EUROPEAN PARLIAMENT 2009 – 2014

Committee on Civil Liberties, Justice and Home Affairs

2012/2130(INI)

2.5.2013

DRAFT REPORT

on the situation of fundamental rights: standards and practices in Hungary
(pursuant to the European Parliament resolution of 16 February 2012)
(2012/2130(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Rui Tavares

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on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)

(2012/2130(INI))

The European Parliament,

– having regard to Article 2 of the Treaty on European Union (TEU), setting out the values upon which the Union is founded,

– having regard to Articles 3, 4, 6 and 7 of the Treaty on European Union (TEU), Articles 49, 56, 114, 167 and 258 of the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR),

– having regard to its resolution of 16 February 2012 on the recent political developments in Hungary[1] instructing the Committee on Civil Liberties, Justice and Home Affairs, in cooperation with the European Commission, the Council of Europe and the Venice Commission, to follow up the issue of whether and how the recommendations set out in that resolution have been implemented, and to present its findings in a report,

– having regard to its resolutions of 10 March 2011 on the media law in Hungary[2] and of 5 July 2011 on the Revised Hungarian Constitution[3],

– having regard to its resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon[4],

– having regard to its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010 - 2011)[5],

– having regard to the Commission Communication on Article 7 of the Treaty on the

[1] Texts adopted, P7_TA(2012)0053.
[2] Texts adopted, P7_TA(2011)0094.
[3] Texts adopted, P7_TA(2012)0315.
[4] Texts adopted, P7_TA(2010)0483.
[5] Texts adopted, P7_TA(2012)0500.

European Union entitled ‘Respect for and promotion of the values on which the Union is based’ (COM(2003) 606 final),

– having regard to the Council and Commission statements presented at the plenary debate held in the European Parliament on 18 January 2012 on the recent political developments in Hungary,

– having regard to the statements of the Hungarian Prime Minister Viktor Orbán, who addressed the European Parliament on 18 January 2012 in the plenary debate on the recent political developments in Hungary,

– having regard to the hearing held on 9 February 2012 by the Committee for Civil Liberties, Justice and Home Affairs,

– having regard to the report of a delegation of Members of the European Parliament on their visit to Budapest from 24-26 September 2012,

– having regard to the working documents on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) comprising working documents No 1 – Independence of the Judiciary, No 2 – Fundamental principles and Fundamental Rights, No 3 – Media legislation, No 4 – Principles of democracy and the rule of law and No 5 – Concluding Remarks by the Rapporteur, which were discussed in the Committee for Civil Liberties, Justice and Home Affairs on 10 July 2012, 20 September 2012, 22 January 2013, 7 March 2013 and 8 April 2013 respectively, as well as the comments of the Hungarian Government thereon,

– having regard to the Fundamental Law of Hungary, adopted on 18 April 2011 by the National Assembly of the Hungarian Republic, which entered into force on 1 January 2012 (hereinafter referred to as ‘the Fundamental Law’), and the transitional provisions of the Fundamental Law of Hungary, adopted on 30 December 2011 by the National Assembly, which also entered into force on 1 January 2012 (hereinafter referred to as ‘the transitional provisions’),

– having regard to the First Amendment of the Fundamental Law, tabled by the Minister of National Economy on 17 April 2012 and adopted by the Hungarian Parliament on 4 June 2012, establishing that the transitional provisions are part of the Fundamental Law,

– having regard to the Second Amendment of the Fundamental Law, tabled on 18 September 2012 in the form of an individual member’s bill and adopted by the Hungarian Parliament on 29 October 2012, introducing the requirement of voter registration into the Fundamental Law,

– having regard to the Third Amendment of the Fundamental Law, tabled on 7 December 2012, adopted by the Hungarian Parliament on 21 December 2012 and establishing that the limits and the conditions of the acquisition of agricultural land and forest and the rules governing the integrated organisation of agricultural production shall be defined by cardinal law,

– having regard to the Fourth Amendment of the Fundamental Law, tabled on 8 February 2013 in the form of an individual member's bill and adopted by the Hungarian Parliament on 11 March 2013, which, among other provisions, integrates into the text of the Fundamental Law the transitional provisions (with the exception of the provision requiring voter registration) annulled by the Constitutional Court of Hungary on 28 December 2012 on procedural grounds (Decision No 45/2012),

– having regard to Act CXI of 2012 on the Amendment of Act CLXI of 2011 on the organisation and administration of courts and Act CLXII of 2011 on the legal status and remuneration of judges of Hungary,

– having regard to Act No XX of 2013 on the legislative amendments of upper age limits to be applied in certain judicial legal relations,

– having regard to Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities, of Hungary (the Act on Churches), which was adopted on 30 December 2011 and entered into force on 1 January 2012,

– having regard to Opinions Nos CDL(2011)016, CDL(2011)001, CDL-AD(2012)001, CDL-AD(2012)009, CDL-AD(2012)020 and CDL-AD(2012)004 of the European Commission for Democracy through Law (Venice Commission) on the new Constitution of Hungary, on the three legal questions arising from the process of drafting the new Constitution of Hungary, on Act CLXII of 2011 on the legal status and remuneration of judges of Hungary and Act CLXI of 2011 on the organisation and administration of courts of Hungary, on Act CLI of 2011 on the Constitutional Court of Hungary, on the cardinal acts on the judiciary that were amended following the adoption of opinion CDL-AD(2012)001 on Hungary, and on the Act on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary,

– having regard to Joint Opinion No CDL-AD(2012)012 of the Venice Commission and the OSCE/ODIHR on the Act on the elections of Members of Parliament of Hungary,

– having regard to the Hungarian Government's comments Nos CDL(2012)072, CDL(2012)046 and CDL(2012)045 on the draft opinion of the Venice Commission on the cardinal acts on the judiciary that were amended following the adoption of opinion CDL-AD(2012)001. on the draft joint opinion on the Act on the elections of Members of Parliament of Hungary and on the draft opinion on Act CLI of 2011 on the Constitutional Court of Hungary,

– having regard to the initiatives undertaken by the Secretary General of the Council of Europe, Mr Jagland, including the recommendations on the judiciary laid down in his letter of 24 April 2012 addressed to the Hungarian Deputy Prime Minister, Mr Tibor Navracsics,

– having regard to the letters of reply of 10 May 2012 and of 7 June 2012 from Mr Navracsics declaring the intention of the Hungarian authorities to address the recommendations by Mr Jagland,

– having regard to the letter of 6 March 2013 sent by the Secretary General of the Council of Europe, Mr Jagland, to Mr Navracsics expressing his concerns about the proposal for the Fourth Amendment of the Fundamental Law and calling for the postponement of the final vote, and the letter of reply of 7 March 2013 from Mr Navracsics,

– having regard to the letter of 6 March 2013 sent by the Ministers of Foreign Affairs of Germany, Netherlands, Denmark and Finland to the Commission President, Mr Barroso, calling for a mechanism to foster compliance with fundamental values in the Member States,

– having regard to the letter of 8 March 2013 sent by the Hungarian Minister of Foreign Affairs, Mr János Martonyi, to all his counterparts in the Member States of the EU explaining the purpose of the Forth Amendment,

– having regard to the letter of 8 March 2013 sent by Mr Barroso to Mr Viktor Orbán on the concerns of the European Commission regarding the Fourth Amendment of the Fundamental Law and the letter of reply from Mr Orbán to the Commission President, copies of which were sent to both the President of the European Council, Mr Van Rompuy, and the President of the European Parliament, Mr Schulz,

– having regard to the joint statement of 11 March 2013 by President Barroso and Secretary General Jagland recalling their concerns regarding the Fourth Amendment of the Fundamental Law with respect to the principle of the rule of law,

– having regard to the request for an opinion of the Venice Commission on the Fourth Amendment of the Fundamental Law of Hungary, sent on 13 March 2013 by Mr Martonyi to Mr Jagland,

– having regard to the Council and Commission statements on the constitutional situation in Hungary presented at the plenary debate held in the European Parliament on 17 April 2013,

– having regard to the letter of 16 December 2011 from the Commissioner for Human Rights of the Council of Europe, Mr Hammarberg, to Mr Martonyi, raising concerns on the subject of the new Hungarian law on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, religious denominations and religious communities, and having regard to Mr Martonyi's reply of 12 January 2012,

– having regard to Opinion No CommDH(2011)10 of 25 February 2011 of the Commissioner for Human Rights on Hungary's media legislation in light of the Council of Europe's standards on freedom of the media, as well as to the annotations of 30 May 2011 from the Hungarian Minister of State for Government Communication to that opinion,

– having regard to the statements by the Office of the UN High Commissioner for Human Rights (OHCHR) of 15 February 2012 and of 11 December 2012 calling on Hungary, respectively, to reconsider legislation criminalizing homelessness and to uphold the Constitutional Court's decision decriminalising homelessness,

– having regard to the statements by the OHCHR of 15 March 2013 voicing concerns over

the adoption of the Fourth Amendment to the Fundamental Law,

– having regard to the ongoing infringement proceedings in Case C-288/12 brought by the European Commission against Hungary over the independence of the data protection authority,

– having regard to the Decision of the Court of Justice of the European Union of 6 November 2012 on the radical lowering of the retirement age for Hungarian judges,

– having regard to the Decisions of the Constitutional Court of Hungary of 16 July 2012 (No 33/2012) on the lowering of the retirement age of judges in Hungary, of 28 December 2012 (No 45/2012) on the transitional provisions of the Fundamental Law, of 4 January 2013 (No 1/2013) on the Act on the electoral procedure and of 26 February 2013 (No 6/2013) on the Act on the freedom of religion and the legal status of churches,

– having regard to the upcoming report by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe,

– having regard to the upcoming assessment of the Fourth Amendment of the Fundamental Law by the European Commission,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2013),

I-BACKGROUND AND MAIN ISSUES AT STAKE

European common values

A. whereas the European Union is founded on the values of democracy and the rule of law as set out in Article 2 TEU, on unequivocal respect for fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights and in the ECHR, and on the recognition of the legal value of such rights, freedoms and principles, as is further demonstrated by the EU's forthcoming accession to the ECHR pursuant to Article 6(2) TEU;

B. whereas the common values enshrined in Article 2 TEU constitute the core of the rights attached to the status of EU citizens irrespective of their nationality or cultural and political identities, and whereas citizens can fully enjoy those rights only if fundamental values and principles are upheld;

C. whereas respecting and promoting such common values is not only an essential element of the European Union's identity but also an explicit obligation deriving from Article 3(1) and (5) TEU, and therefore a *sine qua non* for becoming an EU Member State as well as for fully preserving membership prerogatives;

D. whereas the obligations incumbent on candidate countries under the Copenhagen criteria continue to apply to the Member States after joining the EU by virtue of Article 2 TEU,

and whereas all Member States should therefore be assessed on a regular basis in order to verify their continued compliance with the EU's common values;

E. whereas Article 6(3) TEU underscores that fundamental rights, as guaranteed by the ECHR and as arising from the constitutional traditions common to the Member States, constitute general principles of Union law, and whereas such rights are a common heritage and asset of democratic European states;

F. whereas, with the entry into force of the Treaty of Lisbon and pursuant to Article 6 TEU, the Charter has the same legal value as the Treaties, hence transforming values and principles into tangible and enforceable rights;

G. whereas Article 7(1) TEU grants the EU institutions the power to assess whether there is a clear risk of a serious breach of the common values referred to in Article 2 by a Member State, and to engage politically with the country concerned in order to prevent and redress violations, while the ultimate purpose of the means laid down in Article 7(2) and (3) TEU is to penalise and remedy any serious and persistent breach of common values;

H. whereas the scope of Article 2 TEU is not restricted by the limitation of Article 51(1) of the Charter and the scope of Article 7 TEU is not limited to the policy areas covered by EU law, and whereas as a consequence the EU can also act in the event of a breach of, or a clear risk of a breach of, the common values in areas falling under Member State's competences;

The report turns a number of logically false statements into a legally unfounded conclusion. The report uses the (unquestionably) universal nature of the democratic values (Article 2) as a justification for the (wishful) expansion of the EU's powers to act in areas that are specifically excluded from the Treaties. In other words, the report suggests that where there is an alleged risk of the breach of the fundamental values, the boundaries of the Treaties cease to apply. Such an interpretation is in clear contrast with the founding principles of the EU, such as the doctrine of conferral of powers, the subsidiarity and proportionality principle (Art. 4-5 TEU), the institutional equilibrium under Art. 13(2) TEU. But most importantly it contradicts the rule of law enshrined in Article 2 TEU.

