

## **Act I of 2007**

### **on the Entry and Residence of Persons with the Right of Free Movement and Residence<sup>[1]</sup>**

With a view to guarantee the right of free movement and residence provided for in the Treaty establishing the European Community, and to ensure equal treatment for the family members of Hungarian citizens who do not have Hungarian citizenship, Parliament has adopted the following Act:

#### Chapter I

#### GENERAL PROVISIONS

##### **Section 1**

(1) The Republic of Hungary shall ensure the right of free movement and residence in accordance with the provisions of this Act:

*a)* with the exception of Hungarian citizens, to nationals of any Member State of the European Union and States who are parties to the Agreement on the European Economic Area, and to persons enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area with respect to the right of free movement and residence (hereinafter referred to as "EEA nationals");

*b)* to the family member of an EEA national who does not have Hungarian citizenship, accompanying or joining the EEA national (hereinafter referred to as "family members of EEA nationals");

*c)* to the family member of a Hungarian citizen who does not have Hungarian citizenship, accompanying or joining the Hungarian citizen (hereinafter referred to as "family members of Hungarian citizens"); and

*d)* to any person accompanying or joining an EEA national or a Hungarian citizen, who:

*da)* is dependant or for a period of at least one year has been member of the household of a Hungarian citizen, or where serious health grounds require the personal care of the family member by the Hungarian citizen;

*db)* had been dependant or had been for a period of at least one year member of the household of an EEA national in the country from which they are arriving, or where serious health grounds require the personal care of the family member by the EEA national,

and whose entry and residence has been authorized as family member by the authority.

(2) The provisions of this Act only apply to EEA nationals entering under diplomatic or other personal immunity, or who are entering the country on the grounds of treaties, unless prescribed otherwise by treaty.

(3) This Act shall not apply to persons recognized by the Hungarian refugee authority as refugee, or beneficiaries of temporary or subsidiary protection as prescribed in specific legislation.

## Section 2

For the purposes of this Act:

*a)* 'third-country national' shall mean - with the exception of Hungarian citizens - any person who is not a citizen of the EEA, including stateless persons;

*b)* 'family member' shall mean:

*ba)* the spouse of an EEA national;

*bb)* the spouse of a Hungarian citizen;

*bc)* the descendants of the EEA national and those of the spouse of the EEA national who are under the age of 21 or are dependants;

*bd)* the descendants of a Hungarian citizen and those of the spouse of a Hungarian citizen who are under the age of 21 or are dependants;

*be)* - unless otherwise prescribed in this Act - the dependent relatives in the ascending line of an EEA national and those of the spouse of an EEA national; and

*bf)* the relatives in the ascending line of a Hungarian citizen and those of the spouse of a Hungarian citizen;

*bg)* the person who has parental custody of a minor child who is a Hungarian citizen;

*bh)* any person whose entry and residence has been authorized as family member by the competent authority;

*c)* 'gainful employment' shall mean:

*ca)* any work performed for others under contract of employment - as governed by law - for remuneration, which constitutes subordinate and superior positions;

*cb)* any work performed for remuneration in a self-employed capacity in accordance with the relevant statutory provisions, if such self-employed person provides for his own health insurance and pension insurance coverage in accordance with the relevant legal regulations; or

*cc)* any person other than those defined in Subparagraph *cb)*, who is engaged in any gainful activity in the capacity of being the owner or director of a business association, cooperative or some other legal entity formed to engage in gainful employment, or is a member of the executive, representative or supervisory board of such entity;

*d)* 'travel document' shall mean a passport or another instrument or document that is recognized by the Republic of Hungary as proper means of identification for its holder for crossing the border of the Republic of Hungary and to certify his/her citizenship (stateless status);

*e)* 'Schengen State' shall mean any Member State of the European Union applying in full the Schengen acquis defined in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on the European Union, to the Treaty

establishing the European Community and to the Treaty establishing the European Atomic Energy Community (hereinafter referred to as "Schengen Protocol") and in Council Decision 1999/435/EC, as well as the measures adopted by the institutions of the European Union in these fields, and any other State that is in association with the implementation, application and development of the Schengen acquis by virtue of Article 6 of the Schengen Protocol within the meaning of the Agreement concluded with the Council of the European Union.

## Chapter II

### RIGHT OF ENTRY AND RESIDENCE

#### Right of Entry and Residence for a Period Not Exceeding Three Months

##### **Section 3**

(1) EEA nationals have the right to enter the territory of the Republic of Hungary with a valid travel document or an identity card.

(2) Third-country nationals accompanying an EEA national or a Hungarian citizen or joining an EEA national or a Hungarian citizen who reside in the territory of the Republic of Hungary, who are family members, have the right to enter the territory of the Republic of Hungary with a valid travel document and - unless otherwise prescribed by any directly applicable Community legislation or an international agreement - with a valid visa.

(3) Third-country nationals also have the right to enter the territory of the Republic of Hungary as family members with a valid travel document and - unless otherwise prescribed by any directly applicable Community legislation or an international agreement - a valid visa, who:

*a)* are dependants or for a period of at least one year have been members of the household of a Hungarian citizen, or where serious health grounds require the personal care of the family member by the Hungarian citizen; or

*b)* had been dependants or for a period of at least one year had been members of the household of an EEA national in the country from which they are arriving, or where serious health grounds require the personal care of the family member by the EEA national.

(4) The persons referred to in Subsections (2) and (3) may enter the territory of the Republic of Hungary without a visa, provided that they hold a document specified in this act certifying the right of residence, or a residence card issued by States who are parties to the Agreement on the European Economic Area to third-country national family members of EEA nationals.

(5) The provisions set out in Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (hereinafter referred to as "Schengen Borders Code") shall also apply to the entry.

(6) Prior to issuing the visa granting the right of residence for up to three months, the central visa authority shall - on request - consult with the central authorities of the Schengen States.

##### **Section 4**

(1) An entry visa may be granted to the family member who is a third-country national, and who satisfies the requirements set out in Article 5 (1) *a*), *c*) and *e*) of the Schengen Borders Code.

(2) Third-country national family members holding a valid visa shall have the right to multiple entry within a period of three months from the date of issue of the visa.

(3) The right of entry exercised upon a visa shall terminate when the requirements set out in Subsection (1) no longer exist.

## **Section 5**

EEA nationals holding a valid travel document or an identity card, and legally entered third-country national family members who are holding a valid travel document shall have the right of residence not exceeding three months from the date of entry for as long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the Republic of Hungary.

Right of Residence for a Period Exceeding Three Months

## **Section 6**

(1) EEA nationals shall have the right of residence for a period exceeding three months if:

*a*) the purpose of the residence is to engage in some form of gainful employment;

*b*) they have sufficient resources for themselves and their family members not to become an unreasonable burden on the social assistance system of the Republic of Hungary during their period of residence, and have comprehensive sickness insurance cover for health-care services as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family for such services as required by statutory provisions; or

*c*) they are enrolled at an educational establishment governed by the act on public education or the act on higher education, for the purpose of studying, including vocational training and adult education if offering an accredited curriculum, and they have sufficient resources for themselves and their family members not to become an unreasonable burden on the social assistance system of the Republic of Hungary during their period of residence, and have comprehensive sickness insurance cover for health-care services as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family members for such services as required by statutory provisions.

(2) The family members of EEA nationals who satisfy the requirements set out in Paragraph *a*) or *b*) of Subsection (1) shall have the right of residence.

(3) The spouse and dependent children of the EEA national who satisfies the requirements set out in Paragraph *c*) of Subsection (1) shall have the right of residence.

