**Background document on the amendments to the Fundamental Law of Hungary**

1. **Introductory remarks**

The Hungarian Parliament adopted Hungary’s new Fundamental Law on 25 April 2011 in the framework of a comprehensive reform process launched by the Fidesz Government in 2010. The law came into effect on 1 January 2012.

In contrast with the former constitution based on the Soviet model and adopted in 1949, -about which everyone agreed that it had to be replaced - the new Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles, complying fully with the common European democratic values and standards.

The Fundamental Law was first amended on 18 June 2012, stipulating on the one hand that temporary provisions were integral part of the Fundamental Law and abolishing, on the other hand, Article XXX on the Central Bank. The Second amendment to the Fundamental Law on the validity of national referenda was passed on 18 September 2012 and stated that a national referendum shall be valid if more than half of all electors have cast a valid vote. Furthermore, on voter registration it incorporated that a cardinal act may bind the exercise of voting right to voter registration on request. The third amendment concerned the Land Act and was passed on 7 December 2012. Article P with this regard has been modified by the addition of the following paragraph: “The acquisition of farmland and forests, the limits and conditions required for the realisation of the goals determined in paragraph (1), and the regulations regarding integrated agricultural production management and agricultural units are determined by a cardinal act.”

1. **The fourth amendment**

In December 2012, the Constitutional Court nullified some of the temporary provisions of the Fundamental Law ruling that constitution-level provisions should not be included in two separate legislative texts. The reason provided by the Constitutional Court did not express any criticism in terms of content, with the exception of the institution of mandatory voter registration for Hungarian residents, the proposal on which, in accordance with the court decision, was subsequently abolished by the initiator Fidesz parliamentary fraction.

In accordance with the latest ruling of the Constitutional Court, the Parliament is currently discussing the fourth amendment to the Fundamental Law.

* 1. **Temporary provisions - The reasons for the new amendment**

In Point 3 of the Closing Statements of the Fundamental Law, the Parliament determined that, operating as a constitutional law-maker, it would adopt the temporary provisions related to the Fundamental Law in a separate document. It was on the basis of this that Parliament adopted the temporary provisions of the Fundamental Law of Hungary on 11 December 2011.

The Temporary Provisions and later, following the amendment adopted in June 2012, the Fundamental Law itself also stated that the Temporary Provisions were part of the Fundamental Law. The constituent assembly therefore determined that it would split the unified Fundamental Law into two formal parts, in which the main text included in the first part is followed by the temporary provisions of the second part. The Parliament applied its right to decide what and in what form it wished to publish at a constitutional level, while fully conforming to the compulsory requirements regarding the formulation of the Fundamental Law and Temporary Provision as determined by the Constitution and the Fundamental Law.

In its decision 45/2012 of December 29, the Constitutional Court annulled several provisions of the Temporary Provisions for formal reasons, citing legal invalidity. The Constitutional Court pointed out that the Fundamental Law is a uniform legal document, and so any and all substantive amendments and addenda must be incorporated into the Fundamental Law in a structurally coherent manner. Non-temporary provisions that fall within the regulatory scope of the Fundamental Law may not be introduced in an independent legal source, or in the amendments of such, that falls outside the Fundamental Law. However, the Constitutional Court did not repeal those stipulations of the Temporary Provisions that were related to the Fundamental Law and which were determined as in fact being temporary.

The Parliament accepted the decision of the Constitutional Court, and in accordance wishes not only to incorporate the provisions annulled by the Court, but to incorporate the full content of the Temporary Provisions into the Fundamental Law, as put forward by the proposal T/9929. The proposal incorporates some of the annulled provisions of the Temporary Provisions in a corresponding Article of the Fundamental Law, others in the Closing Provisions, and places the unrepealed parts of the Temporary Provisions in full at the end of the Closing Provisions.

* 1. **Amendments Relating to the Constitutional Court**

The proposal expands the body’s sphere of responsibility and power, as well as its power to initiate ex-post norm monitoring, in addition to which it aims to increase the transparency of procedures and the speed of certain procedures.

The proposal creates the opportunity for the preliminary and - with the determination of a deadline - ex-post monitoring of the Fundamental Law and its amendments by the Constitutional Court. As such, the proposal raises familiar Constitutional Court practices to a constitutional level, while also increasing the sphere of responsibility and power of the President of the Republic.

