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**THE APPLICATION OF JHA  
AND THE POSITION OF MINORITIES  
THE CASE OF HUNGARY**

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## ABOUT THE CEPS-SITRA NETWORK

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CEPS, with financial assistance of the Finnish SITRA Foundation, embarked at the end of 2000 on a programme to examine the impact of Justice and Home Affairs access on an enlarged European Union, the implications for the candidate countries and for the states with which they share borders. *The aim of this programme is to help establish a better balance between civil liberties and security in an enlarged Europe.*

This project will lead to a series of policy recommendations that will promote cooperation in EU JHA in the context of an enlarged Europe as well as institutional developments for the medium- to long-term in areas such as a European Public Prosecutors Office, re-shaping Europol and a developed system of policing the external frontier (Euro Border Guard). These must be made within a balanced framework. *There are two key issues:*

First of all, to prevent the distortion of the agenda by “events” – some items are being accelerated and other marginalised. This risks upsetting the balance, carefully crafted by the Finnish Presidency, between freedom, security and justice. The current ‘threat’ is that security issues, at the expense of the others, will predominate after the catastrophic events of 11th September. These have resulted in a formidable political shock, which served as a catalyst to promote certain initiatives on the political agenda, such as the European arrest warrant, and a common definition of terrorism. The monitoring of items, which could be marginalised and the nature of the institutional/political blockages that could distort the Tampere agenda, is our priority.

Secondly, how to look beyond the Tampere agenda, both in terms of providing a flexible approach during the period of completion of the Tampere programme as well as what should come afterwards. Much detail remains to be filled in about rigid items on the Tampere agenda and CEPS will continue to work in three very important areas:

- Arrangements for managing and policing the external frontier
- Judicial cooperation leading to the development of a European Public Prosecutor
- Strengthening of Europol, particularly in the field of serious trans-frontier violence and moves towards a more federalised policing capacity

The CEPS-SITRA programme brings together a multi-disciplinary network of 20 experts drawn from EU member states, applicant countries as well as neighbouring states: the European University Institute in Florence, the Stefan Batory Foundation (Warsaw), European Academy of Law (ERA Trier), Academy of Sciences (Moscow), London School of Economics, International Office of Migration (Helsinki), Fondation Nationale des Sciences Politiques (CERI) in France, Universities of Budapest, Université Catholique de Louvain-la-Neuve, University of Lisbon (Autonoma), University of Nijmegen, University of Burgos, CEIFO in Stockholm, University of Tilberg and University of Vilnius, as well as members with practical judicial and legislative backgrounds.

# THE APPLICATION OF JUSTICE AND HOME AFFAIRS AND THE POSITION OF MINORITIES: THE CASE OF HUNGARY

*CEPS POLICY BRIEF No. 18*

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## **Minority Issues from the EU Perspective**

When one considers the substance of European Union (EU) official documents in a simplified way, national and ethnical minorities may appear in three contexts.

The first belongs to *external relations* (common foreign and security policy), which cover minorities as a matter of human rights in third countries. These documents call upon the (third) countries concerned to respect human rights and international and European standards on minorities' rights that are also endorsed by the EU. In this regard, the legislation being developed in view of a common European migration policy contains provisions about the respect of minority rights in order to prevent further migration waves.

The second context relates to the *integration of lawfully residing nationals of third countries* taking into consideration the cultural and historical ties of these communities with the member states. Migrants, or diasporas, from third countries are expected to integrate or return and potential migrants to stay in their countries as it has been defined by the Justice and Home Affairs (JHA) objectives.

Lastly, the evolving *principle of non-discrimination* has been developed in various fields of Community law by prohibiting unequal treatment on racial grounds. The provisions concerning the prohibition of discrimination in Europe have been inserted in Article 13 of the EC Treaty. Due to recent developments, it has been gradually changed, as the Charter of Fundamental Rights may extend the ban on discrimination, (Art. 21 of the Charter), on the basis of membership of a national minority, regardless to citizenship. Moreover, the Tampere Council Conclusions have declared the aim to increase the efforts on social, economic and family integration of diasporas or ethnic minorities residing legally on (the) EU territory regardless of nationality.