## **Section 7**

(1) The family members of a Hungarian citizen who is engaged in gainful employment shall have the

right of residence for a period exceeding three months.

(2) The right of residence for a period exceeding three months shall extend to the family member of a Hungarian citizen if:

*a)* he/she has sufficient resources or the Hungarian citizen has sufficient resources for such family member not to become an unreasonable burden on the social assistance system of the Republic of Hungary during their period of residence; and

*b)* they have comprehensive sickness insurance cover for health-care services as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family members for such services as required by statutory provisions.

(3) The right of residence for a period exceeding three months may be granted to a person who exercises parental custody of a minor child who is a Hungarian citizen in the absence of the requirements set out in Subsection (2).

## **Section 8**

(1) The competent authority may grant the right of residence to persons as family member, who:

*a)* are dependants or for a period of at least one year have been members of the household of a Hungarian citizen, or where serious health grounds require the personal care of the family member by the Hungarian citizen; or

*b)* had been dependants or for a period of at least one year had been members of the household of an EEA national - who satisfies the requirements set out in Subsection (1) of Section 6 - in the country from which they are arriving, or where serious health grounds require the personal care of the family member by the EEA national.

(2) The right of residence of the person referred to in Subsection (1) shall terminate when their family life is terminated.

(3) The person referred to in Subsection (1) shall have the same legal status as the family member during their period of lawful residence, with the exception that such right of residence may not be retained on these grounds:

*a)* in the event of the Hungarian citizen's death or if his/her citizenship is terminated;

*b)* in the event of the EEA national's death or if his/her right of residence is terminated, or if the EEA national no longer exercises the right of residence.

## **Section 9**

(1) An EEA national who is no longer engaged in any gainful employment as defined in Paragraph *c)* of Section 2 shall retain his/her right of residence obtained in accordance with Paragraph *a)* of Subsection (1) of Section 6 in the following circumstances:

*a)* he/she is temporarily unable to work as the result of an illness or accident requiring medical treatment;

*b)* he/she has registered as a job-seeker as prescribed in specific legislation following the termination of his/her gainful employment; or

*c)* he/she embarks on vocational training with a view to improve his/her professional aptitude, provided that he/she obtained the experience prescribed for vocational training during the previous gainful employment.

(2) The EEA nationals referred to in Paragraph *b)* of Subsection (1) shall retain their right of residence on the grounds of gainful employment for the period of granting the job-seeking assistance as specified in specific legislation.

## **Section 10**

(1) The right of residence referred to in Subsection (1) of Section 6 shall be retained, subject to the conditions defined therein, by the family member of an EEA national:

*a)* in the event of the EEA national's death or

*b)* if the EEA national no longer exercises the right of residence.

(2) The right of residence of an EEA national who is a family member of a Hungarian citizen shall be retained according to Subsection (1), in the case specified in Paragraph *a)* of Subsection (1).

(3) The right of residence of the spouse of an EEA national shall be retained according to Subsection (1), if the marriage was dissolved or annulled by the court.

(4) The right of residence of an EEA national shall be retained as family member if he/she is a family member of a Hungarian citizen or a family member of an EEA national who satisfies the conditions set out in Subsection (1) of Section 6.

## **Section 11**

(1) The right of residence of third-country national family members of EEA nationals and Hungarian citizens shall be retained as family member in the event of the death of the EEA national or Hungarian citizen if:

*a)* they are engaged in gainful employment;

*b)* they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence, and have comprehensive sickness insurance cover for health-care services as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family members for such services as required by statutory provisions; or

*c)* they exercise the right of residence as family members of a person who satisfies the requirements

set out in Paragraph *a)* or *b)*.

(2) The right of residence of a third-country national spouse shall be retained as family member in the event of divorce or annulment of marriage where:

*a)* prior to the non-appealable divorce or annulment of marriage the marriage has lasted at least two years, and the former spouse has resided at least one year in the Republic of Hungary during the marriage as a family member of the EEA national or Hungarian citizen;

*b)* by court order the former spouse has parental custody of the child of an EEA national who resides in the territory of the Republic of Hungary, or by agreement between the spouses has the right of access to a minor child;

*c)* this is warranted by particularly difficult circumstances, such as having been a victim of any willful criminal conduct by the spouse who is an EEA national or a Hungarian citizen while the marriage was subsisting, or if having the resident status prior to contracting marriage; or

*d)* by agreement between the spouses or by court order, the former spouse has the right of access to the minor child, provided that the court has ruled that such access must be in the territory of the Republic of Hungary.

(3) In the case defined in Subsection (2) the right of residence of a third-country national family member shall be subject to his/her compliance with the requirement set out in Paragraph *a)*, *b)* or *c)* of Subsection (1).

(4) By way of derogation from Subsections (1) and (3) the right of residence of a third-country national spouse of a Hungarian citizen shall be retained unconditionally if the spouse has parental custody of the child who was born during their marriage.

## **Section 12**

In the event of the EEA national's death or if his/her right of residence is terminated, or if the EEA national no longer exercises the right of residence the right of residence of his/her child shall be retained - irrespective of age - for the period of the pursuit of studies, if already and continuously engaged in such studies. The right of residence of the other parent who has parental custody of the child shall be retained until the completion of the studies of the minor child.

## **Section 13**

(1) The competent authority shall adopt a resolution to declare that the EEA national or family member no longer exercises his/her right of residence in the territory of the Republic of Hungary if such EEA national or family member has left the territory of the Republic of Hungary during a period of one year for over six months before obtaining the right of permanent residence.

(2) The provisions contained in Subsection (1) shall not apply:

*a)* if the reason for the absence is compliance with compulsory military service; or

*b)* if in connection with one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study, vocational training, or posting.

#### **Section 14**

(1) The right of residence of the EEA national or the family member shall terminate if he/she is:

*a)* no longer able to comply with the conditions for the exercise of such right; or

*b)* subject to entry ban.

(2) The right of residence of a third-country national family member shall terminate when the family life is terminated within six months from the time when the right of residence was obtained, provided that it was contracted solely for the purpose of obtaining the right of residence.

(3) The right of residence of a third-country national person who has parental custody of a child shall terminate when the right to exercise parental care is terminated, and if such person is not entitled to further residence on any other ground.

#### **Section 15**

(1) The competent authority shall adopt a resolution to declare the termination of the right of residence in the cases defined in Paragraph *a)* of Subsection (1) of Section 14 and in Subsections (2) and (3) of Section 14.

(2) The EEA national whose right of residence had been terminated shall leave the territory of the Republic of Hungary.

(3) The third-country national family member whose right of residence had been terminated shall leave the territory of the Republic of Hungary, except if granted the right to reside under specific other legislation.

(4) Compliance with the obligation to leave the territory of the country shall be carried out within three months from the operative date of the resolution.

Right of Permanent Residence

#### **Section 16**

(1) Permanent residence status shall be granted to:

*a)* EEA nationals who have resided legally and continuously within the territory of the Republic of Hungary for five years;

*b)* family members who have resided legally and continuously within the territory of the Republic of Hungary for five years;

*c)* persons who have retained the right of residence in connection with their relationship to an EEA

national or a Hungarian citizen, and who have resided legally and continuously within the territory of the Republic of Hungary for five years; and

*d)* the children - born in the territory of the Republic of Hungary - of a parent who has the right of permanent residence.

(2) Permanent residence status shall be granted to:

*a)* the family members of Hungarian citizens - except the spouse - who have resided continuously within the territory of the Republic of Hungary in the household of a Hungarian citizen for a period of at least one year;

*b)* the spouse of a Hungarian citizen if their marriage was contracted at least two years prior to the date when the application was submitted and they share the same household since.

