authority taking action may seize the ticket in possession of the foreigner or when the financial coverage cannot be put up in any other way, the amount of money required for buying tickets and the travel document against which there shall be no legal remedy.

Controlling foreigners **Article 61** (1) The Office, the regional alien policing authority and the Border Guard may control whether the alien policing rules specified in this Act are upheld. (2) To control compliance with alien policing rules, the representative of the authority specified in paragraph (1) and the Border Guard is also entitled to enter a private house or private area. (3) In the course of control, the foreigner shall present and hand over his/her travel documents, permission to stay or personal identification document when called upon to do so. (4) Any travel document found at the foreigner that has been issued for another person and illegally by him/her found in the course of control shall be seized by the authorities and sent to the issuing agency by way of Ministry of Foreign Affairs. (5) The policeman or the border guard shall place the foreigner who is unable to prove the legality of his/her stay in Hungary or his/her personal identity in a creditworthy manner under arrest and present him/her to the alien policing authority competent to take action. When during the arrest the alien policing authority is unable to establish the legal heading of stay or the personal identity of the foreigner, the policeman or the border guard may apply the measure of apprehension for the necessary period not exceeding twelve hours, against which a complaint may be lodged. *The warrant of apprehension* **Article 62** (1) In order to establish his/her place of stay, the Office, the regional alien policing authority and the alien policing agency of the Border Guard may issue a warrant for the apprehension of the foreigner staying in an unknown location who (a) is subject to an alien policing procedure,

37

(b) has escaped from detention or has left the mandatory place of stay prescribed for him/her under an alien policing procedure by violating the prescribed rules of behaviour and has not returned there; (c) failed to implement a final expulsion order. (2) The warrant for apprehension shall be ordered by resolution and sent to the police station competent according to the seat of the regional alien policing authority taking action. (3) The warrant for apprehension shall be withdrawn when the reason for having issued it ceases. The warrant for apprehension shall be withdrawn by resolution of the regional alien policing authority taking action which shall be sent to the police station according to paragraph (2). *Taking hold of and retention of the travel documents of the foreigner* **Article 63** (1) The departure of a foreigner staying legally in Hungary may be restricted only in order to conduct the penal or petty offence procedure initiated against him/her. (2) The authority responsible for petty offences may take hold of the travel documents of the foreigner with a view to initiating a petty offence procedure when the procedure launched against a foreigner is because of a petty offence threatened by the law with the penalty of custody. The travel documents taken hold of shall be immediately forwarded to the regional alien policing authority. (3) When taking hold of travel documents, a receipt shall be issued to the foreigner containing his/her personal identification data and evidencing the measure taken. There shall be no legal remedy against the taking away of the travel document. (4) The regional alien policing authority shall retain the travel document taken away by resolution until the final completion of the petty offence procedure, the payment of the fine or, in a penal procedure, for the period specified by the prosecution or the court. **Chapter V Common rules of the alien policing procedure and the processing of data** **Article 64**

38

The Office, the regional alien policing authority and the Border Guard shall be entitled to record the fingerprints and portrait photo of the foreigner with a view to personal identification and to examine his/her baggage, clothing and vehicle. **Article 65** In the alien policing case of the foreigner—unless otherwise provided by legal regulation—that of the alien policing authorities having the same powers shall be competent, that is, competent according to the place of accommodation or place of resident of the foreigner in Hungary or the place of the perpetration of the violation of the law. **Article 66** (1) The police, by exercising its powers specified in law, shall collaborate in performing the tasks of alien policing. The police, when requested by the Office or the regional alien policing authority shall (a) collaborate in controlling compliance with alien policing rules, (b) take action to have the foreigner transported to a border crossing point; (c) guard the foreigner under arrest; (d) implement the deportation of the expelled foreigner by air; (e) when detention is ordered, transport the foreigner to the institution implementing detention; (f) ensure that the detained foreigner is presented to the court; (g) escort the foreigner released from a penitentiary institution to the regional alien policing authority; (h) escort the foreigner to the diplomatic or consular representation with a view to hold the hearing required for obtaining travel documents and return him/her to the institution implementing detention; (i) transport the detained foreigner to an institution of health care for treatment. (2) The policeman and the border guard shall be entitled to apply coercive instruments in accordance with the provisions of separate act. (3) The representative of the Customs and Finance Guard may take action in controlling the extent of the financial coverage required for entry and stay. **Article 67**