I. whereas pursuant to the principle of sincere cooperation laid down in Article 4(3) Member States shall facilitate the achievement of the Union's tasks and refrain from any measures which could jeopardise the attainment of the Union's objectives, including the objective of respecting and promoting the Union's common values;

J. whereas respect for the Union's common values goes hand in hand with the EU's commitment to diversity, translated into the obligation for the Union to respect '*the equality of Member States before the Treaties as well as their national identities'* as stated in Article 4(2) TEU;

K. whereas, in the framework of the Treaties, respect for '*national identities'* (Article 4(2)TEU) and for '*different legal systems and traditions of the Member States'* (Article 67 TFEU) are intrinsically associated with the principles of sincere cooperation (Article 4(3)TEU), mutual recognition (Articles 81 and 82 TFEU) and thus mutual trust;

Paragraph K is a one-sided reference to important founding principles whose function is to define the boundaries of the powers of the EU vis-à-vis national matters. The paragraph, instead of enumerating them in full as in the case of Art.2 and 7, merely pictures these principles as subordinate elements of other principles. From a legal point of view, it is difficult to find the link between the respect of national identities (a founding principle in Art. 4 TEU) and the programme of mutual recognition of civil and criminal judgements (two enabling articles to foster civil and criminal cooperation among Member States – Art. 81-82 TFEU).Also see comments on paragraph L.

L. whereas a departure from, or a violation of, the Union's common values by a Member State cannot be justified by national traditions nor by the expression of a national identity when such departure results in the deterioration of the principles at the heart of the European integration, such as the rule of law or the principle of mutual recognition, with the consequence that a referral to Article 4(2) TEU is applicable only so far as a Member States respects the values enshrined in Article 2 TEU;

As in the case of paragraph H above, the closing part of the sentence ["a referral to Article 4(2)..."] is trying to devalue an important founding principle of the EU with reference to the assumed ultimate superiority of Article 2. Such an assumption is unfounded for a set of reasons. First, there is no dichotomy between the two Treaty requirements: Article 4(2) is not designed vis-a-vis Article 2, but it is a horizontal founding principle that applies across the entire EU construction. It follows that no hierarchy can be established between the two as the text suggests. The legal absurdity of the conclusion of the draft report can be demonstrated by an *a contrario* ***example:if a Member State is found in breach of Article 2, does the EU have powers to completely disregard (to crush?) the national identity of the country, regardless of its constitutional set-up, legal system, etc.?***

M. whereas the Union's objective to uphold and promote its values in its relations with the wider world, as set out in Article 3(4) TEU, is further reinforced by the specific obligation for the Union's action on the international scene to be guided by the principles which inspired its creation, development and enlargement: democracy, the rule of law and the universality and indivisibility of human rights and fundamental freedoms (21(1) TEU);

N. whereas, therefore, not only the credibility of the Member States and of the EU on the international scene, but also the Union's objectives in its external action, would be undermined if Member States were not able or willing to live up to the standards to which they have agreed and bound themselves;

In full agreement with the paragraphs M and N above: the EU cannot risk its own external credibility by way of ignoring its own constituent rules. Ultra vires, politically motivated disciplinary activism against one Member State may give the impression that the EU itself is ready to set aside its own basic rules against an easy target, bowing to media hype or ideological pressure.

O. whereas respect by the Member States for the same set of fundamental values is an indispensable condition for ensuring mutual trust and consequently the correct functioning of mutual recognition, which is at the heart of the creation and development of the internal market as well as of the European area of freedom, security and justice, and whereas, therefore, any attempt to disrespect or weaken the common values

adversely affects the whole construction of the European process of economic, social and political integration;

P. whereas the common values set out in Article 2 TEU, and proclaimed in the Preambles to the Treaties and the Charter of Fundamental Rights and referred to in the Preamble to the ECHR and in Article 3 of the Statute of the Council of Europe, require a separation of powers between independent institutions based on a correctly functioning system of checks and balances, and whereas core features of these principles include: respect for legality, including a transparent, accountable and democratic process of enacting laws; legal certainty; a strong system of representative democracy based on free elections and respecting the rights of opposition; effective control of the conformity of legislation with the constitution; an effective, transparent, participatory and accountable government and administration; an independent and impartial judiciary; independent media; and respect for fundamental rights;

The paragraph gives the impression that the set of constitutional criteria enumerated therein directly flow from Article 2 TEU, the Preamble to the Treaties and the Charter, the ECHR or the Statute of the Council of Europe. To the contrary: this mixture of incomparable political and legal elements finds no authoritative support in the sources listed. It is important to recall that the Preamble to TEU only refers to "freedom, democracy, equality and the rule of law", "liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law", Article 2 mentions "human dignity, freedom, democracy, equality, the rule of law and the respect for human rights". ECHR and the Statute of the Council of Europe only refer to "the rule of law". Consequently, none of the documents define structural or operational constitutional requirements that the report enumerates. All the more so as the criteria listed by paragraph P are not fundamental rights or freedoms. In fact, paragraph P is a political wish-list that the report tries to present as universally accepted legal requirements. This process is all the more problematic as the rest of the report uses the above list as the yardstick for its judgement.

In addition, in terms of content it is very difficult to see a large number of the items on the list as common European (let alone universal) requirements. E.g. compare "a correctly functioning checks and balances" with the British parliamentary sovereignty doctrine or "the effective control of the conformity of legislation with the constitution" with the lack of a constitutional court in one third of the Member States.

Reforms in Hungary

Q. whereas Hungary was the first former Communist country to accede to the ECHR, and as an EU Member State was the first to ratify the Treaty of Lisbon on 17 December 2007, and whereas Hungary played an active part in the work of the Convention and the Intergovernmental Conference in 2003 and 2004 in, among other issues, the drafting of Article 2 TEU, and took the initiative which resulted in the inclusion of the rights of persons belonging to minorities;

R. whereas Hungary is also a party to the International Covenant on Civil and Political Rights and other international legal instruments obliging it to respect and implement international democratic principles;

S. whereas following the 2010 general elections in Hungary the governing majority gained

more than two thirds of the seats in parliament, enabling it to rapidly initiate intense legislative activity to reshape the whole constitutional order of the country (the Constitution has been amended twelve times and the Fundamental Law four times so far) and thus substantially modify the institutional framework as well as a number of fundamental aspects of public life;

T. whereas any Member State of the European Union is absolutely free to review its constitution and whereas the very meaning of democratic alternation is that it enables a new government to enact legislation reflecting its values and political commitments;

U. whereas the tumultuous history of democratic traditions in Europe shows that reforming a constitution requires utmost care and due consideration of procedures and guarantees aimed at preserving, among other things, the rule of law, the separation of powers and the hierarchy of legal norms – the constitution being the supreme law of the land;

V. whereas the comprehensive and systematic constitutional and institutional reforms (a root-and-branch revision of the legal system), which the new Hungarian Government has carried out in an exceptionally short time frame[1] is unprecedented, and explains why so many European institutions and organisations (the European Union, Council of Europe, OSCE) as well as the U.S. Administration have deemed it necessary to assess the impact of some reforms carried out in Hungary, whereas the situation in other Member States, although following a different pattern, may also need to be monitored, while enforcing the principle of equality of the Member States before the Treaties, and whereas there should be no double standards in the treatment of Member States;

The above statement on the length of the timeframe must be seen as subjective. The only objective criterion in this context is whether the legal and institutional changes have taken place within the timeframe foreseen by the applicable legislation. The report does not question this fact.

To avoid the impression of double standards it is indeed necessary to apply the same standards vis-à-vis any Member State. Hence, it is difficult to see why the report concludes that "the situation in other Member States [...] may also need to be monitored" "although following a different pattern". This gives the impression that the whole process is geared specifically towards Hungary. It also amounts to an admission that the rapporteur operates in a legally undefined space, using Hungary as a political test-case.

W. whereas a dialogue based on openness, inclusiveness, solidarity and mutual respect between the European institutions and the Hungarian authorities is necessary in the framework of the above-mentioned community of democratic values;

The Fundamental Law and its transitional provisions

X. whereas the adoption of the Fundamental Law of Hungary – which was passed on 18 April 2011, exclusively with the votes of the members of the governing coalition and on the basis of a draft text prepared by the representatives of the governing coalition – was conducted in the exceptionally short time frame of one month, thus restricting the possibilities for a thorough and substantial debate with the opposition parties and civil

[1] See Annex to Working Document No 5.

society on the draft text;

The statement on the process of the adoption of the new Fundamental Law is factually incorrect and misleading, giving the impression that the new constitution was adopted by way a stealth, over-night constitutional coup. The following facts must be emphasised:

- ***Adoption of the Fundamental Law was preceded by a preparatory period of almost one year. The Parliament set up an ad hoc committee for the preparation of the Constitution in the summer of 2010. All parliamentary parties were invited to the committee, the procedure of which was open to public. Several hundreds of written comments were received from specialist private individuals, state organs, and civil society organizations. These comments were made publicly available on the committee's website. The ad hoc committee also organised public hearings for stakeholder groups such as trade unions or churches.***
- ***Besides, in 2011, the Government distributed questionnaires on some constitutional issues to the entire adult population of Hungary (the "national consultation").***
- ***Furthermore, in the beginning of 2011, all parliamentary parties were encouraged to submit their own proposals for a new Constitution. The rules of procedure of the Parliament had been amended explicitly in order to ensure for the opposition to more efficiently exercise its rights and with the aim of having a more substantive dialogue with the opposition.***
- ***In 2011 great publicity was given to the Constitution-making process. In particular from February to April a wide range of substantive constitutional questions were widely discussed in the media and several seminars, conferences were organized by universities and civil organizations with the topic of the new Constitution on their agendas. The politicians and experts of the Government and the ruling party regularly attended these media events and scientific conferences; they shared their views with the general public and received the written or oral observations and comments.***
- ***In March and April of 2011 every parliamentary session was dedicated to debating the new Fundamental Law, no other legislative acts were deliberated during this period. The procedure was fully open to the public and a number of external comments had been canalised in the parliamentary process via nearly 170 amendments.***
- ***Unfortunately, during the preparation of the Fundamental Law two opposition parties, based on their own political decisions, decided to stay away from the discussions at the parliamentary sessions, and remained reluctant to formulate proposals.***

Y. whereas the 'national consultation' on the draft Fundamental Law only consisted of a list of twelve questions on very specific issues drafted by the governing party in a way that could have lead to self-evident replies and which, above all, did not include the text of the draft Fundamental Law so that the public was not in a position to submit its views thereon;

As shown above (paragraph X) the preparation and adoption of the new Fundamental Law was a broad and open process. The report however picks one single element of that process (the "national consultation") and caricatures it as a mock-consultation designed to rubber stamp political choices that have already been made. This account completely ignores the

fact that the purpose of the consultation was not to solicit comments on the full text of the draft Fundamental Law, but to seek direct voter opinion on a number of fundamental questions (with a view to influencing subsequent drafting).

Z. whereas following a constitutional petition by the Hungarian Commissioner for Fundamental Rights, the Constitutional Court of Hungary annulled on 28 December 2012 (Decision No 45/2012) more than two thirds of the transitional provisions, on the grounds that they were not of a transitional nature;

AA. whereas, despite that Decision, the Fourth Amendment to the Fundamental Law, adopted on 11 March 2013, integrates into the text of the Fundamental Law all the transitional provisions annulled by the Constitutional Court, with the exception of the provision requiring electoral registration, as well as other previously-annulled provisions;

Contrary to the evaluation of the report, the Fourth Amendment has not been adopted "despite" but, precisely because of Decision No 45/2012 of the Constitutional Court. Importantly, the Decision was based on formal reasons (permanent constitutional requirements can only be laid down in the Fundamental Law itself not in transitional provisions) and did not address substantial issues. In fact, it was the Constitutional Court itself that called upon the legislator to create an unambiguous legal situation by way of revisiting the annulled provisions. The Court however gave no instruction as to which provisions should be integrated into the Fundamental Law, giving free hand to Parliament to make its own choice.

As to the re-enactment of provisions that have been annulled by the Constitutional Court it must be pointed out that this is not an exceptional – let alone unconstitutional – political practice. As the Venice Commission points out "[t]here is [...] no general standard saying that a constitutional revision cannot go against a decision of a constitutional court. This would make the Constitution as interpreted by the Constitutional Court intangible" (paragraph 67 of Opinion No. 679/2012 on the Revision of the Constitution of Belgium).