(3) If the EEA national or the family member no longer exercises his/her right of residence in the Republic of Hungary, returning to the territory of the Republic of Hungary for a period of over three months, the duration required for the right of permanent residence shall recommence.

## **Section 17**

(1) In the absence of proof to the contrary, the first day of continuous residence in the territory of the Republic of Hungary shall be deemed the date of registration according to Section 21 or the date of submission of the application for the residence card described in Section 22.

(2) The following shall not be deemed as discontinuity of residence:

*a)* temporary absences from the Republic of Hungary not exceeding six months a year;

*b)* absences for compulsory military service;

*c)* one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study, vocational training, or posting.

(3) If the EEA national or the family member no longer exercises the right of residence within the territory of the Republic of Hungary, it shall be treated as discontinuity of residence.

## **Section 18**

(1) Permanent residence status shall be granted to an EEA national who is engaged in gainful employment in the territory of the Republic of Hungary before the termination of the five-year period of residence specified in Paragraph *a)* of Subsection (1) of Section 16 if:

*a)* having resided in the territory of the Republic of Hungary continuously for more than three years from the time of entry and at the time of termination of his/her gainful employment has reached the age laid down by law for entitlement to an old-age pension, or ceased his/her gainful employment in order to take early retirement, provided that such person has been working in the territory of the Republic of Hungary for at least the preceding twelve months before going into retirement with old-

age pension or before taking early retirement;

*b)* having resided in the territory of the Republic of Hungary for the purpose of gainful employment continuously for more than two years from the time of entry and stopped working due to incapacity to work as the result of an illness or accident requiring medical treatment;

*c)* his/her incapacity to work is the result of an accident at work or an occupational disease entitling the person concerned to a benefit specified in specific other legislation; or

*d)* after at least three years of continuous employment and residence in the territory of the Republic of Hungary, taking up gainful employment in another State that is a party to the Agreement on the European Economic Area, while retaining his/her place of residence in the territory of the Republic of Hungary.

(2) For the purposes of Subsection (1), periods of gainful employment shall also include the periods:

*a)* when the EEA national has registered as a job-seeker as prescribed in specific other legislation; or

*b)* when the EEA national did not work due to an illness or accident.

(3) If the spouse of the EEA national residing in Hungary for the purpose of gainful employment is a Hungarian citizen, the conditions as to length of residence and employment laid down in Paragraphs *a)* and *b)* of Subsection (1) shall not apply and the EEA national shall be granted the right of permanent residence if he/she is:

*a)* entitled to old-age pension or early retirement; or

*b)* no longer engaged in gainful employment due to incapacity to work as the result of an illness or accident requiring medical treatment.

(4) If the EEA national has acquired the right of permanent residence under Subsection (1), the family members holding the right of residence shall also have the right of permanent residence.

(5) If the EEA national who is engaged in gainful employment in the territory of the Republic of Hungary dies before acquiring permanent residence status under Subsection (1), the family members who are residing with him shall acquire the right of permanent residence on condition that:

*a)* the EEA national had, at the time of death, resided continuously on the territory of the Republic of Hungary for the previous two years; or

*b)* the EEA national's death resulted from an accident at work or an occupational disease.

## **Section 19**

(1) The right of permanent residence shall be terminated:

*a)* through absence for a period exceeding two consecutive years; or

*b)* in the case of having been subject to entry ban.

(2) In the case referred to in Paragraph *a*) of Subsection (1) the competent authority shall communicate the loss of the right of permanent residence by way of a resolution.

### Chapter III

## NOTIFICATION REQUIREMENTS AND DOCUMENTS CERTIFYING THE RIGHT OF RESIDENCE

### Visas Issued to Third-Country National Family Members

#### **Section 20**

(1) The validity period of the visa is six months - subject to the criteria set out in Subsection (2) - from the date of issue.

(2) The period of validity of the visa may not exceed the period of validity of the travel document in which it is issued.

(3) The proceedings for the issue of visas are exempt from charges.

(4) Upon receipt of a visa application the competent authority shall issue the visa or shall reject the application by way of a resolution.

(5) The visa issued to a third-country national family member shall be cancelled if he/she fails to comply with the requirements set out in Subsection (1) of Section 4 at the time of entry.

(6) The resolution adopted in connection with visa applications or for the cancellation of visas may not be appealed.

(7) A visa may be issued in expedited proceedings to a minor applicant if the verifiable purpose of entry is the minor's medical treatment.

(8) In visa proceedings the competent authority may hear the applicant if he/she is a minor with limited legal capacity or if incompetent. Such hearing shall be attended by the minor's legal representative or by a person of full age with legal capacity who has been duly authorized by the legal representative.

### Registration of the Residence of EEA Nationals for a Period Exceeding Three Months; Registration Certificates

#### **Section 21**

(1) EEA nationals shall register if wishing to exercise their right of residence for a period exceeding three months not later than the ninety-third day from the time of entry by communicating their personal data. At the time of registration EEA nationals shall produce or enclose the documents to certify compliance with the requirements prescribed in specific other legislation for residence.

(2) Upon evidencing compliance with the requirements prescribed in this Act the competent authority shall issue a certificate for the registration of residence (hereinafter referred to as "registration certificate") immediately.

(3) The registration certificate shall attest the registration and the date of the registration.

(4) The registration certificate shall be invalid if the right of residence has terminated.

#### Certificate of the Right of Residence of Third-Country National Family Member for a Period Exceeding Three Months

##### **Section 22**

(1) The right of residence of third-country national family members for a period exceeding three months shall be certified by a document issued by the competent authority (hereinafter referred to as "residence card") for which the application shall be submitted not later than the ninety-third day from the time of entry or from the date of initiation of the fact underlying the right of residence. The documents to certify compliance with the requirements prescribed in specific other legislation for residence shall be presented or enclosed with the application.

(2) The competent authority shall immediately issue a certificate of application for the residence card to verify the right of residence of the third-country national family member.

(3) Upon receipt of an application for a residence card the competent authority shall issue the residence card or shall reject the application by way of a resolution.

(4) In the proceedings for the issue of a residence card the competent authority shall adopt its decision within three months from the date of submission of the application.

(5) The residence card shall attest the right of residence of its holder during its period of validity.

##### **Section 23**

(1) The validity of the residence card issued to third-country national family members of EEA nationals shall be determined based upon the duration of residence of the EEA nationals who have the right of residence. The residence card shall be issued for a maximum period of five years.

(2) The validity period of the residence card issued to third-country national family members of Hungarian citizens shall be five years.

(3) The residence card shall be cancelled if its holder no longer exercises the right of residence in the territory of the Republic of Hungary, or if his/her right of residence is terminated.

#### Certificate of the Right of Permanent Residence of EEA nationals and Family Members

##### **Section 24**

(1) The right of permanent residence of EEA nationals and family members shall be certified by a document issued by the competent authority (hereinafter referred to as "permanent residence card").

(2) Upon receipt of an application for a permanent residence card the competent authority shall issue the permanent residence card or shall reject the application by way of a resolution.

(3) In the proceedings for the issue of a permanent residence card the competent authority shall adopt its decision within three months from the date of submission of the application.

## **Section 25**

(1) The third-country national family member shall submit the application for a permanent residence card before his/her residence card expires. Any applicant who submits the application after his/her residence card has expired, if unable to offer a plausible explanation therefore, shall be required to show that his/her right of permanent residence exists.

(2) The competent authority shall immediately issue a certificate of application for the permanent residence card to verify the right of residence of the third-country national family member.