39

(1) the resolutions brought in alien policing cases under an administrative procedure shall be communicated by delivery, the resolution brought by a court procedure and the resolution brought in the course of a procedure of an administrative agency ordering a measure restricting personal freedom shall be communicated to the foreigner also orally in his/her mother tongue or another language understood by him/her. (2) When a foreign language is used—when that is not spoken by the representative of the authority taking action—the services of an interpreter shall be used. The fees and

costs of the interpreter shall be borne by the state. (3) When the foreigner is staying in an unknown location, the communication of the resolution shall be effected by display in public. Only the operative part of the resolution may be displayed in public **Article 68** (1) The court shall take action out of turn in cases related to the court review of the resolutions of the alien policing authority specified in this Act. (2) The furnishing of preliminary evidence shall be admitted in the cases specified under paragraph (1). (3) To ensure the costs of departure, the court may order the seizure of the valuables of the foreigner or the blocking of his assets to the extent required for that purposes. **Article 69** The provisions of Act IV of 1957 on the general rules of administrative procedure shall apply to alien policing cases with the differences set forth in this Act. *Enforcement of claims* **Article 70** (1) When, by final resolution, the court has established that the resolution ordering the detention of the foreigner or his/her stay in a designated place was in violation of the law, the foreigner may claim the compensation of the damage actually suffered owing to the detention or forced stay from the authority issuing that resolution with the exception according to paragraph (2). (2) A claim cannot be enforced when the foreigner

40

(a) has hidden from the authorities, has escaped or has attempted to do so; (b) has misled the authorities or has attempted to do so in order to thwart the procedure; (c) has hidden the financial coverage of his stay in Hungary or departure available to him/her, or (d) has in any other way ascribable to him gave reason for ordering his/her detention or stay in a designated place. (3) In the absence of a compromise agreement, the claim for compensation may be enforced in a civil procedure. *Providing foreigners with travel documents* **Article 71** The foreign representation of the Republic of Hungary shall issue a travel document to the immigrated or resident foreigner valid for a single entry whose travel documents lost or annihilated abroad cannot be replaced there and because of this his/her return to Hungary would not be possible. **Article 72** (1) The regional alien policing authority may issue a travel document to the resident foreigner—upon his/her request with a view to travelling abroad—entitling the foreigner to return to Hungary when he or she does not have a valid travel document of his/her country of origin and it cannot be replaced for reasons outside his/her control. (2) Such travel document shall be valid for two years from the date of its issue and may be extended. **Article 73** The regional alien policing authority may issue a travel document entitling the holder for a single journey for returning to the country according to his/her permanent place of residence when his/her lost or annihilated travel document cannot be replaced. **Article 74**

41

(1) Upon his/her request, for the purpose of travelling abroad, the regional alien policing authority shall issue a travel document to the stateless person living in Hungary that entitles the holder to return to Hungary within its period of validity. (2) The travel document shall be valid for two years from the date of issue and may be extended. (3) The legal regulations concerning the travel of Hungarian nationals abroad shall govern the restriction of the travelling of stateless persons living in Hungary abroad and issuing travel documents to them. (4) Legal remedy against any rejection of an application for issuing the travel document shall be governed by the general rules of administrative procedure. (5) The legal regulations concerning the travel by Hungarian nationals abroad shall govern the management of data related to the travel documents of stateless persons. *Management of data* **Article 75** (1) The data of foreigners recorded pursuant to this Act shall be managed by the Office (hereinafter referred to as the “central data management agency”) in the central alien policing records with a view to the personal identification of foreigners and to prevent parallel procedures. The central alien policing records shall consist of sub-records containing the data of (a) persons expelled or subject to a prohibition on entry and stay; (b) applications for visas and visas issued; (c) natural persons and legal entities issuing invitations and invited natural persons; (d) persons having a residence permit or

permission to stay or certificate entitling the holder for temporary stay; (e) persons having an immigration permit; (f) foreigners restricted in their personal freedom and those affected in extraordinary events; (g) foreigners reporting loss of travel documents specified in this Act. (2) The data of foreigners recorded pursuant to this Act shall also be managed by the competent alien policing authority having the required powers (hereinafter referred to as the “competent alien policing authority”).