“Ethnic minorities” are usually considered to be those members of national groups of third countries residing outside or inside the EU and who enjoy basic, fundamental human rights but in certain cases, they are considered as Union citizens facing racism, intolerance or exclusion in general, without special connection to ethnic identities or the inter-ethnic tensions. In other words, up to the recent past, the ethnic issue was rather an *indirectly* formulated policy or a policy that was regulated within other policies and not as an issue to be tackled separately. Today the “ethnic minority” issue has become a policy in its own right, as it would concern future citizens of the Union after accession. Therefore, it became part of the Copenhagen political criteria. Referring to principles of Community law (such as the rule of law, the stability of the system, the prohibition of discrimination, the respect for constitutional traditions and national identity of member states), an “educating” aspect has emerged from

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the criteria defined in the Copenhagen Conclusions. The observation of minority rights calls for a respect of the standards on minorities developed within the Council of Europe and CSCE frameworks. Confirming this requirement as a necessary component, the situation of ethnic minorities and in particular the development of their rights and their socio-economic integration has been monitored and evaluated by the Commission in its regular reports on candidate countries. However, the attention has been limited to the discrimination and exclusion of Roma, although for instance there are further 12 lawfully registered ethnic minorities in Hungary (Act No.67 of 1993). This should serve as a good illustration of the, still dominant, “non-discrimination and non-exclusion” approach of the EU instead of moving towards a comprehensive “ethnic identity” discourse.

Moreover, the pre-accession agreement with Hungary and the Tampere Council Conclusions underline the importance of the implementation of JHA and especially of the Schengen *acquis* before accession. This top priority includes also the visa restrictions and the control on immigration, asylum and external borders. These instruments shall be implemented to regulate the entry of third country nationals to the territory of the EU regardless of their ethnic background (even if an important number of persons belonging to national minorities is likely to suffer from these barriers). The Union is facing a new problem in that the populations of the ‘old members’ were far more homogeneous than those of the new accession countries and they did not have minorities living in neighbouring non-EU countries. This explains why the problem of minorities has not been tackled until now in the context of Justice and Home Affairs, although this is likely to become one of the most complex issues of the current enlargement process.

### **Pre-Accession Efforts in the Area of JHA in Hungary**

In the past 80 years, millions of ethnic Hungarians lost their Hungarian citizenship, after the changes of borders agreed on in international and bilateral treaties. They thereby became minorities in the surrounding countries, and their connections with the mother country became unclear for officials in the European Community. Some illustrations can be found by the following examples.

Since 1989, a new doctrine in foreign policy has been developed in Hungary – the system of triple priorities. Theoretically, it contains three equal objectives: the Euro-Atlantic integration of Hungary, a stable and friendly relationship with neighbouring countries in the entire region and the governmental responsibility for ethnic Hungarians living on the other side of the borders, as the boundaries of the state are not overlapping with the ones of the nation. However, these three priorities in Hungarian foreign policy are very difficult to reconcile. In the meantime, the setting-up of a new view on migratory movements in the EU reached Hungary. In the early 1990s, forced migration, freedom to travel, the revival of ethnic links as well as “irregular tourism” provided a big boom in migration statistics, which reached consolidation only at the end of the past decade. Table 1 gives an overview of the number and composition of aliens entering, commuting to and residing in contemporary Hungary.

*Table 1. Frequency of travel and commuting movements into Hungary*

<b>Number of persons crossing the border of Hungary with:</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>	<b>Estimated number of ethnic Hungarians<sup>a</sup></b>
Slovakia	22 304 592	18 123 592	14 973 374	55 401 558	11 080 311
Ukraine	5 596 996	4 498 146	5 845 869	15 941 011	3 188 202
Romania	11 612 826	10 494 141	12 477 462	34 584 429	6 916 885
Yugoslavia	7 598 321	4 921 295	6 587 175	19 106 791	3 821 358
Croatia	8 772 255	8 467 532	9 399 624	26 639 411	5 327 882
Slovenia	4 402 953	3 047 196	2 781 313	10 231 467	1 023 146

<sup>a</sup>The author's estimation is based on the composition in various migrant groups due to the absence of ethnic registration made by authorities.