## **Section 26**

The permanent residence card shall be invalid if the right of permanent residence has terminated.

### **Notification Requirements**

## **Section 27**

(1) EEA nationals and family members shall register their first residence in the territory of the Republic of Hungary during the proceedings for the issue of the registration certificate or residence card.

(2) The competent authority shall disclose to the body operating the register of personal data and residence records of citizens the personal identification data and residence of EEA nationals and family members they have on record, as well as the information contained on their registration certificate or residence card for the purpose of issuing the personal identification number and residence certificate.

(3) The competent authority shall notify the body operating the register of personal data and residence records of citizens concerning the invalidation of any registration certificate and residence card.

## **Section 28**

(1) The EEA nationals and the family members, whose travel document, identity card, or document certifying the right of residence is stolen, destroyed or lost, shall report it to the competent authority, as well as if any such document that was presumed lost and reported as such is found subsequently.

(2) The competent authority may issue a warrant to locate a document if the whereabouts of such document is unknown.

(3) Unless otherwise stipulated by international agreement, a third-country national family member whose travel document is lost, stolen, destroyed or has expired shall obtain a new travel document. Such third-country national family member shall be allowed to leave the country only in possession

of the new travel document and a certificate of the notification referred to in Subsection (1).

(4) EEA nationals shall be required to obtain a replacement travel document that was lost, stolen, destroyed or has expired, if they do not have a valid identity card.

### **Section 29**

EEA nationals and family members exercising the right of residence for a period exceeding three months shall report, by communicating the personal data:

*a)* the death of a family member in their household;

*b)* any change of name,

if the death or change of name occurred outside the territory of the Republic of Hungary.

### **Section 30**

EEA nationals and family members shall notify the competent authority when they no longer wish to exercise their right of residence.

### **Section 31**

(1) The family member shall notify any changes in his/her title of residence under the reasons specified in Sections 10 and 11, and shall provide proof for the right of further residence.

(2) The family member shall notify the termination of the family life underlying his/her right of residence according to Subsection (1) of Section 8.

### **Section 32**

(1) EEA nationals and family members shall present their documents certifying the right of residence when so requested by the authority vested with powers to check their identity and legality of residence.

(2) Apart from the documents specified in this Chapter, EEA nationals and family members may use other credible means to verify their right of residence.

## **Chapter IV**

restrictions on the RIGHT OF FREE MOVEMENT AND RESIDENCE on grounds of public policy, public security, public health

### **Section 33**

The right of free movement and residence of the persons to whom this Act applies may be restricted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, where such personal conduct represents a genuine, present and sufficiently serious threat affecting public policy, public and national security or public health.

### **Section 34**

(1) The return procedure and the expulsion may not be ordered and executed to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the person concerned is likely to be subjected to persecution on the grounds of his/her race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier of a country where there is substantial reason to believe that the returned or expelled person is likely to be subjected to torture or any other form of cruel, inhuman or degrading treatment or capital punishment (non-refoulement).

(2) The person concerned whose application for refugee status is pending may be ordered to return or expelled only if his/her application is refused by final and executable decision of the refugee authority.

### **Section 35**

The competent authority shall have powers to check compliance with the conditions for residence and with the requirements of notifications set out in this Act, if there is reason to believe that these conditions are not satisfied or that the person affected failed to comply with any requirement of notification.

Refusal of Entry and Return Procedure

### **Section 36**

(1) The authority carrying out border checks shall refuse the entry of the EEA national or the family member who does not fulfill all the entry conditions laid down in Section 3, or if having been subject to entry ban.

(2) The EEA national or the family member whose entry was refused shall be returned:

*a)* to the country from which he/she is arriving;

*b)* to the country that is liable to accept him/her;

*c)* to the country where his/her customary residence is located; or

*d)* to a third country prepared to accept him.

(3) The return procedure shall only be ordered by a substantiated resolution stating the precise reasons and it shall take effect immediately, save the exception set out in Subsection (4). The resolution for return may not be appealed.

(4) If entry is refused due to the absence of the conditions specified in Section 3 for entry, the authority carrying out border checks shall - upon request - provide the EEA national or the family member the opportunity to obtain the necessary documents within seventy-two hours from the time of the resolution for return, or to provide other means of evidence for his/her right of entry.

(5) The provisions of Subsections (1)-(4) shall also apply to any person who is able to show proof of his/her identity and for being an EEA national.

### **Section 37**

(1) With the exceptions set out in Subsection (2), any person whose entry was refused and is ordered to return must remain on the means of transport that is scheduled to depart, or to transfer onto another means of transport of the carrier that is liable to provide return transport for the person in question.

(2) The person ordered to return shall remain in the designated place located in the frontier zone of the Republic of Hungary for a maximum period of seventy-two hours, as instructed by the authority carrying out border checks, if:

*a)* the return procedure cannot be carried out in accordance with Subsection (1); or

*b)* the person ordered to return has submitted a petition according to Subsection (4) of Section 36.

(3) If the person ordered to return is able to obtain the necessary documents within seventy-two hours from the time of the resolution for return, or is able to provide other means of evidence for his/her right of entry, the resolution for assisted return shall be withdrawn.

(4) If the return procedure cannot be carried out within the time limit specified in Subsection (2), the competent authority shall have powers to expel the person in question following his/her entry.

### **Entry Ban**

### **Section 38**

(1) Entry ban shall be imposed on the grounds of:

*a)* international commitment; or

*b)* decision of the Council of the European Union.

(2) The competent authority shall - by way of a resolution - entry ban on any person whose whereabouts are unknown or who resides outside the territory of the Republic of Hungary.

(3) Where entry ban is imposed in conjunction with expulsion, it shall be contained in the competent authority's resolution ordering the expulsion.

(4) The data controller body referred to in this Act shall be notified of any entry ban measure imposed.

(5) Where expulsion is ordered by the court, the authority carrying out the expulsion shall provide for the registration of the relating entry ban.

### **Section 39**

(1) The duration of an entry ban imposed under Subsection (1) of Section 38 shall be determined by the imposing authority; it may not be longer than three years on the first instance, and may be extended by three additional years per occasion if the underlying circumstances still exist at the time of expiry of the entry ban.

(2) The entry ban shall be lifted if the underlying circumstances no longer exist.

Expulsion

### **Section 40**

(1) The competent authority may - at the request of the public health authority - expel the EEA national or the family member for public health reasons who suffers from any infectious disease or contagious parasitic disease as specified in specific other legislation and considered to constitute a threat to public health, and who refuses to submit to the appropriate compulsory medical treatment, with the exception if the infectious disease or contagious parasitic disease is contracted after three months following the date of entry.

(2) The competent authority may expel the EEA national or the family member who:

*a)* refuses to comply with an order to leave the territory of the Republic of Hungary within the prescribed time limit;

*b)* does not have the right of residence, and who has provided false or misleading information to the competent authority to verify his/her right of residence.

### **Section 41**

(1) An expulsion order shall also entail the entry ban on the person affected for a period of not less than one year and not more than five years.

(2) Where expulsion is ordered on grounds of public health, the public health authority shall communicate the proposed duration of the entry ban.

(3) The duration of the entry ban imposed in conjunction with expulsion under this Act shall commence as of the date when the expulsion is carried out.

(4) The reasons for the entry ban if imposed in conjunction with expulsion shall be reviewed after two years from the date when the expulsion is carried out.

(5) Entry ban may not be ordered if:

*a)* expulsion was ordered because the return procedure could not have been carried out for reasons

beyond the control of the person in question; or

*b)* the expulsion measure was taken against a minor.

