**Measures of the Hungarian government handling the migration crisis**

Hungary witnessed already a dramatic increase in the number of the illegal migrants arriving to the country during the early months of this year. Therefore, Hungary was among the first EU member countries to call for a systemic and geographically comprehensive approach, including at the extraordinary European summits in April and June when recent tragedies at the Mediterranean Sea inclined the European Commission to concentrate almost exclusively on the Southern Mediterranean route. Hungary has from the beginning advocated the importance of the Eastern Mediterranean and Western Balkans route.

As it is shown on the charts below, Hungary witnessed an increased migration pressure from early 2015. The number of asylum requests has sharply increased since the end of last year. While in the first quarter of the year economic migrants from Kosovo dominated the statistics the trend has changed in April when refugees from Syria and Afghanistan started to opt for the Western Balkan route.



Hungary found itself in an awkward situation. Despite of the fact that 99 % of the migrants arriving at its Southern border from Serbia already came through a European Union Member State (and have already entered then left the Schengen Area) most of them have never been registered. Trying to comply with Hungary’s commitments derived from the European Treaties, notably from the Dublin and the Schengen Agreements, has put an increasingly heavy burden on the Hungarian authorities. Most migrants had already decided their destinations before getting onto their journey from Turkey, therefore, after submitting their request for a refugee status they had only one goal in mind: continuing their journey towards Germany. An increasing number has tried to avoid all contacts with the Hungarian authorities, camping at the railway stations instead of being admitted by one of the refugee centres. As a result, these centres have never reached their full capacity through the entire crisis.

The situation became especially dramatic when, in early September, Germany announced that Federal authorities would handle all asylum requests irrespective of the applicant’s first point of entry into the European Union and that Syrians could count on a favourable decision. Migrants from that moment simply refused to cooperate with the Hungarian authorities or get registered. In the enclosed statistics one can see a dramatic drop in the number of Syrian asylum seekers despite the fact that their influx continued to increase.

It was in anticipation of this influx that the Hungarian government decided to accelerate the construction of the fence protecting the 175 kilometres of the Hungarian-Serbian border (hence the external border of the Schengen Area). Work started in early July and were concluded by 15th September.



Two further elements contributed to the protection of the external Schengen Border. Firstly, this physical protection is reinforced by the National Police, supported by the Hungarian Army. Secondly a set of legal measures was passed by Parliament with the aim of discouraging people from illegally crossing the state borders..

As on 4th September Mr László Trócsányi Minister of Justice underlined in his exposé to the Hungarian National Assembly, the amendments to Act III of 1952 on Civil Proceedings and Act LXXX of 2008 on Asylum serve to make asylum procedures before the authorities and courts faster and simpler, whilst guaranteeing full respect for the procedural rights of applicants.

The minor amendments proposed to be made to Act LXXXIX of 2007 on the State Border, Act LXXVIII of 1997 on the Formation and Protection of the Built Environment, Act LIII of 1995 on the General Rules of Environmental Protection, Act CXXIX of 2007 on the Protection of Arable Land ensure the fulfilment of the constitutional and EU obligations related to the protection of the borders and the more effective implementation of procedures to be conducted by the authorities at the borders.

The amendments to Act C of 2012 on the Criminal Code, Act XIX of 1998 on Criminal Proceedings and Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanours seek to facilitate combating trafficking in human beings and the maintenance of order at the state borders.

Essence of the amendments:

The amendment to the Asylum Act seeks to accelerate asylum procedures. It introduces a special border procedure permitted by the applicable EU legislation, whilst leaving the general procedural guarantees unchanged and taking full account of the specific situation of vulnerable persons such as minors, unaccompanied minors and other individuals requiring special procedures or care.