Extensive use of cardinal laws

AB. whereas the Fundamental Law of Hungary refers to 26 subject matters to be defined by cardinal laws (that is laws the adoption of which requires a two-thirds majority), which cover a wide range of issues relating to Hungary's institutional system, the exercise of fundamental rights and important arrangements in society;

The existence of cardinal laws in the Hungarian constitutional system is nothing new. Cardinal laws are a product of the agreement between the opposition parties in 1989.The previous constitution contained more or less the same number and the same range of subject matters to be regulated by two-thirds majority. Thus the presence of these laws is not a token of the arrogance of the ruling coalition, but a steady feature of the Hungarian constitutional order. Only in a few areas does the Fundamental Law introduce new requirements for cardinal laws, mainly in relation to the prudent management of the state budget and state assets.

AC. whereas since the adoption of the Fundamental Law the parliament has enacted 49

cardinal laws[1] (in one and a half years);

Despite the explanatory footnote this statement gives the impression that the Hungarian Parliament keeps adopting cardinal laws beyond the limits set by the Fundamental Law itself (26 v. 49). It must first be pointed out that Parliament has not adopted 49 full cardinal laws. Instead it enacted 49 laws that contain provisions of cardinal law value. In many cases these were simple majority acts that contain amendments to cardinal laws (hence the two-thirds requirement). Moreover, most cardinal laws are short framework acts that call for the adoption further ordinary acts or government decrees, giving broad political room for subsequent governments to implement their own political programme.

AD. whereas a number of issues, such as specific aspects of family law and the tax and pension systems, which usually fall under the ordinary decision-making powers of a legislature, are regulated by cardinal laws;

This statement is not supported by any comparative evidence and contains a subjective judgement.

Practice of individual members' bills and accelerated procedures

AE. whereas important legislation, including the Fundamental Law, its second and fourth amendments, the transitional provisions of the Fundamental Law and a number of cardinal laws were enacted on the basis of individual members' bills, to which the rules set out in Act CXXXI of 2010 on the participation of civil society in the preparation of legislation and in Decree 24/2011 of the Minister of Public Administration and Justice on preliminary and ex-post impact assessment do not apply, with the consequence that legislation adopted through this streamlined procedure is subject to a restricted public debate;

Individual members of Parliament have a long-standing constitutional right to submit bills to Parliament, just like in most European countries. Contrary to the impression made by the report, these bills are not adopted in a legal vacuum. All bills and amendments thereto are publicly available on the website of the Parliament as soon as their submission, thus transparency is fully ensured.

AF. whereas the adoption of a large number of cardinal laws in a very short time frame, including the acts on the legal status and remuneration of judges of Hungary and on the organisation and administration of courts of Hungary, as well as the acts on the freedom of religion and on the National Bank of Hungary, inevitably restricted the possibilities for an adequate consultation of the opposition parties and the civil society;

All these laws have been adopted through the proper procedure. Opposition parties have always had the right to participate and to have their say in the parliamentary process as set out in the Rules of Procedure of Parliament. The tight schedule of the adoption of new cardinal laws was necessitated by the entry into force of the new Fundamental Law. Without the new cardinal laws, the new constitution would have remained ineffective.

[1] These laws include cardinal laws all provisions of which require a two-thirds majority, cardinal laws specific provisions of which have to be adopted by simple majority and acts the specific provisions of which require a two-thirds majority of the Members of Parliament present.

Weakening of checks and balances: Constitutional Court, Parliament, Data Protection Authority

Under the 1989 constitutional regime the newly established Hungarian Constitutional Court received the broadest possible powers that can be delegated to a court of its kind. After twenty years of jurisprudence there was a broad consensus – even by members of the Court – that the powers of the Constitutional Court should be revised. In the broad constitutional context it must be pointed out that having a constitutional court is not a sine qua non of democracy or the rule of law. It follows, that countries remain free to choose the level of constitutional jurisdiction as they see appropriate.

AG. whereas, under the Fundamental Law, the powers of the Constitutional Court to review budget-related laws have been substantially limited to violations of an exhaustive list of rights, thus obstructing the review of constitutionality in cases of breaches of other fundamental rights, such as the right to property, the right to a fair trial and the right not to be discriminated against;

This statement ignores the fact that the Constitutional Court maintains significant powers with regards to the revision of budget-related legal acts as follows:

- ***unlimited ex ante review of all budget-related legislative acts;***
- ***unlimited ex post review of all legal acts other than acts of Parliament (e.g. government decrees);***
- ***full ex ante and ex post review of all budget-related legislative acts from a procedural point of view;***
- ***full ex ante and ex post review of all budget-related legislative acts with regards to their compliance with international treaty obligations.***

Besides, also in case the restriction applies the practice shows that Constitutional Court has proven capable to deliver judgements on budget-laws through an extensive interpretation of broad legal categories, such as human dignity.

AH. whereas the Fourth Amendment of the Fundamental Law left untouched the already existing right of the Constitutional Court to review amendments to the Fundamental Law on procedural grounds, and whereas it excludes in the future the Court being able to review constitutional amendments on substantive grounds;

First, it must be pointed out that even before the Fourth Amendment the Constitutional Court, in its own interpretation, held no powers to review constitutional amendments on substantive grounds. The Fourth Amendment is a mere transposition of this case law into the text of the constitution. Moreover, the assessment of the Venice Commission on the review of constitutional amendments by constitutional courts concludes that this is a rare feature of constitutional jurisdiction, and that "such a control cannot therefore be considered as a requirement of the rule of law" (paragraph 49 of Opinion No. 679/2012 on the Revision of the Constitution of Belgium).

AI. whereas the Constitutional Court, in its above-mentioned Decision 45/2012, held that 'Constitutional legality has not only procedural, formal and public law validity requirements, but also *substantial* ones. The constitutional criteria of a democratic State under the rule of law are at the same time constitutional values, principles and

fundamental democratic freedoms enshrined in international treaties and accepted and acknowledged by communities of democratic States under the rule of law, as well as the *ius cogens*, which is partly the same as the foregoing. As appropriate, the Constitutional Court may even examine the free enforcement and the constitutionalisation of the *substantial* requirements, guarantees and values of democratic States under the rule of law.' (Point IV.7 of the Decision);

The context of this passage from the Decision of the Constitutional Court was whether or not the Transitional Provisions could contain substantial amendments to the Fundamental Law. The Court's evident conclusion was negative, hence it quashed the (majority) of the Transitional Provisions. The Court however did not arrive at a finding that it was empowered to review the substantive constitutionality of amendments to the Fundamental Law (also see comments on paragraph AH).

AJ. whereas the Fourth Amendment of the Fundamental Law further stipulates that the rulings of the Constitutional Court adopted before the entry into force of the Fundamental Law shall be repealed, and reintroduces into the Fundamental Law a number of provisions previously annulled by the Constitutional Court[1];

By way of repealing the rulings of the Constitutional Court delivered before the entry into force of the Fundamental Law, the Parliament made it clear that the Constitutional Court was not tied to its decisions adopted on the basis of the former Constitution. However, this does not preclude that the Constitutional Court may come to the same conclusions as before. Nor does this provision prevent the Constitutional Court from referring to its earlier decisions as they form part of the so-called historical constitution (constitutional traditions) of Hungary that is specifically recognised by the Fundamental Law as a source of interpretation. The Constitutional Court indeed has exactly done this following the entry into force of the Fourth Amendment. E.g. in Decision 10/2013. (IV. 25.) or Resolution No. III/3440/2012 justices keep referring to pre-existing Constitutional Court decisions.

As to the reintroduction of previously annulled provisions – as explained in relation to paragraph AA above – the Venice Commission itself acknowledged that depriving parliaments of that right would amount to a political take-over by constitutional courts of the position of elected law-makers.

AK. whereas a non-parliamentary body, the Budget Council, with limited democratic legitimacy, has been granted the power to veto the adoption of the general budget, thus restricting the scope for action of the democratically elected legislature;

The establishment of a Budget Council with strong powers over national spending was required under the 2008 IMF loan and EU balance of payment assistance agreement. The raison d'être of such an institution is exactly what is criticised by the report: to limit the powers of political parties to adopt irresponsible budgetary measures. It is a well-known fact that Hungary has been subject to an excessive budget deficit procedure since its accession to the EU. This has been the result of democratically elected representatives paying no attention to fiscal reality or the long-term financial interests of the country. Furthermore, not only has the establishment of the Budget Council been a requirement advanced by the EU, the 2012 country-specific recommendations endorsed by the European

[1] See paragraph 4 of Working Document No 5.

Council call for further strengthening of the institution.

These external control bodies do not have to be democratically elected. The Constitutional Court, the National Bank, the State Audit Office are institutions with no direct electoral mandate, yet they exercise extensive powers that restrict the action of the democratically elected legislature.

As a point of clarification it must be highlighted that the Budget Council may exercise a veto only as a last resort exceptional measure when Parliament is to adopt a budget leading to the growth of state indebtedness. Otherwise the ordinary function of the Council is to undertake a preliminary review of the draft national budget and to make recommendations.

AL. whereas the new Freedom of Information Act, adopted in July 2011, abolished the institution of the Commissioner on Data Protection and Freedom of Information, thus prematurely terminating the six-year-long mandate of the Commissioner and transferring its powers to the newly-established National Agency for Data Protection whose independence is currently under review by the Court of Justice of the European Union;

This paragraph mixes up two distinct issues. It is true that the premature termination of the office of the former data protection ombudsman is sub judice before the European Court of Justice. Importantly, however, the independence of the new data protection agency has not been questioned by the European Commission. As regards the independence of the Hungarian Data Protection Authority even the Venice Commission acknowledged that it is far better ensured in Hungary than in many other European states. It is worth mentioning that in its Decision No. 3076/2013. (III. 27.) the Hungarian Constitutional Court confirmed that the restructuring of an organisation may be an explicit constitutional reason for the shortening of the mandate of civil servants.

AM. whereas the Commission initiated an infringement procedure against Hungary on 8 June 2012, declaring that Hungary had failed to fulfil its obligations under Directive 95/46/EC by removing the data protection supervisor from office before the end of the mandate, thus putting at risk the independence of the office;

Paragraph AM only repeats paragraph AL. As the issue is before the European Court of Justice it is premature to draw any legal conclusions at this stage. As clarified above however: the case before the ECJ does not concern the independence of the new data protection authority.

Independence of the judiciary

AN. whereas, according to the Fundamental Law and its transitional provisions, the six-year-long mandate of the former President of the Supreme Court (renamed the 'Kúria') was prematurely ended after two years;

The former President of the Supreme Court held two combined, indivisible functions until the entry into force of the Fundamental Law. On the one hand, he was the chief justice of the Supreme Court (a judicial function). On the other hand, he was heading the administrative branch of the entire national judiciary (an administrative function). These two offices became separate under the new Fundamental Law, leading to an inevitable

termination of the office of the incumbent President.

The above circumstances constitute a sufficient reason for the termination of the appointment of the former leader position before its original expiry, as it was confirmed by the Constitutional Court in Decision No. 3076/2013. (III. 27.).

AO. whereas on 2nd July 2012 Hungary amended the cardinal laws on the judiciary (Act CLXI of 2011 on the Organisation and Administration of Courts and Act CLXII of 2011 on the Legal Status and Remuneration of Judges), partly implementing the recommendations of the Venice Commission;

We wish to refer to the constructive dialogue with the Venice Commission and Secretary-General Jagland, as a result of which only one outstanding issue remains, the appointment of the proceeding court. A bill has been introduced to Parliament regarding this area and negotiations are also on-going with the European Commission; the objective is to find a solution that the Commission finds acceptable. Also see the comments on the recommendations.

AP. whereas key safeguards for judicial independence, such as irremovability, guaranteed term of office, the structure and composition of the governing bodies, are not regulated in the Constitution but are – together with detailed rules on the organization and administration of the judiciary – still set out in the amended cardinal laws,

The Fundamental Law is a framework legislation that does not regulate any subject matter in great depth. Instead, cardinal laws set out the fundamental guarantees of judicial independence, exactly as under the previous constitution. Such an arrangement has been attested as sufficient by the Venice Commission as well as the Hungarian Constitutional Court.

AQ. whereas the independence of the Constitutional Court is not set forth in the Fundamental Law of Hungary and neither is the independence of the autonomous administration of the judiciary;

The Fundamental Law enumerates all independent state bodies, yet it only contains the very word "independent" in a very few cases only. Instead, it determines the basic rules of their operation, of the election of the officials, etc., leaving the detailed regulation of these bodies to cardinal laws. Consequently, the above statement in paragraph AQ holds no legal relevance. The independence of these institutions is ensured by complex legislative measures, rather than mere declarations in or outside the Fundamental Law.