#### **Section 42**

(1) An expulsion measure may not be ordered against an EEA national or family member who:

*a)* has resided in the territory of the Republic of Hungary for more than ten years; or

*b)* is a minor, except when the expulsion is necessary for the child's best interests.

(2) The data controller body referred to in this Act shall be notified of any expulsion measure imposed.

#### **Section 43**

An expulsion measure may not be imposed in connection with a criminal offense where the court sentence did not include expulsion.

#### **Section 44**

In the cases specified in Subsection (2) of Section 40 an expulsion measure may be imposed upon weighing the following criteria:

*a)* the nature and gravity of the crime committed;

*b)* the age and health condition of the person affected;

*c)* the family situation of the person in question, duration of the family relationship;

*d)* number of children of the person in question and the ages of the children, relations with the children including visitation rights;

*e)* if there is another State where there are no legal obstacles for exercising the family life, the difficulties which the family members are likely to face if they had no other choice but to take up residence in this country;

*f)* the financial situation of the person affected;

*g)* the duration of residence in Hungary of the person in question;

*h)* the social and cultural integration of the person in question, and the extent of his/her links with the country of origin.

## **Section 45**

(1) The EEA nationals and the family members whose entry ban was imposed independently may enter the territory of the Republic of Hungary only upon the consent of the ordering authority granted at the request of the court.

(2) The competent authority may authorize the entry of an EEA national or family member being the subject of an entry ban measure imposed in conjunction with expulsion for the purpose of appearing before the court in the process of review of the expulsion order, if the court has summoned or consented for the person affected to appear.

## **Section 46**

(1) Expulsion and entry ban orders may not be appealed.

(2) In the event of judicial review, the court shall adopt a decision within eight days of receipt of the petition. The EEA national or the family member affected shall be provided the opportunity to present his/her views in person in the hearing. A personal audience is not required if the EEA national or the family member affected cannot be reached at the address on record, or if they have moved to a place unknown.

(3) The court may overturn the resolution. The court's decision is final.

## **Section 47**

(1) The EEA national or the family member who is subject to entry ban imposed in conjunction with expulsion may apply within one year from the date the expulsion was carried out for the entry ban to be lifted on grounds of changes in his/her state of health or family status in connection with which he/she is required to enter the territory of the Republic of Hungary.

(2) The competent authority shall adopt a decision in connection with the aforesaid application within three months. If the competent authority cancels the entry ban measure it shall ensure that the entry ban is erased from the records.

## **Enforcement of Expulsion Orders**

## **Section 48**

(1) Where expulsion is ordered by the court or by the immigration authority, the competent authority shall take measures:

*a)* for the registration of expulsion together with the date and time when enforced, and also for the registration of the entry ban if applicable;

*b)* for the withdrawal of the document certifying the right of residence.

(2) If expulsion cannot be carried out for reasons referred to in Section 34, the same reasons shall

apply where expulsion is ordered by the court. In this case, expulsion shall be declared non-enforceable by the sentencing judge of the competent court.

(3) Where Subsection (2) applies, the person expelled may appeal directly to the sentencing judge to declare the expulsion non-enforceable. If the person expelled submits his/her request which was addressed to the sentencing judge to the immigration authority, the immigration authority shall forward it without undue delay to the competent sentencing judge with its opinion attached.

(4) The enforcement of expulsion shall be suspended for the duration of the proceeding of the sentencing judge.

#### **Section 49**

(1) If an expulsion ordered by the court - with the exception of imprisonment - is enforced more than two years after it was issued, the competent authority shall re-submit the case to the court ordering the expulsion to have the sentence reviewed.

(2) The court shall check as to whether any material change took place in the circumstances of the person expelled since the expulsion order was adopted, or as to whether the person concerned remains to constitute a serious and genuine threat to public policy or public security, and shall adopt a decision whether to retain or lift the expulsion order.

#### Deportation

#### **Section 50**

(1) An expulsion ordered by the court or under immigration laws shall be enforced - save where Section 34 applies - by way of transporting the person affected under official escort (hereinafter referred to as "deportation").

(2) Deportation shall be ordered in the resolution ordering the expulsion measure under immigration laws. If expulsion is ordered by the court, deportation shall be ordered by way of a resolution that may not be appealed, with the exception set out in Subsection (4).

(3) Suspension of the enforcement of a resolution ordering deportation may not be requested.

(4) The proposed means of deportation may be contested by the person affected.

(5) The deportation of a person shall be abandoned if:

*a)* the entry of the person deported to the country of destination is no longer an option; or

*b)* the person deported requires urgent medical attention.

(6) The competent authority may cooperate in the enforcement of expulsion ordered by a country that is required to apply the provisions of Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.

#### Detention Prior to Deportation

## **Section 51**

(1) In order to secure the enforcement of deportation, the competent authority shall have powers to detain the EEA national or the family member affected (hereinafter referred to as "detention prior to deportation"). Minors may not be placed under detention.

(2) The maximum duration of detention prior to deportation ordered by the competent authority is seventy-two hours, and it may be extended by the local court of jurisdiction by reference to the place of detention until the deportation is carried out, for maximum thirty days.

(3) Detention prior to deportation shall be ordered by way of a resolution, and shall be carried out when communicated. Detention shall be terminated immediately:

*a)* when the grounds therefor no longer exist,

*b)* when it becomes evident that the expulsion cannot be executed, or

*c)* after thirty days from the date when ordered.

## **Complaints**

## **Section 52**

(1) The EEA national or the family member may not apply for the suspension of proceedings for ordering detention prior to deportation. Resolutions ordering detention prior to deportation may not be appealed.

(2) A person placed under detention prior to deportation may lodge a complaint for the judicial review of the resolution ordering his/her detention within seventy-two hours from the time when ordered.

(3) The person placed under detention prior to deportation may lodge a complaint in the event of the immigration authority's failure to comply with its obligations set out under Sections 58-59.

(4) The complaint shall be adjudged by the local court of jurisdiction by reference to the place of detention.

(5) The court shall adopt a decision:

*a)* immediately for complaints filed under Subsection (2), or simultaneously with the extension of detention prior to deportation beyond the seventy-two-hour time limit;

*b)* within eight days for complaints filed under Subsection (3).

## **Section 53**

(1) According to the court's decision:

*a)* detention prior to deportation shall be terminated forthwith if declared unlawful;

b) any measure that has been omitted must be carried out, or any infringement must be remedied.

(2) The court's decision concerning the complaint shall also contain instructions - if requested by the competent authority - concerning the extension of detention prior to deportation beyond the seventy-two-hour time limit.

#### Extension of the Duration of Detention Prior to Deportation by Court Order

##### **Section 54**

(1) The authority ordering the detention prior to deportation shall file its request for an extension beyond the seventy-two-hour time limit at the local court within twenty-four hours from the time when ordered.

(2) The competent authority shall provide an explanation for the aforesaid request.

(3) The court shall adopt a decision forthwith concerning the motion for the extension of detention prior to deportation.

#### Common Provisions for Court Procedures

##### **Section 55**

(1) The court shall proceed with a single judge presiding in proceedings concerning complaints and for the extension of detention prior to deportation and shall conclude the case by way of a summons.

(2) If the judge has dismissed a complaint or a motion for extension, another request or motion may not be lodged on the same grounds.

##### **Section 56**

(1) The court shall appoint a procurator for the EEA national or the family member who does not understand the Hungarian language and is unable to contract the services of a legal representative on his/her own.

(2) In any case concerning the extension of detention prior to deportation beyond the seventy-two-hour time limit by the court, and in proceedings relating to complaints and further extension of detention the detainee shall be granted a personal hearing upon request.