*Source:* National Headquarters of the Border Guard, Office of Immigration and Naturalisation Affairs - Ministry of the Interior ([www.b-m.hu](http://www.b-m.hu)).

The visa-free system may explain the high number of border-crossings. The frequent travel, border crossing and commuting movement would be proved by figures on issued residence permits. Table 2 covers citizens from the neighbouring states.

*Table 2. Numbers of short-term residency permits issued, 1998-2000*

<b>Number of short-term residence permits (less than one year validity) issued for citizens of:</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>	<b>Estimated number of ethnic Hungarians from the total<sup>a</sup></b>
Slovakia	315	518	1 166	1 999	1 599
Romania	7 428	10 125	13 071	30 624	28 000
Ukraine	1 739	1 951	2 676	6 366	3 183
Yugoslavia	1 815	1 355	961	4 131	3 304
<b>Number of long-term residence permits (more than one year validity) issued for citizens of:</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>	<b>Estimated number of ethnic Hungarians from the total number</b>
Slovakia	n.a.	n.a.	n.a.		
Romania	6 216	8 449	10 626	25 291	20 232
Ukraine	1 439	2 047	2 421	5 907	35 442
Yugoslavia	1 560	2 023	2 035	5 618	3 932

<sup>a</sup> The author's estimation is based on the composition in various migrant groups due to absence of ethnic registration made by authorities.

*Source:* National Headquarters of the Border Guard, Office of Immigration and Naturalisation Affairs - Ministry of the Interior ([www.b-m.hu](http://www.b-m.hu)).

The comparison of the numbers of residence permit holders and travellers from the same state indicates that *ethnic movement is characterised by short-term, frequent or commuter travel to Hungary. This trend can be explained partly by the selective or inefficient implementation of the bureaucratic and rigid alien police authorisation in the country.* Until 1990, the departures of citizens from the surrounding countries were strongly limited or controlled for various reasons. *Since 1990, the alien police authorisation (residence permits, immigration permits), the naturalisation and the labour authorisation have been gradually modified: their provisions have become more and more restrictive and severe sanctions in law enforcement have been introduced.* Table 3 may give a certain impression on the evolution of the legislation. However, a straight and smooth way towards a proper infrastructure and personnel facilities as well as the political will of consequent application can hardly be observed.

*Table 3. The evolution of legislation on border controls and employment*

<b>Applicable rules on border control and surveillance</b>	
<b>Until 31 October 1997</b>	
<p>Law-decree (1974) on state and public security Police Act (some provisions) (1994). Decree of the Council of Ministers on border protection (1974). Decree on border control issued by Minister of the Interior (1975). Decree of the Council of Ministers on border zones (1989). Act on Amendment of the Constitution of the Hungarian Republic No CVII of 1993.</p>	<ul style="list-style-type: none"> <li>- Entitlement for clandestine investigation power in criminal cases</li> <li>- Entitlement to collect and store the personal data of each person crossing the border regardless of citizenship, activity, and circumstances for a period of 90 days</li> </ul>
<b>1 November 1997</b>	
<p>Act on border guard and border protection (*) No. XXXII of 1997. Decree on its execution issued by the Minister of the Interior (1997). Decrees of the Government relating to the Act.</p>	<ul style="list-style-type: none"> <li>- Border guards can be made accountable for legal practices</li> <li>- Institutional changes inside the border guard system at regional and local level</li> <li>- Distinction made between the external (EU) and internal borders and their respective regimes</li> </ul>
<b>Major amendments since 1997</b>	
<p>Act No LXXV of 1999 (entered into force: 1<sup>st</sup> September 1999). Act No LXIX of 1999 (entered into force: 1<sup>st</sup> March 2000). Act No. XXXIII of 2001 (entered into force: 1<sup>st</sup> January 2002 with some exceptions).</p>	