AR. whereas the amendment of the cardinal laws on the judiciary as regards the power of the President of the National Judicial Office to transfer cases from the presiding court to another court to ensure the adjudication of cases within a reasonable period of time neither lays down objective criteria for the selection of the cases to be transferred nor entrusts the National Judicial Council with the mandate to adopt objective selection criteria;

It must be noted that as a result of the Fourth Amendment to the Fundamental Law the system of transfer of cases is being revised (Bill T/10593). Under the new system individual cases may no longer be transferred to other courts, only categories of cases. The President

of the NJO will have no influence whatsoever on which court hears a given case. The details of the new mechanism are elaborated in consultation with the European Commission.

AS. whereas, following the entry into force of the Fundamental Law its transitional provisions and cardinal Act No CLXII of 2011 on the legal status and remuneration of judges, the mandatory retirement age for judges was reduced from 70 to 62 years of age;

AT. whereas the Decision of the Court of Justice of the European Union, adopted on 6 November 2012, states that the radical lowering of the retirement age for Hungarian judges from 70 to 62 years of age constitutes unjustified discrimination on grounds of age, and whereas two complaints were submitted by two groups of Hungarian judges to the ECtHR on 20 June 2012 seeking a ruling to establish that Hungary's legislation on lowering the retirement age for judges violates the ECHR;

AU. whereas on 11 March 2013 the Hungarian Parliament adopted Act No XX of 2013 amending the upper age limits with a view to complying with the rulings of the Hungarian Constitutional Court of 16 July 2012 and of the Court of Justice of the European Union of 6 November 2012;

A point of information as to paragraphs AS-AU: The Hungarian Government has committed itself to execute the judgment of the ECJ. To this end Act XX of 2013 has been prepared in close cooperation with the European Commission. The Commission has approved the concept of the regulation, including the solution that certain managerial court positions may only be restored if they are vacant.

The new Act sets the upper age limit for judges and prosecutors at 65 years from 1 January 2023, i.e. following a 10 year transitional period (equal that of the increase of the general retirement age from 62 to 65). Judges and prosecutors already laid off can decide whether they wish their contract to be restored. Due compensation is provided for by the Act, including the possibility to claim damages incurred in connection with the early termination of the service relationship. The implementation of the Act (i.e. the reinstatement of judges and prosecutors) is in progress, the Hungarian Government regularly informs the Commission on the developments.

The electoral reform

AV. whereas as part of the recent electoral reform the Hungarian Parliament passed, on 26 November 2012, on the basis of an individual member's bill, the Act on the election procedure, which aimed to replace the previous automatic voter registration of all citizens with residence in Hungary by a system of voluntary registration as a condition for exercising the individual's right to vote,

AW. whereas the Second Amendment of the Fundamental Law enshrining the requirement of voter registration was tabled as an individual member's bill on the same day as the draft law on the election procedure, namely on 18 September 2012, and was adopted on 29 October 2012,

AX. whereas, following the petition of the President of the Republic of 6 December 2012, the Constitutional Court established that the registration requirement represents an undue

restriction on the voting rights of Hungarian residents, and is therefore unconstitutional,

AY. whereas, while considering voter registration for citizens residing abroad as justified, the Constitutional Court in its decision of 4 January 2013 further held that exclusion of the possibility of personal registration of voters without an address living in Hungary is discriminatory and that the provisions allowing the publication of political advertisements only in the public media service during the electoral campaign, and the rules banning the publication of public opinion polls within six days before the elections, disproportionally limit freedom of expression and freedom of the press,

The electoral provisions have been revised in view of the Decision of the Constitutional Court. The restrictions on the publication of opinion polls have been lifted. The rules of political advertisements have been amended as follows: internet, billboard, cinema, newspaper etc. advertisements will be unconstrained. Audio-visual (TV, radio) advertising can only take place through the national media under pre-established, proportionate conditions, free of charge. Also see comments on paragraph 37.

Media legislation

AZ. whereas the European Union is founded on the values of democracy and the rule of law, and consequently guarantees and promotes freedom of expression and information as enshrined in Article 11 of the Charter and Article 10 of the ECHR, and whereas these rights include freedom to express opinions and freedom to receive and communicate information without control, interference or pressure from public authorities;

BA. whereas the ECtHR has ruled that there is a positive obligation on Member States to ensure media pluralism, arising from Article 10 ECHR, and whereas the Convention's provisions are similar to those contained in Article 11 of the Charter as part of the *acquis communautaire*;

BB. whereas an autonomous and strong public sphere, based on independent and plural media, constitutes the necessary environment in which the collective freedoms of civil society – such as the right of assembly and association – as well as individual freedoms – such as the right to freedom of expression and the right of access to information – can thrive, and whereas journalists should be free from the pressure of owners, managers and governments, as well as from financial threats**;**

BC. whereas the Council of Europe and the OSCE through declarations, resolutions, recommendations, opinions and reports on the subjects of media freedom, pluralism and concentration have created a significant body of common pan-European minimum standards in this field;

BD. whereas Member States have a duty to constantly promote and protect freedom of opinion, expression, information and the media, and whereas, should these freedoms be placed at serious risk or violated in a Member State, the Union is obliged to intervene in a timely and effective fashion, on the basis of its competences as enshrined in the Treaties and in the Charter, to protect the European democratic and pluralistic order and fundamental rights;

BE. whereas Parliament has repeatedly expressed its concerns about media freedom,

pluralism and concentration in the EU and its Member States;

BF. whereas criticism of a number of the provisions of Hungarian Media legislation has been voiced by Parliament and the Commission, the OSCE Representative on Freedom of the Media and the Council of Europe Commissioner for Human Rights, as well as by the Secretary General of the Council of Europe, the UN Special Rapporteur on the promotion of right to freedom of opinion and expression, and by a large number of international and national journalists' organisations, editors and publishers, NGOs active in the area of human rights and civil liberties, and Member States;

BG. whereas criticism has been levelled which relates mainly to the adoption of legislation under the parliamentary procedure of individual members' bills, the highly hierarchical structure of media supervision, the managerial authority of the Chairperson of the Regulatory Authority, the lack of provisions ensuring the independence of the Authority, the extensive supervisory and sanctioning power of the Authority, the considerable impact of certain provisions on the content of programming, the lack of media-specific regulation, the lack of transparency in the bidding process for licenses, and the vagueness of norms potentially conducive to arbitrary application and enforcement;

BH. whereas in its resolution of 10 March 2011 on media law in Hungary[1], Parliament stressed that the Hungarian media law should be suspended as a matter of urgency and reviewed on the basis of the comments and proposals of the Commission, OSCE and Council of Europe, and whereas Parliament urged the Commission to continue the close monitoring and assessment of the conformity of the Hungarian media law as amended with European legislation, and particularly with the Charter;

BI. whereas the Commissioner for Human Rights of the Council of Europe has stressed the need to amend the legislation in order to tackle encroachments on the freedom of the media such as prescriptions on what information and coverage shall emanate from all media providers, the imposition of penalties on the media, pre-emptive restraints on press freedom in the form of registration requirements and exceptions to the protection of journalists' sources, and whereas, regarding the independence and pluralism of the media, he has expressed the need to address issues such as weakened constitutional guarantees of pluralism, lack of independence in media regulatory bodies, lack of safeguards for the independence of public service broadcasting and absence of an effective domestic remedy for media actors subject to decisions of the Media Council;

BJ. whereas the Commission has raised concerns regarding the conformity of the Hungarian media law with the Audiovisual Media Services Directive and the *acquis communautaire* in general, notably in relation to the obligation to offer balanced coverage applicable to all audiovisual media service providers, and has also questioned whether that law complies with the principle of proportionality and respects the fundamental right to freedom of expression and information enshrined in Article 11 of the Charter, the country of origin principle and registration requirements, and whereas, in March 2011, following negotiations with the Commission, the Hungarian Parliament amended the law to address the points raised by the Commission;

[1] Texts adopted, P7_TA(2011)0094.

This clearly shows the commitment of the Hungarian Government to cooperate with the Commission to address concerns based on precise legal reasoning. After consultations with the European Commission, on 7 March 2011, the Parliament adopted the Act XIX of 2011 with a content corresponding to the results of these talks. This Act amended the regulation regarding the requirement of balanced coverage, registration, and sanctions available against media content providers established in another Member State. Furthermore, the Act clarified the notions of 'press product' and 'media service.'

BK. whereas the OSCE has expressed serious reservations regarding the material and territorial scope of Hungarian legislation, the politically homogeneous composition of the Media Authority and Media Council, the disproportionate penalties imposed, the lack of an automatic procedure for suspending penalties in the event of an appeal to the courts against a Media Authority ruling, the violation of the principle of the confidentiality of journalistic sources and the protection of family values;

BL. whereas the OSCE recommendations[1] included deleting the legal requirements on balanced coverage and other content prescriptions from the laws, safeguarding editorial independence, ensuring that different rules regulate different forms of media – print, broadcast and online – deleting registration requirements deemed excessive, ensuring that the regulatory body is independent and competent, ensuring objectivity and plurality in the process of appointment of organs governing the media sector, refraining from placing print media under the jurisdiction of the regulatory body and effectively encouraging self-regulation;

BM. whereas while welcoming the amendments to the media legislation adopted in March 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has highlighted the need to address remaining concerns pertaining to regulation of media content, insufficient guarantees to ensure the independence and impartiality of the Media Authority, excessive fines and other administrative sanctions, applicability of the media legislation to all types of media, including the press and the Internet, registration requirements, and lack of sufficient protection of journalistic sources;

BN. whereas an analysis by Council of Europe experts[2] (which assessed compliance of the Media Acts as proposed for amendment in 2012 with Council of Europe standard-setting texts in the field of media and freedom of expression) recommended that specific provisions on registration and transparency, content regulation, obligations on news coverage, protection of sources, public service media and regulatory bodies be thoroughly revised, clarified or in some cases eliminated;

On the basis of the analysis of the experts of Council of Europe on Hungarian media legislation and also taking account the Decision No. 165/2011 (XII. 20.) of the Hungarian Constitutional Court, the Parliament, in July 2012, adopted the Act LXVI of 2012 amending the media legislation, which was prepared in consultation with the Council of Europe.

[1] Legal analysis sent to the Hungarian Government on 28 February 2011 http://www.osce.org/fom/75990
See also the analysis and assessment of September 2010: http://www.osce.org/fom/71218

[2] Expertise by Council of Europe experts on Hungarian media legislation: ACT CIV of 2010 on the freedom of the press and the fundamental rules on media content and ACT CLXXXV of 2010 on media services and mass media, 11 May 2012.

These amendments established the procedural guarantees of the right to the protection of sources of information, narrowed the scope of the Press and Media Act as to press products, and created a framework for the constitutional operation of the Media and Communications Commissioner.

BO. whereas, despite the fact that the laws were amended in 2011 following negotiations with the European Commission and in May 2012 further to the decision of the Constitutional Court of December 2011, the OSCE Representative on freedom of the Media has deplored that several amendments were introduced and adopted at short notice without consulting stakeholders and that fundamental elements in the legislation have not been improved, notably the appointment of the president and members of the Media Authority and Media Council, their power over content in the broadcast media, the imposition of high fines and the lack of safeguards on the financial and editorial independence of public broadcasters;

BP. whereas, further to the dialogue conducted with the EU and the Secretary General of the Council of Europe through an exchange of letters and expert meetings, further legal amendments were tabled in February 2013 in order to strengthen and guarantee the independence of the media regulatory bodies, notably in respect of the rules relating to the conditions of the appointment and election of the President of the National Media and Infocommunications Authority and the Media Council and concerning, respectively, the nomination procedure, the person making the appointment and repeated appointment;

After the exchange of letters and expert meetings, further legal amendments were adopted by the Parliament on 25 March 2013 (see Act XXXIII of 2013) in order to strengthen the independence of the President of the Media Authority; to preclude the possibility of re-appointment of the President of the Authority as well as of the re-election of the Members of the Media Council; to set out legal obligations to consult NGOs and to take their proposals into consideration in the nomination procedure; to set higher professional requirements for the appointment of the President of the Authority and the Members of the Media Council. Besides, in relation to information services provided by linear media service providers, the amendment maintained only the requirement of 'balanced' coverage, while it repealed the adjectives 'comprehensive, factual, up-to-date, objective' as suggested by the Council of Europe.