(3) The hearing may be conducted at the place of detention and in the absence of the legal representative.

(4) The court may disregard the holding of a hearing if the person under detention prior to deportation is unable to attend due to being treated in an in-patient medical institution, or if the complaint or the motion does not originate with a party entitled to do so.

(5) The EEA national or the family member, and the immigration authority shall present their evidence in writing or verbally during the hearing. Parties shall be given the opportunity to study the evidence presented. If the EEA national or the family member is not present, or the proponent authority is not represented, but they have submitted their comments in advance in writing, they will

be introduced by the judge.

### **Section 57**

(1) The court's decision shall be delivered to the EEA national or the family member affected, and to the immigration authority. If the EEA national or the family member has a legal representative or a procurator, they shall be informed as well. The court decision shall be announced verbally and shall also be delivered in writing without delay.

(2) The court's decision is final.

(3) The court proceedings are exempt from charges.

Execution of Detention Prior to Deportation

### **Section 58**

(1) When admitted to the detention, the detained person shall be informed of his/her rights and obligations in his native language or another language he/she understands.

(2) If so requested by the detained person or if so prescribed by a bilateral consular agreement, the authority ordering detention prior to deportation shall promptly inform the Hungarian consular or diplomatic mission of the detained person concerning his/her detention and the extension of the duration of detention.

(3) As a provisional measure, the authority ordering detention prior to deportation shall immediately provide for the placement of dependent family members of the person apprehended, who have remained without supervision, and for the safeguarding of his/her valuables which have been left unattended.

### **Section 59**

(1) The competent authority shall carry out the detention prior to deportation in places designated for this purpose.

(2) Men placed under detention prior to deportation shall be housed in separate quarters from women.

(3) Persons placed under detention prior to deportation shall have the right to:

*a)* housing and nourishment, have the right to wear their own clothes or shall be provided with seasonal clothing if necessary, and emergency and basic medical care;

*b)* consult their legal representative or a member of the consular representation of their host country without any censorship, and to be visited by relatives under censorship;

*c)* send and receive packages and letters as specified in specific other legislation, and to receive visitors;

- d)* supplement their diet at their own expense;
- e)* practice their religion as specified in specific other legislation;
- f)* use the educational and cultural facilities of the institution;
- g)* make complaints and present any requests, protests or notifications of common interest;
- h)* spend at least one hour each day outdoors.

(4) Persons placed under detention prior to deportation shall have the obligation to:

- a)* abide by the house rules of the detention facility, and to obey the instructions received in that respect;
- b)* conduct themselves so as not to injure the rights of other detainees, and not to disturb them;
- c)* take part in cleaning the areas they use, without any compensation;
- d)* subject themselves to any examinations, to permit the searching of their clothing, and not obstruct the confiscation of any contrabands.

Facial Photograph and Fingerprint

#### **Section 60**

(1) With a view to enforce compliance with entry ban orders the authority ordering expulsion ordered under immigration laws or carrying out the expulsion ordered by the court shall take the facial photograph and fingerprint of the person expelled by court order, or by the competent authority in conjunction with the entry ban.

(2) The person referred to in Subsection (1) shall submit to have his/her facial photograph and fingerprint of his/her face taken.

Common Provisions in Connection with Restrictions on the Right of Residence

#### **Section 61**

Expulsion and entry ban orders shall specify:

- a)* the criteria weighted in accordance with Section 44;
- b)* the duration of the entry ban;
- c)* the country to which the person in question is expelled;
- d)* the deadline for leaving the country;
- e)* the place where the border is crossed;
- f)* the obligation for being photographed and fingerprinted in connection with the entry ban.

## **Section 62**

The costs associated with expulsion shall be borne by the person expelled or - if lacking the financial means necessary in connection with his/her family member - by the EEA national or the Hungarian citizen. Where the expulsion cannot be carried out because the person liable to bear the costs does not have the financial means necessary, the competent authority shall advance the costs of departure.

Warrant of Arrest

## **Section 63**

(1) In order to locate an EEA national or family member whose whereabouts are unknown, the competent authority may issue a warrant if the person in question:

*a)* has escaped from detention prior to deportation; or

*b)* has left the place of confinement designated under Subsection (2) of Section 37 to an unknown location.

(2) The warrant specified above shall be issued by way of a resolution, a copy of which shall be sent to the local police headquarters where the ordering authority is located.

(3) When the grounds for such a warrant cease to prevail, it shall be withdrawn forthwith by the ordering authority. A copy of the resolution of withdrawal shall be sent to the police headquarters defined in Subsection (2).

Restrictions on Exit

## **Section 64**

(1) EEA nationals and family members shall not be authorized to exit the territory of the Republic of Hungary if placed under pre-trial detention, if subject to house arrest or confined to quarters, if detained, placed under custody awaiting extradition, arrested for extradition, arrested for transfer, placed under provisional detention for transfer, or if placed under involuntary temporary treatment in a mental institution.

(2) The competent authority shall have powers to confiscate the travel documents of EEA nationals and family members by way of a resolution, if notified by the court conducting the criminal proceedings, the public prosecutor or the investigating authority for having ordered any of the restraining measures specified in Subsection (1). The aforesaid resolution may not be appealed.

(3) The travel document shall be confiscated for the duration of the restraining measure to which the EEA national or the family member is subjected according to Subsection (1).

Vested Responsibilities

## **Section 65**

(1) Natural and legal persons and unincorporated business associations authorized to operate some commercial form of passenger transport services (hereinafter referred to as "carrier") providing travel accommodations to third-country national family members by means of air, water or scheduled road transport shall be required to check the travel document and visa of their passengers before boarding for traveling to the Republic of Hungary or to another country through the territory of the Republic of Hungary to ensure that they have travel documents required for entry or for transit.

(2) The carrier transporting any third-country national family member by means of air, water, road or railway transport shall provide for the return of such family member to the country of departure or to the country which is liable to accept him/her:

*a)* if its passenger is refused admission to the Republic of Hungary for lacking any of the requirements specified by law;

*b)* if its passenger is refused admission to another country and is turned back to the Republic of Hungary; or

*c)* if the carrier to which the passenger was scheduled to be transferred refused to admit the passenger on its means of transport.

(3) If return cannot be promptly executed, the carrier in question shall bear all costs incurred in connection with the stay of the third-country national family member until his/her return.

(4) If the carrier disputes its obligation to return the person in question or to finance his/her stay, the competent authority shall adopt a formal resolution to order the carrier to comply.

(5) For any failure to comply with the obligation specified in Subsection (1) as set out in specific other legislation, a penalty for the protection of public policy shall be imposed upon the carrier in question.

(6) A carrier shall be exempted from the payment of penalty for the protection of public policy if able to verify of having proceeded with due care and diligence to ensure compliance with the obligation of control specified in Subsection (1).

## **Section 66**

(1) The authority carrying out border checks shall impose a penalty for the protection of public policy upon any air carrier who fails to supply information - in violation of the provisions set out in specific other legislation - on passengers it transports from outside of any Member State of the European Union or from outside of the territory of any Schengen State into the territory of the Republic of Hungary.

(2) The provisions laid down in Subsection (1) shall also apply where the information the air carrier has supplied is incomplete or untrue stemming from its failure to exercise due care and diligence.

## **Section 67**

(1) Employers shall be required to report within three workdays to the competent authority if the

employment of an EEA national or family member did not materialize, or if his/her employment is terminated.

(2) Any employer who fails to satisfy the obligation defined in Subsection (1) shall be subject to a penalty for the protection of public policy levied by the competent authority.