<b>Applicable rules on entry and residence and on immigration of aliens to Hungary</b>	
<p style="text-align: center;"><b>Until 30 April 1994</b></p> <p>Law-decree (1982) on alien police. Decree on its execution (1982) issued by the Minister of the Interior. Act on Fees (1990).</p>	<ul style="list-style-type: none"> <li>- Restrictions on detention and movement of illegal migrants</li> <li>- Special exception due to NATO membership</li> <li>- Extended (not necessarily lawful) reasons to put names on the list of undesired aliens</li> <li>- Sanctions against air carriers</li> <li>- Extended regime of personal data collection, storage and international transfer</li> <li>- Changes of competence</li> <li>- Establishment of a central migration authority</li> <li>- Restriction in visa issue procedures</li> <li>- More rigid rules on expulsion and rejection at the border (<i>refoulement</i>)</li> <li>- Withdrawal of residence permit and immigration permit</li> <li>- Making the legal status of settled migrants more fragile</li> <li>- Stringent alien police control</li> <li>- Combating human trafficking</li> </ul>
<p style="text-align: center;"><b>1 May 1994</b></p> <p>Act on entry and residence and on immigration of aliens to Hungary (*) No. LXXXVI of 1993 (into force: 1 May 1994). Decree of the Government (1994) on execution. Decrees on execution issued by the Minister of Foreign Affairs (1994). Minister of the Interior (1994). Minister of the Finance (1994). Minister of Justice (1995).</p>	
<p style="text-align: center;"><b>Major amendments since 1997</b></p> <p>Act No. XXXIV of 1994 (into force: 1 May 1994). Act No. LXVI of 1996 (into force: 1 September 1996). Act No. CXXXIX of 1997 (into force: 1 March 1998). Act No. XII of 1998. Act No. CXVII of 1999 (into force: 20 February 2000). Act No. LXXV of 1999 (some amendments entered into force on 1 September 1999 and others on 1 January 2000). Act No. X of 2000 (into force: 1 March 2000).</p> <p><i>A totally new Act on Entry and Residence of Aliens No. XXXIX of 2001 will enter into force on 1<sup>st</sup> January 2002 (with some exceptions). Its executive decree issued by the Government No. 170 of 2001.</i></p>	

<b>Applicable rules on foreign labour</b>	
<p style="text-align: center;"><b>Until 28 February 1991</b></p> <p>Ministerial decree on employment of aliens in Hungary issued by the Minister of Labour (1991).</p>	<ul style="list-style-type: none"> <li>- Changing competence of labour authority</li> <li>- Exceptions from labour authorisation (e.g. key personnel of companies)</li> <li>- Benefited authorisation for certain labourers</li> <li>- Upgraded sanctions against illegal employment</li> </ul>
<p style="text-align: center;"><b>1 March 1991</b></p> <p>Act on labour services and unemployment benefits No. IV of 1991 (into force: 1 March 1991). Art.7 regulates the employment of foreign labourers in Hungary. Ministerial decree on its execution issued by the competent minister (Minister of Labour, 1991).</p>	
<p style="text-align: center;"><b>Amendments since 1 March 1991</b></p> <p>Act No. LII of 1995 (enters into force: 1 July 1995). Act No. CVII of 1996 (enters into force 1 January 1997). Act No. CXX of 1997 (enters into force 1 January 1998). Act No. LXXXIX of 2000 (enters into force 26 June 2000). Act No. XXIV of 2001 (enters into force: 1 July 2001). Modification of Ministerial decree on labour authorisation of foreigners in Hungary issued by the Minister of Social Affairs (1995, 1996, 1998) by the Minister of Social and Family Affairs (1999, 2000).</p>	



<b>Applicable rules on citizenship</b>	
<p><b>Until 30 September 1993</b></p> <p>Act on Hungarian Citizenship No. V of 1957. Law-decree on its execution (1957). Act No. XXVII of 1990. Act No. XXXII of 1990.</p>	<ul style="list-style-type: none"> <li>- Benefited naturalisation of stateless persons that were educated or settled in Hungary.</li> <li>- Easier withdrawal of naturalisation.</li> <li>- More liberal rule of renunciation of Hungarian citizenship.</li> <li>- Procedural guarantees in citizenship affairs</li> </ul>
<p><b>1 October 1993</b></p> <p>Act on Hungarian Citizenship* No. LV of 1993. Government Decree on citizenship procedures (1993).</p>	
<p><b>Amendments since 1 October 1993</b></p> <p>Act No. XXXII of 2001 (enters into force: 15 July 2001). Government Decree No. 103/2001 on amendment of citizenship procedure (enters into force: 15 July 2001).</p>	

\* It shall be passed/modified with qualified majority (two third) of votes in the Parliament.