Based on the model of the health care emergency defined in the health care legislation [Section 228(2) of the Health Care Act], the Act authorises the Government to declare a state of crisis caused by mass migration for a temporary period upon the emergence of the conditions laid down in the law, subject to the notification of the Committee on Law Enforcement of the National Assembly. As a result, similar to the health care emergency, in the event of the emergence of the extraordinary circumstances defined in the legislation, the Act permits, without the introduction of a special legal order, the adoption of measures which only concern the duties of the State and municipalities, and – subject to certain guarantee provisions – do not exceed the extent acceptable under the Fundamental Law for ordinary Acts.

In a state of crisis of this nature, the Act allows the provisional use of public property or municipal property (private property excluded) against mandatory compensation, and facilitates or dispenses with certain public administration procedures to make them more effective in the interest of providing appropriate care for asylum seekers (e.g. in the case of buildings used for accommodating and providing care for applicants, the rules of public procurement need not apply).

The amendment to the **Act on the Protection of the State Border** introduces the concept of transit zone. Authorisation for this institution is granted in Article 43(1) and (3) of the Common Procedures Directive, based on which Member States may conduct procedures to assess the admissibility of applications at the border or in transit zones if the applicant has arrived from a safe third country, and the merits of the application may be determined within the framework of an accelerated asylum procedure if the applicant has entered the territory of the Member State unlawfully [Article 31(8)(h)]. Such special procedures may also be conducted in the case of large numbers of applicants, and are in fact, specifically designed for that eventuality. The essence of a transit zone – similar to an airport transit zone – is that while it is located in the territory of the given state, the entry into the transit zone does not qualify, in immigration terms, as an entry into that state. In the future, applications for asylum may also be submitted at these transit zones, in addition to the „normal” border crossing points, and may be examined in an accelerated, on-site procedure. In the event of the admissibility of asylum applications, applicants are permitted to enter the country via the transit zones.

**Amendment to the Act on Civil Proceedings**: In the interest of managing the large number of applications in procedures conducted on the borders, it is reasonable and necessary to introduce special procedural rules not only in the procedures of the asylum authority but also in the proceedings related to the judicial review of administrative decisions which should be conducted during the stay of migrants in the transit zone, before their entry into the territory of Hungary in a legal sense. For practical reasons, the Szeged Public Administration and Labour Court has exclusive jurisdiction to proceed in cases related to the judicial review of asylum proceedings conducted on the borders, as part of which it will have cassation powers to repeal the decision of the asylum authority and may order the conducting of a new procedure. Should the applicant request it, a full hearing can be held during the course of the court trial. This rule complies with the principles and rules of the Fundamental Law relating to fair trial and legal remedy. The related special procedural provisions proposed in the Asylum Act also ensure that asylum-seekers should not be required to leave the transit zone to attend a hearing in person.

The amendments to the **Criminal Code and the Act** on Criminal Proceedings primarily serve the purposes of effective and stringent action against human traffickers, and promote the acceleration of procedures, whilst respecting the relevant guarantees.
Illegal border crossers typically enter the territory of the country via human trafficking, without documents or with false documents, which often renders their identification impossible. Entire criminal organisations are being formed for the perpetration of these criminal acts committed for financial gain which abuse the vulnerable position of migrants and endanger their lives and physical well-being. It may hardly be contested that this trend, which is a threat to society, and the commission of these crimes can be tackled – as a general and specific preventive duty of the State – by increasing the penalty for the trafficking in human beings. Accordingly, the amendment to the Criminal Code increases penalty for the crime of trafficking in human beings.

The introduction of above measures provoked a rapid response of human traffickers altering the migration flow towards Croatia. The Hungarian government therefore decided to extend the protecting fence. By the middle of October when works terminated the number of illegal border crossings at the Croatian-Hungarian border (173.687) neared that at the Serbian-Hungarian border (203.925). On 16th October the closure of the Croatian green border was announced by Mr Péter Szijjártó Minister of Foreign Affairs and Trade. Measures introduced for the first time at the Serbian border a month previously entered into force on 17th October 2015. Legal border crossing points naturally remained open with a tightened border control regime.