42

Article 76 The central data management agency and the competent alien policing authority may transmit data to judicial and law enforcement agencies, national security services, the authority responsible for refugee affairs and specialised authorities specified in this Act (hereinafter referred to as the “agencies entitled to request data”) and pursuant to law or international agreement to the agencies and within the range of data specified therein for the purpose of enabling them to perform their functions specified in legislation. **Article 77** (1) The data managed pursuant to this Act may be used for statistical purposes and data may be transmitted of them in a manner unsuitable for the identification of persons for statistical purposes. Of the data of the foreigner having a residence permit, permission to stay or immigration permit, the data specified under Article 81(1)(a)-(j), and (l) and (n) may be transferred to the Central Statistics Office also in a manner suitable for the identification of persons with a view to data management for statistical purposes. (2) Pursuant to international agreement, the central data management agency may transmit data to the international law enforcement agencies and the Schengen Information Centre through the International Criminal Co-operation Centre. (3) With a view to harmonising visa policy, the consular agencies issuing visas may transfer data concerning visa applications granted and rejected to the foreign representations competent according to their seats. (4) The provisions of the Act on the protection of personal data and the publicity of data in public interest and the Act on the police shall govern the management of personal data according to this Act. **Article 78** (1) the central data management agency and the competent alien policing authority shall manage the following data of the foreigners expelled or subject to a prohibition on entry and stay: (a) personal identification data (b) nationality (stateless status); (c) permanent residence abroad; (d) legal basis of the maintenance of the prohibition and its due date;

43

(e) name of the agency ordering the measure; (f) the fingerprints of the expelled person. (2) Upon his/her request, the foreigner subject to a prohibition on entry and stay shall be informed of the data recorded on him. The head of the central data management agency and of the competent alien policing authority may refuse such information for reasons of national security and law enforcement. (3) The data specified in paragraph (1) shall be managed by the central data management agency for five years following the termination of the prohibition and by the competent alien policing authority so long as the prohibition is maintained. **Article 79** (1) Based on visa applications and issued visas, the central data management agency and the competent alien policing authority shall manage the following data of the foreigner: (a) data specified in Article 78(1)(a)-(c); (b) photo and the document identification data of his/her passport; (c) purpose of entry and the planned period of stay; (d) a copy of documents verifying the conditions required for entry and stay or the data referring to these; (e) fact and reasons of refusing the issue of the visa; (f) number, serial number, period and area of validity of the visa issued; (g) date of entry and exit, place of crossing the border. (2) The data according to paragraph (1) shall be managed by the central data management agency for five years following the expiry of the period of validity of the visa and by the competent alien policing authority for one year following the expiry of the period of validity of the visa. **Article 80** (1) The central data management agency and the competent alien policing authority shall manage the following data of the natural person or legal entity inviting the foreigner under the obligation to obtain an approval and of the invited foreigner

44

(a) the personal identification data of the inviting natural person and his/her nationality (statelessness) or name of the legal entity; (b) the address of the inviting natural person or seat (registered offices) of the legal entity; (c) the personal identification data and nationality (statelessness) of the invited foreigner; (d) the period of undertaking the commitment; (e) the serial number of the letter of invitation or the fact of the refusal of its issue. (2) The specified in paragraph (1) shall be managed by the central data management agency for five years from the submission of the application for a visa or permission to stay and by the competent alien policing authority for one year following the completion of the procedure. **Article 81** (1) The central data management agency and the competent alien policing authority shall manage the following data of the foreigner having a residence permit or permission to stay or a certificate entitling the holder for temporary stay: (a) data according to Article 78(1)(a)-(c); (b) date of entry (arrival); (c) place of stay in Hungary; (d) document identification data of the passport; (e) number of the permit, its period of validity, extension and its period; (f) purpose of stay; (g) refusal of an application to issue or extend a permit and the withdrawal of the permit and the reasons thereof; (h) the family status of the person concerned; (i) his/her school qualifications, professional qualifications; (j) occupation; (k) photo and signature; (l) data of final exist; (m) data of the traffic license of the vehicle used by him/her and registered abroad; (n) data of the registered place of residence.