This process is on going. Last summer, the Parliament adopted Acts on amendments of the Border Control Act, the Hungarian Citizenship Act, and the new Aliens Act. These acts together with their enforcement rules entered into force in January 2002.

Besides the legal approximation, the PHARE, Twining and Horizontal Programmes, and the pre-accession cooperation have contributed through training, finance, exchange of experiences and assistance, to improve the capacity and the action potential in law enforcement. Due to co-finance requirements of the EU programmes, the national budget also has to share these huge expenditures. Furthermore, the control on external border crossing, residence of aliens, lawful employment of foreign workers, asylum restrictions and combating organised crime make no difference among aliens on the ethnical ground. Consequently, *Hungarians belonging to the ethnic minorities are subject to the same migration restrictions, surveillance, alien policing and sanctions as all the other migrants.*

However, the *visa-free travel and bilateral agreements on friendship and good neighbourhood could be considered as the panacea for this “ethnically neutral but anti-national policy”*. Since 1990, governments have made severe efforts to extend the zone of friendly relationships in and on the near and wider environment of Hungary. Therefore, 19 such agreements were concluded up to 2000. They contain commitments on keeping and strengthening the unimpeded and mutual communication among citizens, the cultural exchange and respect of human rights, including the minority rights.

In parallel to the development of secondary rules on visa restrictions, on the format of visas, on the criteria to issue a visa and on the exchange of information concerning the visa regime at EU-level, a “Schengen panic” rose among ethnic Hungarians. They fear the rise of new walls on the Eastern borders of Hungary by border guards, visas, mobile units, police and labour authorisations, readmission agreements and immigration rules regulating the entry and residence of third country nationals. Although several bricks of the wall are already in place,

the visa is considered as the most brutal and final element of the new construction. Not only Cuba or Mongolia but Moldova, Belarus, Macedonia, the Russian Federation and CIS countries in Asia have been put on the list of states whose nationals must be in possession of a visa in order to entry Hungary. The *visa-free system with Romania, Ukraine and Yugoslavia is intended to be kept until accession in order to allow migrations of ethnic minorities into the country and to prevent stronger anti-European feelings in public opinion.* (See Appendix 1).

### **Possible Ramifications of the Enlargement for Hungary**

The possible implications of the accession to the EU and of the implementation of the *acquis communautaire*, including the JHA provisions, must be considered by both the new as well as old members. The impact of mechanically introduced visa and movement restriction on Hungary in the minority context may be divided into four parts:

#### *(i) External relations*

The set up of triple priorities in foreign policy should be reshaped in Hungary with regard to the second pillar of Community law. For instance, the regional stability and NATO membership should be evaluated higher while bilateral agreements on friendship would be less applicable in the light of a common foreign policy. As regards the minority context, the trust in the entire EU will be reduced if national preferences in each member state (e.g. on the base of colonial ties) would not be allowed in Hungary. Moreover, the dialogue for better neighbourhood and regional development will be very efficient in the “ethnic zone”. Hungary will actively endorse stronger participation of minorities in political life in these societies through diplomatic and human rights instruments.

#### *(ii) The economic impact*

The benefits of CEFTA (Central European Free Trade Agreement) would be suppressed in the non-member states replacing the Community customs (tariffs) or rules. Unless other broad developing and trade agreements are concluded with the EU in order to provide a continuous regional economic exchange, the border zones and the less developed areas may lose even limited prosperity. Furthermore, the Schengen regime will limit the movement of workers and persons in general from the surrounding states whose minority members have played the most relevant role. For this reason, change in the allocation of small capital and remittances would reduce the size of the informal economy and ethnic networks in the trade, labour market and business. On the other hand, the regional tourism, family connections, youth exchange would be hampered to a certain extent.