As shown by the above-mentioned steps, Hungarian Government has always been constructive in considering the criticism and suggestions to the media regulation, coming from either the Hungarian or the European institutions. Mr Jagland, Secretary General of Council of Europe, also expressed his satisfaction with the amendments to the media legislation.

BQ. whereas the Fourth Amendment imposes press restrictions as it bans all political advertising during electoral campaigns except for advertising in the public media;

As clarified in relation to paragraph AY above, restrictions on political marketing only apply to broadcasting services. The aim of this provision is to ensure the publication of political advertisings via public media (radio and television) on an equal basis and free of charge. The Fourth Amendment does not affect at all political advertisings not displayed through broadcasting services (e.g. posters, flyers, internet). Similar restriction exists in a

number of European countries and was also recognised by the European Court of Human Rights in one of its recent judgments. [Animal Defenders International vs. UK; judgement of Grand Chamber of 22 April 2013].

The Hungarian Government is in consultation with the European Commission with a view to fine-tuning the rules on political advertising, although the Commission itself has not raised any points of EU law thus far.

BR. whereas the National Media and Infocommunications Authority and the Media Council have not conducted assessments on the effects of the legislation on the quality of journalism, the degrees of editorial freedom and the quality of working conditions for journalists;

It is difficult to see why the Hungarian media authorities (or any other national authorities) would be obliged to undertake sociological or market-review reports as suggested by the report. Such a demand has no EU relevance whatsoever.

Respect of the rights of persons belonging to minorities

BS. whereas the respect for the rights of persons belonging to minorities is explicitly recognised among the values referred to in Article 2 TEU and the Union is committed to promoting these values and combating social exclusion and discrimination;

BT. whereas the responsibility of Member States to ensure that the fundamental rights of all are respected, irrespective of their ethnicity or belief, covers all levels of public administration as well as the law enforcement authorities and also implies actively promoting tolerance and firmly condemning phenomena such as racial violence and hate speech;

BU. whereas the lack of reaction by the law enforcement authorities in cases of racially motivated crime[1] has resulted in mistrust of the police forces;

BV. whereas it is noteworthy that the Hungarian Parliament has enacted legislation in criminal and civil areas to combat racial incitement and hate speech;

BW. whereas, although intolerance against the members of Roma and Jewish communities is not a problem solely associated with Hungary and other Member States are faced with the same predicament, recent events have raised concerns as to the increase in anti-Roma and anti-Semitic discourse in Hungary;

Paragraphs BU-BW are dangerous examples of a selective political narrative that create a picture that Hungary is country where racial tension is mainstream political condition and racial crime is rife. Paragraph BU mentions a recent series of racially motivated crimes. It fails to mention however that these crimes ("the Roma-killings") were committed in 2008-2009, i.e. during the previous government whose activities are generously spared from criticism by the report. The current government has acted against all these (and similar)

[1] Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/20/33/Add. 1)

crimes in a most determined fashion. Lack of reaction by law enforcement authorities thus was characteristic up to 2010.

Paragraph BW suggests that anti-Roma ad anti-Semitic political talk is a mainstream political phenomenon in Hungary. This is an incorrect presentation of the situation. While such negative and unfortunate incidents do emerge in Hungary, they have been tackled by the Government and Parliament with zero tolerance. Notably, the Government introduced a range of legislative measures tackling hate speech and racial incitement in public (providing legal remedies under the Fourth Amendment against hate speech, criminalising Holocaust-denial, banning paramilitary groups), to promote Jewish and Roma culture and identity (introduction of the Remembrance Day, 50% increase in Holocaust pension, dedicating 2014 as the Hungarian Holocaust Memorial Year, compulsory education of Holocaust and Roma history in public schools, etc.). President Áder, Prime Minister Orbán and all members of the Government speak up in public condemning each and every incident of a racist motive.

Freedom of religion and recognition of churches

BX. whereas freedom of thought, conscience and religion as enshrined in Article 9 of the ECHR and Article 10 of the Charter is one of the foundations of a democratic society, and whereas the role of the State in this respect should be that of a neutral and impartial guarantor of the right to exercise various religions, faiths and beliefs;

BY. whereas the Act on Churches established a new legal regime for the regulation of religious associations and churches in Hungary which imposed a set of requirements for the recognition of churches and made such recognition conditional on prior approval by the parliament by a two-thirds majority;

BZ. whereas the obligation set out in the Act on Churches to obtain recognition by the parliament as a condition to establish a church was deemed by the Venice Commission[1] to be a restriction of the freedom of religion;

CA. whereas as a result of the entry into force of retroactive provisions of the Act on Churches more than 300 registered churches lost their legal status of church;

CB. whereas at the request of several religious communities and the Hungarian Commissioner for Fundamental Rights, the Constitutional Court examined the constitutionality of the provisions of the Act on Churches and declared in its Decision 6/2013 of 26 February 2013 some of them unconstitutional and annulled them with retroactive effect;

CC. whereas the Constitutional Court in that Decision, while not questioning the right of the parliament to specify the substantive conditions for recognition as a church, considered that the recognition of church status by a vote in Parliament might result in politically biased decisions, and whereas the Constitutional Court declared that the Act did not contain any obligation to provide detailed reasoning of a decision which refuses

[1] Venice Commission Opinion 664/2012 of 19 March 2012 on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary (CDL-AD(2012)004).

recognition of church status, that no deadlines were specified for the parliament's actions and that the Act did not ensure the possibility of legal remedy in cases of refusal or lack of a decision;

The concerns raised by the Constitutional Court are being addressed by Parliament under a bill (No. T/10750) amending the Act on Churches. The proposed new legislation sets out clear conditions for recognition as a church, contains an obligation for detailed reasoning of a decision which refuses church status, specifies deadlines for the procedure of recognition and ensures the possibility of legal remedy in cases of refusal or lack of a decision.

CD. whereas the Fourth Amendment to the Fundamental Law, adopted two weeks after the decision of the Constitutional Court, amended Article VII of the Fundamental Law and elevated to the level of the constitution the power of the parliament to pass cardinal laws to recognise certain organisations engaged in religious activities as churches, thus overruling the Constitutional Court's decision;

The provision included in the Fourth Amendment is not identical to which had been annulled by the Constitutional Court and also takes into account the assessments made in the decision of the Constitutional Court.

II- ASSESSMENT

The Fundamental Law of Hungary and its implementation

1. Recalls that respect for legality, including a transparent, accountable and democratic process of enacting laws, and for a strong system of representative democracy based on free elections and respecting the rights of the opposition are key elements of the concepts of democracy and the rule of law as enshrined in Article 2 TEU and proclaimed in the Preambles to both the Treaty on the European Union and the Charter,

2. Firmly reiterates that, while the drafting and the adoption of a new constitution falls within the scope of Member States' competences, Member States and the EU have the responsibility to ensure that the constitutional processes and the contents of constitutions are in conformity with the common values of the Union, the Charter and the ECHR,

Here, the text basically introduces a constitutional monitoring mechanism that does not exist under the Treaties.

3. Regrets that the process of drafting and adopting the Fundamental Law of Hungary lacked the transparency, openness, inclusiveness and ultimately the consensual basis that could be expected in a modern democratic constituent process, thus weakening the legitimacy of the Fundamental Law itself,

The comments made to paragraphs X-Y give a detailed account of the process of the adoption of the Fundamental Law. In view of these facts this statement must be seen as unfounded.

4. Takes note of the above-mentioned Decision of 28 December 2012 of the Constitutional Court declaring that the Hungarian Parliament exceeded its legislative authority when it

enacted a number of transitional provisions of the Fundamental Law containing permanent and general rules,

5. Strongly criticises the provisions of the Fourth Amendment to the Fundamental Law, which undermine the supremacy of the Fundamental Law by reintroducing in its text a number of rules previously declared unconstitutional – i.e. incompatible on procedural or substantive grounds with the Fundamental Law – by the Constitutional Court;

This statement has no factual foundation whatsoever. First, the very reason of the Fourth Amendment was the reinstatement of the supremacy of the Fundamental Law (by way of integrating all permanently applicable provisions therein, as required by the Constitutional Court). Second, none of the re-introduced provisions had been annulled on a substantive ground. Third, as confirmed by the Venice Commission it is not against the rule of law to integrate legal norms into the constitution that had been previously quashed by the Constitutional Court. The strong wording deploring the Fourth Amendment is thus unjustified.

6. Recalls that in its above-mentioned Decision of 28 December 2012, the Constitutional Court gave a clear ruling on both substantive and procedural standards of constitutionality by declaring that: *'In democratic States under the rule of law, constitutions have constant substantial and procedural standards and requirements. The substantial and procedural constitutional requirements shall not be set lower in the era of the Fundamental Law than they were at the time of the Constitution (Act). The requirements of a constitutional State under the rule of law continue to be constantly enforced requirements in the present and they are programs for the future. The constitutional State under the rule of law is a system of constant values, principles and guarantees'*[1]; considers such a clear-cut and dignified statement to be valid for the European Union and all its Member States;

While Hungary welcomes the EU-wide recognition of the quality of the jurisprudence of its Constitutional Court, it must be pointed out (also see comments on paragraph AI) that the Court has not taken a position on whether or not the Fundamental Law fulfils these requirements. Most importantly, it did not rule that it had the power to apply such universal values against amendments to the Constitution.

7. Recalls that the common values of the Union of democracy and the rule of law require a strong system of representative democracy based on free elections and respecting the rights of the opposition and that according to Article 3 of Protocol 1 to the ECHR elections should guarantee the *'expression of the opinion of the people in the choice of the legislator'*;

8. Considers that the extensive use of cardinal laws to regulate areas that are covered by ordinary laws in most Member States or to set forth very specific and detailed rules undermines the principles of democracy and the rule of law as it has enabled the current government, which enjoys the support of a qualified majority, to set in stone political choices with the consequence of making it more difficult for any new future government having only a simple majority in the parliament to respond to social changes and thus of potentially diminishing the importance of new elections;

[1] Point IV.7 of the decision.

This statement is completely subjective and excessive. The number of areas subject to cardinal laws has more or less remained steady since 1989 in Hungary. This has never been a source of criticism (see comments on paragraphs AB-AC). It must also be recalled that the current government is not the first one enjoying two-thirds majority in Hungary. The socialist-liberal coalition between 1994-1998 governed with two-thirds majority amending a great number of cardinal acts at will. Challenging solely the current Hungarian government is politically biased. Moreover, in countries with a tradition of grand-coalitions cardinal laws are not at all exceptional legislative products. E.g. in Austrian two-third majority acts are often adopted to avoid constitutional review.

9. Considers that use of the individual members' bills procedure to implement the constitution (through cardinal laws) does not constitute a transparent, accountable and democratic legislative process as in practice it restricts public debate and consultation, and that it could run counter to Fundamental Law itself, which makes it an obligation for the government (and not individual members) to submit to the parliament the bills necessary for the implementation of the Fundamental Law;

There is nobody more accountable than a Member of Parliament who may be dismissed by the electors at the next elections. Their right to initiate bills is also enshrined in the Fundamental Law similarly to that of the Government. Denying this right of the members of Parliament with reference to the democratic values common to EU Member States would lead us to an absurd conclusion that democratically elected MPs cannot exercise their representative roles. (Also see comments on paragraphs AE-AF).

10. Shares the opinion of the Venice Commission (No CDL-AD(2012)001), according to which the adoption of a large amount of legislation in a very short time frame could explain why some of the new provisions do not comply with European standards;

Democratic system of checks and balances

11. Recalls that democracy and the rule of law require a separation of powers between independent institutions based on a correctly functioning system of checks and balances and effective control of the conformity of legislation with the constitution;

As outlined in relation to paragraph P the effective control of the conformity of legislation with the constitution cannot be seen as a common European democratic requirement. If it was so, a large number of EU Member States should leave the EU for lack of a Constitutional Court.

12. Considers that the limitation of constitutional jurisdiction relating to the laws on the central budget and taxes is in contradiction with the requirements of democracy, the rule of law and the principle of judicial review, as it weakens the institutional and procedural guarantees for the protection of a number of constitutional rights and for controlling the parliament's and the government's powers in the budgetary field;

This statement has no legal foundation whatsoever. The control of budgets by Constitutional Courts is not a common European standard. The call of the report for external control over the budget (here by the Constitutional Court) is inconsistent with the report's own criticism over the Budget Council (see comments on paragraph AK). The principle of judicial review does not encompass constitutional jurisdiction. Also see

comments on paragraphs AG, AJ-AM.

