

Act XXXII of 1997
on Protecting the Borders and the Border Guard

In accordance with the Constitution of the Republic of Hungary and in order to meet obligations undertaken in international agreements, Parliament herewith creates the following Act on Protecting the Borders and the Border Guard.

Chapter I

GENERAL PROVISIONS

Article 1

(1) Border protection is a system of activities to prevent, investigate and stop actions that violate or endanger orderly conditions at the borders of the Republic of Hungary, as well as to prevent entry and exit of persons who do not fulfil the conditions of crossing the state border.

(2) Border protection is also meant to prevent, investigate and stop actions that violate or endanger the public order and security of the European Union at its external borders and in its border areas.¹

Article 2

The armed forces shall be responsible for the protection and defence of the state borders. The Border Guard shall be a dual-purpose armed force of special legal standing and organisation, which shall perform its functions related to the defence of the country in accordance with the laws pertaining to the armed forces and border policing functions in accordance with the provisions of this Act and other laws and regulations applicable to it.

The State Frontier of the Republic of Hungary

Article 3

(1) For the purposes of this Act, the state border of the Republic of Hungary shall be the contiguous series of imaginary vertical planes specified in international agreements, which separate the territory of Hungary in the air, on the surface of land (water) and under ground, from the territories of neighbouring states.

¹ This Paragraph has been introduced by Act XXXIII of 2001 and shall come into force upon full Schengen membership.

(2)² The line of state borders of the Republic of Hungary shall be indicated by border signs positioned in the fields. Land-survey data concerning the line of the state border and the positioning of the border signs are contained in international frontier documents.

(3) Those border signs, which the Republic of Hungary, pursuant to international agreements, is responsible for the establishment and maintenance of and the border signs located in the territory of the Republic of Hungary shall constitute the property of the Hungarian State.

(4)³ Surveyor's data pertaining to the border line and the location of border signs are contained in international frontier documents (frontier descriptions, frontier maps and ordinance survey maps).

Definitions

Article 4

(1)⁴ Within the meaning of this Act

1. *border area*: the band of area from the border line consisting of the administrative territory of settlements specified by Government decree; and, in addition, the separately specified area of an airport, railway station and harbour (port) open to international traffic, as well as the vehicle in international traffic on which border traffic is controlled while in motion;
2. *guarding the state border*: a permanent duty of the Border Guard in the border area in order to prevent, investigate and stop actions that violate or endanger orderly conditions at the state border of the Republic of Hungary;
3. *border line*: the line of intersection of the frontier and land (water);
4. *border crossing point*: that part of a road or railway border station, airport or harbour (port) open to international traffic – or some other place in the case of a temporary opening of the border – where the control of persons, vehicles, documents and freight and their crossing of the state border are effected within border traffic;
5. *border surveillance*: putting flags in the Border Guard registration system for controlling border traffic, on the basis of which the Border Guard performs covert activities not subject to a court warrant in the course of controlling border traffic aimed at the surveillance, reporting or identification of persons, vehicles, travel documents or other objects specified by the law enforcement authorities and the national security services;

² This Paragraph has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

³ It shall expire on 1st January 2002.

⁴ This Paragraph has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

6. *border traffic control*: a duty of the Border Guard performed at the border crossing point opened to border traffic pursuant to this Act and other legal regulations or in other locations designated for control; it is aimed at checking persons, vehicles and freight (not including customs control specified by Act C of 1995 on Customs Law, Customs Procedure and Customs Administration), their legal admission or exit, and at the prevention, investigation and interruption of illegal border crossing and other illegal actions within its scope of authority;
7. *borders warrant*: overt activity aimed at the identification of persons, vehicles, passports, other documents and objects (under warrant of apprehension) present in various lists, specified by separate legal regulations at the border;
8. *border order*: orderly conditions along the border, the maintenance of which is based on the mutual respect of rights and obligations with neighbouring states pursuant to international agreements and legal regulations;
9. *border road*: a road in the immediate vicinity of the border, the axis of which corresponds to or is parallel with the border line;
10. *border waters*: in the lack of provisions of international agreements to the contrary, all the natural or artificial, surface or subsurface lakes or rivers which the state border crosses or on which the border line runs, in the width between the border line and the Hungarian bank, as well as the waters crossed by the state border in a width of 50 metres from the border line;
11. *conflict situation*: armed action evolving in the territory of one or more states in the vicinity of the frontier, which directly endangers the order of the state border;
12. *refugee risk*: a flight of people *en masse* from the territory of a neighbouring state, which directly endangers the order of the state border;
13. *partial closure of the border*: a ban (suspension) on crossing by specified persons, vehicles and freight through a border crossing point open to border traffic;
14. *full closure of the border*: full suspension of border crossing by persons, vehicles and freight at border crossing points open to border traffic in certain segments of the state border;
15. *transit area (zone)*: an area of the airport open to international traffic specified by the National Headquarters of the Customs and Finance Guard with the consent of the National Headquarters of the Border Guard, which extends from the door of the aircraft to the line of the border traffic control, and serves the purposes of waiting for travelling persons.

(2)⁵ The provisions of this Act shall be applied in accordance with the provisions of the Schengen Implementation Agreement signed on 19 June 1990 concerning the implementation of the Schengen Agreement signed on 14 June 1985 concerning the gradual abolition of control on common borders (hereinafter referred to as the “Schengen Implementation Agreement”). In this respect:

- a) *a state party to the Schengen Implementation Agreement*: with respect to which the Schengen Implementation Agreement entered into force and which may apply its provisions;
- b) *internal border*: the common border between the Republic of Hungary and a state party to the Schengen Implementation Agreement on water or land, or the area of an airport open to international air traffic and harbour appointed for the arrival and departure of internal lines;
- c) *external border*: the segments of the border of the Republic of Hungary on land and water, as well as its airports and harbours, when they do not qualify as internal border;
- d) *airline engaged in internal traffic (hereinafter referred to as: internal flight)*: a flight arriving from or departing exclusively to a state party to the Schengen Implementation Agreement, under the condition that it does not stop over in the territory of any third state;
- e) *internal shipping line*: a vessel arriving from or departing for exclusively a state party to the Schengen Implementation Agreement, under the condition that it does not stop over in the territory of any third state.

The Guarding of the Border and Regulations Ensuring the Maintenance of Order at the State Border

Article 5

(1) On land, visibility along the border line shall be guaranteed by an at most five meters wide clearance, in the area of which - unless otherwise provided for by international agreement - no edifice may be erected. .

(2) If the boundary (borderland) of any real property corresponds to the border line, the owner of the property shall be subject to the performance of the duties of the Border Guard specified in law or prescribed in international agreement. The Border Guard shall be liable for any damage caused in relation to such activity in accordance with the rules of the Civil Code pertaining to special liability.

Article 6

⁵ This Paragraph has been introduced by Act XXXIII of 2001 and shall come into force upon full Schengen membership.

(1) Work which also affects the territory of the neighbouring state or which results in a change in the land or water feature of the border line may only be carried out on the basis of international agreement.

(2) Buildings and edifices extending over or leading through the state's border may only be erected, changed, maintained or terminated on the basis of international agreement.

(3) The approval of the specialised authority according to Article 42 herein may be waived for the commencement of work provided that it is warranted by the prevention of danger to the public, fire-fighting, technical rescue, the elimination of the consequences of industrial or natural calamity or other catastrophe. In such cases, the Border Guard shall be immediately notified after the event.

(4) If the activity is concomitant with crossing the border, simultaneously with the issue of its approval, the Border Guard shall take action to perform the necessary controls for border crossing required for the performance of the work together with the Customs and Finance Guard. The costs of this shall be borne by the applicant unless otherwise provided for in international agreement.

(5)⁶ When crossing internal borders, the provisions of paragraph (4) need not be applied.

Article 7

The assessment of damage and costs arising because of violation of border order and the mode of compensation shall be determined by international agreement or, in the lack of such, legal regulation.

Article 8

The general rules for the use of border roads and border waters shall be determined by international agreement.

Article 9

The executive of the local government concerned shall take action to have domestic animals straying through the state borders accommodated and kept until they are returned, while observing veterinary requirements and customs law.

Article 10

⁶ This Paragraph has been introduced by Act XXXIII of 2001 and shall come into force upon full Schengen membership.

(1) While transiting border waters — with the exception of an involuntary mooring — the vessel shall not be moored on either the Hungarian bank or the bank belonging to the neighbouring state; nobody shall board it or disembark from it or put anything on or remove from the vessel. In the case of involuntary mooring, Article 17 paragraph (4) shall be applied as appropriate.

(2)⁷ Unless a decision is made to the contrary by a competent authority of the Hungarian or neighbouring state, the prohibition under paragraph (1) shall not apply to a shipping line on border waters on the internal border.