45

(2) The central data management agency may transfer data from its records to the following agencies with the exception to Article 15(1)(c) extending to their powers and competence as specified in legislation: (a) agencies entitled to request data; (b) the authorities responsible for nationality affairs; (c) the customs and finance guard; (d) the executive of the local government performing the functions of a district centre competent according to the place of residence of the immigrant with a view to issuing a personal identity card; (e) the executive of the local government competent according to the place of residence of the immigrant for performing the tasks related to the registration of the personal data and addresses of citizens. (3) The registered data shall be managed by the central data management agency for five years from the expiry of the permission to stay and the certificate entitling the holder for temporary stay or the withdrawal of the residence permit or permission to stay and by the competent alien policing authority until the expiry of the permission to stay or the certificate entitling the holder for temporary stay. **Article 82** (1) The central data management agency and the competent alien policing authority shall manage the following data of the foreigner having an immigration permit: (a) the data according to Article 78(1)(a)-(c); (b) his/her photo and passport data; (c) the data verifying the conditions required for immigration; (d) data concerning family status; (e) data concerning school qualifications; (f) data concerning occupation; (g) data concerning the issue and withdrawal of the permit; (h) address. (2) The central data management agency and the competent alien policing authority may manage the personal identification code of the foreigner having an immigration permit with a

46

view to maintaining contact with the registry of personal data and addressees and for issuing data to the investigating authority. (3) Data according to paragraph (1) shall be managed by the central data management agency for twenty years from the date of the rejection of the application or from the cession of the legal status and by the competent alien policing authorities until the final completion of the procedure or for one year from the cession of the legal status. **Article 83** (1) With a view to meeting its obligations undertaken in international agreements, the central data management agency shall manage the following data of foreigners taken in custody placed under preliminary arrest or restricted in any other way in their personal freedom in the Republic of Hungary or concerned in extraordinary events (death, accident causing serious injury, etc.): (a) the data according to Article 78 (1) (a)-(c); (b)

place of residence in Hungary; (c) data of the penal procedure (legal qualification and description of the criminal act) name of the agency taking action and case number (d) data of the extraordinary event, name of the agency taking action and case number. (2) The data according to paragraph (1) may be managed for three years following the performance of the obligation to inform. **Article 84** (1) The central data management agency shall manage the following data of foreigners reporting loss of their travel documents: (a) the data according to Article 78(1)(a)-(c); (b) type and number of the travel document reported as lots; (c) date of reporting; (d) place, time and date of entry; (e) place of stay in Hungary; (f) name of the agency receiving the report; (g) number of the certificate entitling the holder to stay, its validity and name of the issuing authority;

47

(h) type, number and validity of the new travel document. (2) The central data management agency shall manage the data of foreigners reporting loss of their travel documents until the document is found or in the absence of this for five years from the report. **Article 85** (1) The competent alien policing authority shall manage the data related to notification of the place of accommodation for five years from notification or from submission of the guest book. (2) The data related to notification of the place of accommodation of the resident foreigner shall be managed by the competent alien policing authority until the place of accommodation is terminated and by the central data management agency for five years following termination of the place of accommodation. **Chapter VI Rules concerning liability** **Article 86** (1) The operator of the aircraft or vessel carrying the foreigner and the operator of the road vehicle conveying passengers (hereinafter referred to as the “operator”) shall, prior to transportation, ascertain that the foreigner meets the conditions required for entry (valid travel document and visa). (2) When the entry of the foreigner was refused because of the absence of a condition specified by law, the operator shall take action to have the foreigner immediately returned to the country from where it had carried the foreigner or which is under an obligation to readmit him or her. (3) When returning cannot be immediately implemented, the operator shall bear the costs incurred in relation to the stay of the foreigner until his/her return. (4) When the operator disputes whether his obligation to return and to bear the costs obtain, it shall immediately notify the alien policing authority thereof following refusal of the entry of the foreigner. In this case, the alien policing authority shall determine the obligation of the operator transporting the foreigner here to return and to bear the costs by resolution. (5) The alien policing authority refusing the entry may levy a public order protection fine of an amount up to HUF 1 million per flight on the operator of the aircraft, road vehicle and water vessel provided that the entry was refused because of the absence of a valid passport or visa.

