



EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and
Raphaële Magoni (eds.)

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András Kováts, Pál Nyíri and Judit Tóth
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The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

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Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

1.1. Immigration control vs. management and assessment of migration needs

In Hungary, policy debates on migration are usually phrased in terms of *idegenrendészet*, literally "alien policing". The terms *vándorlás*, *migráció*, or *bevándorlás* ("migration" or "immigration") are often used in the discussion of abstract, international issues, but not of Hungarian policy. This telling fact accurately reflects the contents of the debate.

Migration has not been debated separately, independently from other policy issues. There is no standing forum where opinions regarding migration can be discussed. Generally speaking, neither the political, professional, nor the general public sees migration as a core problem of present-day Hungarian society. Therefore, policy debates – if any – remain isolated, short-term, usually ad hoc, related to a legislative proposal or to some event eliciting public attention such as a large "catch" of "illegal immigrants", the suicide of a detained asylum seeker, or a complaint against perceived labour conflicts. In this section, we focus mainly on the areas covered by the three draft Commission Directives: long-term residence, employment, and the migration of family members of resident foreigners, while mentioning other topics of debates if they deserve attention.

Policy debates related to migration issues in Hungary have always had two characteristics:

- a. The status of ethnic Hungarians living in countries adjacent to Hungary has been part of the discussion on immigration legislation. The key question pertaining to this issue has been, to what extent can and should an "alien policing" system be the tool of transnational ethnic politics, especially when these have clearly conflicting interests? Hungary's governments between 1990 and 2002 maintained that they aimed at encouraging ethnic Hungarians to remain in the lands of their birth, and initiated no active immigration or resettlement policy of co-ethnics akin to Germany's. Unlike the German case, Hungary's policy toward co-ethnics abroad has, thus, developed not as immigration policy, but as a policy of shaping national identity (Tóth 2000, Hegyesi and Melegh 2002). The Hungarian immigration and naturalisation system has often been criticised for being indifferent towards ethnic Hungarians who "return to their motherland" despite certain benefits for ethnic Hungarians and persons of Hungarian ancestry in the immigration and naturalisation process. The so-called Status Law, ostensibly intended to be a set of legal instruments to support ethnic Hungarians in neighbouring countries, stirred domestic political debates in 2001 and 2002, resulting among others in a set of proposed measures regulating seasonal employment in Hungary.
- b. Migration policy debates have included asylum issues as a main concern, usually strongly associated with the issue of "illegal migration". The mixing of the terms of these two issues is related to the fact that there is no distinct agency dealing with migration issues in general. The Office of Immigration and Nationality (OIN)² of the Ministry of the Interior is a bureaucratic conglomerate responsible for "alien policing", asylum and naturalisation affairs. Similarly, NGOs dealing with migration are largely dependent on international funding, where asylum- and refugee-related funding sources are rather over-represented. Furthermore, the political and public discourse - shaped by the press and the official communication of the Ministry of the Interior (including the OIN, Border Guard, Police) - often does not differentiate between the terms "illegal aliens", "asylum seekers", "refugees" and "migrants".

² Official mistranslation of "Immigration and Naturalisation Office".

In recent years, policy debates on migration have been related to three major topics:

- legislative and institutional changes due to/required by the upcoming EU accession;
- the “Status Law” and its implementation;
- the necessity to formulate a comprehensive national migration policy.

Legislative and institutional changes due to/required by the upcoming EU accession

In mid-2001, the Parliament passed a set of legislative proposals (the so-called alien policing law package) aimed at amending and/or replacing four laws related to migration, asylum, naturalisation, border control, and entry and residence in Hungary. According to the government’s argument, the changes were required by the preparation for accession to the EU. This position was largely criticised by NGOs and independent experts and scholars and, in part, by parliamentary opposition. Critics said the amendment was untimely and, therefore, useless, as the EU *acquis* on asylum and immigration was still being formulated and no one could foretell its content and nature at the time of its coming into effect in 2004 - the same year Hungary was scheduled to join (Nagy 2001).

The amendments restricted the conditions of entry and residence in Hungary with the justification of combating “illegal immigration” and immigrant criminality³. They created the legal category of “permanent resident” (*letelepedett*), replacing the former “immigrant” (*bevándorolt*) status. Permanent residents enjoy fewer rights and entitlements than immigrants, and the status can be withdrawn if the original conditions based on which it was issued no longer exist. The objective is to fight against illegal immigration and criminal activities of foreigners, as is required by EU member states.

Less than a year after the new laws came into effect on 1 January 2002, the Government was preparing a new amendment of the laws on asylum and on the entry and residence of foreigners. Once again, EU accession and the fight against crime and illegal immigration were given as a justification (see e.g. *Népszabadság* 2003).

The 2001 amendments centralised the migration and asylum system in the hands of a single office, the OIN. Contrary to official claims of decentralisation and introduction of civil control as responsibilities for immigration control are taken away from the Border Guard, immigration policy is becoming increasingly centralised and restrictive, focusing mostly on migration control and policing measures (Kőszeg 2002).

The “Status Law” and its implementation

See Section 4 below.

³ Statements by Károly Konrád, Deputy State Secretary of the Ministry of Interior, in Parliament, on 25 September 2001, and by Sándor Lezsák MP, Head of the Hungarian Democratic Forum faction, during the debate on the Alien Policing Law Package, 18 April 2001. [http:// www.parlament.hu/ naplo36/index.htm](http://www.parlament.hu/naplo36/index.htm)

The need for a comprehensive national migration policy

For the last few years, there has been an ongoing discussion, initiated and mostly dominated by a group of scholars and policy activists centred around the Centre of Migration and Refugee Studies and Menedék – Hungarian Association for Migrants, on the necessity of formulating and adopting a comprehensive national migration policy that can be the starting point of a thorough legislative and institutional reform of the immigration and asylum system. The debate started in late 1997, when the Ministry of Interior commissioned the Research Group on International Migration of the Hungarian Academy of Sciences to draft a proposal for a migration policy paper (one often cited antecedent of this study was Boldizsár Nagy's paper on five possible principles for a migration policy [Nagy 1997].) The study was carried out by a research team of eleven experts, responsible for the different fields covered by the policy proposal, and a set of recommendations with some expert opinions as appendices was submitted to the Ministry (Sik and Tóth 1999:9-79). The recommendations suggested that some immigration should be encouraged; discussed the need to link immigration policy to the needs of the labour market; and suggested a way of organising the institutions of immigration management which would safeguard the human rights of migrants as well as national security. They also stressed the need for healthcare, and social and child welfare services for migrants. They acknowledged the need for a special policy towards the immigration of ethnic Hungarians and suggested that emigration from Hungary and the repatriation of emigrants be included in the general framework of immigration policy. Finally, they stressed the need to develop durable solutions to the problem of forced migrants.

The Ministry of the Interior never officially responded to the recommendations. It publicly mentioned the proposal as background material for future political decisions, but never in fact utilised it. The Research Group on International Migration published the recommendations in Hungarian (Sik and Tóth 1999:9-79) and English (Nyíri et al. 2001:253-323) with the aim of generating public debate, but with no success so far. Nonetheless, the idea of a migration policy finally appeared to gain political and institutional support in 2002, as reflected in three separate policy initiatives.