Article 11

(1)⁸ The provisions of international agreement shall govern the crossing of the state border and traffic along a railway line between railway stations in the same state that can be reached only by crossing into the territory of a neighbouring state (*peage* traffic).

(2) In the course of traffic referred to under paragraph (1) hereof, boarding and disembarking the train crossing the territory of the Republic of Hungary or loading articles onto or removing articles from such a train shall be governed by international agreement.

Article 12

The Border Guard shall be notified of the following:

- a) hunting within five kilometres of the state borders, at least three working days before the planned date,
- b) practice firing with live ammunition arranged on a shooting range located within 10 kilometres of the state borders, at least three days in advance,
- c) ⁹work performed using an aircraft within 10 kilometres of the state borders, at least 24 hours before commencement.

⁷ This Paragraph has been introduced by Act XXXIII of 2001 and shall come into force upon full Schengen membership.

⁸ This Paragraph has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

⁹ This Point has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

Conditions for Crossing the State Borders

Article 13

(1)¹⁰ The state border may be crossed under the conditions specified in international agreements and under separate laws – if no exception is specified by international agreement or law – at the road, rail, water or air border crossing points open to traffic controlled by the Border Guard and other authorities authorised thereto by law.

(2) The checking of travel documents of persons travelling by regularly scheduled bus, train or boat and the control of other conditions of crossing the borders may also be effected while the vehicle or vessel is under way. Under way control may be effected upon the request of the entity providing the service in the case of vehicles not running to a schedule.

(3)¹¹ The checking of the travel documents of aircraft passengers and the control of other conditions of border crossing shall be effected after the landing or before the departure of the aircraft in or from the territory of the country.

Article 13/A¹²

(1) The state border of the Republic of Hungary — with the exception under paragraph (2) — may be crossed without control anywhere and any time on the internal border.

(2) After consultation with the states party to the Schengen Implementation Agreement, the Government may provide for — by way of decree — the protection of the state border and the control of border traffic in order to protect public security and public order.

(3) If the measure under paragraph (2) bears no delay, the Minister of the Interior may issue an order to that effect until Government decision is made and shall forthwith notify states party to the Schengen Implementation Agreement.

(4) The measures under paragraphs (2) and (3), as well as the location assigned for border crossing and the opening hours thereof shall be publicly announced.

Article 14¹³

Within the framework defined by the Government, the Border Guard, together with the Customs and Finance Guard, may permit the operation of a temporary border crossing point. The Act on

¹⁰ This Paragraph has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

¹¹ This Paragraph has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

¹² This new Article has been amended by Act XXXIII of 2001 and shall come into force upon full Schengen membership.

¹³ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

Customs Law, Customs Procedure and Customs Administration shall be applied to the additional costs incurred by the Border Guard due to the operation of such a border crossing point as appropriate.

Article 15

- (1) The Border Guard shall be responsible for maintaining order at the border crossing point.
- (2) Government decree shall determine the order of entry to the area of the border crossing point for purposes other than crossing the border, for remaining in the area and for leaving it.

Article 16

- (1) The material conditions required for the rapid and civilised performance of admission and exit shall be guaranteed by the owner, tenant or operator of the border crossing point.
- (2) The operator or the carrier shall collaborate in the checking of vehicles and freight.
- (3) Upon launching an international special train, flight or boat and in determining the schedule for vehicles engaged in international traffic, the time needed for checking the conditions of crossing the border as specified by the Border Guard and the Customs and Finance Guard shall be taken into account.

Article 17¹⁴

- (1) Aircraft may cross the state border at the designated points of entry and exit in airspace, observing the international agreements and statutory provisions pertaining to civilian flights.
- (2) Civil and state aircraft engaged in international traffic, which land in or depart from the territory of the Republic of Hungary, their passengers and crew, shall be subject to border and customs control.
- (3) The operator of the airport and the public landing and departure area defined by separate legal provision shall, before issuing permission for landing in or departing from an area outside the border area to an aircraft engaged in international traffic, obtain the consent of the Border Guard and of the Customs and Finance Guard in advance.
- (4) In the case of an emergency landing of an aircraft engaged in international traffic, the competent air traffic authority shall notify the Border Guard or the Police or the Customs and Finance Guard without delay. The authorities concerned shall inform one another of this fact.

¹⁴ This Article has been amended by Act XXXIII of 2001 and Paragraph (1)-(5) thereof shall come into force 1st January 2002. Paragraph (6) shall come into force upon full Schengen membership.

The joint permission of the Border Guard and the Customs and Finance Guard shall be required for continuing the flight.

(5) If the emergency landing takes place in an established landing strip, the person in charge at the landing strip shall inform the authorities listed under paragraph (4) hereof.

(6) In the case of an internal flight engaged in air traffic — with the exception of a measure under Article 13/A (2) and (3) — the provision of paragraphs (2) to (4) shall not be applicable.

Special Regulation for Crossing the State Border

Article 18¹⁵

(1) Unless otherwise provided for by legal regulation or international agreement, the rules required for border crossing need not be applied to persons, vehicles and freight crossing the state borders in the following cases:

- a) in the cases provided for under Article 6 (4), Article 10 and Article 11 (1), as well as in the case of border crossing by persons engaged in a rescue mission and of people in flight;
- b) in the case of the crew and passengers of an aircraft effecting emergency landing under Article 17 (4) and (5), or those of a vessel effecting involuntary mooring;
- c) in the case of extradition, deportation, transit or the transfer or taking over of a person pursuant to international agreement;
- d) in the case of transit by aircraft provided that the passenger does not leave the transit area or the vehicle.

(2) In the case of external flights, paragraph (1) d) shall not apply.

Opening and Termination of the Border Crossing Point, Suspension of its Operation, Restricting Border Traffic

Article 19¹⁶

(1) Pursuant to international agreement, the Minister of the Interior and the Minister of Finance shall take action concerning the opening of a new border crossing point, the termination of a border crossing point, the suspension of its operation and the change of the nature of its traffic on the basis of Government decision, and with the consent of the Ministers concerned.

¹⁵ This Article has been amended by Act XXXIII of 2001 and Paragraph (1) thereof shall come into force 1st January 2002. Paragraph (2) shall come into force upon full Schengen membership.

¹⁶ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

Article 20¹⁷

- (1) To prevent the spread of infectious diseases or for other reasons of public health, the Minister of the Interior, upon the initiative of the Minister of Welfare, may declare crossing of the state border conditional upon the observation of special health requirements.
- (2) In order to prevent the entry of contagious veterinary diseases or pests harmful to plants and in the case of the occurrence of such events, the Minister of the Interior shall take action together with the Minister of Finance on the basis of the initiative of the Minister of Agriculture to restrict border traffic in accordance with veterinary and plant health restrictions.
- (3) For reasons of national security, public security and the protection of public order and in emergency situations specified in the Act on Catastrophe Protection, the Government and the Minister of the Interior may declare full closure and partial closure of the borders, respectively, in particularly warranted cases and for specified periods.
- (4) In the case of catastrophe or the danger of catastrophe, if any delay involves danger, the National Commander of the Border Guard may declare full or partial closure of the borders, simultaneously notifying the Minister of the Interior and the competent authority of the neighbouring state until decision is made by those authorized thereto.
- (5) The Minister of the Interior shall inform the competent Parliamentary Committee of declaring the closure of the border and the reasons thereof and shall publish this fact.
- (6) The provisions under paragraphs (1) to (5) shall not be applicable on the internal border, with the exception of measures taken in accordance with Article 13/A (2) and (3).

Chapter II

DETAILED REGULATIONS PERTAINING TO THE FUNCTIONS AND DIRECTION OF THE BORDER GUARD

The Defence of the State Border by the Border Guard

¹⁷ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002. Paragraph (6) is a new regulation and shall come into force upon full Schengen membership.

Article 21

(1) In the case of an armed attack against the country and the unexpected assault of an external armed group, the Border Guard shall participate in the defence of the independence and territorial inviolability of the Republic of Hungary and in the defence of the population and material goods, with units specified in the plan for the armed defence of the country (hereinafter referred to as the Defence Plan) prepared for this function.

(2) In accordance with the government measure, the Border Guard, in order to implement the provisions according to paragraph (1) hereof

- a) shall introduce emergency or reinforced duty for the Border Guard and border traffic units,
- b) regroup or deploy Border Guard forces and temporary command staff to the endangered segment of the border,
- c) perform the defence of the order of the state's border in accordance with the provisions of the Defence Plan in the interest of warding off unexpected attack until the announcement of a state of emergency or martial law,
- d) pursuant to separate legislation, it may make use of civilian facilities and technical means in order to perform its duties.

(3) The Border Guard shall inform the competent aviation authority of the violation of the border detected visually by an air target flying at a height below the measurement threshold of radio technical instruments along the state border or at a right angle to it.

(4) The Border Guard shall perform the duties assigned to it under Article 22 of Act CX of 1993 on National Defence (hereinafter: Defence Act).