Another important new element of the proposal is that it extends the power to initiate ex-post norm monitoring to both the President of the Curia and the Prosecutor General. Accordingly, the most important representatives of the justice system also have a direct opportunity to initiate the examination of regulations that they feel may be unconstitutional by the Constitutional Court.

The element of the proposal according to which a 30-day deadline would be introduced for the Constitutional Court in the case of norm monitoring initiated by a judge - to prevent the further delaying of court proceedings with regard to the right to a fair trial - also provides a significant guarantee.

The proposed new paragraph (7) of Article 24 of the Fundamental Law aims to make the proceedings of the Constitutional Court more transparent by declaring that the elaborator and initiator of the legislation, or their representatives, must take part in a hearing, or their official opinions must be acquired, in accordance with the stipulations of the relevant cardinal act.

In addition, the proposal states that the Constitutional Court may only examine the provisions that it has not been directly required to monitor in connection with a proposal, if such provisions are in directly and contentually related to the legislation under investigation. It must be stressed that this provision does not reduce the body’s former powers in any way.

One of the most challenged elements is the provision on Constitutional Court decisions brought prior to the coming into force of the Fundamental Law. However, the objective of this provision is that the provisions of the Fundamental Law be interpreted together within the context of the Fundamental Law and independent to previous decisions brought by the Constitutional Court. Through this provision, Parliament makes it clear that the Constitutional Court is not bound by any decisions it may have previously made on the basis of the old Constitution. This of course does not exclude the possibility that the Constitutional Court might reach a decision that is identical to one of its previous decisions when interpreting certain provisions of legislation. With relation to this field of legislation, the proposal also took into account the fact that several elements of Constitutional Court practice have previously also been included in the Constitution.

* 1. **Amendments Relating to the Justice System**

The proposal raises the regulations on the organ that performs the central administration of the judicial organisation to a constitutional level, also determining regulations on the election of officers. Accordingly, the proposal states that the Chairperson of the National Judicial Office shall be elected from among the judges for a period of nine years by Parliament, requiring a two-thirds majority of the votes of all Members of Parliament.

In addition, the proposal also includes a provision on the right to transfer cases, formulated to help assure the right to a court decision within a reasonable period of time, with additional guarantees and amendments. Accordingly, in future the Prosecutor General shall not have the power to transfer cases and, based on the decision of the Chair of the National Judicial Office, only the hearing of cases determined in cardinal acts may be conducted contrarily.

* 1. **Amendments Relating to Religious Organisations**

The proposal introduces the new concept of “organisations that perform religious activities” and make them objects of the regulation. Furthermore, the new paragraph (2) to Article VII of the Constitution states that in addition to the individual or joint exercising of the right to religious freedom by all persons and organisations, the state may provide a special - church - legal status for organisations performing religious activity. The objective of this legal status is to enable these organisations to perform their activities in a more efficient manner.

According to the new paragraph (4) of Article VII of the Fundamental Law, the requirement for receiving such church status is conformance to certain conditions determined in the related cardinal act. Of these, the Fundamental Law includes the requirement of continuous operation and public support, the required level of which is determined by Parliament.

The amendment to existing Fundamental Law regulations introduced in accordance with the new paragraph (3) of Article VII of the Constitution makes it clear that the regulation on independent operation also applies to the relationship between the state and organisations that perform religious activities and it also states that independence is required in the case of such organisations with regard to the exercising of basic rights.

* 1. **Changes Ensuing from Previous Decisions by the Constitutional Court**

The proposal also wishes to amend the Fundamental Law further to observations made by the Constitutional Court in various other decisions.

* + 1. **The Family-Concept**

In acceptance of the observations explained in Constitutional Court decision 43/2012 (XII.20.), the proposal plans to include the concept of the family in the Constitution. The proposal supplements Article L) of the Fundamental Law that declares the protection of marriage and the family, while expressing the fact that marriage and parent-child relationship shall be regarded as the basis of a family relationship. The basis of the parent-child relationship is most often genealogical, but in addition to biological lineage such a relationship may also come about as a result of adoption or adoptive guardianship. It must be stressed that the provision only determines the basis of the family relationship, not the family itself.