- a. The OIN decided to launch, in March 2003, a project targeting the formulation of a policy for the integration of refugees and other migrants, funded by the Dutch Government and implemented by a Dutch consulting agency in co-operation with the Welfare and Logistics Department of the OIN's Asylum Division (the fact that the OIN designated its asylum branch to deal with immigrant integration reflects the continuing lack of recognition of immigration as a social issue, but possibly also points toward increasing awareness of that issue within the agency.) The project aims at drafting policy and legislative texts based on discussions with experts and experiences of small-scale pilot projects implemented within its framework. The brief of the project⁴ emphasises learning from Western (Dutch) experiences and the involvement of NGOs in the process.
- b. As part of a broad research scheme supported by a government grant, the Institute for Population Research of the Central Statistical Office proposed the drafting of a migration policy⁵ independent from short-term electoral and party preferences and sensitive to the national interest. The authors see migration policy as a possible tool for positively influencing unfavourable demographic trends and argue that decisions concerning international migration

⁴ Tender MAT02/HU/9/3, Radar, Amsterdam, November 2002.

⁵ Grant NKFP-2002 – 5/0084, pp. 63-65.

should not remain determined by the executive branch's momentary capacity and "mood," putative but unverified public opinion, and momentary migration pressure.

- c. The third initiative is a continuation of the earlier migration policy proposal drafted by the Research Group on International Migration, since renamed the Centre for Migration and Refugee Studies. Researchers of the Centre have been invited to join an expert group on Justice and Home Affairs of the Integration and Development Working Group, operated within the framework of the National Development Plan launched by the Government in September 2002. The Working Group's task is to help define and communicate national interests vis-à-vis EU policy prior to and following accession. Within the framework of the Integration and Development Working Group, a revised and updated version of the migration policy proposal will be prepared. Key issues to be addressed are the room to manoeuvre within the wider political context of being an EU member state and decentralisation and professionalisation of migration management, shifting the emphasis away from control and restriction.

1.2. Different terms for different types of migrants

As discussed above, most discussions consider migration primarily as an issue of border and criminal security. In the context of seasonal and unskilled work, migration is usually mentioned as a threat risk for the domestic labour force. Apart from some controversial ad-libbing by former Prime Minister on the positive effects of the Status Law on labour immigration, the only framework in which immigration facilitation has been mentioned has been the Research Group on International Migration's policy proposal. It recommended that (1) entrepreneurs who invest in under-developed regions and (2) students and R&D personnel should be encouraged to immigrate.

1.3. Immigration and discussions about social and economic policies for the future

Migration has been discussed in the context of demographic change, most notably in the publications of the Institute for Population Research of the Central Statistical Office (see Section 4 below), but not in the context of social and economic development. The most recent strategic government document dealing with social and economic issues, the National Development Plan, mentions migration as a positive demographic phenomenon: "International immigration shows a growing importance. In the 1990s, approximately 14-16 thousand people immigrated into Hungary, whereas emigration was an order of magnitude lower. The positive balance of international migration considerably reduced the loss of population"⁶. However, the Plan does not discuss any implications of immigration for its strategy of national development.

⁶ Nemzeti Fejlesztési Terv (National Development Plan) 2002. p. 17.

1.4. Immigration in relation to the discussion on demographic trends and labour market strategy

Migration as an instrument of influence of population trends

Hungary's population has been declining since 1981. In 2000, the population decline was -33 per thousand, and the proportion of people over 65 within the population was 15%, with a fertility rate of 1.3 (Hablicsek and Tóth 2001). Judging by the decline and ageing which result from low fertility rates, Hungary displays a similar demographic pattern to the rest of Europe. Although politicians, particularly those of nationalistic parties, have been discussing this pattern with increasing concern, the idea of compensating it by means of immigration did not enter public or political discussions until recently. Immigration continues to be ignored in official labour market statistics. In some sectors – such as agriculture and construction – migrant labour, chiefly unauthorised, are believed to play an important role (Jungbert 1997:194), if not such a determining one as in Western European countries or the Czech Republic. However, this phenomenon is not widely discussed. The sustainability of the pension and healthcare systems, which already include a greater contribution from employers and employees than in Western Europe, in the context of a declining active population, is even less frequently regarded as a problem.

The idea of using immigration to reverse “negative” population trends first appeared in a study by Rudolf Andorka in 1990, but demographers did not begin to take into account immigration in the prediction of population patterns until the mid-nineties (Hablicsek and Tóth 1996, 2001; Hablicsek 1998). The authors of these studies pointed to historical precedents of immigration repopulating regions of Hungary and identified “replacement” levels of immigration, concluding that “Hungary has to make efforts to intensify immigration to levels substantially higher than that of today” (Hablicsek and Tóth 2001). The scenario favoured by the authors involved a combination of an annual net immigration of 20,000 with significantly increasing fertility and average life expectancy.

In a separate and less differentiated debate in the journal *Magyar Szemle*, initiated in 1995, Ferenc A. Szabó, professor at the Defence Studies University, argued more boldly that Hungary should replenish its population by “absorbing” ethnic Hungarians from neighbouring countries in a similar way as Germany and Israel encourage the “return” of the Diaspora. In addition to demographic trends, Szabó also mentioned the sustainability of the social security system in his argument, which was rejected by the President of the Central Statistics Office, György Vukovich, a demographer. Vukovich argued that this was an unacceptable way of improving population trends and that, on the contrary, ethnic Hungarians already in Hungary should be encouraged to return to their native countries (Szabó 1997).

The Director-General of the Refugee and Migration Office (which, contrary to its name, was only in charge of refugees) responded to these debates, saying that Hungary should decide whether it indeed wanted to use migration as a tool for addressing the “alarming demographic deficit” and whether it needed foreign labour (Jungbert 1997). However, no balanced debate ensued. The issue received political and public attention with hysterical overtones when Prime Minister Viktor Orbán asked demographer László Cseh-Szombathy to prepare a report on population trends. The report, released in 2000, contained an analysis and policy recommendations on migration prepared by Hablicsek and Tóth. It came in the wake of the United Nations study on “replacement migration” in Europe, which suggested that Europe would have to absorb 159 million immigrants if it was to maintain sustainable demographic trends.

The release of the report and the Prime Minister's subsequent comment that Hungary should be able to draw on a pool of hundreds of thousands or even 1.5 million potential ethnic Hungarian workers from neighbouring countries⁷ was the first instance in which migration as an option of population aroused significant public debate. A staff in the Prime Minister's Office elaborated that Hungary was "in the fortunate situation of being able to ensure 'replacement' from resources within the nation in the broad sense, should there be a need to do so" (Borók 2001:379), but described this as a long-term option. Both the speaker of the nationalistic Smallholders' Party, a partner in the government coalition, and the President of the opposition chauvinistic Party of Hungarian Truth and Life rejected immigration as a way of "improving" population trends ("Importpolgárok," *Heti Világgazdaság*, 18 March 2000, 99-101).

Following the report, the government established a National Population Committee to study ways to confirm what it saw as negative population trends. The committee, which had a subcommittee on migration headed by Pál Péter Tóth, received the mandate to develop a population strategy by the end of the year, but did not complete its mission.

The Medgyessy administration, in office since 2002, decided to keep the Population Committee. However, the secretary of the committee, Ágnes Vargha, removed the issue of "replacement migration" from the policy agenda as incompatible with the political priorities of the new government. Instead, she said the committee was planning to commission studies of the - mainly demographic - impact of ethnic Hungarian's migration to Hungary in their areas of origin in the neighbouring countries.

Migration as instrument of labour supply

"Hungarian legislation is based on the assumption that migration pressure on the country is high and that it is determined by the *demand* side (...) A negative selection is, therefore, needed to restrict this migration pressure, while a positive quota system (...) is necessary to attract desirable labour" (Hárs 1997:78). Quotas on foreign workers by nationality are regulated in bilateral treaties. For example, a 2000 treaty with Romania sets a quota for 8,000 Romanian seasonal labourers each year, for periods not exceeding six months. A treaty with Slovakia, signed in the same year, sets a yearly quota of 800 Slovak workers plus 200 seasonal labourers (see Chapter 3 for details).