(5) In case of an emergency that directly and substantially threatens the population and material goods, in case of danger to the public and in the emergency situation specified in the Act on Civil Defence, the Border Guard shall collaborate in

- a) the rescue of the population and material goods in the performance of relocation tasks,
- b) the protection of the site,
- c) the guarding of facilities,
- d) the relocation of institutions maintained by agencies of public administration,
- e) the elimination of consequences,
- f) in case of an emergency taking place in the vicinity of the state border, in the admission of those fleeing from the territory of the neighbouring state and in guiding the rescue forces,

g) the collection of persons fleeing through the state border from the territory of the neighbouring state, their primary accommodation and supplying them with food and clothing, if needed, in their medical treatment and the safeguarding of their material goods.

(6) In return for compensation, the Border Guard may perform tasks requiring special expertise and technical equipment.

The Policing Activities of the Border Guard, and its Law Enforcement Functions

Article 22¹⁸

(1) In fulfilling its policing duties, the Border Guard shall perform the following functions:

- a) it shall guard the state border, prevent, investigate and stop the illegal crossing of the border;
- b) in accordance with international agreements and in co-operation with other authorities, it shall control the passenger and vehicle traffic and freight crossing the state border, permit the border crossing of persons meeting the conditions of entry and exit, and maintain order at the border crossing points;
- c) it shall perform its alien policing duties specified in the Act on the Entry and Residence of Aliens (hereinafter referred to as the Act on Alien Policing) and the execution ordinances thereof;
- d) as collaborator, it shall participate in performing refugee authority duties defined by separate legal provisions;
- e) it shall meet its obligations specified in international agreements, direct the activity of the Hungarian authorities mandated to inquire into border events, supervise the performance of the work related to the surveillance of the state border, placement and renewal of border signs and shall take action to keep the border clearance area clear;
- f) it shall prevent violent action aimed against the order of the state border and the facilities guarded by the Border Guard;
- g) it shall take the necessary action to manage any emergency involving refugees and conflict situations directly endangering order at the state border;
- h) in conflict situations, beyond the provisions of Article 21 (2), it shall investigate actions endangering order at the state border and shall arrest those arriving with or bearing arms;

¹⁸ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002. Paragraph (3) is a new regulation and shall come into force upon full Schengen membership.

- i) in its capacity of specialised authority, it shall collaborate in the administrative procedures specified by legal regulation and ensure the maintenance of order at the state border;
 - j) in the case of a state of martial law, state of emergency or emergency situation, it shall perform the defence of order duties specified in legal regulations;
 - k) it shall exercise its authority specified in legal regulations in certain cases of petty offence;
 - l) it shall collect and evaluate the information required for the performance of its duties.
- (2) The Border Guard shall perform the law enforcement tasks referred to its authority by law, the acts of investigation referred to its authority by law, and act as the investigative authority in criminal cases referred to its authority by separate law.
- (3) With exception of the measures under Article 13/A (2) and (3), points a) and b) shall not be applicable to the internal border.

The Organisation of the Border Guard

Article 23

- (1) The Border Guard shall be divided into central, regional and local units.
- (2) The central unit of the Border Guard is the National Headquarters of the Border Guard (hereinafter referred to as the National Headquarters).
- (3) The regional units of the Border Guard are the directorates that function directly subordinated to the National Headquarters.
- (4) The central unit and regional units of the Border Guard shall be legal entities.
- (5)¹⁹ The local units of the Border Guard shall include its branches operating in direct subordination to the directorates.
- (6) To perform the duties specified in this Act, border guard organisations not mentioned under paragraphs (3) and (5) hereof may also be established in the manner specified by law; the legal standing of such an organisation shall be determined by legal regulation.

The Control and Direction of the Border Guard

Article 24

¹⁹ This Paragraph has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

(1) Pursuant to the provisions of the Constitution and the Act on Defence, the Border Guard shall be controlled and directed by the Parliament, the President of the Republic, the Government and the Minister of the Interior.

(2) The Minister of the Interior shall be the minister in the Government responsible for the execution of the duties of the Border Guard. He shall exercise all the rights of control which the Constitution, this Act or separate law do not refer to the authority of another agency or person.

(3) Within his functions related to the technical direction of border policing activities, the Minister of the Interior shall

- a) submit the plans and reports pertaining to the budget, development, equipment and preparation of the Border Guard and shall submit the numbers of the Border Guard personnel in a detailed breakdown to the Parliament,
- b) prepare the drafts of international agreements, bills, parliamentary resolutions, government decrees and government resolutions related to the activities, operation and functions of the Border Guard,
- c) regulate the operation of the Border Guard by decree and other legal instruments of state control,
- d) maintain international relations to facilitate the international co-operation and development of the Border Guard,
- e) upon the recommendation of the National Commander of the Border Guard (hereinafter referred to as the National Commander) and in agreement with the Minister of Finance, shall make the decision on the establishment or termination of the organisation of the Border Guard that is a legal entity [Article 23 (4)] and on re-designating **service posts** taken up by conscripts into regular or contractual Border Guard service posts or positions to be filled by civil servants or public employees,
- f) shall introduce the arms, equipment and instruments of coercion and the uniforms of the Border Guard.

Article 25

(1) With respect to the direction of the operation of the Border Guard, the Minister of the Interior

- a) may specify duties for the Border Guard in order to implement government decisions and may issue instructions concerning the performance of the duties of the Border Guard provided that there are no statutory provisions to the contrary,
- b) with the exception of matters subject to Article 7 (1) b) and (2) of the Act on Defence, shall exercise employer's rights vis-a-vis the National Commander,

- c) determine the principles of raising the level of combat readiness and of the mobilisation of the Border Guard.
- d) based on government decision, shall take action to raise the level of combat readiness and to mobilise the Border Guard through the National Commander,
- e) based on the submission of the Commander-In-Chief of the Army, shall specify the requirements of preparing the Border Guard for military defence duties,
- f) shall determine the detailed rules pertaining to the scope of authority of the National Commander,
- g) upon the recommendation of the National Commander, shall approve the Statutes of the Border Guard,
- h) shall be responsible for the lawful operation of the Border Guard, shall take supervisory action to prevent and terminate illegal practices for which he shall regularly supervise compliance; in the case of the duties performed in a manner that violates the law, shall take action to re-establish compliance and to annul illegal measures or shall alter internal instructions that violate the law and shall adjudge appeals against the resolution of the National Headquarters (National Commander) brought in procedures of the first instance,
- i) designate the facilities to be guarded by the Border Guard,
- j)²⁰ supervise budgetary management of the Border Guard, approve schemes of development of the Border Guard proposed by the National Commander, as well as control expediency and effectiveness of the resource management of the Border Guard;
- k) exercise the personnel related and employer's rights referred to his authority by separate legal regulation,
- l) based on international agreements and the authorisation conferred upon him by the Government, shall appoint the leaders, deputies, members and permanent specialists of agencies established to administer matters related to the state border (commissioner-in-chief on border affairs, border commissioners, joint committees, etc.),
- m) shall approve the plans related to the handling of conflict situations and refugee emergencies aimed at maintaining order at the state border,
- n) based on the authorisation conferred upon him by the Government, shall take action for the temporary regrouping of the Border Guard forces in the case of conflict situations and refugee emergencies.

²⁰ This Point has been amended by Article 74 of the Act LXXV of 1999 on the Provisions of Combating Organised Crime and Certain Phenomena Connected thereto and on the Amendments of Relevant Legislation (hereinafter: Act on organised crime).

(2) The Minister of the Interior may issue individual instructions to the Border Guard under his authority specified by law or government decree exclusively through the National Commander.

(3) The Minister of the Interior shall not issue instructions affecting the merits of cases subject to the competence of the Border Guard as a special authority.

The National Commander

Article 26

(1) The Border Guard shall be headed by the National Commander who shall be the superior in service of Border Guard personnel.

(2) The National Commander shall be responsible for preparing the Border Guard for defence and policing tasks, for the performance of its defence and policing duties, for its disciplinary status and for ensuring its operation from all aspects and for compliance of its budget management.

Article 27

(1) Within the framework specified by legal regulations and other legal instruments of state control, the National Commander shall command the National Headquarters, direct and control the operation of the regional units and issue his commands and measures with independent responsibility.