* + 1. **Provisions Relating to the Freedom of Expression**

The proposal wishes to include in the constitution the fact that human dignity may constitute an external limitation to the right to freedom of expression and it wishes to create the constitutional basis for the possible sanctioning of certain cases of hateful action and behaviour, using the instruments provided by the Civil Code in the case of the violation of the dignity of communities. This provision, which enables more efficient action against hateful speech, is justified by previous constitutional court practices and social demand for the increased protection of the dignity of communities.

In addition, with relation to constitutional regulations on election media campaigns, the proposal deducts the correct conclusions from Constitutional Court decision 1/2013 (I. 7) when, while bearing in mind the need to assure the suitable provision of information to the public and equal opportunities for all political parties, is states that especially important television and radio adverts may only be broadcast through public media channels, free of charge, during the electoral campaign. The proposals aim is to reduce expenditure on the election campaign by creating equal conditions when it comes to political advertisements.

* + 1. **The Use of Public Areas**

Article XXII of the Fundamental Law currently denotes the provision of suitable accommodation to all as a national objective. To reinforce solidarity and social responsibility towards homeless people, the proposal makes it clear that, among others, this objective must be realised through the state and local governments endeavouring to provide accommodation for all homeless people.

In addition, while taking into account the findings of Constitutional Court decision 38/2012 (XI. 14), the proposal makes it clear that it does not support the misuse of public areas: in the interests of protecting public order, public safety, the community and cultural values, laws or local government decrees may declare living on public areas illegal. As a guarantee, the proposal states that declaring such actions illegal may only occur in the interests of realising the stated goals, and may only be determined with regard to a specific part of the public area.

* 1. **Provisions Relating to the Communist Dictatorship**

The proposal states that the realistic exploration of the facts regarding the operation of the communist dictatorship and the public's sense of justice must be assured according to the stipulations of the concrete, normative provisions included in the proposal. The proposal, therefore, includes no more than was determined by the Temporary Provisions: the setting up the National Commemoration Committee and assuring that the wielders of the dictatorship's power are judged in the same manner as public figures, the possibility for the reduction of the especially high benefits of some leaders of the dictatorship, and the ruling out of limitations with regard to the criminality of serious crimes committed during the period of the communist dictatorship in the name, in the interests, or with the understanding of the state.

The latter proposal does not void the principle of "nullum crimen sine lege", and only those actions committed during the communist dictatorship fall under its scope which the then applicable Penal Code already regarded as criminal at the time they were perpetrated, but in which cases criminal prosecution failed to occur because of the political interests of the single-party state.

In addition, the proposal takes into account the time that has passed since 2 May 1990 and the coming into force of the Fundamental Law: the state shall only receive such extra time for the criminal prosecution of criminal offences after the coming into force of the Fundamental Law, as it was deprived of by the period of communist dictatorship.

The proposal also requires that the documentation of the communist single-party state and any organisations created with its collaboration or that it controlled, must be lodged with the Public Records Office.

* 1. **Provisions Relating to Higher Education**

The proposal makes the determination of the financial management order of public higher education institutions and the monitoring of such management the responsibility of the Government.

This includes the fact that the Government -- within the framework of legislation -- is to determine regulations with relation to the management of these institutions, and that it is to exert supervisory powers with regard to such management within the framework of its sphere of authority as maintainer and via suitable institutions. The management powers regulated by the proposal do not affect freedoms with regard to research and curriculum.

In the interests of upholding the right to education, the Fundamental Law determines the accessibility of participation in higher education and the support of those receiving higher education on the basis of their abilities. In the interests of assuring that exercising the right to education with the financial support of the state also serves the interests of the community and the individual, the proposal makes possible the legislative introduction of terms and conditions for the financial support of participation in higher education as a student (the state financing of education). The two elements of these conditions are the existence of value-creating work according to Articles M) and I) of the Fundamental Law, and the fact that it should serve the interests of the community of Hungary. it must be stressed that the state financing of education and the conclusion of the related student contract is not the only possibility that students have available for completing studies in higher education that require no financing on their part: the reduced rate "Diákhitel 2" (Student Loan 2) construction allows students to participate in higher education without the need to conclude a student contract.