Ethnic Hungarians from neighbouring countries (except those from Austria, due to objections by the EU which does not allow discrimination between citizens of member states) also enjoy limited privileges within the quota. According to the so-called "Status Law" (Law LXII of 2001), ethnic Hungarians can apply for "Hungarian National Identity Cards". Holders of such cards are entitled to apply for work permits in Hungary for three months each year under a simplified procedure, which means that Employment Offices do not need to certify the availability of qualified Hungarian citizens for the jobs they are applying for. Despite the fact that the supposedly easier route of labour migration is the most important benefit of the "Status Law", the Orbán government, which tabled it, played down the potential increase in migration that it could result in. Government speakers, on the one hand, stressed that the implementation of the law should help solve labour shortages and encourage foreigners currently illegally employed in Hungary to legalise their employment, but on the other hand, argued that simplified access to the Hungarian labour market

⁷ This statement was interpreted by the Hungarian press as an encouragement to immigration, but the Prime Minister later clarified that he had in mind Hungarians abroad as an economic resource for the "mother country" (Melegh 2002).

will reduce ethnic Hungarians' desire to move to Hungary⁸. On the government side, the chairman of the Foreign Relations Committee further opined that the country might increasingly need the labour of ethnic Hungarian migrants in the future⁹. The chauvinistic opposition Hungarian Life and Justice Party supported the law, arguing that ethnic Hungarians should be allowed to work in Hungary regardless of the consequences for the domestic labour market¹⁰.

The opposition's reaction was equally inconsistent. Officials in the previous Socialist-Liberal administration had advocated the establishment of a quota system for foreign labour with preferences for ethnic Hungarians (Jungbert 1997:194). Now in opposition, most MPs from both parties tried to play the migration threat card in the debate on the law, while being unwilling to reject it because of its nationalistic appeal. The Socialists at first opposed the law, cautioning that it represented a threat of mass immigration and an excessive burden on social security, and that migrants may drive down wages. Even if these dangers were not real, they were perceived by society, and the benefits would, therefore, increase intolerance toward migrants from neighbouring countries¹¹. In the end, the Socialists agreed to support the law but suggested that work permit benefits for ethnic Hungarians be granted for six months, so that they attract more skilled labour, and that a stipulation be included that the migrants be paid the prevailing wage¹². Some politicians of the liberal opposition Free Democrats discounted the need for migrant labour and the claim that the law would help legalise illegal employment¹³, while others suggested that if Hungary provides benefits regarding access to the labour market to ethnic Hungarian citizens of neighbouring countries, then it should extend them to all of their citizens¹⁴. Overall, such differentiated considerations were marginal to the content of the debate, which focused on symbolic and emotive issues (Vida 2001:8; Melegh 2002).

In December 2001, after objections by governments of neighbouring countries to the draft on the basis that Hungary cannot discriminate between the citizens of another country based on their ethnicity, Hungary extended the same provision to all Romanian citizens in a separate treaty (but not to citizens of other countries). The government argued that this treaty provided a further means to legalise currently illegal labour (Hegyesi and Melegh 2002).

The treaty caused even greater opposition from the Socialists, who used the threat of immigration in their 2002 election campaign. Socialist leaders, according to press reports, said that the government wanted to "unleash millions of Romanian workers" – or in one word, Gypsies – on the Hungarian job market, which was "provocative to Hungarians". A Free Democrat, Péter Gusztos, seconded him, accusing Orbán of wanting to be "the Prime Minister of 23 million Romanians" (Hegyesi and Melegh 2002). The National Labour Council and the National Association of Construction Entrepreneurs spoke out in support of the treaty, while trade unions opposed it

⁸ See the introductory statements in the opening debate of the draft law on Hungarians living in neighbouring countries (T/4060) in Parliament on 19 April 2001, particularly by Foreign Minister János Martonyi (<http://www.htmh.hu/plenaris.htm>).

⁹ Statement by László Pószán MP (Fidesz) in the opening debate of the draft law in Parliament on 19 April 2001 (<http://www.htmh.hu/plenaris.htm>).

¹⁰ Statement by István Csurka MP (HLJP) in the opening debate on the draft law in Parliament on 19 April 2001 (<http://www.htmh.hu/plenaris.htm>).

¹¹ Statement by Mária Vojnik MP in the debate on the draft law in Parliament on 29 May 2001 (<http://www.htmh.hu/reszletes.htm>).

¹² Statement by Pál Filló MP (Socialists) in the opening debate on the draft law in Parliament on 19 April 2001 (<http://www.htmh.hu/plenaris.htm>).

¹³ Statement by István Szent-Iványi MP in the debate on the draft law in Parliament on 19 April 2001 (<http://www.htmh.hu/plenaris.htm>).

¹⁴ Statement by Tamás Bauer MP in the debate on the draft law in Parliament on 9 May 2001 (<http://www.htmh.hu/altvita.htm>) and Kis 2002:82.

(Hegyesi and Melegh 2002). To allay critics' fears, the government set up an annual quota on work permits¹⁵ for the first time and made the work permit procedure more bureaucratic. The number of work permits would not exceed the average of registered vacancies in the previous year. The work permit quota for 2002 was 81,000, and it was not fully used¹⁶.

After the Socialists' victory, the new government maintained the need to abrogate both the treaty and the employment clause of the "Status Law". Prime Minister Péter Medgyessy repeated that "there was a potential threat of mass employment of Romanians in Hungary" (Horváth 2002), defending his party from the criticism of nationalist opposition, which accused the Socialists of having deliberately used the threat of mass immigration in their campaign¹⁷.

In reality, because of the limited scope of benefits provided both in the "Status Law" and in the treaty, both failed to have any impact on migration in one way or another. Less than 200 work permits have been issued under their provisions to this day¹⁸.

In the field of health, which is suffering from a shortage of doctors, and especially nurses and other personnel due to low wages, a more substantive debate on migrant labour has taken place. Some hospitals directly recruit nurses in Romania and the Ukraine, and even contribute to their training there (*Oltalomkeresők* 2001). Out of 40,000 doctors in Hungary, 2,400 are immigrants. According to the Hungarian Chamber of Physicians, these doctors fill positions for which there were no Hungarian applicants. However, other organisations such as the Specialist Practitioners' Defence League and the Institute for Basic Care have warned that many foreign physicians are unlicensed or do not speak Hungarian (*Oltalomkeresők* 2002). However, major employers' organisations have not spoken out on the migration issue.

Overall, although the Secretary of State of the Ministry of Internal Affairs stated in 1997 that the formulation of a "labour market strategy" was part of Hungary's tasks in the field of migration policy (Világosi 1997:156), this has not taken place yet.

¹⁵ Joint Decree of Minister of Economy, the Minister of Foreign Affairs, and the Minister of Youth and Sport No.2 of 2002, 29 January.

¹⁶ *Magyar Közlöny*, 13/2002.

¹⁷ See interpellation I/867 by Róbert Répássy MP to Foreign Minister László Kovács, 17 September 2002.

¹⁸ The current administration believes that this figure is low because the work permit procedure is too bureaucratic, and plans to modify it. In the first half of 2002, a total of approximately 20,000 work permits was issued.

Chapter 2: The stakeholders

The National Population Committee

The Committee was set up in 2001 by a government decision¹⁹ with the aim of drafting the National Population Programme, a long-term strategic policy document (see previous section, *Migration as an instrument of influence of population trends.*) Currently, two migration-related issues are on the Committee's agenda: the influence of immigration on demographic trends and the question of xenophobia. In late 2002, the Committee commissioned the Institute for Population Research to prepare papers on both issues. Overall, the Committee has come down on the liberalisation/management side of the migration debate, although this has not been high on its agenda and has not enjoyed support from all Committee members.