(2) Within his authority specified under paragraph (1) hereof, the National Commander shall

- a) participate in the development of the part of the country's armed defence plan pertaining to the Border Guard in accordance with the measure of the Minister of the Interior,
- b) put forward recommendations to the Minister of the Interior concerning the enactment of legal regulations and other legal instruments of state control affecting the operation and functions of the Border Guard,
- c) submit the plans pertaining to the management of conflict situations and refugee emergencies aimed at maintaining order at the state borders to the Minister of Interior for approval,
- d) regulate the procedures for raising the combat readiness of and mobilising the Border Guard,
- e) together with the Chiefs of Staff of the Army, shall plan the replacement of personnel of the Border Guard and the assets required for replacement and mobilisation, shall prepare the agreements aimed at making use of real property owned by the state and the municipalities

necessary for the accommodation of personnel regrouped in the case of conflict situations and refugee emergencies,

- f) shall develop the order of training and preparing personnel and ensure execution thereof,
- g) shall develop the plans pertaining to the number of Border Guard personnel, within this, the composition of personnel, their organisation and equipment and shall submit these to the Minister of the Interior for approval and, following approval, shall take action to have them implemented,
- h) shall make the decision on the establishment and termination of organisational units not subject to Article 24 (3) e),
- i) shall direct the implementation of duties arising from international agreements,
- j) shall represent the Border Guard in international relations,
- k) shall exercise the rights of the employer as specified by legal regulation and shall put forward recommendations to the Minister of the Interior for the appointment and recall of his deputies,
- l) shall direct the preparation of the annual budget of the Border Guard, shall take action to use the annual budget estimates in accordance with the law and prepare the report on the use of the annual budget,
- m) shall organise and direct the meeting of the material, technical, financial and health conditions for the operation of the Border Guard, shall take action to ensure appropriate service and working conditions for the staff,
- n) may issue mandatory measures and commands to Border Guard units to execute functional tasks related to defence activity, policing tasks and operations as specified by legal regulation and other legal instruments of state control and to regulate issues within his scope of authority,
- o) shall ensure the protection of state and service secrets by the Border Guard,
- p) may temporarily regroup Border Guard forces and assets to ensure the guarding and surveillance of the borders, controlling border traffic and maintaining order at the borders.

Chapter III

THE PERSONNEL OF THE BORDER GUARD

Article 28

The personnel of the Border Guard may consist of border guards performing their actual duty, persons liable to military service deployed on reserve, civil servants and public employees.

Article 29

For the purposes of this Act, the following may perform actual duty:

- a) the professional border guard,
- b) the student of military and policing institutions of higher education admitted by the Border Guard who is preparing for a career as a professional border guard in a legal relationship specified by separate regulation,
- c) the border guard on contract,
- d) the conscript and reserve border guard performing border guard duty in consequence of liability to military service

[hereinafter the persons referred to under Points a)-d): the border guard].

Replacement and Supplementing Border Guard Personnel

Article 30

- (1) The border guard may perform duty on the basis of voluntary application or liability to military service in accordance with the origin of the service relationship.
- (2) Border Guard personnel may be supplemented by calling up those voluntarily applying for professional service or service on contract or by calling up conscripts.

Article 31

- (1) The professional service relationship shall be established for an indefinite period, the service relationship on contract for a definite period.
- (2) The border guard on contract shall fill a specific post and may reach the rank appropriate to such a post.

Article 32

- (1) The provisions of the Act on Defence shall be applied to the replacement of the conscript and reserve staff.

(2) Reserve personnel - to be ensured by the competent county (Budapest) replacement centre - shall consist of persons liable to military service discharged from conscript service, dismissed from the professional or contracted staff of the Border Guard or those retired or put on reserve from the Border Guard.

Article 33

The suitability of the border guard for service, as specified in separate legal regulation, with respect to criminal procedure in progress, criminal record, exemption from detrimental legal consequences linked to a criminal record and psychological status shall be checked upon entering into a service relationship and may be checked during the period of the service relationship.

Article 34

The border guard, who is a conscript or on reserve pursuant to liability to military service, shall not exercise an authority implying decision making on cases.

Article 35

In units, the border guard may be deployed to perform the tasks specified under

- a) Article 21 and Article 22 (1) a), b), c), e), f), g) and i) in border areas,
- b) Article 21 and Article 22 (1) c), e) and i) outside the border areas.

Article 36

The rules pertaining to the rights, duties, benefits, social security benefits, disciplinary liability and liability for damages of those Border Guard personnel on actual duty shall be determined by the separate Acts on the Service Relationship of the Professional Members of the Armed Forces, on the Service Relationship of Conscripts and, furthermore, on the Legal Standing of the Leaders, Faculty and Students of Military and Law Enforcement Institutions of Higher Education and on Vocational Training.

Chapter IV

CO-OPERATION BY THE BORDER GUARD

Article 37²¹

(1) In the course of fulfilling its duties and tasks specified in legal regulations, the Border Guard shall co-operate with the Hungarian Army, the Police, the Customs and Finance Guard, refugee agencies, the agencies of catastrophe protection, the national security agencies, the environment protection and nature conservation authorities and other state agencies, the local governments and their offices, business organisations, social organisations, citizens and their communities.

(2) The Border Guard shall co-operate with foreign policing agencies on the basis of international agreements or the principle of reciprocity. On the basis of international agreement, a professional member of the Border Guard may in the course of fulfilling his policing duties act within his scope of authority specified by international agreement. A member of a foreign agency fulfilling border policing duties may act within his scope of authority specified by international agreement in the territory of the Republic of Hungary.

Article 38

To establish regional and local units of the Border Guard for the performance of border policing duties, the opinion of the body of representatives of the local government concerned shall be invited in advance.

Article 39

(1) The leaders of the directorates shall annually inform the county (Budapest) assembly of the local governments of border areas and/or the assembly of the city with county rights on the developments concerning the regime at the border, the border guarding situation and border traffic.

(2) Upon invitation, the head of the local unit of the Border Guard shall inform the body of representatives of the local government within his area of competence, of the developments concerning the regime at the border, the border guarding situation and border traffic.

(3) The head of the regional agency of the Border Guard shall inform the head of the competent office of public administration, the president of the county (Budapest) assembly (lord mayor), the county (Budapest) police commissioner, the commander of the county (Budapest) civil defence unit; the head of the Border Guard's local unit shall inform the mayor of the local self-government, and with respect to Point e) hereof, the regionally competent environment protection and nature conservation authority without delay, of

a) a threat to the population from the territory of a neighbouring state,

²¹ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

- b) the expected arrival of large numbers of refugees or persons requesting temporary protection,
 - c) an armed group assaulting the territory of the country, the measures taken and recommended to protect the population, the elimination of the armed group,
 - d) all restrictions introduced in the border area pursuant to this Act if advanced notification thereof was not possible owing to the risk in delay,
 - e) pollution to the environment or a threat thereof or damage to natural assets.
- (4) The head of the regional unit of the Border Guard shall inform, without delay,
- a) the head of the regionally competent unit of the National Security Office of matters according to paragraph (3) Point a)-d),
 - b) the commander of the unit of the Hungarian Army stationed in the area affected concerning matters under paragraph (3) a), c) and d),
 - c) the commander of the competent regional customs unit of the Customs and Finance Guard concerning matters under paragraph (3) a), b) and d),
 - d) the competent agency of refugee affairs concerning matters under paragraph (3)b).
- (5) The heads of the agencies referred to under paragraph (1)-(4) shall inform the competent units of the Border Guard of facts and circumstances affecting the activities of the Border Guard that they may have ascertained in the course of performing their functions.

Chapter V

THE POLICING AUTHORITY OF THE BORDER GUARD, ITS COMPETENCE AND OFFICIAL FORA

Mandated Powers

Article 40

- (1) The Border Guard, to the extent necessary for the performance of its duties, may block and search roads and areas in the border area; may restrict or forbid stay or the performance of work in specified areas, notifying those concerned through the executive of the local government for a temporary period.
- (2) For the purposes specified under paragraph (1), hereof, the Border Guard may restrict or forbid traffic on border roads pursuant to international agreement in accord with the competent

agency of the neighbouring state, also notifying the competent police district, the mayor of the local government and the traffic authority concerned. The action of the Border Guard shall not give rise to disadvantage which is obviously disproportionate to the legitimate purpose of the action.

(3) The Border Guard may set up and place edifices and technical equipment in the border area and may install technical instruments to protect the order of the state border (surveillance).

Article 41

Apart from the international waterway, the Border Guard, in agreement with the competent agencies of the neighbouring state and the Customs and Finance guard, based on international agreement, shall permit

- a) the transit of vessels of the neighbouring or a third state through a part of the border waters where both banks belong to the territory of the Republic of Hungary,
- b) the entry of the vessel to a part of border waters where both banks belong to the territory of the neighbouring state.

Powers of the Border Guard in its Capacity of Specialised Authority

Article 42

(1) The approval of the Border Guard as the specialised authority shall be required for

- a) the establishment of shooting grounds within 10 kilometres from the state borders, the establishment of a port or other facility,
- b) the designation and maintenance of a place for swimming along the border waters and on the banks thereof,
- c) the activities specified under Article 6 (1) and (2), furthermore, for the operation of a mine, exploration, surveying, water management and constructions works within 100 meters from the borderline.