## **Section 68**

Carriers and employers may not request suspension of any proceeding aimed to determine their liability.

## Chapter V

### Common Provisions

## **Section 69**

The competent authority shall inform the parties affected - in the language the person in question understands - of their rights and obligations conferred in this Act, in particular their right to legal recourse, claim for compensation, and the means for enforcing their rights.

## **Section 70**

(1) In the proceedings launched upon request in accordance with this Act the client shall submit his/her request in person, and shall appear in person in front of the competent authority to collect his/her registration certificate. The competent authority may not require an applicant to appear in person who is unable to do so due to health reasons.

(2) If the request the client has submitted in the proceedings referred to in Subsection (1) is incomplete, the competent authority shall promptly make out a notice for requesting the missing information.

(3) Those proceedings in which the applicant is required to appear in person cannot be administered by way of electronic means.

## **Section 71**

(1) Subject to the exceptions set out in Subsections (2)-(4), the decisions adopted in proceedings falling within the scope of this Act shall be delivered by service of process.

(2) The following shall also be conveyed verbally to the client attending in his/her native language or in another language he/she understands:

*a)* resolutions;

*b)* the court's decision adopted in the judicial review of a resolution;

c) the court's decision adopted in the judicial review of a resolution ordering detention prior to deportation, and in connection with the extension of such detention.

(3) The time of conveyance shall be recorded in a protocol and it must be signed by the client.

(4) If the client's whereabouts are unknown, the resolution or summons shall be conveyed by service by publication, with the exception set out in Subsection (5). A procurator for service of process shall not be appointed.

(5) If entry ban is imposed under Subsection (1) of Section 38, the operative part of the resolution shall be displayed on a website specified in specific other legislation.

## **Section 72**

(1) Where no appeal is permitted under this Act, reopening the case and procedures in equity may not be requested.

(2) In the proceedings governed in this Act, the summons adopted in the first instance by the authority of the second instance may not be appealed.

## **Section 73**

(1) In proceedings for the issue of visas the costs of translation and interpreting services, and the fees of a sign language interpreter (hereinafter referred to as "costs of language services") shall be borne by the applicant.

(2) In addition to what is contained in Subsection (1), in the proceedings launched upon request under this Act the costs of delivery of the decision and the costs of language services shall be covered by the competent authority, whereas the costs of language services in other proceedings shall be borne by the applicant.

(3) In ex officio procedures under this Act, the costs of language services shall be borne by the competent authority.

## **Section 74**

In ex officio procedures under this Act, in cases of emergency the competent authority may use an interpreter in the absence of a summit of appointment subject to a contract between the authority and the interpreter.

Chapter VI

data PROCESSING

## **Section 75**

(1) In order to monitor the legality of the right of residence the immigration authority shall keep the following sub-registers - within the central immigration register - on the personal data of EEA nationals and family members:

*a)* register of EEA nationals holding registration certificates;

*b)* register of holders of residence cards;

*c)* register of holders of permanent residence cards;

*d)* register of EEA nationals and family members subject to expulsion or entry ban;

*e)* register of EEA nationals and family members subject to restriction of personal liberty;

*f)* register EEA nationals and family members whose travel document or identity card was reported lost.

(2) The body operating the central immigration register shall be authorized to process the personal identification data of persons holding registration certificates or residence cards for reasons of contact with the body operating the register of personal identification number and residence records of citizens and for disclosure to law enforcement authorities.

## **Section 76**

The sub-registers relating to the documents certifying the right of residence, referred to in Paragraphs *a)-c)* of Subsection (1) of Section 75, contain the following data of the data subjects relating to their documents certifying the right of residence:

*a)* birth name and married name, personal identification number and the address shown on the registration certificate;

*b)* the time of registration, and the time of submission of the application for the residence card;

*c)* the data from the travel document or identity card;

*d)* the number, type and validity of the document certifying registration or the right of residence, and the duration of any extension;

*e)* the date and reason for the withdrawal of the document certifying registration or the right of residence, where applicable;

*f)* the date of turning in the document certifying registration of the right of residence, where applicable;

*g)* an indication if the document certifying registration or the right of residence had been exchanged, replaced, lost or destroyed, or if returned when found;

*h)* the EEA national's marital status, if it concerns the right of residence of another person.

## **Section 77**

Data may be processed in the sub-registers maintained on documents certifying the right of residence for five years following termination of the right of residence or the date of registered departure of the data subject.

## **Section 78**

(1) The register of persons subject to expulsion or entry ban contains the following information:

*a)* the EEA national's and the family members' name, data and place of birth, mother's name, nationality, personal identification number;

*b)* the legal grounds and the duration of expulsion or entry ban;

*c)* the date and time when the measure was carried out;

*d)* the name of the ordering authority;

*e)* the date and place of exit;

*f)* the facial photograph and fingerprint of the EEA national and his/her family members.

(2) Upon request, the person who is subject to entry ban shall be informed of his/her data kept on record. If justified on the grounds of national security or criminal investigation, the immigration authority may refuse to disclose such information subject to a reasoned decision.

(3) The immigration authority shall have the right to process data specified in Subsection (1) - with the exception set out in Subsection (4) - for five years after the expulsion or entry ban is lifted.

(4) The competent authority shall have the right to process the data specified in Paragraph *f)* of Subsection (1) for as long as the entry ban is in force.

## **Section 79**

(1) The register of foreign nationals under some form of confinement and those affected by some form of emergency (death, accident), and which is maintained for the purpose of compliance with the obligation of notification specified in international agreements with a view to ensure consular protection, contains the following information:

*a)* the EEA national's and the family member's name, date and place of birth, mother's name, nationality, and personal identification code;

*b)* the particulars of the criminal proceedings (the legal definition and description of the crime, the date when committed, the date when the court's decision was delivered), case number;

c) the particulars and the case number of the emergency;

d) the name of the acting authority;

e) the date and time when the measure was carried out.

(2) The data specified in Subsection (1) may be processed for a period of three years following the discharge of the notification obligation or the termination of the confinement.

## **Section 80**

(1) The register of EEA nationals and family members whose travel document or identity card was reported lost contains the following information:

a) the EEA national's and the family member's name, date and place of birth, mother's name, nationality, and personal identification code;

b) type and number of the travel document that was reported lost;

c) the date and time when reported;

d) name of the authority to which the report was filed;

e) the type, number and validity of the document certifying the right of residence, and the name of the issuing authority;

f) the type, number and validity of the new travel document or identity card.

(2) The immigration authority shall have the right to process the data relating to the loss of the travel document until it is found, or for a period of five years from the date when reported lost.

## **Section 81**

(1) From the sub-registers specified in Subsection (1) of Section 75 information may be released, subject to the exception set out in Subsection (2), with the legal basis and purpose indicated, to the law enforcement and criminal investigation agencies, the national security services, the tax authority, the authority handling citizenship-related duties, the refugee authority and to the employment and labor authority to the extent necessary to discharge their duties conferred upon them by law, and from the sub-registers specified in Paragraphs a)-c) of Subsection (1) of Section 75 to the body operating the register of personal data and address records of citizens to the extent necessary to discharge its statutory obligation relating to keeping records on the personal data and addresses of EEA nationals and their family members.

(2) The employment and labor authority may request information from the sub-registers specified in Paragraphs a)-c) of Subsection (1) of Section 75 only with respect to the persons to whom the treatment afforded by the Republic of Hungary is different from what is required under Articles 1-6 of Council Regulation (EEC) No. 1612/68 on the freedom of movement for workers within the Community.

(3) Data may be supplied in accordance with an international agreement or any directly applicable Community legislation to the agency defined therein.