#### *(iii) The domestic policy and regulation*

The existing institutionalised dialogue with the Hungarian communities across the EU/external borders might become more structured and regular in the future. The fate of Hungarians across the EU borders and the related speech discourses may deepen the rupture between the political parties and actors along the degree of solidarity towards ethnic Hungarians. On the other side, the gap could be filled by action in the room for manoeuvre left for national regulation according to the principle of subsidiarity. By this means, national legislation could create an extra-community competence, which will bring about a preferential treatment to ethnic Hungarians while the other residing third country nationals or foreign workers in Hungary would be discriminated. However, this option is subject to strong criticism by political opponents and by the neighbouring countries in the Act on Benefits for Ethnic Hungarians Living in Neighbouring States (See Appendix 2).

(iv) *The cultural, social and ethnic connections*

Due to obstacles in daily communication and connections with the mother country, the cultural and spiritual component of the identity of minority communities may develop in its own way. There is a risk that the diaspora will be melted into the majority culture of their respective host country. On the other hand, the development of telecommunications, Internet and selected cultural imports will be stronger in traditions that radiate to the mother country. Furthermore, today's visa-free travel can eliminate, to a certain extent, the fragmentation of the nation, but it is accompanied by public law restrictions on residence, asylum and employment of foreigners in general (and, among them, the Hungarian minorities living across the borders). The efficient propaganda made by all governments on the dangers posed by foreigners provokes xenophobic prejudice against foreigners in general and against these ethnic minorities. While the implementation of the JHA instruments and especially of the visa regime isolates some parts of the nation, the new walls in the Eastern borders would reduce these negative feelings amongst a demographically diminishing group of ethnic migrants in Hungary. In parallel, ethnic isolation brought along through newly "imported" restrictions and their consequent implementation may reinforce anti-European feelings as well as ethnic identity and solidarity.

### **Recommendations**

Mutual trust between the EU and Hungary depends on the effective implementation of the *acquis*. Although trust is closely interrelated with security, some proposals for trust-building are offered below.

1. A clear schedule for enlargement is required for various reasons, inter alia in order to establish the external border-controlling regime in proper time. For instance, in the case of Hungary, the best scenario would be an external border of 1103 km, while the worse scenario would be a border of 1886 km if only Slovenia was the only neighbouring country that would join the EU at the same time as Hungary. Of course, a realistic and observed schedule of enlargement would have also a positive impact on public opinion that is sensitive to the exclusion of ethnic minorities beyond the new EU borders.
2. In close relation with the schedule on enlargement, a *structured set of instruments towards outsiders* that would include the evolving regional connections, partnerships, and trade agreements with non-member states should be developed. It may contribute to provide certain perspectives for Hungarian communities living in non-member countries for the near future and in medium-term.
3. It is necessary to reinforce the *international fora dealing with human rights and minority rights*, such as the Council of Europe, ILO, UNHCR, IOM and CEES, *to make them more influential and effective*.

The recent legal opinion of the Venice Committee of the EC on the possible international connections between mother countries and diasporas (19 October 2001) should be observed by all interested states, and the Act on Ethnic Hungarians in neighbouring states (Appendix 2) could be reviewed in light of this opinion. It should be accompanied with an upgrading of the diplomatic and institutional instruments of dialogue and legal protection of various groups in need of protection (migrant workers, minorities, refugees, displaced persons, etc.) together with the countries of origin. These efforts might include the insertion of *additional applicable provisions in favour of diasporas and minorities into the "friendship" and other bilateral agreements* that have been concluded between member states and non-member states and their neighbouring

countries. All of these steps can contribute to a full *emancipation of ethnic minorities*, such as Hungarians across the border.

4. *Respect for ethnic minority rights during the entire process of enlargement* must be observed in each candidate country *in the same manner and size*.

This includes some pressure on the candidate countries to tackle the minority issue in its whole complexity, covering, amongst others, the social and economic integration of Roma citizens and combating racism and exclusion.

5. An important role for the EU is to balance the *migration policy* in order to upgrade the capacity of social and economic integration of refugees, foreign workers and third country nationals resident in the candidate and later the new member states. New rules or legislation in preparation on family reunification, third country nationals who are residents in the EU and refugees in the EU, should take into account the issue of integration in order to balance *the restrictive public order measures of Schengen*. The EU may also push for development in the receiving and transit countries. Without this inclusive policy, the principles and provisions of Community law on equal treatment and legal protection against racism, social exclusion, and discrimination will be more visible during the accession procedure.
6. On the other hand, a certain amount of flexibility or the introduction of *transitional periods for the implementation of the acquis regarding the issue of short-term (up to 3 months), study and labour visa regime* seems inevitable.