(2) The Border Guard may forbid the activity subject to the reporting obligation under Article 12 or to the approval of the specialised authority in case of a failure to effect notification or obtain approval.

Procedure in the Case of the Suspicion of a Criminal Act or Petty Offence

Article 43

(1) The Border Guard shall perform the investigation in the case of criminal acts specified under Article 16 (4) of Act I of 1973 on Criminal Procedures (hereinafter Act on Criminal Procedures).

(2) In case of other criminal acts which come to the knowledge of the Border Guard in the course of the performance of its duties specified by law and international agreement, the Border Guard shall interrupt the criminal act, arrest the person against whom there is a well-founded suspicion of having committed the criminal act and transfer him to the competent authority, also indicating the evidence. The Border Guard may perform acts of investigation that cannot be postponed in order to safeguard the evidence.

Article 44

(1) In order to arrest the person under the well-founded suspicion of having committed a criminal act or to prevent illegal crossing of the border or to prevent the taking of vehicles, objects or documents which may be linked to a criminal act through the borders, the Border Guard may enforce warrants of apprehension upon the request of the investigating authority or in the case specified under Article 43 (2) and, in case of criminal acts according to Article 16 (4) of the Act on Criminal Procedures, also within its own scope of authority.

(2) In cases within its own authority, or upon the request of the Police, the Defence Service of the Law Enforcement Agencies, the national security services or the Customs and Finance Guard, the Border Guard may monitor watch lists and stop lists.

Article 45²²

(1) In cases defined by the provisions of law, the Border Guard shall act as a petty offences authority.

(2) In the case of perceiving a petty offence not under its scope of authority, the Border Guard shall

- a) take measures to stop the action;
- b) record the facts and obtain evidence, or, for this purpose, inform the competent petty offences authority;
- c) file a report.

²² This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

Alien Policing Powers

Article 46

- (1) The Border Guard shall perform its alien policing tasks within its authority specified in the Act on Alien Policing.
- (2) Pursuant to international agreement or reciprocity, the Border Guard shall effect the transfer and taking over of persons through the state border and shall take the persons to be transferred in between other states to the place of transfer with an escort.

Article 47

- (1) In participating in the fulfilment of refugee authority duties, the Border Guard shall ensure that the foreigner declare his intention of submitting an application for recognition as a refugee or as a person enjoying temporarily protected.
- (2) The Border Guard shall not effect the measure or decision stating the obligation to leave the country against the foreigner who has made a declaration according to paragraph (2), except when
 - a) the foreigner did not submit an application for recognition as a refugee or as a person enjoying temporarily protected to the refugee authority;
 - b) if the application by the declaring foreigner is rejected by the refugee authority, and the unfavourable decision is enforceable;
 - c) in the absence of an obligation thereto, no provision of law allows for the admission of the foreigner as a refugee.

Article 47/A²³

The Border Guard may apply the coercive measures limiting personal freedom brought under its alien policing powers in the transit area, too.

²³ This new Article has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

The Competence of the Border Guard

Article 48

In the border area - based on separate legal regulation - the Border Guard shall participate in supervising compliance to the regulations on environment protection and nature conservation and water traffic (shipping).

Article 49

(1) Notwithstanding the provisions of Article 50 hereof, the Border Guard shall be competent to perform the tasks referred to its authority in the border area.

(2) The competence of the Border Guard organisations performing border policing tasks shall be specified by separate legal regulation.

Article 50²⁴

The Border Guard shall also perform its tasks specified under Article 22 (1) c), d), e), f), i), j), k), and l) as well as Article 22 (2) outside the border area.

The Official Forums of the Border Guard

Article 51

Unless otherwise provided for by legal regulation, the border protection and border traffic units shall take action in the first instance and the directorate in the second instance in cases referred to the authority of the Border Guard.

Article 52

Unless otherwise provided for by international agreement, the directorate shall approve the exercise of activities specified in Article 6 (1) and (2) and Article 42 of this Act, shall license the activity specified under Article 17 (6) and Article 41 as well as the transfer of persons, who have strayed through the state border, at the joint border, in its capacity as a specialised authority of the first instance.

²⁴ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

Article 53

(1)²⁵ Unless otherwise stated by law, in the second instance, the National Headquarters shall adjudge the appeal submitted against the administrative resolution of the directorate made in the first instance.

(2) The National Headquarters shall take action in the first instance in cases defined under Article 14 and Article 17 (3). The Minister of the Interior shall be entitled to take action in the second instance.

Chapter VI

ACTIONS, INSTRUMENTS OF COERCION, INTELLIGENCE GATHERING

Article 54

In the course of performing its border policing duties, the Border Guard shall apply the provisions of Chapters IV-IX of Act XXXIV of 1994 on the Police (hereinafter referred to as the Police Act). For this purpose, Police shall mean Border Guard, policeman shall mean border guard and tasks and duties shall mean the tasks and duties of the Border Guard specified in this Act.

Actions

Article 55

Apart from intelligence gathering subject to permission by a judge, the provisions of Chapters IV-IX of the Police Act shall also govern the policing duties of the Border Guard specified in this Act.

Article 56

(1) The provisions of Chapter V of the Police Act shall be applied to the actions of the Border Guard with the following differences:

- a) The Border Guard shall be entitled to apply the provisions of Article 36 of the Police Act (apprehension of persons and objects) only in the case of the well-founded suspicion of criminal acts listed under Article 16 (4) of the Act on Criminal Procedures and in the case defined under Article 43 (2) of this Act.

²⁵ This Paragraph has been amended by Article 74 of the Act on Organised Crime.

- b) in the case of a well-founded suspicion of the criminal acts listed under Article 16 (4) of the Act on Criminal Procedures and in the case specified under Article 43 (2) of this Act, the Border Guard shall have the rights ensured under Article 39 (taking action in a private home and in other places which do not qualify as public area) points a)-c) of the Police Act,
- c) the action according to Article 45 of the Police Act (removal of the vehicle, use of wheel clamp) may be effected by the Border Guard only at road border crossing points,
- d) a border guard shall not be entitled to exercise the rights or take the actions specified under Article 34 (bringing before the court), Article 35 (checking for crime prevention purposes), Article 38 (public security arrest), Article 41 (checking by instruments - polygraph), Article 46 (safeguarding persons and facilities) of the Police Act,
- e) a border guard whose status is that of conscript, reserve or supplementary reserve and performing his duties under his liability to military service, when on patrol duty, shall take the action specified under Article 29 (requesting persons to prove their identities), Article 30 (intensive control), Article 31 (search of clothing, packages, vehicle), Article 32 (request for information) and Article 33 (1) a) to d) (arrest) of the Police Act,
- f) with respect to his functions, a border guard shall, if recognising a criminal act, also take the necessary actions outside the border area.

(2) In the course of its operation, the Border Guard shall not make use of the rewards specified in Article 27 of the Police Act and shall not issue official licenses as specified under Article 28 of the Police Act.

(3)²⁶ Against a person taken into the custody of the alien policing authority, the Border Guard may apply remand measures in accordance with the Act on Alien Policing.

Instruments of Coercion

Article 57

The provisions of Chapter VI of the Police Act shall govern the instruments of coercion that may be used by the border guard and the mode of their deployment with the following differences:

- a) a border guard may only employ the coercive instruments provided by the Minister of the Interior for the Border Guard,
- b) the road block specified under Article 41 of the Police Act may be employed by the Border Guard only in the border area,

²⁶ This new Paragraph has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

- c) border guard units shall not be deployed in cases specified under Article 58 (1) g) and Article 59 of the Police Act.

Use of Firearms

Article 58

(1) A border guard may use firearms in the manner specified under Articles 52-53 and 55-57 of the Police Act in the following cases:

- a) to prevent a direct threat to or attack on life,
- b) to prevent a direct attack threatening grievous bodily harm,
- c) to prevent or interrupt criminal acts causing danger to the public, terrorist action or the hijacking of aircraft,
- d) to prevent a criminal act being committed with firearms, explosives or other instruments capable of killing,
- e) to prevent an act aimed at the illegal and violent acquisition of firearms or explosives,
- f) to prevent an attack on a facility of outstanding importance for the operation of the state or the supply of the population,
- g) against the person who fails to comply with the border guard's warning to put down arms or other dangerous instruments held by him and whose behaviour indicates the direct use of the arms or other dangerous instruments against the person,
- h) to prevent an attack against his own life, body and personal freedom.

(2) A border guard performing his duty in the territory of another state pursuant to an international agreement may use firearms in the cases and in the manner specified in the international agreement.

(3) The use of both firearms and other arms shall be immediately reported to the superior in service. The superior in service shall take action to investigate whether that use was in compliance with the law.