48

Article 87 (1) Prior to the employment of a foreigner, the employer shall ascertain whether the foreigner has a visa to stay or valid permission to stay issued to undertake work. (2) The employer shall report the failure of the permitted employment of the foreigner in Hungary or the termination of his/her employment within the period of validity of the work permit to the regional alien policing authority competent according to the place of work within three workdays. (3) The regional alien policing authority may levy a public order protection fine of an amount up to five hundred thousand forints per employee on the employer failing in its obligation according to paragraph (1). **Chapter VII Notification obligations** *Obligation concerning the notification of the place of accommodation of foreigners* **Article 88** (1) The foreigner shall notify its place of accommodation in Hungary also giving the following data: (a) personal identification data; (b) nationality; (c) document identification data of the passport; (d) address of the accommodation; (e) data of commencement and expected termination of using the place of accommodation; (f) number of visa; (g) place, time and date of entry; (h) number of permission to stay. (2) The host shall keep a register according to the prescribed forms (guest book)

concerning the data of the foreigner staying at a place of commercial accommodation or other accommodation maintained by a legal entity specified in paragraph (1).

49

(3) The operator of the place of commercial accommodation shall submit the guest book to the regional alien policing authority competent according to the place of accommodation annually. (4) The operator of the place of commercial accommodation or other accommodation maintained by a legal entity shall transmit the form used for notification to the regional alien policing authority within three workdays from using the accommodation. (5) When the place of accommodation is not a commercial place of accommodation or other accommodation maintained by a legal entity, the foreigner shall meet his/her obligation of notification to the regional alien policing authority competent according to his place of accommodation in person or through his/her host. The obligation of notification may be met directly or through the executive of the local government of the settlement (district in Budapest) competent according to the place of accommodation. (6) Unless otherwise provided for by international agreement or legal regulation, the obligation of notification shall be met within three workdays from entry.

Reporting obligations related to the personal documents of the foreigner and official measures **Article**

89 (1) The foreigner shall immediately report the loss or annihilation of his/her travel document or permit entitling him/her to stay to the issuing authority or to the regional alien policing authority competent according to his/her place of stay. A certificate shall be issued on the report. (2) The authority competent according to the provisions of paragraph (1) shall be immediately informed of the travel document believed to have been lost and found after having been reported as lost. (3) The alien policing authority may order a search for the foreigner's travel document or permit entitling the holder to stay when the whereabouts of the document is unknown. The provisions of Article 62(2) and (3) shall be applied to the ordering and withdrawal of the search. (4) Unless otherwise provided for in international agreement, the foreigner shall obtain a new travel document to replace the lost, annihilated or expired travel document from the diplomatic or consular representation competent according to his/her nationality. The foreigner may leave the territory of the county only in possession of the new travel document and the certificate entitling the holder for temporary stay. (5) The authority taking action shall ensure through the Ministry of Foreign Affairs that the travel documents found be forwarded to the foreign representation of the state having sovereign power according to the place of issue.

50

Chapter VIII Closing provisions **Article 90** (1) Apart from the provisions of Article 91, this Act shall enter into force on 1 January 2002; its provisions shall be applied also to cases in progress with the exception of the procedure related to an application for an immigration permit not yet finally adjudged- (2) The following shall lose effect on the day of the entry into force of this Act: (a) Act LXXXVI of 1993 on the entry, stay in Hungary and immigration of foreigners; (b) Articles 9 and 10 of Act CXVII of 1999 on accession to the Agreement between the Member States of the North Atlantic Treaty Organisation concerning the legal status of their armed forces, the promulgation of the Agreement and on the amendment of certain legal regulations related to the Agreement; (c) the text “[Article 35 (1)]” in Article 3 of Act LXXV of 1999 concerning the rules of combating organised crime and certain phenomena related to it and the related law amendments and Articles 15-35, Article 59 and Article 61(6)(c) thereof; (d) Article 1 of Act X of 2000 on the entry into force, amendment and annulment of certain legal regulations; (e) Article 61 (2)-(9) of Act CXXXIX 1997 on asylum (f) the text “and the admitted person” in Article 21 (2) of LXIX of 1999 on petty offences; (g) the text “alien policing” in Article 1 (1) (c) in Act XXXIV of 1994 on the Police. **Article 91** Article 4 (1) (f), Article 4 (3)-(5), Article 7 (3), Article 8 (2) and (5), Article 10 (3) , in Article 18 (1) (a) the text “except when the purpose of legal stay was to pursue studies”, Articles 25-30, Article 32 (1) (e) and (f), Article 38, and