13. Recalls that as declared by the Constitutional Court in its Decision No 45/2012, *'Constitutional legality has not only procedural, formal and public law validity requirements, but also substantial ones [...]. As appropriate, the Constitutional Court may even examine the free enforcement and the constitutionalisation of the substantial requirements, guarantees and values of democratic States under the rule of law'*;

14. Considers that after the entry into force of the Fourth Amendment the Constitutional Court can no longer fulfil its role as the supreme body of constitutional protection as the legislature is now entitled to modify the Fundamental Law as it wishes even in the case of the constitutional amendments contradicting other constitutional requirements and principles;

This evaluation is unfounded: there is no change in either the role of the Constitutional Court or that of the Parliament. The Constitutional Court never investigated the substantive constitutionality of constitutional amendments. If it was given that power, it would overtake the role of the legislator. That would result in a serious breach of democratic principles, rendering parliamentary elections meaningless. See also comments on paragraphs AI-AJ.

15. Is deeply concerned about this shift of powers in constitutional matters to the advantage of the parliament and to the detriment of the Constitutional Court, which severely undermines the principle of separation of powers and a correctly functioning system of checks and balances, which are key corollaries of the rule of law;

As shown above, the neither the role of the Constitutional Court, nor of the Parliament has changed. They do different things by design: Parliament adopts (modifies, replaces) the constitution and other laws, the Constitutional Court compares laws with the constitution. Also see comments on paragraph AH and paragraph 14.

16. Is also extremely concerned about those provisions of the Fourth Amendment which repeal 20 years of constitutional jurisprudence, containing an entire system of founding principles and constitutional requirements, including any potential case-law affecting the application of EU law and of European human rights law;

All effects of the jurisprudence are still valid, there is no objection to arrive by the Court to the same conclusion. In fact, the Constitutional Court already uses its previous decisions as a source of interpretation. See also comments to paragraph AJ.

17. Is also concerned about the conformity with EU law of the provision of the Fourth Amendment which enables the Hungarian Government to impose a special tax in order to implement EU Court of Justice judgments entailing payment obligations when the state budget does not have sufficient funding available and when the public debt exceeds half of the Gross Domestic Product;

There is an on-going dialogue between Hungary and the European Commission on this issue and it is too early to formulate any judgement on the conformity of this provision with EU law.

18. Criticises the accelerated process of enacting important laws as it undermines the rights of the opposition parties to be effectively involved in the legislative process, thus limiting their scrutiny of the majority's and the government's action and ultimately negatively affecting the system of checks and balances;

The rights of the opposition are ensured by the Rules of Procedure of the Parliament and have been fully respected throughout the entire legislative process. Also see comments on paragraph AF.

19. Recalls that the independence of data protection authorities is guaranteed by Article 16 TFEU and Article 8 of the EU Charter of Fundamental Rights;

20. Stresses that protection against removal from office during the term of office is an essential element of the requirement of the independence of national data protection authorities under EU law;

Such statements are the prerogative of the European Court of Justice. As the adjudication of this case is in progress the report should refrain from such conclusions.

21. Welcomes the fact that the Commission has launched an infringement procedure against Hungary over the independence of the data protection supervisor;

22. Deplores that the above-mentioned institutional changes resulted in a clear weakening of the systems of checks and balances required by the rule of law and the democratic principle of the separation of powers;

This is an unfounded political conclusion based on above-mentioned factual errors and misconceptions.

Independence of the judiciary

23. Recalls that independence of the judiciary is required by Article 47 of the Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights and is an essential requirement of the democratic principle of the separation of powers derived from Article 2 TEU;

24. Recalls that the Constitutional Court, in its above-mentioned Decision 33/2012, qualified the independence of the judiciary and judges as an achievement of the historical constitution of Hungary, when it declared that the *'principle of judicial independence, with all of its elements, is an achievement beyond doubt. Therefore the Constitutional Court establishes that judicial independence, and the resulting principle of irremovability, is not only a normative rule of the Fundamental Law, but also an achievement of the historical constitution. Thus it is an interpreting principle obligatory to everybody, based on the provisions of the Fundamental Law, and which is to be applied also in the course of exploring other potential contents of the Fundamental Law'*[1];

25. Stresses that the effective safeguarding of independence of the judiciary forms the basis

[1] Point (80) of the decision.

of democracy in Europe and is a prerequisite for consolidating mutual trust between the judicial authorities of the various Member States and thus smooth cross-border cooperation in the common area of justice, based on the principle of mutual recognition as enshrined in Articles 81 TFEU (civil matters) and 82 TFEU (criminal matters);

26. Regrets that the numerous measures adopted – as well as some on-going reforms – do not provide sufficient assurances of constitutional safeguards as to the independence of the judiciary and the independence of the Constitutional Court of Hungary;

First, the Fundamental Law contains provisions similar to those of the previous Constitution as regards the protection of the independence of the judiciary. The main novelty of the Act on the administration of courts was the restructuring of the administrative model of the judiciary, the replacement of the National Council of the Judiciary with the president of the National Judicial Office (NJO), the creation of the National Judicial Council as a supervisory board of the president of the NJO as well as the reshaping of the powers of the Kúria in order to strengthen its character as a supreme court. These may neither be construed as violation of human rights, nor as a violation of the principle of the separation of powers. Second, as the report also acknowledges below the Hungarian justice system has been revised to meet the concerns of the Venice Commission as well as those of the European Court of Justice.

This applies to the independence of the Constitutional Court as well. While the institutional status of the Constitutional Court remained the same as under the previous constitution, in order to further strengthen its independence, the Act on the Constitutional Court has been revised in view of the comments of the Venice Commission.

27. Considers that the premature termination of the term of office of the Supreme Court's President violates the guarantee of security of tenure, which is a key element of the independence of the judiciary;

The tenure of the President of the Supreme Court was terminated as this position also ceased to exist in its original form. The previously two indivisible roles of the President (chief justice on the one hand, chief judicial administrator on the other) have been allocated to two different institutions (to the Kúria-Supreme Court and to the National Judicial Office). The Hungarian Constitutional Court held that such an institutional restructuring was a sufficient ground for the early termination of the office of the President. The European Commission has opted not to initiate an infringement procedure on this issue. For a detailed explanation also see comments on paragraph AN.

28. Welcomes the above-mentioned Decision 33/2012 of the Constitutional Court declaring the compulsory termination of the service of judges at the age of 62 unconstitutional as well as the above-mentioned decision of the Court of Justice of the EU of 6 November 2012, which held that the radical lowering of the retirement age of judges in Hungary constitutes unjustified discrimination on grounds of age and is therefore in breach of Council Directive 2000/78/EC;

29. Welcomes the amendments to Act CLXI of 2011 on the organisation and administration of courts of Hungary and Act CLXII of 2011 on the legal status and remuneration of judges of Hungary, adopted by the Hungarian Parliament on 2nd July 2012, which address many of the concerns previously expressed in its resolution of 16 February 2012

and by the Venice Commission in its opinion;

30. Regrets, however, that not all the recommendations of the Venice Commission have been implemented, in particular as regards the need to limit discretionary powers of the President of the National Judicial Office in the context of the transfer of cases, which potentially affect the right to a fair trial and the principle of a lawful judge;

As regards the transfer of cases a new, revised scheme is under deliberation in Parliament that creates an automatic procedure for the reallocation of cases. The details of such new mechanisms are being finalised in consultation with the European Commission. Also see comments on paragraph AR.

31. Welcomes the adoption of Act XX of 2013 on the legislative amendments relating to the upper age limit applicable in certain judicial legal relations, which sets the retirement age of judges at 65 years of age at the end of a transitional period of 10 years and arranges for the reinstatement of those judges unlawfully dismissed;

32. Regrets, however, that as regards presiding judges, Act XX of 2013 provides for their reinstatement in their original executive posts only if these judicial positions are still vacant, with the consequence that not all unlawfully dismissed judges are guaranteed to be reinstated in exactly the same position with the same duties and responsibilities they were holding before their dismissal;

This solution has been approved by the European Commission as well. Reinstatement of previous presiding positions would result in an unmanageable legal situation. Also see comments on paragraphs AS-AU.

33. Welcomes the Commission's proposal for a permanent scoreboard on justice in all 27 EU Member States as put forward by Vice-President Reding, which shows that safeguarding the independence of the judiciary is a general concern of the EU;

34. Acknowledges the professionalism and dedication of the Hungarian judicial community and its commitment towards the rule of law, and recalls that since the start of the democratic process in Hungary the Constitutional Court has been recognized as an outstanding constitutional body throughout Europe and the world;

Media pluralism

35. Acknowledges the efforts of the Hungarian authorities that led to legislative changes aimed at addressing a number of the shortcomings identified in order to improve media legislation and bring it into line with EU and Council of Europe standards;

36. Welcomes the continued constructive dialogue with international actors and stresses that the fruitful cooperation between the Council of Europe and the Hungarian Government bore tangible results, as reflected in Act XXXIII of 2013, which address several concerns previously highlighted in the legal assessments of media legislation, notably in relation to the appointment and election procedures for the presidents of the Media Authority and the Media Council;

37. Expresses concern at the effects of the provision of the Fourth Amendment banning

political advertising in the commercial media, as although the announced aim of this provision is to reduce political campaign costs and create equal opportunities for the parties, it jeopardises the provision of balanced information;

As explained in relation to paragraph BQ political advertising is not banned in commercial media as political marketing in newspapers, billboards, internet, cinemas, etc. remain free. What the Fourth Amendment does is the introduction (along with a number of Member States) of an equal-opportunities-scheme for political advertising in audio-visual broadcasting. Here, the scheme limits political advertising to the national media service providers under the condition that all actors must be allocated proportionate air-time free of charge. This enhances, rather than limits the provision of balanced information as no political party can outweigh others in the audio-visual scene through financial means (also see comments on paragraph BQ).

Notwithstanding the above, it should be noted that there is an on-going dialogue with the European Commission.

38. Reiterates its call on the Hungarian authorities to take action in order to make or commission pro-active regular assessments on the impact of the legislation on the media environment (reduction of the quality of journalism, instances of self-censorship, restriction of editorial freedom and erosion of the quality of working conditions and job security for journalists);

Such studies are prepared in great number by independent institutions.

39. Deplores that the creation of the state-owned Hungarian News Agency (MTI) as the single news provider for public service broadcasters, while all major private broadcasters are expected to have their own news service, has meant it has a virtual monopoly on the market, as most of its news items are freely available; recalls the recommendation of the Council of Europe to eliminate the obligation on public broadcasters to use the national news agency as it constitutes an unreasonable and unfair restriction on the plurality of news provision;

40. Notes that the national competition authority needs to make regular assessments of the media environments and markets, highlighting potential threats to pluralism;

41. Stresses that measures to regulate the access of media outlets to the market through broadcast licensing and authorising procedures, rules on the protection of state, national or military security and public order and rules on public morality should not be abused for purposes of imposing political or partisan control or censorship on the media, and underlines that a proper balance needs to be ensured in this respect;

42. Is concerned that public service broadcasting is controlled by an extremely centralised institutional system which takes the real operational decisions without public scrutiny; underlines that biased and opaque tendering practices and the biased information of the public service broadcasting reaching a wide audience distort the media market;

The report fails to provide any examples of "biased information of the public service broadcasting". Short of that it remains an unfair political judgement with no support of factual evidence.

43. Recalls that content regulations should be clear, allowing citizens and media companies to foresee in which cases they will be infringing the law and to determine the legal consequences of possible violations; notes with concern that in spite of such detailed content regulations, recent anti-Roma public stances remained unsanctioned by Hungary's Media Authority and calls for balanced application of the legislation;

In the absence of any concrete examples the paragraph creates an impression that the Media Authority is a silent collaborator in the support of anti-Roma public discourse. To the contrary, it must be pointed out that indeed the National Media Authority issued a financial penalty of HUF 250 000 (slightly under EUR 1000) on 8 May 2013 against a journalist for hate speech against the Roma. It also must be underlined that the Media Authority has only residual jurisdiction over these cases, only if a particular press outlet does not join a self-regulatory body. In most cases these measures are implemented by the self-regulatory body rather than the Media Authority itself.