This would provide a controlled, provisional labour movement of third country nationals, in parallel with a controlled movement of Hungarian citizens' inside the EU.

7. There is still a lack of *public control and transparency of the accession procedure* in the candidate countries. This constitutes a key factor in the lack of trust and of the growing prejudice towards the EU. In order to improve the *legitimacy of accession efforts as well as the legality of JHA*, the EU should endorse various constitutional initiatives based on the rule of law principle in order to contribute building trust. For instance, stronger police cooperation with candidate countries includes an exchange of personal data – while the entire mechanism of independent monitoring of the storage, transmission and protection of data relating to the police sector has not yet been set up. There is a certain tension between general guarantees on the storage and protection of data in the police sector and the “interest of efficiency” that is urged in combating organised crime or illegal migration. For this reason, special guarantees need to be set up in this field before this vital cooperation is launched. For instance, the ombudsman for the rights of personal data protection and rights for obtaining public information must be operational, and the storage and transmission of personal data must be based on statutory or international public law in Hungary. This should be considered as a compulsive criterion of accession, as relevant as the respect of the principles of the rule of law or the prohibition of discrimination.

## REFERENCES

Ministry of the Interior, Office of Immigration and Naturalisation Affairs ([www.b-m.hu](http://www.b-m.hu)).

National Headquarters of the Border Guard ([www.b-m.hu](http://www.b-m.hu)).

## APPENDIX 1

*To illustrate the complexity and interaction of “minority issues” with JHA, the enlargement and public opinion, selective quotes from one of Hungary’s highest circulation daily newspapers (Népszabadság, 15 June 2001) are reproduced below (author’s comments in Italics).*

There is a political turning point in the negotiations, Hungary could close 22 chapters and we could reach a reasonable compromise in the field of free movement of workers. *[i.e. the member states can maintain the national regulation on employment of Hungarian citizens for certain periods of time - J.T.]* The Government is expecting that the EU will confirm the conclusion of the negotiations with the most prepared candidate countries in 2002 during the Gothenburg Summit. Furthermore, according to the Prime Minister, the Council shall insist on having the 2004 general European elections to take place in the present candidate countries as well.

The president had a meeting with Jacques Chirac and Lionel Jospin. He summarised the visit to the press. “It is not a secret that the case of the Roma from Zámoly *[obtaining asylum in contemporary France - J.T.]* has been mentioned. My negotiating partners stated France intended not to express her condemnation of the Hungarian government or Hungarian society. The case was exclusively based on individual circumstances. The efforts made by the Hungarian government as well as churches in favour of Roma communities in order to upgrade their social, material and spiritual integration are respected by France.

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Chaotic situation of visa issues in Russian border. A bilateral agreement on limited visa-free travel has been concluded between Hungary and the Russian Federation. It provides mutual free entrance for diplomatic and service passport holders and residence up to 90 days in the territory of the party states. The agreement entered into force immediately just after signature. *[It means that the prior visa-free agreement has been replaced by the introduction of visa requirement for ordinary travellers, visitors from the Russian federation and from Hungary - J.T.]* The Hungarian Association of Lorry Drivers initiated a meeting to discuss the chaotic situation on the visa issue by the Russian authority. The organisation invited the representative of the responsible ministries, the border guards and the consular office of the Russian Federation. The unprepared visa regime caused delays, and there were long queues in front of the consular office. Consequently, the logistic entrepreneurs or companies suffer from severe losses. The leader of the consular department of the Hungarian Ministry of Foreign Affairs underlined that it was in the mutual interest to simplify the visa procedure. She expressed the hope in the establishment and the operation of a flexible and, modern visa system despite this difficult start.