The closure of the Serbian-Hungarian and Croatian-Hungarian border sections has always been regarded as a second best measure by the Hungarian government. The best solution would be the efficient protection of the external borders of the European Union, notably in Greece,, but this idea was not unanimously accepted at the European Council level. The Hungarian Government is still convinced that the most efficient means to prevent the illegal border crossings into the European Union would be a common European solution to protect the external borders of the EU in Greece.

The other three Member States of the Visegrád cooperation, Poland, the Czech Republic and Slovakia have provided help deploying police forces at Hungary’s southern border.

Since the influx continued, as a parallel measure and in full accordance with the Schengen regulations, temporary border control was introduced at the Hungarian-Slovenian border. Hungarian Minister of Interior, Mr. Sándor Pintér sent a letter to EU Ministers of Interior, as well as to Commissioner Avramopoulos, informing them that

* due to the unprecedented migratory and asylum pressure in Hungary, the Government of Hungary declared **crisis situation due to mass migration**;
* due to the extremely high pressure at the Hungarian-Croatian border, the Hungarian Government decided on 16 October 2015 to introduce the necessary border control measures the Hungarian-Croatian border sections in order to meet the responsibility arising from its obligations set forth by the EU legislation and the Schengen *acquis*;
* after careful consideration of the incidents happened in the early morning hours on 17 October 2015 at the Hungarian-Croatian and the Hungarian-Slovenian border sections, the Hungarian Government has adopted a decision on the temporary reintroduction of border checks at the Hungarian-Slovenian border section for 10 days, in accordance with Article 25 of Regulation (EC) **Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), because the** current situation presents serious threat to public policy and internal security in Hungary;
* the decision takes effect on 17 October 2015;
* the scope and intensity of the border control will be limited to the level required by actual security needs.

As a result of the above measures the number of illegal border crossing diminished drastically. While the total number of illegal migrants was 378.647 on 15th October it only increased to 391.003 by the 10th November. This number shows the effectiveness of the Hungarian government’s border protecting measures. In previous years the number of illegal border crossing in the quarter of the year equalled to the aggregated number of the first three quarters.

Need for a common European solution

Regarding the permanent relocation mechanism, the Hungarian standpoint has not changed since the first proposition of the Commission regarding the relocation of migrants within the European Union. According to this, Hungary is not a frontline state, since 99 % of migrants arriving at the Hungarian border has already entered the European Union and the Schengen Area. That is why the idea of establishing hotspots in Hungary couldn’t be accepted.

The mandatory quotas do not represent any solution for the migration crisis because it fails to handle any of the causes of this mass movement of people. European leaders have already wasted way too much time and energy discussing this measure, failing to focus on more important aspects. Furthermore the quota system cannot be effective as it does not prevent the so-called secondary migration; in other words, there is no guarantee that migrants will remain in the country where they are assigned to stay. Experience shows us that their aim is not the reach of a safe haven but much more the mirage of economic and social welfare associated mainly with countries like Germany and Sweden.

The main objective of the Hungarian policy remains therefore to find a common European solution for the protection of the external borders. Further important measures include:

* addressing the root causes of the migration crisis, including finding a political solution to the armed conflicts ongoing e.g. in Syria, Iraq and Afghanistan;
* keeping the refugees as close as possible to their countries of origin by supporting the countries adjacent to the conflict areas, such as Turkey, Jordan and Lebanon, with technical assistance and financial aid, so the refugees can ultimately return to their home countries once the crisis is over;
* continuing to save lives on the Mediterranean and, at the same time, cracking down on the network of traffickers and eliminating their business model;
* establishing hot spots on the external borders of the European Union, primarily in Greece, through a common and coordinated EU effort, so that the border control personnel of the member states can distinguish between economic migrants, who simply come to the EU hoping for a better life, and real refugees whose life is in danger in their country of origin;
* implement more efficient return policies by returning the economic migrants to their home countries with an active role of Frontex.

Brussels, 12th November 2015