Gathering of Intelligence

Article 59

(1)²⁷ In order to perform its duties specified under Paragraph (2) of Article 22²⁸ of the present Act, the Border Guard may conduct secret inquiry according to the provisions of Chapter VII of the Police Act

(2)²⁹ Only the legal aspects of utilising the expenditure of special operations of the Border Guard may be supervised by external state agency. In this framework, with the exception of Article 25 (1) j), expediency and effectiveness may not be supervised.

(3) The Border Guard may gather intelligence according to paragraph (1) hereof only if the data required for the performance of its duties specified in this Act cannot be obtained in another way.

Legal Remedy

Article 60

(1) The provisions of the legal regulations governing the given procedure shall be applied for the legal remedy against the actions taken and the employment of the coercive instruments regulated in this Act provided that a procedure is initiated on the basis of the action (criminal, petty offence procedure, etc.).

(2) The head of the directorate shall make the decision concerning other complaints submitted against an action by the Border Guard or refraining therefrom by resolution in accordance with the general rules governing public administrative procedures unless it is effected in the course of another procedure.

Chapter VII

DATA PROCESSING BY THE BORDER GUARD

General Rules

Article 61

(1) The Border Guard shall process personal data in order to perform its law enforcement, crime prevention, policing, defence and public administrative tasks and duties specified in this Act.

(2) In order to perform its duties specified under paragraph (1) hereof, the Border Guard may take over data from other data processing systems specified in this Act indicating the purpose and

²⁷ This Paragraph has been amended by Article 75 of the Act on Organised Crime.

²⁸ This Article allows Border Guard to lead criminal investigations.

²⁹ This new Paragraph has been introduced by Article 75 of the Act on Organised Crime.

legal basis of their use. The fact of the transfer of data shall be documented by both the transmitting and the receiving agency.

(3) Personal data related to law enforcement and crime prevention duties shall be handled separately from personal data related to policing, defence and administrative duties.

(4) The personal data processed by the Border Guard may be used for statistical purposes in a manner that does not permit the identification of individuals.

(5) The Border Guard may transfer personal data to foreign law enforcement, judicial, border guard agencies and international organisations on the basis of international agreement.

Article 62

(1) To perform its law enforcement, crime prevention and alien policing duties, the Border Guard may request data from the agencies keeping the registries of personal data and addresses, the national vehicle registry, the registry of criminal offenders (those whose convictions were upheld by the courts), the registry of those held in penitentiary institutions, the registry of those restricted in their foreign trips and the registry of passports, the registry of border signs and the alien policing registries irrespective of the constraints of the general work order. These requests for data shall be complied with in the case of deficient and fragmentary data. too

(2) The head of the agency receiving data shall be liable for the compliance of the use of the data so received according to paragraph (1) and provided according to Article 48 paragraph (2)

Article 63

The Border Guard shall, for administrative purposes, process the personal identification and address data of those participating in the procedure and the identification data of the case from the commencement of the procedure until the destruction of the documents here concerned.

The Border Guard's Data Management Systems

Article 64

The Border Guard shall operate data management systems specified under Articles 65-77 in order to perform its law enforcement, crime prevention, policing, defence and administrative duties.

Article 65

(1) The Border Guard shall process the data of persons, vehicles and travel documents in relation to monitoring watch lists and stop lists, of persons subject to a ban on entry and stay and of persons vehicles and travel documents under warrant of apprehension ordered for the territory of the Republic of Hungary on the basis of the serial number (file number) issued by the entity ordaining such action and the type of the order (filing flag) in the registry for controlling border traffic; with respect to the monitoring of persons, vehicles and travel documents, the data shall be processed for 180 days from the issue of the order or until its withdrawal in the case of persons subject to a ban on entry and stay and, in the case of warrants of apprehension concerning persons, vehicles and travel documents ordered for the territory of the Republic of Hungary, for the period specified by the entity issuing the order or until the termination of the reason for registration.

(2) The regional and local units of the Border Guard shall process the data on persons on watch lists and stop lists, those subject to a ban on entry and stay or under warrant of apprehension extending to their area of competence: the name of the person (surname and first name), mother's name, place and date of birth, sex, citizenship, the code pertaining to the order, the date of entry in the registry and of the expiry of the order, the date and exact time of the last updating of the data and, furthermore, in the case of a central unit, the code of the organisation issuing the order, the personal description of the person concerned, a portrait photograph and additional comments of the organisation issuing the order shall also be processed by the central agency on the basis of the file number.

(3) The regional and local units of the Border Guard shall process the data pertaining to vehicles monitored on watch lists or stop lists or subject to warrants of apprehension within their area of competence: the country code and registration number of the vehicle on the watch or stop list or subject to a warrant of apprehension, the code pertaining to the order, the date of entry in the registry and the expiry of the order, the date and exact time of the last updating of the data and , the code of the organisation issuing the order and its additional remarks shall also be processed on the basis of the file number by the central agency.

(4) The regional and local units of the Border Guard shall process the data relating to travel documents on watch and stop lists and warrants of apprehension within their areas of competence: the citizenship of the holder of the travel document on the watch and stop list or the warrant of apprehension, the serial number of the travel document, the code pertaining to the order, the date of entry in the registry and of the expiry of the order and the date and exact time of the last updating of the data and , the code of the organisation issuing the order and its additional remarks shall also be processed by the central agency on the basis of the file number.

Article 66

(1) The Border Guard shall not supply data from the registry of persons, vehicles and travel documents related to the monitoring of watch lists, stops lists and of persons subject to a ban on entry and stay if these registries have been produced by other agencies and transferred to the Border Guard for the performance of its duties.

(2) With respect to data relating to persons, vehicles and travel documents on watch lists and stop lists ordered by the Border Guard, data may be supplied only with the permission of the head of the investigative authority of the Border Guard.

(3)³⁰ From the registry of persons subject to a ban on entry and stay ordered by the Border Guard, data may be supplied to the Customs and Finance Guard, the alien policing authority, the judicial and law enforcement agencies, the national security agencies and the authority for refugee affairs and, based on international obligations, to the agencies and with respect to the data therein specified.

(4)³¹ In order to perform its duties under this Act, the Border Guard may take over data from the central alien policing registry and the central refugee registry. The Border Guard shall not transfer such data to any other agency, and shall handle them until the termination of its proceedings.

(5)³² The Border Guard shall — without delay — inform the central alien policing data controlling agency of any decision or measure it makes in its scope of authority defined by the Act on Alien Policing.

Article 67³³

(1) The central agency of the Border Guard shall process the following data in the registry on the entry and exit of aliens subject to the visa requirement within the area of its competence, for five years: the place, date and mode of the entry of the alien subject to the visa requirement, the name (surname and first name) of the alien entering the country, place and date of birth, sex, citizenship, number of travel document and number of visa and, if entry is effected by car, the registration number of the car.

(2) The Border Guard may supply data from the registry of entry and exit by aliens subject to the visa requirement to the judicial, law enforcement and national security agencies, to the authority for refugee affairs and, based on international agreement, to the relevant agencies and with respect to the range of data specified therein.

Article 68

(1) The central, regional and local units of the Border Guard shall process the following data in relation to cases within its authority and competence with respect to the registry of those committing illegal acts, for two years from entry in the registry and with respect to more substantial damage caused by violating the order of the border, for five years: the name of the

³⁰ It shall expire on 1st January 2002.

³¹ This new Paragraph has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

³² This new Paragraph has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

³³ It shall expire on 1st January 2002.

perpetrator (surname and first name), date of birth, place of residence and place of stay, citizenship, the qualification, relation, date and direction of the illegal act committed, the motive for the illegal act, the cause of its occurrence, mode of perpetration, nature of perpetration and other data concerning the action taken with respect to the said illegal act.

(2) The Border Guard may supply data from the registry according to paragraph (1) hereof to the Police, the national security agencies and the authority for refugee affairs and, on the basis of international agreement, to the relevant agencies and with respect to the range of data therein specified.

Article 69

(1)³⁴ For the purposes of law enforcement and crime prevention, the Border Guard may process the personal data of persons crossing the border, and, if entry is by car, the registration number of the vehicle, for 90 days.

(2)³⁵ Provisions of Paragraph (1) shall also be applied to Hungarian nationals entering and leaving the country with the sole difference that their data shall be handled for 90 days from the date of border crossing.

(3) The Border Guard may supply data from its registry for border traffic control to the judicial, law enforcement, national security and refugee affairs agencies and to the alien policing authorities.

Article 70³⁶

(1) The central, regional and local units of the Border Guard shall process the data specified in Articles 52-59 of the Act on Alien Policing extending to their area of competence for the period specified therein.

(2) The Border Guard may supply data from the data registered in the course of its alien policing procedure only to the agencies and authorities specified in Articles 52-59 of the Act on Alien Policing.

Article 71³⁷

(1) In its registry of petty offenders, the Border Guard shall process the personal identification data (citizenship, surname and first name, and for women, maiden name) and the

³⁴ This Paragraph has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

³⁵ This new Paragraph has been introduced by Article 75 of Act on Organised Crime. It shall expire on 1st January 2002.