Article 88 (4) shall enter into force on the effective date of the Act promulgating the Act on accession of the Republic of Hungary to the European Union. Until Article 32 (1) (e) of the Act enters into force, Article 32 (1) (e) shall be applied to the foreigner who has committed a deliberate criminal act penalised by loss of freedom of more than five years according to Hungarian law.

51

Article 92 (1) For the purposes of Article 90 (1), the application not yet evaluated with a final resolution as well as the implementation of the coercive measure by the alien policing authority shall be regarded as cases in progress. (2) The provisions of Act LXXXVI of 1993 on the entry, stay in Hungary and immigration of foreigners shall be applied to the application for immigration submitted and finally not yet adjudged by the entry into force of this Act with the difference that the regional alien policing authority shall adjudge the application in the first instance. **Article 93** (1) This Act shall not affect the validity of the immigration permit that has become final prior to its entry into force or the rights and obligations related to it. (2) The entry permit and the permission to stay issued prior to the entry into force of this Act may be used within their period of validity. (3) The applications for a temporary permission to stay or long-term permission to stay submitted prior to the entry into force of this Act shall be regarded as applications for permission to stay. (4) Wherever legal regulation mentions a temporary or long-term permission to stay, it shall be understood as a permission to stay.

Article 94 (1) The Government is herewith authorised to regulate the following by decree: (a) the detailed order of the alien policing procedure, the notification of accommodation or place of residence, and of the procedure related to the data of foreigners managed pursuant to this Act; (b) the alien policing functions, powers and competence of the visa issuing authorities, the detailed rules of issuing visas and the mandatory form of the visa; (c) the conditions of issuing residence permits and permissions to stay and the form of the residence permit; (d) the rules of proposing the issue, extension or withdrawal of the residence permit for humanitarian purposes and the detailed rules of the co-operation between the alien policing authorities, the national security services and the law enforcement agencies;

52

(e) the rules of implementing detention for refusal, detention in preparation for expulsion and alien policing detention and those related to the establishment and designation of the mandatory place of stay; (f) the detailed public health rules of the entry and stay in Hungary of foreigners; (g) the rules of supplying and supporting admitted person and those staying in community shelters; (h) the requirements concerning the establishment of community shelters, the house order of community shelters; (i) the detailed rules of the entry and stay in Hungary of the members of the civilian staff and their relatives subject to the NATO-SOFA Agreement. (2) The minister of the interior is herewith authorised to regulate in agreement with the ministers concerned by decree: (a) the authorities taking action in cases related to the entry, exit and stay of foreigners and the withdrawal of the immigration permit, their competence and the order of their procedures; (b) the forms, required content of documents and annexes thereto prescribed in this Act; (c) the fees of the procedures related to the entry and exit and stay in Hungary of foreigners and the issue of the stateless passport; (d) the governing amount of the financial coverage; (e) the rules of bearing the costs related to alien policing procedure. (3) The minister of foreign affairs is herewith authorised to determine, in agreement with the minister of the interior, certain rules related to the entry and exist and stay in Hungary of individuals enjoying diplomatic exemptions or other exemptions based on international law and to establish the range of valid travel documents. (4) The minister of the interior and the minister of justice are herewith authorised to determine the rules of implementing alien policing detention in agreement with the ministers concerned by decree. (5) The minister of health is herewith authorised to determine, in agreement with the minister of the interior, the diseases endangering public health which exclude the

permission of stay and to determine the provisions related to the all-risk health insurance by decree.