The Integration and Development Working Group

The working group, set up in late 2002, is a loose "think-tank" within the framework of the National Development Plan. Its activities are co-ordinated by the Prime Minister's Office. It consists of scholars and middle-rank officials. It prepares research papers with the aim of providing decision makers with background material for EU accession. The working group's section on Justice and Home Affairs supports several new policy research initiatives related to migration, including a migration policy proposal based on research undertaken by the Centre for Migration and Refugee Studies. The working group is, thus, a sounding board for researchers rather than a policy actor of its own, and it is too early to tell how much impact it will have.

The Office of Immigration and Nationality of the Ministry of Interior

The Office is the central authority responsible for immigration affairs. The government's justification in setting it up in January 2000 was that integrating naturalisation, migration and asylum administration into a single centralised administrative unit was necessary in order to harmonise the system with EU expectations and standards. The Office's core responsibility is narrowly defined as "carrying out all the alien policing tasks in its capacity as the central alien policing authority". As an additional responsibility, however, the office is responsible for "supporting the decision-making process of the Government concerning migration and drafting legal provisions falling within its competence" as well as "executing tasks related to migration arising from international conventions"²⁰. In fact, the office has always played a key role in drafting legislative proposals, as well as participating in professional discussions/debates related to migration, and has come down strongly on the control/restriction side. Most recently, however, its asylum department has been involved in a project of drafting of a policy on immigrant integration, suggesting a possible ideological rift within the organisation.

The Central Statistics Office

In the past few years, the Office has been involved in professional discussions related to immigration in three aspects:

- a. A researcher at the office is the regular author of the SOPEMI country statistical report on Hungary. Although the draft versions of the reports circulate among researchers, there is no open professional discussion on the validity and reliability of the sources used and the way data is presented.

¹⁹ Government Decision No. 1069/2001 (VII.10.)

²⁰ Source: <http://www.bmbah.hu>

- b. In 2001, the office had an expert working group in 2001 responsible for the improvement and standardisation of data collection on foreigners in Hungary.
- c. The Office's Institute for Population Research has been active in conducting research on migrants in Hungary.

The office's contribution to the migration debate, beyond its role as data provider, is shaped by a concern for demographic dynamics. This means that it has come down, at an abstract level, on the side of managed immigration.

The Centre for Migration and Refugee Studies, Minority Research Institute of the Hungarian Academy of Sciences

The Centre has been active in undertaking (mostly applied) research in the field of migration, publishing a series of books on the topic (e.g. Sik and Tóth 1999 and Nyíri, Fullerton and Tóth 2001) as well as organising conferences and professional discussions. The Institute is the country partner of the Brussels-based Migration Policy Dialogue in partnership with IOM, the Hungarian Helsinki Committee and Menedék – Hungarian Association for Migrants.

The Centre's major research projects influence professional discussions on migration policy:

- a regular survey of the level of xenophobia in Hungary, undertaken since 1992;
- research on the migration potential of the ethnic Hungarian and Roma populations of neighbouring countries;
- research on the integration of migrant children at school in Hungary.

The Centre has been a forceful advocate of managed migration and of a right-based approach within the academic community.

The Delegation of the European Commission

The Delegation, as official rapporteur on the country's "readiness" for EU accession, has played a crucial role in shaping the official discourse. It has had more to say on asylum than on migration, but its most recent country report²¹ mentioned both issues. The report is satisfied with the overall situation of migration affairs, finding discrepancies with EU policy only in implementation. The strongest criticism is targeted at the rights of migrant workers and their families: "In the area of the free movement of workers, legislation is only partially aligned and efforts are required to ensure complete alignment by accession, including the social and cultural integration of migrant workers and their families"²².

The report welcomed the amendments of "alien policing" legislation (see above), but expressed concern about their implementation.

The UN High Commissioner for Refugees, Hungarian Office

Although UNHCR's primary concern is the protection of refugees, it has also played a role in influencing migration policy in Hungary as an advocate of a humanitarian and right-based approach. The branch office firmly expresses its opinion on the necessary involvement of ministries and non-governmental agencies in the legislative process. Since the beginning of 2002, UNHCR has been actively lobbying to broaden the circle of agencies dealing with asylum, including municipalities, ministries, as well as NGOs. This has a halo effect on migration issues, as most of the problems (employment, social, health, education) these agencies deal with are not restricted only to asylum seekers and refugees, but affect other migrants too. As UNHCR is gradually withdrawing from direct project financing, advocacy and refugee-care, NGOs that have

²¹ 2002 Regular Report on Hungary's Progress towards Accession (com(2002) 700 final)

²² Ibid, p. 56.

been relying on its support will likely shift or broaden their scope of activities to migration issues in general.

The Hungarian Helsinki Committee

The Committee is one of the key human rights advocacy organisations in Hungary. Among other programmes, HHC has a legal support network for asylum seekers, but solicitors employed by the organisation often deal also with rights violations encountered by foreigners in other contexts, such as violations arising from the detention and expulsion of foreigners, as well as the arbitrariness of the residence permit process. The organisation is a strong pro-refugee and immigrant voice in the asylum and migration debates and enjoys good media coverage, chiefly due to the background of its president as a well-known liberal politician and former dissident.

Menedék – Hungarian Association for Migrants

The association's mandate is the representation of migrants and their interests towards of the authorities and the general public. It is one of the largest partners of UNHCR in Hungary in implementing refugee-related programmes, but it also has a strong voice in professional discussions on migration. Members of the association include well-known academics. The association issues a free monthly newsletter on migration issues, which is distributed to approximately 400 addresses within the research community and the administration and has a role in opinion forming. In late 2002, the association, with the support of IOM Budapest, has issued the first "migration newsletter" for the Migration Dialogue Programme, covering the topics of human trafficking and the employment of foreigners. The association has also been actively lobbying to set up a professional forum which can effectively contribute to the formulation of a national migration policy.

Political Parties

Most political parties come down on the control-and-restriction side of the migration debate without having an opinion on migration as a broader social issue. Of the two main parties, nationalist Fidesz-Hungarian Civic Party does not mention migration in its programme, while the Socialists' programme mentions it only within the discussion of criminality. A Socialist briefing document on public safety mentions migration as one of the factors leading to increased criminality and urges measures to prevent large-scale immigration²³. Similarly, the small liberal Free Democratic Party has no policy on migration and integration. On the other hand, individual Free Democrat and Socialist politicians have expressed concern for the conditions of refugees and detained migrants at various times in Parliament, and the current Socialist-Free Democratic administration has made symbolic gestures in their support, such as a Christmas 2002 visit to a refugee camp by the Chairman of the Parliament.

²³ Magyar Szocialista Párt Biztonságpolitikai kabinetje (Security Policy Caucus, Hungarian Socialist Party), Társadalom – bűnözés - közbiztonság, rendőrség – A szocialista rendészeti politika alapjai (Society, criminality, safety, police). Briefing document. 2002, pp. 8 and 22.

Chapter 3: European legislative proposals

3.1. Admission for economic purposes

The questions and answers below contain references to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed economic activities (COM (2001) 386 final, Brussels, 11.7.2001).

3.1.1. Single national application procedure and title

Hungarian legislation²⁴ differs from the Proposal in the following: (1) The work permit application process is separate from the two-step process of authorisation for entry (work visa) and residence (residence permit for work); (2) The authorisation of self-employment is based on legal residence, so the permanent residence permit (or residence permit in case of EU/EEA citizens) is a precondition to obtain a self-employment certificate; (3) Economic activity or gainful employment of any duration is subject to authorisation regardless of its length; (4) The scope of the subjective entitlement is narrow while the discretionary powers of labour and migration authority are wide; (5) Foreign workers cannot leave the country without losing their authorisation, except in certain cases; (6) There is no security deposit requested from foreign employees.