Rights of persons belonging to minorities

44. Notes that the Hungarian Parliament has enacted legislation in criminal and civil areas to combat racial incitement and hate speech; points out, however, that legislation on its own cannot achieve the goal of creating a society free from intolerance and discrimination throughout Europe;

45. Underlines that the authorities in all Member States have a positive obligation to act to avoid violation of the rights of persons belonging to minorities and cannot remain neutral when faced with such violations;

Freedom of religion and recognition of churches

46. Notes with concern that the modifications introduced in the Fundamental Law by the Fourth Amendment attribute to the parliament the power to recognise, by way of cardinal laws and without the constitutional duty to justify a refusal of recognition, certain organisations engaged in religious activities as churches, which might negatively affect the duty of the State to remain neutral and impartial in its relations with the various religions and beliefs;

The proposal on the amendment to the Act on Churches (Bill No. T/10750) addresses the concerns reiterated above. It will introduce a two-stage application process for the recognition of churches with clearly defined procedures, timelines and remedies. Importantly, under the new regime any religious community can call itself a church. Parliamentary recognition is only necessary for a privileged legal-financial relationship with the state. The special (recognised) church status or the lack thereof does not affect the right of organisations engaged in religious activities to the freedom of religion and the prohibition of discrimination. The state cannot influence or intervene in religious activities in the theological sense.

Finally, it must also be pointed out that many European countries apply distinctions between different religious organisations and often that is the Parliament who is entitled to grant them a special status (e.g. in Lithuania, Belgium). Besides, there are a number of European countries where the constitution itself places an established religion above the rest of the religious communities (e. g. in Denmark and Finland the Evangelical Lutheran

Church, in Greece the Eastern Orthodox Church, in Malta the Roman Catholic Church is explicitly emphasised by the constitution as a dominant church). Also see comments on paragraph CC.

Conclusion

47. Concludes – for the reasons explained above – that the systemic and general trend of repeatedly modifying the constitutional and legal framework in very short time frames, and the content of such modifications, are incompatible with the values referred to in Article 2 TEU, Article 3, paragraph 1 and Article 6 TEU and deviate from the principles referred to in Article 4, paragraph 3 TEU; considers that - unless corrected in a timely and sufficient manner - this trend will result in a clear risk of a serious breach of the values referred to in Article 2 TEU;

The report basis its conclusion on two facts: (i) the systemic and general trend of repeatedly modifying the constitutional and legal framework in very short timeframes goes against Articles 2, 3, 6 TEU and (ii) the content of the constitutional amendments are incompatible with the same values.

Ad (i) First, it must be underlined that the major constitutional reforms have been completed during 2011-2012. There is no "systemic and general trend" as the report says. What happens these days is a fine-tuning of a system (mainly as a result of the activity of the Constitutional Court) whose building blocks are already firmly in place. Even if there was a systemic and general trend of modification, the report does not substantiate why repeated modifications of a constitutional system goes against the Treaties.

Ad (ii) The report does not cite any examples where the content of the new constitutional rules goes against the EU Treaties. It is for the European Commission to identify instances of incompatibility with EU law and for the European Court of Justice to adjudicate the issue. Where such instances have been found, they have been either decided by the ECJ or have been (or being) revised in consultation with the Commission. Hungary thus fully complies with EU law or where it proves not to, it is ready to amend its legislation. It is difficult to see how this approach can equal to a systemic breach of the fundamental values of the EU.

In summary: the conclusions of the report are not only based on established legal benchmarks, but a set of arbitrary requirements not supported by EU law. Even the report misses its own standards as it fails to demonstrate its systemic procedural and substantive violation by Hungary.

III- RECOMMENDATIONS

Preamble

48. Reaffirms that its present resolution is not only about Hungary, but inseparably about the European Union as a whole, and its democratic reconstruction and development after the fall of the 20th century totalitarianisms. It is about the European family, its common values and standards, its inclusiveness and its capacity to engage in dialogue. It is about the need to implement Treaties which all Member States have voluntarily acceded to. It is about the mutual help and mutual trust that the Union, its citizens and Member States

need to have if these Treaties are to be more than just words on paper but the legal basis for a true, just and open Europe respecting fundamental rights;

Despite its declared intention to avoid the use of double-standards against Hungary, the approach as well as some of the statements of the report appears to confirm the this exercise is a disciplinary test-case against Hungary (see paragraph V – "other Member States should be monitored through different patterns").

49. Shares the idea of a Union which is not only a 'union of democracies' but also a 'Union of Democracy', based upon pluralistic societies where respect for human rights and the rule of law prevail;

50. Reaffirms that while in times of economic and social crisis one may yield to the temptation to disregard constitutional principles, the credibility and robustness of constitutional institutions play a pivotal role in underpinning economic, fiscal and social policies;

51. States that it is ready – and calls on the Council and Commission to also be prepared – in the event that Hungary does not implement the recommendations set out in paragraph 61, to take action under Article 7(1) TEU to determine the existence of a clear risk of a serious breach by Hungary of the common values of the Union as set out in Article 2 TEU;

Appeal to all Member States

52. Calls on the Member States to comply with their Treaty obligations to respect, guarantee, protect and promote the Union's common values, which is an indispensable condition for respecting the substance of Union citizenship and for building a culture of mutual trust enabling effective cross-border cooperation and a well functioning EU area of freedom, security and justice;

53. Considers that it is the moral and legal duty of all Members States, as well as of the Union institutions, to defend the European values as enshrined in the Treaties, the Charter of Fundamental Rights and the European Convention on Human Rights to which the EU will soon accede;

54. Calls on the national parliaments to enhance their role in monitoring compliance with fundamental values and to denounce any risks of deterioration of these values that may occur within the EU borders with a view to maintaining the credibility of the Union vis-à-vis third countries, which is based on the seriousness with which the Union and its Member States take the values they have chosen as foundations;

55. Expects all Member States to take the necessary steps, particularly within the Council of the European Union, to contribute loyally to the promotion of the Union's values and to cooperate with Parliament and the Commission in monitoring their observance, especially in the framework of the 'Article 2 Trilogue' referred to in paragraph 76;

The concept of an "Article 2 Trilogue" is completely alien to the Treaty on the European Union. The report steps out of the constitutional powers of the European Parliament. Also see comments on paragraph 76.

Appeal to the European Council

56. Reminds the European Council of its responsibilities within the framework of the area of freedom, liberty, security and justice;

57. Notes with disappointment that the European Council is the only EU political institution that has remained silent, while the Commission, Parliament, the Council of Europe, the OSCE and even the U.S. administration have voiced concerns over the situation in Hungary;

58. Considers that the European Council cannot remain inactive in cases where one of the Member States is faced with changes that may negatively affect the rule of law in that country and therefore the rule of law in the European Union at large, in particular when mutual trust in the legal system and judicial cooperation may be put at risk;

59. Invites the President of the European Council to inform Parliament of his assessment of the situation and rapidly engage in consultations with the President of Parliament and the President of the Commission;

The European Council has very well defined roles under the TEU. In particular, it holds important responsibilities in the Article 7 process. The report basically invites the European Council and its President to breach their Treaty obligations by way of acting against Hungary in excess of their statutory powers.

Recommendations to the European Commission

60. Calls on the Commission as the guardian of the Treaties:

– to inform Parliament of its assessment of the Fourth Amendment of the Fundamental Law and its impact on cooperation within the EU;

– to be determined in ensuring full compliance with the common fundamental values and rights set out in Article 2 TEU, as violations thereof undermine the very foundations of the Union and mutual trust between Member States;

– to focus not only on specific infringements of EU law to be remedied notably through Article 258 TFEU, but to draw the consequences of a systemic change of the constitutional and legal system of a Member State where multiple and recurrent infringements unfortunately result in a state of legal uncertainty which not longer meets the requirements of Article 2 TEU;

The Commission has been very active in the monitoring of the legal developments in Hungary. Over the past two years it has launched three infringement procedures and issued a number of administrative letters to the Hungarian Government concerning constitutional changes. In a letter to PM Orbán on 12 April 2013 President Barroso notified the Hungarian Government of the on-going assessment of the Fourth Amendment. The assessment of the Commission has resulted in no more than three administrative letters (no Pilot or infringement procedures!), issued on 2 May 2013. In these letters the Commission raises three issues (special tax for EU-related financial penalties, electoral campaign in the context of European Parliament elections, transfer of judicial cases), but identifies matters

of EU legal relevance only in relation to two of those (special tax, elections). Clearly, the Commission's own assessment has already been completed and its conclusion is that the Fourth Amendment mainly remains irrelevant under EU law.

– to adopt a more comprehensive approach to addressing any potential risks of serious breach of fundamental values in a given Member State at an early stage and immediately to engage in a structured political dialogue with the relevant Member State and the other EU institutions; this structured political dialogue should be coordinated at the highest political level of the Commission and have a clear impact on the full spectrum of negotiations between the Commission and the Member State concerned in the various EU fields;

The report sets concrete tasks for the Commission that go beyond the frame of the current Treaties.

– to create – as soon as risks of violations of Article 2 TEU are identified – an 'Article 2 TEU/Rule of Law Alarm Agenda' to be dealt with by the Commission with exclusive priority and urgency, coordinated at the highest political level and fully taken into account in the various EU sectoral policies until full compliance with Article 2 TEU is restored and any risks of violation thereof are defused;

Such a mechanism can only be created through an amendment of the Treaties. This goes beyond the Article 7 TEU procedure as well as the Article 258 TFEU infringement procedure.

– to hold meetings at technical level with the services of the Member State concerned but not to conclude any negotiations in any policy fields other than Article 2 TEU-related ones until full compliance with Article 2 TEU has been ensured;

The mechanism foreseen by the two above indents would require the Commission to block "negotiations" in any policy field other than Article 2, until the Commission is satisfied with the corrective measures taken by the Member State. Irrespective of the institutional inconsistence of this proposal (which negotiations, which field?), this solution would require the Commission to blackmail Member States through the creation of linkages of completely unrelated matters. The call for such sheer political pressurising not only falls outside the scope of the Treaties, its spirit is completely alien to the governing principles of the Union legal order.

– to apply a horizontal approach involving all the Commission services concerned in order to ensure respect for the rule of law in all fields, including the economic sector;

– to update its 2003 communication on Article 7 of the Treaty on European Union (COM(2003) 606) and to draw up a detailed proposal for a swift and independent monitoring mechanism and an early warning system;

– to regularly monitor the correct functioning of the European area of justice and to take action when the independence of the judiciary is put at risk in any Member State, with a view to avoiding the weakening of mutual trust between national judicial authorities, which would inevitably create obstacles to the correct application of the EU instruments on mutual recognition and cross-border cooperation;

– to ensure that Member States guarantee correct implementation of the Charter of Fundamental Rights with respect to media pluralism and equal access to information;

– to monitor the effective implementation of rules ensuring transparent and fair procedures for media funding and state advertising and sponsoring allocation, so as to guarantee that these do not cause interference with freedom of information and expression, pluralism or editorial lines taken by the media;

– to take appropriate, timely, proportionate and progressive measures where concerns arise in relation to freedom of expression, information, media freedom and pluralism in the EU and the Member States on the basis of a detailed and careful analysis of the situation and of the problems to be solved and the best ways to address them;

– to address these issues in the framework of the implementation of the Audiovisual Media Services Directive in order to improve cooperation between regulatory bodies of the Member States and the Commission, bringing forward as soon as possible a legislative proposal aimed at reviewing Article 30 of that Directive;

– to address the issue of the conformity with EU law of the new provision of the Fourth Amendment enabling the Hungarian Government to impose a special tax in order to implement EU Court of Justice judgments entailing payment obligations when the state budget does not have sufficient funding available and when the public debt exceeds half of the Gross Domestic Product, and to suggest adequate measures to prevent what may result in a breach of sincere cooperation as enshrined in Article 4(3) TEU.

The Commission has already addressed this issue by way of an administrative letter sent to Hungary on 2 May 2013. The Hungarian Government and the Commission are engaged in consultations over the matter.

Recommendations to the Hungarian Authorities

Recommendations concerning issues falling within national competence (e.g. the structure of constitutional institutions) can only carry legitimacy, if they are based on an exhaustive comparative survey covering all Member States. In addition, such recommendations should be based on pre-determined (and universally endorsed) benchmarks and be applicable to all Member States. Any other situation would give rise to double standards.

Moreover, recommendations that are too vague in content or focus or that are un-implementable can only generate further debate. No matter what the Member States does to address the recommendation, any political actor may easily claim that they are not good enough.