(4) The data processed on the basis of this Act may be used for statistical purposes and such data may be supplied by the body operating the central immigration register for statistical purposes, in a manner so as not to allow the identification of specific individuals. Data may be released from sub-registers specified in Paragraphs *a)*-*c)* of Subsection (1) of Section 75 for the Central Statistics Office for statistical purposes in a manner allowing for the identification of individuals.

## **Section 82**

(1) The competent authority may request data - subject to the exception set out in Subsection (2) - for the purpose of monitoring the right of residence of EEA nationals and their family members from:

*a)* the register of personal data and address records of citizens;

*b)* the register of convicted criminals;

*c)* the watch list;

*d)* the register of persons with work permits;

*e)* the register of companies;

*f)* the register of licensed private entrepreneurs;

*g)* the real estate register.

(2) The competent authority may request data from the register referred to in Paragraph *d)* of Subsection (1) only with respect to the EEA nationals and the family members to whom the treatment afforded by the Republic of Hungary is different from what is required under Articles 1-6 of Council Regulation (EEC) No. 1612/68 on the freedom of movement for workers within the Community.

## **Section 83**

(1) The body operating the register of personal data and address records of citizens shall notify the central data administration agency concerning:

*a)* the death of an EEA national or family member in Hungary, or their change of name;

*b)* the termination of registered residence of an EEA national or family member;

*c)* the termination of processing of the data of an EEA national or family member.

(2) The competent authority shall inform the central body operating the register of personal data and residence records of citizens concerning:

- a)* the termination of the right of residence or the date of registered departure of a data subject;
- b)* the death of an EEA national or family member abroad, or their change of name.

#### **Section 84**

(1) Any disclosure of data from the sub-registers defined in Subsection (1) of Section 75 shall be recorded in the data transfer records.

(2) The data transfer records shall be maintained by the operator of the register.

#### **Section 85**

(1) The data transfer records shall indicate:

*a)* the EEA national's and the family member's name, date and place of birth, mother's name, nationality, and personal identification code;

*b)* the data processor's identification code;

*c)* the date and time of transfer;

*d)* the purpose and legal basis for disclosure and the data disclosed;

*e)* the name of the requesting entity.

(2) Unless otherwise prescribed by law, the data subject shall have the right to consult the data transfer records to monitor any movement of his/her data.

(3) The data transfer records shall be made available for inspection by the competent authority and the data protection ombudsman.

(4) The data transfer records shall be retained for five years following the date of transfer of data.

### Chapter VII

#### CLOSING PROVISIONS

##### Authorizations

#### **Section 86**

(1) The Government is hereby authorized to decree:

*a)* the authorities vested with competence in cases relating to the residence of EEA nationals and family members, their jurisdiction and the rules for their proceedings;

*b)* the detailed regulations for the procedures relating to the registration of residence and issue of residence cards, and for the processing of the data of EEA nationals and the family members on the basis of this Act;

*c)* the duties, competence and jurisdiction of visa authorities, the detailed regulations for the issue of visas, and the types of visas;

*d)* the amount limits of the financial penalties to be imposed on carriers and employers under this Act, and the procedure for levying them;

*e)* the regulations concerning the designation of compulsory places of confinement;

*f)* the rules concerning the provisions and support granted to persons placed under detention prior to deportation and those placed under compulsory confinement;

*g)* the rules of conduct for persons placed under compulsory confinement;

*h)* the detailed public health regulations pertaining to the residence of EEA nationals and the family members in Hungary, and the financial requirements for health care services and the means of certification.

(2) The minister in charge of immigration is hereby authorized to decree:

*a)* the validity and form of the documents specified in this Act, including the information they are to contain;

*b)* the regulations for the enforcement of detention prior to deportation;

*c)* the regulations for carrying out deportation measures; and

*d)* the data processing body of the central immigration register.

(3) The minister in charge of immigration is hereby authorized to decree, in agreement with the minister in charge of taxation, the fees for the proceedings conducted under this Act.

(4) The minister in charge of the healthcare system is hereby authorized to decree, in agreement with the minister in charge of immigration, the types of diseases which are potentially dangerous to public health.

(5) The minister in charge of foreign policies is hereby authorized to decree, in agreement with the minister in charge of immigration, the detailed regulations concerning the right of residence of persons enjoying diplomatic or other type of immunity.

(6) The minister in charge of immigration, the minister in charge of foreign policies, and the minister in charge of supervising the national security services are hereby authorized to decree the cases where the central visa authority is required to consult with the central authorities of other Schengen States requesting consultation prior to granting consent for the issue of a visa for a validity period not exceeding three months for reasons of public security and national security.

Entry into Force

**Section 87**

(1) This Act - subject to the exception set out in Subsection (2) - shall enter into force on 1 July 2007.

(2) Subsection (6) of Section 3 and Subsection (6) of Section 86 of this Act shall enter into force on the day determined in the Council Decision for authorizing the Republic of Hungary to apply the Schengen acquis in full.

(3) On the day defined by the Council Decision giving authorization to the Republic of Hungary for the full-fledged application of the Schengen acquis, the text "in Paragraphs a), c) and e)" in Subsection (1) of Section 4 of this Act shall be replaced by the text "in Paragraph a) and Paragraphs c)-e)".

#### Transitional Provisions

#### **Section 88**

(1) EEA nationals shall enjoy the rights granted to holders of registration certificates inside the validity periods of their long-term visa, residence permit or EEA residence permit issued before the time of this Act entering into force, until their expiry.

(2) The long-term visa, residence permit, immigration permit and authority to reside issued to a family member before the time of this Act entering into force shall afford the right of residence consistent with the above-specified permits and authorizations for as long as they remain valid.

(3) At the request of an EEA national or the family member with a long-term visa or a residence permit, the competent authority - without prejudice to the rights obtained under Subsections (1) and (2) - shall issue a document certifying the right of residence as defined in this Act under the validity period of the permit in question.

(4) At the request of an EEA national or the family members holding an authority to reside or an immigration permit a document certifying right of permanent residence shall be issued irrespective of whether or not the relevant requirements are satisfied.

(5) The applications of EEA nationals and the family members submitted before the time of this Act entering into force for residence permits or for authority to reside pending in the first instance shall be adjudged according to the provisions of this Act.

(6) The provisions of this Act shall apply to the detention of EEA nationals and the family members ordered before the time of this Act entering into force under Act XXXIX of 2001 on the Entry and Stay of Foreign Nationals (hereinafter referred to as "ESFN"). If thirty days have elapsed from the date when ordered, detention shall be terminated on the day of this Act entering into force.

(7) The detention of the nationals of the Republic of Bulgaria and Romania, and their family members who are third-country nationals ordered under the ESFN shall be terminated on the day of this Act entering into force, if thirty days have elapsed from the date when ordered.

(8) Simultaneously with this Act entering into force, the following shall be abolished:

*a)* any expulsion and entry ban measure imposed by the immigration authority against nationals of the Republic of Bulgaria and Romania, and their family members who are third-country nationals under the ESFN; and

*b)* any entry ban measure imposed by the immigration authority against nationals of the Republic of

Bulgaria and Romania, and their family members who are third-country nationals under Paragraphs *a)*-*c)* of Subsection (1) of Section 32 of the ESFN.

Approximation Clause

### **Section 129**

(1) This Act contains regulations that may be approximated with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC together with the decrees adopted for the implementation of this Act.

(2) This Act lays down regulations for the implementation of Articles 5 and 13 of the Schengen Borders Code.

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<sup>[1]</sup> Adopted by Parliament on 18 December 2006