The Proposal for the directive defines certain categories of foreigners whose employment can be secured without a work permit. The present Hungarian legislation²⁵ follows a similar logic, with several differences, usually resulting in a much narrower interpretation. Recognised refugees and temporarily protected persons do not need a permit, whereas people enjoying an “authorised to stay” status (a subsidiary form of protection based on the *non-refoulement* principle), and asylum seekers do (although the latter can work without a permit, if they live and are employed in refugee reception centres). People with a permanent residence (immigration) permit do not need a work permit either. Exemptions can also be made on the basis of an international agreement (the law does not specify this further). Senior officials, high-rank representatives of foreign associations/organisations (covered by international agreements), as well as members of diplomatic services enjoy exemption from work permit. Full-time students in secondary and higher education and students on work placement do not need work permits for employment in Hungary. In addition to the above, there are a number of other cases (members of religious organisations, artists and researchers etc.) that enjoy exception, usually for a limited period of time and with further requirements of international agreements. The law makes employment without a work permit possible for EU citizens and their family members, unless it is regulated in other ways, but this will enter into force together with the EU Accession Treaty of Hungary.

The present Hungarian legislation does not consider third country nationals directly connected to the supply of goods or services from third countries, or those providing cross-border services, as a distinct category exempt from obtaining a work permit as in the Proposal.

The law makes preferential treatment possible (the applicant must automatically be granted a permit, regardless of the economic needs test if the other preconditions are ensured), if: this

²⁴ Act IV of 1991 on the Support of Employment and Benefits for Unemployed Persons, amended in 2002 (Act LIII of 2002), and Ministerial Decree No.8 of 1999 on its implementation; Act V of 1990 on Individual Entrepreneurship; Act XXXIX of 2001 on Entry and Residence of Foreigners in Hungary and Government Decree No.170 of 2001 and Ministry of the Interior Decree No.25 of 2001 on its implementation.

²⁵ Act IV of 1991 on Promotion of Employment and Benefits for Unemployed Persons and Ministerial Decree No.8, 10 November 1999

follows from an international agreement, or the employment is for individuals identified as key personnel (top management) of a foreign corporation. In case of foreign-majority owned companies, if the permit is requested for less than 2% of the staff, it should be granted automatically. The same is valid for the employment of professional athletes, renowned foreign scholars or artists (for more than 5 days per year, under which no permit is needed). Work permits are granted without further consideration to close relatives (spouse, child) of a foreigner who has resided in Hungary for at least eight years, if the relative has accompanied him/her for at least five years. If a foreign applicant has lived in Hungary for at least one year together with his/her spouse who is a Hungarian citizen, recognised refugee, temporarily protected person, immigrant (holder of a permanent residence permit), or is the widow(er) of such a person, the permit is granted automatically. The Office of Immigration and Nationality (OIN) can approve the employment of a foreigner under alien policing regulations (usually if deportation cannot be executed for more than a year) or if the applicant is a "person authorised to stay" and the OIN has agreed to his/her stay on humanitarian grounds. Work permits are issued automatically in both cases. Finally, an applicant must receive preferential treatment according to the Act on Benefits for Ethnic Hungarians Living in Neighbouring Countries (the previously discussed Status Law), if s/he holds an Ethnic Hungarian or Ethnic Hungarian Dependant's Certificate, and if the employment is to last no more than 90 days.

Hungarian legislation makes rejection possible in several cases; some of them are not in harmony with the proposal. Based on the previously discussed ministerial decree, an application must be rejected if any of the three requirements²⁶ necessary for granting a permit is not satisfied. Applications should not be granted either, if the annual quota specified in the Ministerial Decree has been reached (this has never happened yet). The law gives particular attention to the place and starting date of employment: if work starts more than 120 days after submitting the application, or if the employee is not working for the employer who submitted the request, it must be rejected. The situation is the same for employment agencies which provide labour force to other companies: their request for work permits must be turned down. There are two complicated and problematic clauses about rejection: a request must be rejected if the country of citizenship of the person applying for a work permit discriminates against Hungarian jobseekers, and if the position that is to be filled by a foreign worker carries a significantly lower wage, as identified by the employer, than the national average minimum wage for this category of work as defined by the Employment Office and the County or Capital Council on Labour Affairs. This latter condition is particularly problematic, as (apart from certain set wages for public and civil servants and obviously from the general minimum wage) there are no "official" minimum or average wages in the various sectors of the labour market.

In addition to the above cogent clauses, there is a further set of conditions under which the labour authorities have a discretionary power to reject applications. According to the same Ministerial Decree, applications for work permits may be rejected if the employer has been fined for breach of labour regulations in the years prior to the submission of the application. A request may be turned down if the employer has announced significant labour cutbacks within a year prior to the submission of the application, or if the Employment Office is conducting training for the position that will be completed by the time the foreign applicant is to start employment. If the Chamber of Commerce or a professional organisation finds the employment of a foreigner for this position unjustified, the labour authority may also reject a work permit application.

²⁶ (1) the employer advertised the job for which the work permit is requested 30 to 60 days prior to the application; (2) no qualified Hungarian citizen has applied for the position; (3) the foreign citizen is fully qualified for the job.

The rejection of applicants for self-employment in case their self-employment does not generate economic benefit or create jobs (economic needs/beneficial effects test), is completely unusual in Hungarian legislation. It can be stated in general that economic as well as social-policy points of views are only implicitly reflected by the present legislation and practice, based on (if at all) partial and particular lobby interests, rather than on comprehensive policy and strategic considerations.

Regarding the submission of applications, there are also substantial differences between Hungarian legislation and the Proposal. As it has already been mentioned, there is no unified process available, but the authorisation of employment and residence goes parallel with the different authorities involved. Applications for work visas must be submitted abroad and applications for residence permits must be submitted in Hungary; applications for self-employment certificates must be submitted to local governments in Hungary. Employers must apply for work permits, which can be issued for a period of one day to one year. They are renewable for another year an unlimited number of times within the validity of the residence permit, but proof of job vacancy is required each time. Self-employed certificates are open-ended.

On the basis of surveys and available labour/immigration statistics, the following trends can be detected. (1) An increasing number of foreigners residing in Hungary are inactive (pensioners, students, dependent household members). (2) A significant number of employed foreigners is not registered because they fall in preferential categories that do not require work permits, so their impact on the labour market in Hungary is not measured. (3) The rate of highly skilled workers from EU/EEA countries among work permit holders is decreasing and currently stands at 5 to 7% of permit holders. (4) Most (60 to 80%) undeclared/illegal workers as well as unskilled or low-skilled workers with work permits are from neighbouring states (Ukraine, Romania, and Yugoslavia).

3.1.2. Economic needs test and beneficial effects test

The beneficial effects/economic needs test will be a real novelty for Hungary. Currently, self-employment requires a certificate that is issued on the basis of the freedom of entrepreneurship, regardless of citizenship. Hungarian citizens, permanent residents, EU citizens resident in Hungary, and recognised refugees can obtain such certificates with minimum limitations²⁷. Reasons for withdrawal of the certificate are also limited²⁸. This means that the self-employment certification procedure takes into consideration legal, but not economic criteria.

There is no data on how the self-employment of foreign citizens has affected economic development. Since July 2002, the Central Office of the Ministry of the Interior has been handling the central registry of certificates of private entrepreneurs. This registry merely keeps details on the citizenship of certificate holders, but allows searching by geographical and occupational distribution of entrepreneurs as well as by economic activities of self-employed persons.

Economic needs tests on the national labour market context exist²⁹. The following measures, similar to horizontal assessments, protect the domestic labour market: (1) The Minister of Labour, with advice from regional Labour Councils, defines the yearly quota of labour permits at the national level and for each region, including groups enjoying preferential treatment. (2) Applications for labour permits can be rejected if, according to the Chamber of Commerce or a

²⁷ They must be adults registered with the tax and statistics offices, with no criminal record, no tax or customs debt, except members of a company with unlimited liability (Act V of 1990).