61. Urges the Hungarian authorities to implement the following recommendations without any further delay, with a view to fully restoring the rule of law and its key requirements on the constitutional setting, the system of checks and balances and the independence of the judiciary, as well as strong safeguards for fundamental rights, including freedom of expression, media and religion and the right to property:

On the Fundamental Law:

– to fully restore the supremacy of the Fundamental Law by removing from it those provisions previously declared unconstitutional by the Constitutional Court;

In line with the judgement of the Constitutional Court the purpose of the Fourth Amendment was exactly to restore the supremacy of the Fundamental Law, by way of integrating all permanent provisions therein. As a point of clarification it must be underlined that the provisions previously annulled by the Constitutional Court were not constitutional provisions themselves. Reintroducing such provisions – as confirmed by the Venice Commission – does not go against rule of law requirement, it is a political choice of the legislative power. Also see comments to paragraphs AA and AJ as well as paragraph 5.

– to fully apply the recommendations of the Venice Commission and, in particular, to revise the list of policy areas requiring a qualified majority in line with the recommendations of the Venice Commission and with a view to ensuring future meaningful elections;

This point must be rejected in the strongest possible term. The list of policy areas subject to two-third majority has not been expanded under the Fundamental Law. The call to "ensure future meaningful elections" hints that voters' right to elect a free Parliament is constrained in Hungary. Also see comments on paragraphs AB-AD.

– to secure a lively parliamentary system which also respects opposition forces by allowing a reasonable time for a genuine debate between the majority and the opposition and for the participation of the wider public in the legislative procedure;

This is a rather subjective statement with no clear content or direction. The rights of the opposition and the public in legislative procedures are laid down by law. If they are not respected by the law-makers, the Constitutional Court strikes these legislative acts down as invalid.

On checks and balances:

– to restore the right of the Constitutional Court to review all legislation without exception with a view to counterbalancing parliamentary and executive actions and ensuring, through full judicial review, that the Fundamental Law always remains the supreme law of the land;

In the absence of common European standards of constitutional jurisdiction, any Member State may determine the scope of external constitutional review. "Full judicial review" has never existed in Hungary (or hardly anywhere).

– to fully restore the prerogatives of the Constitutional Court as the supreme body of constitutional protection, and thus the primacy of the Fundamental Law, by removing from its text the limitations on the Constitutional Court's power to review the constitutionality of any modifications of the Fundamental Law as well as the abolition of two decades of constitutional case-law;

This recommendation is, again, ill-founded. The Constitutional Court has never held full powers to review constitutional amendments. A comprehensive review power of constitutional amendments by the Court, as is recognised by the Venice Commission, would

equal to a political take-over by the Court of the responsibilities of the elected legislator. Also see comments on paragraph AH-AJ.

– to restore the case-law of the Constitutional Court issued before the entry into force of the Fundamental Law, in particular in the field of fundamental rights[1];

The case-law developed prior to the Fundamental Law can be applied by the Court in the future as well. See comments on paragraph AJ.

– to restore the prerogatives of the parliament in the budgetary field and thus secure the full democratic legitimacy of budgetary decisions by removing the restriction of parliamentary powers by the non-parliamentary Budget Council;

This would contradict the terms of the 2008 IMF/EU agreements as well as the country-specific recommendations issued by the Commission and endorsed by the European Council in 2012. Also see comments on paragraph AK.

– to provide clarifications on how the Hungarian authorities intend to remedy the premature termination of the term of office of senior officials with a view to securing the institutional independence of the data protection authority;

The early removal of the date protection ombudsman from office is subject to a court procedure before the ECJ. If the ECJ decides against Hungary, it will comply with the judgement. It must be pointed out that the "institutional independence" of the new data protection authority is not questioned. See comments on paragraphs AL-AM.

On the independence of the judiciary:

– to fully restore and guarantee the independence of the judiciary by ensuring that the principles of irremovability and guaranteed term of office of judges, the rules governing the structure and composition of the governing bodies of the judiciary, as well as the safeguards on the independence of the Constitutional Court, are enshrined in the Fundamental Law;

All these conditions are fully ensured in Hungary. The report itself fails to mention any instances where the independence of the judiciary is in question. The current system of guarantees has been elaborated following the advice of the Venice Commission. Also see comments on paragraph AP and paragraph 24.

– to promptly and correctly implement the above-mentioned decisions of the Court of Justice of the European Union of 6 November 2012 and of the Hungarian Constitutional Court, by enabling the dismissed judges who so wish to be reinstated in their previous positions, including those presiding judges whose original executive posts are no longer vacant;

The modalities of the implementation of the judgement of the European Court of Justice have been drawn up in consultation with the European Commission. The Commission accepted that judges will be reinstated into their previous executive functions on a selective

[1] See Working Document n° 5.

basis. See also comments on paragraphs AS-AU.

– to establish objective selection criteria, or to mandate the National Judicial Council to establish such criteria, with a view to ensuring that the rules on the transfer of cases respect the right to a fair trial and the principle of a lawful judge;

A new system of transfer of cases, submitted to Parliament, will introduce such criteria. Also see comments on paragraph AO and AR.

– to implement the remaining recommendations laid down in the Venice Commission's opinion No CDL-AD(2012)020 on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001;

The remaining recommendations of the Venice Commission have not been accepted because they are in part erroneous (see for example the participation of the judges in the administration of the judiciary, the functions of the legal secretaries, the application procedure, the fixed term appointment of judges, the transfer and appointment of judges etc.), or because they contradict to the traditions of the Hungarian judicial system (for example the abolition of the law uniformity procedure). The Venice Commission has made several suggestions to change institutions which have been functioning without problems for decades (for example the law uniformity procedure since 1881), or which have been established on the proposal of the judiciary itself (for example the professional requirements of court leaders).

It should be noted that Government requested the opinion of the Constitutional Court on the remaining recommendations of the Venice Commission. This case is still pending before the Constitutional Court.

On the media and pluralism:

– to fulfil the commitment to further discuss cooperation activities at expert level on the more long-term perspective of the freedom of the media, building on the most important remaining recommendations of the 2012 legal expertise of the Council of Europe;

– to ensure timely and close involvement of all relevant stakeholders, including media professionals, opposition parties and civil society, in any further review of this legislation, which regulates such a fundamental aspect of the functioning of a democratic society, and in the process of implementation;

– to observe the positive obligation arising from European Court of Human Rights jurisprudence under Article 10 ECHR to protect freedom of expression as one of the preconditions for a functioning democracy;

– to respect, guarantee, protect and promote the fundamental right to freedom of expression and information, as well as media freedom and pluralism, and to refrain from developing or supporting mechanisms that threaten media freedom and journalistic and editorial independence;

– to make sure that legally binding procedures and mechanisms are in place for the

selection and appointment of heads of public media, management boards, media councils and regulatory bodies, in line with the principles of independence, integrity, experience and professionalism, representation of the entire political and social spectrum, legal certainty and continuity;

– to provide legal guarantees regarding full protection of the confidentiality of sources principle and to strictly apply European Court of Human Rights-related case-law;

– to ensure that rules relating to political information throughout the audiovisual media sector guarantee fair access to different political competitors, opinions and viewpoints, in particular on the occasion of elections and referendums, allowing citizens to form their own opinions without undue influence from one dominant opinion-forming power;

The recommendations on media and pluralism lack the necessary precision to be seen as implementable. It is difficult to assess the normative content of indent 1-4. The recommendations contained in indent 5-6 are already met. The last indent is again too vague to discern any precise content. Also see comments on paragraphs AZ-BQ and paragraph 37.

On respect for fundamental rights

– to take positive action to ensure that the fundamental rights of all persons, including persons belonging to minorities, are respected;

Hungary is fully committed to ensuring the fundamental rights of all, including minorities. Such a vague recommendation however generates an impression to the opposite effect. In its current form the recommendation is pointless and misleading.

On the freedom of religion and the recognition of churches:

– to establish clear, neutral and impartial requirements and institutional procedures for the recognition of religious organisations as churches which respect the duty of the State to remain neutral and impartial in its relations with the various religions and beliefs and to provide effective means of redress in cases of non-recognition or lack of a decision in line with the constitutional requirements set out in the above-mentioned Decision 6/2013 of the Constitutional Court;

The revision by Parliament of the current system of the recognition of churches is in progress in view of the decision of the Constitutional Court. Also see comments on paragraphs CB-CD and paragraph 46.

Recommendations to the EU institutions on setting up a new mechanism to effectively enforce Article 2 TEU

62. Reiterates the urgent need to tackle the so-called ‘Copenhagen dilemma’, whereby the EU remains very strict with regard to respect for the common values and standards by candidate countries but lacks effective monitoring and sanctioning tools once they have joined the EU;

63. Firmly requests that Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirements of democracy and the rule of law;

Any such mechanism can only be established under the Treaties. As it stands, the call for a continuous monitoring mechanism falls outside the existing Treaty framework.

64. Calls for closer cooperation between Union institutions and other international bodies, particularly with the Council of Europe and the Venice Commission, and for use to be made of their expertise in upholding the principles of democracy, human rights and the rule of law;

65. Acknowledges and welcomes the initiatives undertaken, the analysis conducted and the recommendations issued by the Council of Europe, in particular its Secretary General, Parliamentary Assembly and Commissioner for Human Rights and the Venice Commission;

66. Calls on all EU institutions to launch a joint reflection and debate – as also requested by the Ministers of Foreign Affairs of Germany, Netherlands, Denmark and Finland in their above-mentioned letter to Commission President – on how to equip the Union with the necessary tools for it to fulfil its Treaty obligations on democracy, the rule of law and fundamental rights, while avoiding any risks of applying double standards between its Member States;

67. Considers that a future revision of the Treaties should lead to a better distinction between an initial phase, aimed at assessing any risks of a serious breach of the values referred in Article 2 TEU, and a more efficient procedure in a subsequent phase, where action would need to be taken to address actual serious and persistent violation of those values;

68. Given the current institutional mechanism laid down in Article 7 TEU, reiterates the calls it made, in its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011), for the establishment of a new mechanism (‘Copenhagen high-level group’) to ensure compliance by all Member States with the common values enshrined in Article 2 TEU;

69. Reiterates that the setting-up of such a mechanism could involve the rethinking of the mandate of the European Union Agency for Fundamental Rights, which should be enhanced to include regular monitoring of Member States’ compliance with Article 2 of the TEU;

70. Reiterates that, in any case, this new mechanism has to be independent from political influence, swift and effective;

71. Recommends that this mechanism serve to:

– regularly monitor respect for fundamental rights, the state of democracy and the rule of law in all Member States while fully respecting national constitutional traditions;

– conduct such monitoring uniformly in all Member States to avoid any risks of double standards between its Member States;

– warn the EU at an early stage about any risks of deterioration of the values enshrined in Article 2 TEU;

– issue recommendations to the EU institutions and Member States on how to respond and remedy any deterioration of the values enshrined in Article 2 TEU;

72. Instructs its committee responsible for the protection within the territory of the Union of citizens' rights, human rights and fundamental rights, and for determining clear risks of a serious breach by a Member State of the common principles, to submit a detailed proposal in the form of a report to the Conference of Presidents and to the Plenary;

73. Emphasises that this mechanism shall not interfere with, nor duplicate, the work carried out by the Council of Europe and other international bodies, but shall operate in full cooperation with them;

74. Intends to convene a Conference on this issue, before the end of 2013, that brings together representatives from the Member States, the European institutions, the Council of Europe, national Constitutional and Supreme Courts, the Court of Justice of the European Union and the European Court of Human Rights;

IV- FOLLOW-UP

75. Calls on the Hungarian authorities to inform Parliament, the Commission, the Council Presidency and the Council of Europe of the procedure and the calendar they intend to follow for the implementation of the recommendations contained in paragraph 61;

This call introduces a reporting obligation specifically designed for Hungary. This equals to the creation of a new legal obligation outside the scope of the Treaties.

76. Invites the Commission and the Council to each designate a representative who, together with the Parliament's rapporteur ('Article 2 Trilogue'), will carry out an assessment of the information sent by the Hungarian authorities on the implementation of the recommendations contained in paragraph 61;

The "Article 2 Trilogue" envisaged by the report is a new institution that is not supported by the Treaties. Such a new institution would basically overtake the role of the Commission as a guardian of the Treaties as well as empty the infringement procedure and the Article 7 procedure. The Trilogue would lack any legal and political legitimacy, its operation would amount to a clear breach of the rule of law.

77. Asks the Conference of Presidents to activate the mechanism laid down in Article 7(1) TEU in case the replies from the Hungarian authorities to the above-mentioned recommendations do not comply with the requirements of Article 2 TEU;

78. Instructs its President to forward this resolution to the Parliament, President and Government of Hungary, to the Presidents of the Constitutional Court and the Kúria, to the Council, the Commission, the governments and parliaments of the Member States and the candidate countries, the Fundamental Rights Agency, the Council of Europe, the OSCE and the U.S. Secretary of State.