Law harmonisation clause **Article 95**

53

This Act contains regulations compatible with the following legal regulations of the European Communities in accordance with Article 3 of Act I of 1994 promulgating the Europe Agreement concluded between the Republic of Hungary, the European Communities and their Member States concerning the establishment of an association signed in Brussels on 16 December 1991: (a) Council Directive 90/364/EEC of 28 June 1990 on the right of residence; (b) Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity; (c) Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students; (d) Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families; (e) Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State; (f) Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services; (g) Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health; (h) Council Directive 72/194/EEC of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of the Directive 64/221/EEC on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health; (i) Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity; (j) Council Regulation (EC) No 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States; (k) Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas; (l) Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons;

54

(m) Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes; (n) Council Decision of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2 of the Treaty on European Union concerning travel facilities for school pupils, staying in a Member State, who are nationals of third countries; (o) Recommendation on a Joint Action of 4 March 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on airport transit arrangements; (p) Council recommendation of 4 March 1996 relating to local consular cooperation regarding visas; (q) Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries; (r) Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience; (s) Council recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control; (t) 1999/435/EC: Council Decision of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis. **Article 96** Simultaneously with the entry into force of the Act, the following provisions shall replace Article 5 (g) of Act CXXV of 1995 on the national security

services: “(g) shall perform control of persons applying for a residence permit for recognition as refugee and for Hungarian nationality and in relation to the protection of the sovereignty of the state and the protection of constitutional order of persons having submitted visa applications and the related tasks;” **Article 97** (1) The following heading shall replace the heading preceding Article 12 of Law Decree 11 of 1979 on the implementation of penalties and measures (hereinafter law decree on penalties) and the law decree shall be supplemented with the following Article 12:

55

“Establishment of the exclusion of the enforceability of expulsion Article 12 (1) The supplementary punishment of expulsion may not be implemented when, according to Article 43 of the Act on the entry and stay of foreigners implementation is impeded because there is no country in which the foreigner would not be exposed to persecution, torture, inhuman or degrading treatment and from where he cannot be returned to a country where he would be exposed to persecution or violation of his/her human rights. (2) In case of paragraph (1), the prosecutor upon the initiative of the alien policing authority shall put forward a proposal to the judge with competence over the penitentiary, to establish that the reason excluding the implementation of expulsion obtains. (3) The procedure shall be conducted by the penitentiary judge competent in the area of the alien policing authority where the convict is staying. (4) Upon the initiative of the alien policing authority, and upon the proposal of the prosecutor, the judge with competence over penitentiary shall examine the enforceability of expulsion but he shall do so at least every two years. (5) Penal costs shall be borne by the state.” (2) The following provision shall replace Article 75(2) of the law decree on penalties: “(2) The regional alien policing authority shall be responsible for the implementation of expulsion.” **Article 98** Act I of 1973 on penal procedures (hereinafter Act on penal procedures.) shall be supplemented with the following Article 99/E: “Article 99/E (1) The provisions of Article 99/D shall also be applied to taking away the travel documents of the accused foreigner as appropriate with the provision that the travel documents of the foreigner shall be sent to the alien policing authority with a view to ordering its retention. (2) The provision according to paragraph (1) may not be applied when the prosecutor or the court permitted the accused to deposit a bail.”

56

Article 99 The Act on penal procedure shall be supplemented with the following Article 99/F: “Article 99/F When the accused who is a Hungarian national also has a travel document issued by a foreign authority, measures shall be taken for taking it away simultaneously with taking away the Hungarian travel document.” **Article 100** The Act on penal procedure shall be supplemented with the following Article 118/C: “Article 118/C The prosecutor and the court may propose to the alien policing authority to permit pursuant to separate legislation the entry and stay of the foreigner and in his respect for his/her relative whose confession may contain evidence that could foreseeably not be replaced by any other means.” **Article 101** The following provisions shall replace Article 223 (2) of the Act on penal procedure: “(2) When the court applied the secondary punishment of expulsion in addition to a non-enforceable loss of freedom against the accused and the decisive resolution comes into force upon its promulgation, the court shall order that the accused be placed under arrest and presented to the competent alien policing authority with a view to implementing the secondary punishment of expulsion.” **Ferenc Mádl Dr. János Áder President of the Republic President of Parliament**