²⁸ The certificate is withdrawn if one of the conditions listed in the previous footnote is met and is not remedied within a specified time period (Act V of 1990).

²⁹ See Footnote 17.

professional union, the employment of a foreigner for the position is not justified ("reinforced economic needs test"). (3) The Minister of Labour is entitled to define the maximum quota of foreign labour in certain occupations or to ban temporarily the employment of foreigners due to the unemployment rate³⁰.

On the other hand, there is a wide list of exceptions from the economic needs test (persons who can be employed without a work permit).

Further differences include the following. (1) Some categories defined in the Proposal do not exist in Hungarian legislation. Seasonal workers, key personnel, transfrontier workers, and trainees appear indirectly as "beneficial labour" in the framework of international agreements, which may contain regulations other than those included in the law. (2) There is no security deposit, but employers are liable for the potential costs of repatriation of a worker³¹.

As of July 2002, Hungary has concluded employment agreements with the following countries:

| Type of agreement | Country | Limitations | Yearly quota |
|---------------------------------|----------------|--|---------------|
| Seasonal work | Romania | 6 months per year | 8,000 |
| | Slovakia | | 400 |
| Commuter work across the border | Austria | 6 months, only in the border counties | 900 |
| Guest workers | Germany | Age 8-40; 12 to 18 months including possible extensions | 2,000 |
| Exchange of trainees | Slovakia | 12 to 24 months including possible extensions | 400 |
| | Czech Republic | Age 18-40; 12 to 18 months including possible extensions | 300 |
| | Romania | Age 18-35; 12 to 18 months including possible extensions | 700 |
| | Switzerland | Age 18-30; professional qualification is a condition; 12 to 18 months including possible extensions; work permit does not depend on availability of local labour | 100 |
| | Austria | For professionally qualified jobseekers with a basic understanding of the German language; age 18-35; 6 to 18 months including possible extensions; the joint board may decide to exclude certain fields of work | 400 (in 2000) |
| | Netherlands | 24 weeks; work permit does not depend on availability of local labour | Not defined |
| | Luxembourg | Age 18-30; 12 to 18 months including | 20 |

³⁰ Art. 7 of Act IV of 1991 on the Promotion of Employment and Benefits for Unemployed Persons.

³¹ The costs of expulsion shall be borne by the expelled person or, in the absence of financial coverage, by the person who invited him/her. When the obligation to leave the country cannot be met because neither the expelled person nor the person who invited him/her has the required financial coverage, travelling costs shall be paid in advance by the authority ordering expulsion (Art. 40 (6)-(7) of Act on Entry and Residence of Foreigners)

| | | | |
|---------------------------------------|--|---|----------|
| | | possible extensions; work permit does not depend on availability of local labour | |
| | France | For professionally qualified job seekers with a basic understanding of the language; age 18-35; 12 to 18 months including possible extensions | 300 |
| Diplomatic corps and their dependants | UK, France, Italy, USA, Canada, Chile, Argentina, Poland | Exclusively for the accreditation period of the diplomat, no requirement to hold a work permit | No quota |
| Key personnel | EC | Europe Agreement (1991) provides benefit for the establishment EC companies | No quota |

3.1.3. Limits on permits for social reasons

There are no official measures and no public debate on the limits on immigration (see Chapter 1) except the limits on the immigration of ethnic Hungarians, which, however, is debated in abstract moral terms rather than legal terms. There are measures to limit labour immigration (see previous section), but among them, only the yearly national quota on work permits has been enforced, though the number of work permit applicants remained within the quota. Labour councils or chambers of commerce have not expressed any interest in migration issues. The ratification of international agreements on foreign labour did not arouse public interest, with the exception of the Act on Benefits for Ethnic Hungarians Living in Neighbouring Countries (see Chapter 1). According to this law, ethnic Hungarians living in Romania, Ukraine, Slovakia, Slovenia, Croatia, and Yugoslavia enjoy certain preferences in obtaining work permits for work limited to three months per year. They are not, however, exempt from having to obtain a work visa and other immigration requirements³².

³² Act LXII of 2001 on Hungarians Living in Neighbouring Countries came into force on 1 January 2002. Article 15 (1) stipulates that work permits for persons within the scope of the law can be issued for a maximum of three months per calendar year without prior assessment of the situation on the labour market.

3.1.4. Regularisations

There is no individual or group practice of regularisation of irregular migrants, and there is no public debate on this issue.

3.2. Family reunification

The questions and answers below refer to the Amended Proposal for a Council Directive on the right to family reunification (COM (2002) 225 final, Brussels, 2.5.2002).

3.2.1. Definitions

Hungary does not recognise family reunification as a right or a concept. Although Hungarian law makes reference to the entry and residence of family members, it provides only for discretionary, rather than obligatory, preferential treatment of family members in some situations³³. The general principle is that the visa or residence permit status of the dependents must not be of longer duration than that of the sponsor.

| <i>Definition of applicant</i> | |
|--|--|
| In the Proposal | Hungarian legislation |
| Third country national in possession of a residence permit which is valid for at least one year, and who has reasonable prospects of obtaining the right of permanent residence | (1) Hungarian national (2) foreigner holding a temporary residence permit or (3) a settlement/immigration permit |
| Recognised refugee | Recognised refugee |
| <i>Definition of family member</i> | |
| In the proposal | Hungarian legislation |
| Obligatory authorised entry and residence for (1) spouse (2) minor child of the applicant (3) minor child of applicant's spouse (4) adopted minor child of the applicant (5) adopted minor child of the applicant's spouse | Obligatory authorised temporary residence for (1) spouse (2) minor child of the applicant (3) minor child of the applicant's spouse (4) adopted minor child of the applicant (5) adopted minor child of the applicant's spouse |
| Optionally authorised by national law ("may") for (1) dependent first-degree relatives in the direct ascending line of the applicant (2) adult but dependent unmarried child of the applicant (3) adult but dependent unmarried child of the applicant's spouse (4) unmarried/registered partner of the applicant (5) unmarried minor child of the applicant's partner | Optionally issued ("may") visa for (1) spouse (2) minor child (3) spouse's minor child (4) adopted child of applicant (5) adopted child of the applicant's spouse Optionally authorised ("may") permanent residence permit for (1) spouse (2) minor child (3) spouse's minor child (4) adopted child of applicant (5) adopted child of the applicant's spouse |
| <i>Conditions of granting visa/residence</i> | |
| In the proposal | Hungarian legislation |

³³ Act on Entry and Residence of Foreigners (Art.2, 14, 17(3), 18(3), 19(2) and 22); Government Decree No.170, 26 September 2001; Act V of 1990 on Individual Entrepreneurship; Act IV of 1991 on the Promotion of Employment and Benefits for Unemployed Persons (Art 7); Act LXXIX of 1993 on Public Education (Art 6).