³⁶ It shall expire on 1st January 2002.

³⁷ This Article has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

address of petty offenders, the petty offence committed, the sanction or action applied within its scope of authority and the number of the case for two years from the date of taking action against such persons.

(2) The Border Guard may supply data from the registry of petty offenders to the Police, the national security and judicial agencies, as well as the central office handling the registry for public road traffic.

Article 72

(1) The central and local agencies of the Border Guard shall process the data of the registry of persons liable to military service, received from the armed services replacement headquarters with respect to their area of competence on the basis of Article 73 (5) of the Act on Defence, which they may supplement to update for changes taking place during the period of military service and in the interest of assignment to and service in a post with data related to a procedure aimed at exemption from detrimental legal consequences in progress, family status and social situation, mental disability, personality disorder, propensity to suicide, addiction to drugs or psychotropic substances, until the discharge of the individual fulfilling military service.

(2) The Border Guard may supply data from the registry of those liable to military service to the Police, the national security agencies and to the health care institutions competent according to the Act on Defence.

Article 73

(1) The regional units of the Border Guard shall process, within the registry for specialised authority and licensing, the personal data of the person subject to a license and approval by the specialised authority and the data related to the subject of the license or the activity conducted with the approval of the specialised authority in accordance with the provisions of this Act extending to their own area of competence; the data shall be processed for two years from the expiry or withdrawal of the license.

(2) The Border Guard may supply data from the registry of specialised authority and licensing to the Police.

Article 74³⁸

(1) The regional units of the Border Guard shall process the data of refugees and persons requesting temporary protection (name, place and date of birth, number of travel document, place of residence) as well as the date of arrival onto the territory of the Republic of Hungary and,

³⁸ It shall expire on 1st January 2002.

furthermore, the reasons and circumstances giving rise to the flight, for one year following the valid decision of the authority for refugee affairs, with respect to their own area of competence.

(2) The Border Guard may supply data from the registry of refugees and persons under temporary protection to the Police, the national security agencies and the authority for refugee affairs.

Article 75³⁹

(1) The Border Guard shall process the data of the person entering the country with a permit (family and first name, place and date of birth, citizenship) as well as the data pertaining to the place and date of entry, the reason for issuing the permit and, if the person has travel documents, to the number of the travel document in the registry of persons entering the country with a permit, with respect to their own area of competence, for one year from the date of entry in the registry.

(2) The Border Guard may supply data from the registry of persons entering the country with a permit to the Police and the national security agencies.

Article 76

(1) The local agencies of the Border Guard shall process the data of the person arriving to the border crossing point for purposes other than crossing the border (surname and first name, and for women, maiden name, citizenship, permanent place of residence), the number of the personal identity card and the purpose of entering the border crossing point in the registry of persons arriving at the border crossing point for purposes other than crossing the border, with respect to their area of competence, for one year after the expiry of the permit or its withdrawal.

(2) The Border Guard may supply data from the registry of persons arriving to the border crossing point for purposes other than crossing the border to the Police, to the national security agencies and the Customs and Finance Guard.

Article 77

(1) To perform its law enforcement and crime prevention duties, the Border Guard shall process the following at its central, regional and local investigating units in accordance with their areas of competence:

³⁹ It shall expire on 1st January 2002.

- a) details of an unsolved crime which are important from the criminological viewpoint, until the apprehension of the perpetrator of the criminal act or, failing that, until the statutory limitation on applying sanctions,
- b) the traces, material residues, instruments and scent samples found at the site of the criminal act for the period specified under Item a) hereof and, furthermore, if the perpetrator is found or known, the data, fingerprints, personal description, photograph, voice and scent sample of the person questioned on the basis of a well-founded suspicion of having committed a deliberate criminal act, furthermore, the data of the criminal tests performed, for 10 years from the statutory limitation on applying sanctions because of the criminal act or if the perpetrator is sentenced, from the date of exemption from detrimental legal consequences due to a criminal record,
- c) details of the act of the person questioned on the basis of a well founded suspicion of a deliberate criminal act or of the person sentenced for having committed such a criminal act important from the criminological point of view, until the statutory limitation on applying sanctions or, in case of conviction, until exemption from the detrimental legal consequences of a criminal record,
- d) the data on persons effected by the employment of intelligence gathering and the results of such intelligence, until the termination of the procedure or, in case of conducting a criminal procedure, until the statutory limitation on applying sanctions or, in case of conviction, until the exemption from detrimental legal consequences of a criminal record or at most for 10 years,
- e) in the case of a serious criminal act or if the criminal act
 - 1. can be associated with international crime,
 - 2. is implemented in a series or in an organised manner or under arms, the characteristics of the persons and their relationships under the suspicion of having committed the criminal act important from the criminological viewpoint for 10 years or for a period specified under international agreement,
 - a) based on international agreement, the data of all those persons, acts and their relations against whom international law enforcement action has to be taken until the statutory limitation on applying sanctions or for the period specified under international agreement,
 - b) the data of the persons and of their contacts affected in acts or cases pointing to organised crime aimed against the state border and details important from the criminological viewpoint for 20 years following the last data generated with respect to the person concerned,
 - c) the data on the persons in the documents generated in the course of the investigation of individual criminal acts in relation to the investigation and the furnishing of evidence, their contacts, procedural status, the related investigation data, until the judgement is made by the courts or, in case of the termination of the investigation, until the statutory limitation on applying sanctions because of the criminal act,

- d) the data of intelligence gathered - unless a criminal procedure is initiated - for at most two years following the closure of intelligence gathering,
- e) the data of the persons and organisations collaborating with the Border Guard in intelligence work for five years from the termination of such co-operation,
- f) the data taken to prevent criminal acts and petty offences in the course of requesting persons to prove their identities and checking whether a person is under warrant of apprehension, for two years from the date of such control.

(2) To perform its law enforcement and crime prevention duties, the Border Guard may process special data exclusively in the case of matters listed under paragraph (1) Items d)-j) hereof.

(3) The agency of the Border Guard processing law enforcement and crime prevention data shall not give information to the person concerned on the data specified under paragraph (1) Items a)-g). This provision shall not restrict the rights of those engaged in criminal procedures.

Article 78

(1) With respect to the law enforcement data processing system of the Border Guard, only the persons authorised thereto by the National Commander, the member of the agency controlling the operation of the Border Guard, the official of the Ministry of the Interior appointed by the Minister of the Interior and, furthermore, with the exception of the documents listed under Items I, II and IV of the Annex to Act LIX of 1993 on the Parliamentary Commissioner for Citizens' Rights - the Data Protection Commissioner and the representative of any other agency authorised by law may inspect such data, ask for information, notification or data.

(2) Apart from those specified under paragraph (1) hereof, the following may request data in order to be able to perform their tasks specified by law also indicating the purpose:

- a) the courts,
- b) the prosecution,
- c) the Police,
- d) the national security services,
- e) the Ministry of Foreign Affairs,
- f) the competent agency of defence administration,
- g) the Customs and Finance Guard,

- h) the investigating authorities,
- i) the State Financial and Audit Office.

Article 79

(1) Personal data collected and stored by the Border Guard for the purposes of law enforcement may only be used for the purposes of law enforcement unless otherwise provided by law.

(2) The Border Guard may have access to the personal data processed by the agencies specified under Article 78 (2) for the purposes of performing its law enforcement and crime prevention duties, and may forward the data obtained so to the competent agency of the Ministry of the Interior for law enforcement purposes.

(3) The Border Guard may link its law enforcement data processing systems with those of other data processing agencies entitled to transfer personal data to the Border Guard for the purposes of the performance of its law enforcement duties in individual cases specified in this Act on the basis of the law. The linkage shall be terminated following the performance of the specific law enforcement duty and the database acquired in the course of such linkage shall be deleted immediately upon the termination of the investigation or following the confirmed court judgement.

Article 80

The Minister of the Interior, the National Commander, his deputy, the directors of the Border Guard directorates and the head of the investigating agency may, in relation to the criminal act, refuse to publish data in the public interest, for reasons of defence, national security, law enforcement and crime prevention.

Article 81

(1) In order to perform its law enforcement duties, in the course of work related to the apprehension of persons, vehicles and objects and on the basis of international commitments, the Border Guard may order the placement of flags in the registries of the personal data and addresses of citizens and in other administrative registration systems, indicating the purpose thereof.

(2) By means of such flags, the Border Guard unit may request the apprehension of the person concerned or, in the case of a change in data, notification. The data processing agency shall be under the obligation to satisfy the request of the Border Guard.

(3) The head of the Border Guard unit requesting the placement of the flags shall be responsible for ordering the placement of the flag, its termination and for the action requested.