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The Bill on benefits for Hungarians living across the borders *[in its second reading in the Parliament – J.T.]* is not welcomed and reservations have been made. The statement of the Prime Minister on the labour shortage in near the

future in the developing Hungarian economy and that this should be compensated by millions of Hungarians across the border causes more misunderstandings in the surrounding areas. “The EU also expressed its own reservations concerning the Bill, and Romania and Slovakia are both criticising it. According to the president of the Democratic Alliance of Hungarians in Romania, certain reactions of the Romanian government may be projected, in particular with respect to the implementation of the Act. For instance, it will be a huge task to collect the applications for family support provided by the Hungarian government. Moreover, instead of setting up a guest-worker scheme with ethnic Hungarians in Hungary, one could initiate various programmes to attract Hungarian capital to Romania establishing new labour here and keeping the people in homeland.

## APPENDIX 2

*The Hungarian Parliament on 19 of June 2001 adopted Act No. LXII of 2001 EHLNS (Official Gazette, 7 July 2001). Excerpts from the non-official translation are reproduced below.*

The Hungarian Parliament

In order to comply with its responsibilities for Hungarians living abroad and to promote the preservation and development of their manifold relations with Hungary prescribed in paragraph (3) of Article 6 of the Constitution of the Republic of Hungary,

Considering the European integration endeavours of the Republic of Hungary and in-keeping with the basic principles espoused by international organisations, and in particular by the Council of Europe and by the European Union, regarding the respect of human rights and the protection of minority rights;

Having regard to the generally recognised rules of international law, as well as to the commitments of the Republic of Hungary assumed under international law;

Having regard to the development of bilateral and multilateral relations of good neighbourhood and regional cooperation in the Central European area and to the strengthening of the stabilising role of Hungary;

In order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their getting on in life within their homeland and awareness of national identity;

Based on the initiative and proposals of the Hungarian Standing Conference<sup>1</sup>, a co-ordinating body functioning in order to preserve and reinforce the awareness of national self-identity of Hungarian communities living in neighbouring countries;

Without prejudice to the benefits and supports provided by legal rules for persons of ethnic Hungarians (1) living outside the Hungarian borders in other parts of the world;

Herewith adopts the following Act:

### CHAPTER I: GENERAL PROVISIONS

#### Scope of the Act

#### Article 1

(1) This Act shall apply to persons declaring themselves to be of ethnic Hungarian who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine, and who

- a. have lost their Hungarian citizenship for reasons other than voluntary renunciation<sup>2</sup> and
- b. are not in possession of a permit for an open-ended residence [green card for permanent stay] in Hungary.

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<sup>1</sup> Established by the Parliamentary Resolution No. 26 of 1999, 26 March 1999.

<sup>2</sup> This provision may be a legal error. It probably intends to cover not only persons who have ever had Hungarian citizenship (born before 1920), but also their descendants.

(2) This Act shall also apply to the spouse living together with the person identified in paragraph (1) and to the children of minor age being raised in their common household regardless their ethnic origin [even if they are not ethnic Hungarians].

(3) This Act shall also apply to co-operation with, and assistance to organisations specified in Articles 13, 17, 18 and 25.

### **Article 2**

(1) Persons within the scope of this Act shall be entitled, under the conditions laid down in this Act, to benefits and supports in the territory of the Republic of Hungary, as well as in their place of residence in the neighbouring states on the basis of the Certificate specified in Article 19.

(2) The provisions of this Act shall be applied without prejudice to the obligations of the Republic of Hungary undertaken in international agreements.

(3) The benefits and supports able to be claimed under this Act shall not affect other existing benefits and supports possibly ensured by legal rules in force for non-Hungarian citizens who are ethnic Hungarians and living in other parts of the world.

### **Article 3**

The Republic of Hungary, in order to

- a. ensure the maintenance of permanent contacts,
- b. provide for the accessibility of benefits and supports defined in this Act,
- c. ensure undisturbed cultural, economic and family relations,
- d. ensure the free movement of persons and the free flow of ideas,

and taking into account her international legal obligations, shall provide for the most beneficial treatment in the given circumstances that are possible with regard to the entry and stay on its territory for the persons falling within the scope of this Act. [...]

### **Article 27**

(1) This Act enters into force on 1 January 2002.

(2) From the date of accession of the Republic of Hungary to the European Union, the provisions of this Act shall be applied in accordance with the treaty of accession of the Republic of Hungary and with the European Community law.



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