| | |
|---|---|
| Applicants for entry and residence must show proof of (1) accommodation as normal for a comparable family in the region (2) sickness insurance (3) stable resources superior to social benefits | Applicant for visa and temporary residence permit must show proof of (1) proper accommodation, (2) means of livelihood, (monthly income is not below the legal minimal wage per capita in the family), (3) medical insurance |
| | Applicant for permanent residence permit must secure (1) proper and stable accommodation of at least 6 m ² space/capita, (2) means of livelihood (monthly income is double of legal minimal wage per capita in the family) |
| <i>Waiting period</i> | |
| In the proposal | Hungarian legislation |
| Applicant must have resided legally for less than two years before unification | - |
| Maximum period would be three years (derogation) between the submission of the application and issue of the residence permit | - |
| <i>Access to education</i> | |
| In the proposal | Hungarian legislation |
| In the same way as the applicant, the family member shall be entitled to access to education and vocational training | In the same way as nationals, the family member is entitled to access to education, if s/he is a (1) recognised refugee, (2) migrant in possession of permanent/temporary residence permit; to vocational training, if s/he is a (1) recognised refugee (2) migrant in possession of permanent residence permit |
| <i>Access to employment</i> | |
| In the proposal | Hungarian legislation |
| In the same way as the applicant, the family member shall be entitled to access to employment and self-employment | In the same way as the applicant, the family member is entitled to access to employment and self-employment, if s/he is a migrant in possession of permanent residence permit |
| <i>Access to autonomous residence permit</i> | |
| In the proposal | Hungarian legislation |
| After at least five years of residence and family relationship the (1) spouse, (2) unmarried partner, and (3) adult child is entitled to residence permit regardless of the applicant's status. | If marriage is dissolved after the family member's entry, the former spouse's right to residence cannot exceed the duration of the applicant's, except (1) when the minor child born in that marriage is a Hungarian national and the former spouse exercises the right of custody, or (2) the former spouse received a temporary residence permit five years before the marriage was dissolved and meets the conditions required for continuous residence, or (3) in case of death of the spouse. (4) The applicant's adult child is entitled to continuous stay for the same purpose if s/he received a temporary residence permit for the purpose of |

| | |
|--|--|
| | family reunification for five years before reaching majority, and the conditions of continuous residence are met |
| More favourable provisions of the European Social Charter (1961) Its amended versions (1987) and Legal Status of Migrant Workers (1977) | No more favourable provisions of the European Social Charter (1961: Art 18-19 are not binding for Hungary as they have not been ratified) Not a party state |
| | More favourable provisions for permanent residence permit applicants if they are ethnic Hungarians |
| | More favourable provisions for the EU/EEA citizens as the Accession Treaty enters into force |

There is no sign so far that the country would use/ask for derogations in this respect, though it is not a firm and explicit standing-point, but rather a kind of neglect of the issue on policy or strategic discussions and planning.

3.2.2. Standstill clause and deadline clause

A derogation clause for less favourable conditions than those that already exist on the date of adoption of the Directive is not anticipated. Current legislation is obviously less favourable than pre-2001 (e.g. in defining family members). The Proposal may influence current legislative work. Respect for the standstill clause, flexibility and application of the Directive will depend on how important family reunification will become as a channel of legal migration to Hungary. The policy toward ethnic Hungarians, who will be the main group using the family reunification channel, will have an impact on derogations or more favourable provisions, including on employment and education.

3.3. Long-term residence right

The questions and answers refer to the Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM (2001) 127 final, Brussels, 13.3.2001). The Directive aims at harmonising the granting of long-term resident status to third-country nationals and at introducing free movement of these persons.

3.3.1. Requirements

The conditions for obtaining permanent resident status in Hungary are the following³⁴: the foreigner should have legally resided in the country for at least 3 years prior to the submission of her/his application, with accommodation and livelihood guaranteed. There is a set of reasons for which permanent residence should not be guaranteed: if the person is under prosecution or police warrant; if s/he suffers from an illness endangering public health³⁵; if s/he has a criminal record and if his/her settlement would endanger national or public security. Beyond these, there is

³⁴ Based on the Act XXXIX of 2001 on Entry and Residence of Foreigners, and the Government Decree 170/2001 (IX. 26.) on its implementation.

³⁵ Exceptions are made for those uniting with spouses or children who are Hungarian citizens, provided that they undergo the required medical treatment.

a rather unclear provision without further elaboration on its specific content, stating that an application can be rejected if the settlement of the foreigner “endangers the interests of the State of Hungary”. For spouses or cohabitants of Hungarian citizens, recognised refugees or long-term residents (enjoying “immigrant” or “settled” status), as well as those whose ascendants or themselves used to be Hungarian citizens, the waiting period is of only one year.

In exceptional cases, the Minister of the Interior can allow residence for “exceptional reasons”. When comparing the conditions set by Hungarian law with those in the Proposal, the following can be observed: in Hungary the waiting period is shorter (1-3 years) than it is set in the Proposal (5 years). Unlike in the Proposal, the period of residence as asylum seeker, person authorised to stay or person temporarily protected is taken into account when calculating the waiting time regardless of whether the person is a refugee or not. Furthermore, foreigners with refugee status enjoy a wider range of protection and entitlements than those who have a long-term residence (settlement) permit (in the case of refugees, the next step toward full social membership is naturalisation.) Periods of time spent studying in Hungary at present are taken into account in their full length, but there is already a paragraph in the law which will come into force when Hungary becomes a member of the European Union, stating that the time spent studying shall not be calculated when establishing the period of legal residence prior to the application for long-term residence permit.

Regarding the length of absence from the country, which interrupts the continuity of legal residence, the present Hungarian legislation is more restrictive than the Proposal. It allows 90 days (not necessarily consecutive) altogether in a calendar year, and there are no provisions on exceptions due to illness, studies, maternity, military service, etc.

Regarding conditions of resources, Hungarian legislation does not specify the amount of savings or the regular income above which a settlement permit can be issued. It simply says that resources should be “sufficient” to cover the needs of the applicant. In practice, however, the limit is usually two times the minimum wage per capita, which is almost five times higher than the minimum elderly pension. There is a range of other conditions (savings on a bank account opened more than two years before, tax authority documents proving regular income for more than a year, etc.) required by the authorities. Sickness insurance is not required explicitly, but for those whose subsistence is secured through employment, it is automatically there.

3.3.2. Withdrawal of status and protection against expulsion

Current Hungarian legislation provides a weaker legal position for permanent residence holders. Permits are issued for unlimited duration, but the identity cards issued with them are only valid for up to five years, and are not automatically renewed. There is more latitude for the withdrawal of the status, including for length of absence from the territory and because of the economic situation.

The Office or the regional aliens policing authority may withdraw a permanent residence permit or an immigration permit if the foreigner has communicated false data or facts to the authorities, or if the conditions upon which a permit was issued have changed substantially, so that they would now lead to the rejection of the application, provided that less than five years have passed since the issuance of the residence, settlement or immigration permit. In case a permit was issued for the purpose of family reunification, and the marriage has been dissolved within three years after the granting of the permit (except if this is due to the death of the spouse) the permit shall also be withdrawn. As far as minors are concerned, their permit is automatically withdrawn if their parents (or persons exercising the right of custody) lose their right to reside in the country and the stay of the child is not guaranteed in Hungary. If a Hungarian spouse leaves the country with the

intention to reside abroad, the settlement permit of the foreigner shall also be withdrawn. If a foreigner has left the territory of the Republic of Hungary for a period of more than six months or has regularly or permanently taken up employment abroad, s/he loses the right to permanent residence and the permit shall be withdrawn.

Regarding the protection available against expulsion, foreigners who have immigration or temporary residence permits and have been continuously residing in Hungary for five years or more since the issuance of their personal identity cards or residence permits, or were born in Hungary, or entered as unaccompanied minors, may only be expelled if their further stay would endanger national public security, or the constitutional order. Beyond these, expulsion for aliens policing purposes or prohibition of entry and stay may be ordered against foreigners who provided false data or false facts to the authorities in order to obtain the authorisation of entry or residence. Expulsion for aliens policing purposes cannot be applied for the commission of a criminal act for which the Court that tried the case has not ordered expulsion as a single or secondary punishment. In the latter case, Hungarian law does not differentiate between the different types or residence, which means that expulsion can be ordered as a result of criminal convictions. There are no further considerations allowed or secured by the law, regarding age, family and social relations of a long-term resident subject to expulsion. Legal aid is not provided by the state free of charge (neither is it available to nationals³⁶). Emergency expulsion of foreigners with a long-term residence permit for security reasons is possible in Hungary.