(4) The Border Guard and the agency managing the registry containing the flags shall not inform the person concerned of the placing of the flag, the reasons thereof and of the actions taken on the basis of the placement..

(5) The Border Guard shall take immediate action to terminate the placement of the flag if the circumstance giving rise to it no longer obtains.

Chapter VIII

MISCELLANEOUS AND CLOSING PROVISIONS

Article 82

(1) In case of remuneration to collaborating individuals (Article 66 of the Police Act), the Border Guard unit delivering the remuneration shall meet the obligation to deduct and pay personal income tax.

(2) The highest rate of tax specified in the Act on Personal Income Taxation shall be deducted from the amount paid by the Border Guard to collaborating individuals pursuant to paragraph (1) hereof and paid to the tax authority.

Provisions conferring authority

Article 83

(1) The government shall be authorised to determine by decree

- a) the settlements belonging to the border area,
- b) the rules pertaining to opening temporary border crossing points,
- c) the order of entry and stay in and exit from the territory of the border crossing point for purposes other than crossing the border;
- d) ⁴⁰the conditions of the provisional introduction of and the rules of implementing border protection and border traffic control on the segment of the state border functioning as internal border;

⁴⁰ This new Point has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

e) ⁴¹the order and conditions of opening and operating border crossing points; thus especially the place, opening hours, the nature of the traffic of border crossing points, as well as all the material, infrastructural, personnel and financial conditions necessary for the proficient and safe performance of border traffic control.

(2)⁴² The Government shall be empowered to determine detailed rules of procedure for establishing front agencies by the Border Guard.

(3) The Minister of the Interior shall be authorised to determine by decree in agreement with the ministers concerned

a) the regime for hunting in the border area, for traffic, fishing and angling in border waters,

b) the principles of raising the level of combat readiness and mobilisation of the Border Guard,

c) the regime for crossing the state border by military units and freight,

d) the airports, harbours (ports), railway stations qualified as border area,

e) the railway lines and waterways designated for control while under way,

f) the rules of border traffic control for aircraft using airports temporarily opened to international traffic.

(4) The Minister of the Interior shall be authorised to determine by decree:

a) ⁴³the service regulations of the Border Guard, including the detailed rules concerning its service duties and the performance of its official proceedings,

b) the sphere of competence of the border policing agencies and investigating authorities of the Border Guard,

c)⁴⁴

d) ⁴⁵the detailed rules related to data processing by the Border Guard.

e) ⁴⁶provisions connected with granting permission for the use and application of special investigative techniques.

⁴¹ This new Point has been introduced by Act XXXIII of 2001 and shall come into force 1st January 2002.

⁴² This new Paragraph has been introduced by Article 76 of the Act on Organised Crime.

⁴³ This Point has been amended by Act XXXIII of 2001 and shall come into force 1st January 2002.

⁴⁴ This Point expired 1st September 1999 on the basis of Article 61 of the Act on Organised Crime.

⁴⁵ It shall expire on 1st January 2002.

⁴⁶ This new Point has been introduced by Article 76 of the Act on Organised Crime.

(5)⁴⁷ Detailed rules of the application of secret intelligence gathering techniques (Chapter VII of the Police Act) shall be determined by the Minister of Interior.

Legal regulations to be amended

Article 84

(1) Article 44 of Act I of 1968 on Petty Offences (hereinafter Act on Petty Offences) shall be supplemented with the following paragraph 4:

“(4) In the case of the commitment of petty offences related to alien policing, passport and travel documents, illegal crossing of the border, border policing, falsification of border signs and damage to border signs, the Border Guard shall be entitled to question the perpetrator and the witnesses, to inspect the site, to obtain and retain evidence and furthermore, provided that the conditions specified by law obtain, to bring in the perpetrators.”

(2) Article 116/A (3) of the Act on Petty Offences shall be replaced by the following provision:

“(3) Because of the petty offence specified under paragraph (1) hereof, the Police and, at the road border crossing point, the Border Guard may levy a fine *in situ* and may also take traffic administrative action specified in separate legal regulation.”

(3) The following provision shall replace Article 116/B (3) of the Act on petty offences:

“(3) Owing to the petty offence specified under paragraph (1) hereof, the Police and, at the road border crossing point, the Border Guard may levy a fine *in situ* and may also take traffic administrative action specified in separate legal regulation.”

Article 85

(1) Article 16 (3) of Act 1 of 1973 on criminal procedure (hereinafter the Act on criminal procedure) shall be replaced by the following provision:

“(3) The investigation of the foreign exchange crime (Criminal Code Article 309), tax and social security fraud if it is committed with respect to the tax (Criminal Code Article 310), smuggling and the receiving and concealing of smuggled goods (Criminal Code Article 312), cheque abuse (Criminal Code Article 313) and the forgery of public deeds committed in relation to these criminal acts (Criminal Code Article 274), forgery of private deed (Criminal Code Article 276) and stamp forgery (Criminal Code Article 307) shall be performed by the Customs and Finance Guard in accordance with the provisions of separate legal regulation.”

⁴⁷ This new Paragraph has been introduced by Article 76 of the Act on Organised Crime.

(2) Article 16 of the Act on Criminal Procedure shall be supplemented with the following paragraphs (4)-(5) and simultaneously the numbering of the current paragraph (4) shall be changed to paragraph (6).

“(4) In case of a well-founded suspicion of illegal stay in the country (Criminal Code Article 214), illegal crossing of the border (Criminal Code Article 217), man smuggling (Criminal Code Article 218), damage to the border sign (Criminal Code Article 220) and forgery of public deed committed in relation to travelling documents (Criminal Code Article 274), the Border Guard shall also act as investigating authority if the Border Guard perceives suspicion of the criminal act.

(5) Pursuant to the provisions of separate legal regulation, other public administrative agencies may also perform acts of investigation.”

Date of Coming into Force

Article 86

This Act shall come into force on the first day of the sixth month following the day of its promulgation and simultaneously with this, the following shall be annulled:

- a) Article 9 of Law Decree No. 17 of 1974 on state and public security and the subheading preceding it,
- b) Article 98 of Act XXXIV of 1994 on the Police,
- c) Government Decree No. 40/1974 (XI.1) on protecting the state borders of the Republic of Hungary and Ministry of Interior Decree No. 1/1975 (IV.2) issued as its execution ordinance,
- d) Government Decree No. 87/1989 (VII.34) on the termination of the western and southern border zone,
- e) the part of the text “the units of the Police or of the Border Guard or...” in Article 3 paragraph (3) of Government Decree No. 101/1989 (IX.28) on recognition as refugee.

Law Harmonisation Clause

Article 87⁴⁸

In accordance with Section 3 of Act I of 1994 proclaiming the agreement in the matter of the Europe Agreement concluded between the Republic of Hungary, the European Communities and their Member States in Brussels on December 16 1991, contains provisions compatible with the Schengen Implementation Agreement signed on June 19 1990 Concerning the Implementation of

⁴⁸ This new Article has been introduced by Act XXXIII of 2001.

the Schengen Agreement signed on June 14 1985 concerning the Gradual Abolition of Control on Common Borders.

**Articles 27, 28 and 29 of Act ... of May 29 2001 Amending
Act XXXII of 1997 on Protecting the Borders and the Border Guard**

Provisions Concerning Entry into Force

Article 27

(1) This Act shall enter into force on January 1, 2002, with the exceptions under paragraph (2).

(2) A separate Act shall enter the following into force: the provisions establishing Article 1(2) of the Border Guard Act in Article 1 of this Act; Article 4(2) of the Border Guard Act in Article 3 of this Act; Article 17(6) of the Border Guard Act in Article 11 of this Act; Article 18(2) of the Border Guard Act in Article 12 of this Act; Article 22(3) of the Border Guard Act in Article 15 of this Act; as well as Articles 4, 5 and 9, and Article 14(3) of this Act. The provisions of the Border Guard Act concerning border protection and border traffic control shall be applied to the external border from the coming into force of the separate Act.

Article 28

With the entry into force of this Act, the following shall cease to have effect: Articles 3 (4), 66 (3), 67 (1) and (2), 69 (2), 70, 74, 75, and 83 (4) d).

Provisions of Law Amended

Article 29

Article 16 (4) of Act I of 1973 on Criminal Procedure shall be replaced by the following provision:

“(4) In the case of the acute suspicion of illegal stay in the country (Article 214 of the Code of Criminal Procedure), prohibited border crossing (Article 217 of the Code of Criminal Procedure), man smuggling (Article 218 of the Code of Criminal Procedure), wrecking of border signs (Article 220 of the Code of Criminal Procedure), forgery of official documents with respect to travel documents (Article 274 of the Code of Criminal Procedure), the Border Guard shall also act as an investigating authority, when the suspicion of the criminal act was perceived by the Border Guard, or when information or report is made with the Border Guard.

Ferenc Mádl
President of the Republic

Dr János Áder
Speaker of Parliament