3.3.3. Parity of rights

Permanent residence permit holders enjoy the same rights as nationals in (1) education, (2) self-employment, (3) social insurance and basic social protection, and (4) child protection. In all other fields mentioned in the proposal, there are limitations, although not very severe. On the other hand, until the latest amendments came into force in January 2002, immigrants enjoyed voting rights in local (municipal) elections, which are not included in the proposal. Holders of new permanent residence permits do not, but those who obtained immigrant status prior to the changes continue to do so³⁷.

3.3.4. Mobility of third-country nationals

The legislation in force in Hungary does not address the free movement and right of residence of third country nationals residing in an EU member state. Today, "third country nationals" do not differ very much from EU nationals in practice and in legal status. It will take longer to implement the much more complicated legal terminology and to form national priorities – such as equal treatment – beyond the current explicit or implicit preferences for ethnic Hungarians, which will remain a key factor in favour of the mobility of third country nationals.

However, there are provisions in the present legislation regarding the status of third country nationals as family members of citizens of EU member states³⁸. These will come into force when Hungary becomes a member of the European Union. According to the text, third country nationals who are family members of entrepreneurs, employees, self-employees, pensioners and students from the EU residing in Hungary are entitled to a residence permit. The length of the residence permit is equal to that of the person for whom residence is secured. If the EU national residing in Hungary dies, the residence permit of the family member is prolonged for two more years.

³⁶ A new act regulating the provision of free legal aid to nationals is being prepared and debated presently; it is not clear yet, whether foreigners shall be included in its scope of jurisdiction.

³⁷ Article 2. of the Act LXIV. Of 1990 on Election of Local Government Members and Mayors

³⁸ Articles 25-30. of the Act XXXIX of 2001 on Entry and Residence of Foreigners.

These provisions have recently been criticised by advocacy organisations, as according to them, third country nationals who are family members of EU nationals will be in a more favourable situation than third country nationals who are family members of Hungarian citizens, as in the latter case the previously discussed general conditions are to be met in order to obtain a residence permit.

Chapter 4: Recommendations and open method of coordination

The question and answers below contain references to the Communication from the Commission to the Council and the European Parliament on the open method of co-ordination for the Community immigration policy (COM (2001) 387 final Brussels, 11.7.2001).

Taking into account the principles as defined in the guidelines of the Communication and debates on migration policy in Hungary, the planning elements of a comprehensive migration policy will be a novelty for Hungarian stakeholders and legislators. We can summarise the major components as follows:

- A manifestly declared, coherent and transparent migration policy (Guideline No.4) would be not only a genuine change, but also necessary for Hungary. The effective operation of migration management and clear selection on the base of labour needs would reduce irregular migratory movements, the lack of appearance of migrants in the evaluation of public services, labour market, and demography in Hungary. In other words, the economic benefits of immigration would become visible, reducing the fear of foreigners. Accession to the EU, Community law and Union policies will force Hungary to be in harmony with external expectations in the first phase. A manifestly prepared, coherent, pro-active, less defensive and more transparent migration policy will be developed only in a second phase, during which public debates as well as institutions of co-operation with stakeholders would be managed.
- Partnership with the countries of origin and transit in the migration context - as the Tampere Conclusions as well as the Communication (Guideline No.5) underline - is absent. Unless bilateral agreements (e.g. on friendship/basic agreements or CEFTA) are applied, institutionalised partnership, co-operation in order to develop the economy, human rights, or investments, are missing. Some projects of co-operation across the borders and at regional level have been developed due to political initiatives (e.g. in the framework of the Stability Pact) or to financial contributions of international organisations. Neither national nor local policies on partnership exist within a broader framework of international migration, brain drain, return and investment. Even the bilateral agreements on labour exchange are in reality unilateral (either about foreign labour coming to Hungary from neighbouring states or about Hungarian citizens' employment in Germany or Austria within a yearly quota). Furthermore, local, national, and regional authorities as well as civil organisations are involved neither in the legislative procedure (e.g. regarding the principles of admission onto the national territory or of social integration) nor in the implementation of laws.
- Ensuring the development of integration policies for third country nationals legally residing in Hungary (Guideline No.6) will remain within the national competence. In the future, the ethnic composition of third country nationals (80 to 90% are from neighbouring states, and most of them are ethnic Hungarians) will strongly influence integration policies. This would mean a mixture made up of ethnic, foreign, identity and security politics instead of a genuine, comprehensive policy of social, economic and cultural integration of immigrants. The goals of this mix will likely be: (1) to prevent ethnic Hungarians' migration to Hungary, (2) to prevent labour and asylum-seeker migration to Hungary. This "defensive approach" to the labour market may be confirmed also by the security clause in the Accession Treaty³⁹. These two

³⁹ According to the clauses on freedom of movement of workers and freedom to provide services involving temporary movement of workers, Hungarian nationals are subject to transitional provisions for up to seven years, including the right of Member States to take measures in case their labour markets are seriously affected by the movement of Hungarian labour force. Germany and Austria may derogate from defined

stable policy elements are rooted in domestic political expectations of "patriotism" and in the perceived potential of such posturing to attract votes. Moreover, the exclusive or restrictive measures can easily fit in the fight against illegal migration declared by the EU.

- Setting up a National Action Plan on Immigration Policy, as proposed in the Communication, would be a real novelty, in particular regarding its regular review and evaluation, which would inspire co-operation between stakeholders at national level. The complexity of immigration policy, including its implementation and monitoring, cannot be managed by a centralised authority. Therefore, partnerships with NGOs, social partners and municipalities will not be neglected by the government in the near future.

rules in the EC Treaty and implement national measures of protection of the labour market. (Art 2-14 in Annex X, Treaty of Accession. Negotiations on Accession by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia), Brussels 31 January 2003.

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The **Center for international migration and refugee studies** conducts research on various aspects of international migration involving Hungary. Its work ranges from large-scale empirical surveys to theoretical studies. The Center has published a series of books (10 volumes altogether) containing articles on relevant issues of international migration and refugee affairs. It has also made recommendations for Hungarian migration policies. The Center was established in 1991 as a Research Group of the Institute of political science of the Hungarian Academy of Sciences. Since September 2001 the Center has continued its activities within the HAS Institute of Minority Research. The research team consists of six persons and includes sociologists, economists, lawyers as well as experts on political science and social policy.

Pál Nyíri, anthropologist; expert, Office of the Parliamentary Commissioner for Citizens' Rights (since 1999). *Field of research*: Chinese migration, overseas Chinese, migration politics, recent publication *New Chinese Migrants in Europe*, Ashgate, Aldershot, 1999.

Judit Tóth, lawyer, senior lecturer on Department of Constitutional Law of the Faculty of Law of Szeged University, adviser of Ministry of Environment, Ministry of Social Affairs, Ministry of Interior and Parliamentary Committee on Constitutional Reforms; *Field of research*: refugee law, migration policy of contemporary Hungary, EU accession, diaspora law and policy. Recent publication: *Joining an EU Identity: integration of Hungary or the Hungarians?* (with E. Sik) In: *Europeanisation, National Identities and Migration*. eds.: W. Spohn and A. Triandafyllidou, Routledge, London, 2003.

András Kováts, sociologist, programme coordinator at Menedék – Hungarian Association for Migrants. *Field of research*: roma migration, social integration, migration and asylum policy, refugee affairs. Recent publication: *Migration among the Roma Population in Hungary*, in: *Roma Migration*, ed.: A. Kovács, Centre for Migration and Refugee Studies, Budapest, 2003.

Migration Policy Group
Rue Belliard 205, box 1
B-1040 Brussels
Tel. +32 2 230 5930
Fax. +32 2 280 0925
email: info@migpolgroup.com
www.migpolgroup.com