Annex I. Answers to questions raised

1. What is the objective pursued by lowering the mandatory retirement age of judges? For which reason is the mandatory retirement age lowered to 62 now, even if it will be raised again as from 2014?

Hungarian rules on retirement age are not sector-specific or flexible but they apply uniformly to all natural persons of a certain age as laid down in an Act of Parliament. It is possible to work legally after having reached retirement age, but incomes earned this way will be taxed according to different rules. The above rules apply to judges as well as to other professions. Upon reaching retirement age, judges may continue to work and engage in gainful activities, for example as legal counsels, counsellors, or university professors. It can be stated, therefore, that Hungary has not had previously, nor will it have after 1 January 2012, any regulations negatively discriminating against judges (or against members of any other profession).

During the past years the retirement age for judges did not differ from the generally applicable retirement age. Upon reaching retirement age, judges had the choice to retire or to work until reaching the upper age limit of 70 years. Thus the new regulation has not changed the retirement age, only the upper age limit for judges.

In order to bring about a unified regulation within the judiciary and to terminate discrimination against those working in other sectors Parliament decided to introduce a sector-neutral regulation regarding the legal consequences of reaching retirement age in conformity with the general rules on retirement age, with the exception that special rules will apply to certain public law officers.

To prevent that a significant part of Hungarian judges, nearly one-tenth of them, should reach the upper age limit of 70 years at the same time, Parliament has prescribed that entry into the office as judges be subject to a gradually increasing retirement age. The purpose of the regulation is thus, on the one hand, to shape a balanced age structure which makes it possible that retirements be equally distributed in time. On the other hand, Parliament has eased the existing tensions stemming from the difficulties of young professionals in getting a job in the judicial sector. In view of the limited number of positions for judges, especially at the higher levels of courts, the lowering of the upper age-limit will result in facilitating for young professionals to obtain such posts.

Parliament, however, was not merely guided by considerations to optimise personnel management, since its responsibility is also to ensure that the needs of society for the administration of justice as a public service be satisfied at the highest possible level. Increasing the efficiency of the administration of justice is a requirement expressed both by the citizens and businesses. The higher performance expected from the system of judicial organisation within the limits of the given number of authorised posts can be ensured by the inclusion of a higher number of younger professionals who have up-to-date qualifications, who are more suitable to carry a workload, and who are more ambitious and more flexible from both a professional and geographical point of view. The fact that professionals belong to different age groups can contribute to a high standard of professional activity.

There seems to be a contradiction between the 2012 lowering of the retirement age, including the upper age limit for judges, and its gradual increase beginning from 2014. Just like in all countries that (also) have a state system of pensions, it is the social, economic and

demographic processes that determine the framework of the pension system in Hungary, too. At present these processes do not justify the fixing of a higher retirement age. So it is worth mentioning for example that in Hungary the average life expectation of men at birth does not even reach 70 years. This, however, will predictably change in the future and the pension rules will change accordingly.

2. How does this measure fit into the general policy objective of all EU governments to consolidate public finances?

The aspect of the stability of public finances was duly taken into account when the change in the model of judicial administration and the related questions of personnel policy were decided. As it has been explained in point 1, public finances, and within them the state pension system, must be shaped according to uniform principles. The lowering of the upper age limit concerns 274 judges altogether. This is of a lesser importance from the point of view of the whole pension system, since a group representing some ten thousandth only does not justify the changing of the rules governing the whole system, or even the maintenance of a special sectoral regulation.

Parliament ensures the stability of public finances by gradually increasing the retirement age (and the upper age limit of judges therewith) by taking into account demographic processes, so as not to allow for the difference between retirement age and actual life expectation and for the ensuing burden on public finances to increase to a level which would exceed the burden bearing capacity of those financing the pension system, which is of a distributing and levying kind.

3. For which reason has the general retirement age been made mandatory for judges whilst it is not mandatory for other categories of workers? For which reason has the mandatory retirement age of 70 years not been lowered for other similar categories of public servants (e.g. public notaries, university professors) and for civil servants in general?

For those working in the private sector the legislator, respecting the freedom of contract, does not exclude the possibility for natural persons to continue working beyond retirement age (determining, however, whether and under what conditions they may be entitled to old-age pension in that case).

When performing a significant part of public tasks, namely public services (such as public education or public health), public employees (e.g. university professors) are under employment contracts, so – in accordance with the principle mentioned above – it is not excluded for them either to work or continue being employed beyond retirement age.

On the other hand, it is impossible to realise the freedom of contract in the whole public sector as such, since judicial or other functions involving the exercise of public power cannot be performed in the framework of employment contracts. Accordingly, judges, prosecutors, public notaries, bailiffs, as well as public servants and government officials exercising public power carry out their tasks on the basis of appointment. The State bears special responsibility for exercising public power, and therefore the framework and rules of employment in these fields are more strictly defined. One example thereof is the upper age limit determined by the

State for certain positions. The previous legislation also determined an upper age limit for judges, only a higher one.

It is worth mentioning that Parliament is already debating the regulations regarding public notaries and bailiffs, consequently the general retirement age will apply also in these fields, and it will no longer be possible to hold an office upon reaching that age.

Moreover, according to the bill on officials in the public service, at present before Parliament, the government service relationship will terminate when, on the basis of social security regulations, the government official has acquired the necessary service time for a full pension, except where, at the request of the government official and on the basis of the interests of service, the employer maintains the employment legal relationship. In this case the regulations allow a little more flexibility, considering that the regulations pertaining to the legal status of public servants and government officials are somewhere between those of the Labour Code (private sector) and the most stringently regulated judicial fields.

4. Why are the transitional measures for judges who have already reached the new age limit or will do so next year so short, compared with the extent of the change and in view of the imminent increase of the general retirement age? Have any measures been taken to compensate the financial losses faced by judges who will have to retire much earlier than expected?

Act CLXII of 2011 on the Legal Status of Judges contains transitional provisions to ensure that judges who will have reached the upper age limit by the entry into force of the Act and those who reach the upper age limit in 2012 can retire smoothly, gradually and with a six months' period of release. The transitional period will be one year to one and a half years altogether, which will provide sufficient time to take the necessary measures of release.

In view of the fact that in 2014 the retirement age will be further increased to 63 years, a longer transitional period than that would practically mean the introduction of the measure with a different content. The time period of one year to one and a half years between the adoption of the Fundamental Law (25 April 2011) and the effective dates of termination of the service relationships of judges (30 June 2012 and 31 December 2012) cannot be considered too short, and allows sufficient time for the judges concerned who have reached the retirement age to prepare for their retirement.

It is worth mentioning that apart from the number of those concerned, it is not known how many of them would really have wished to make use of the possibility to continue working until the age of 70, after reaching the retirement age. Considering their number of years and the possible negative changes in their state of health, no reliable survey can be made. It is also impossible to determine or forecast how many of these judges would have retired later than allowed by the present regulation but before reaching the age of 70.

The above observations also show that the 'losses' referred to in the question are practically impossible to be interpreted. It is not possible to establish the amount of 'losses' for individual judges, since their future judicial activities, even if they intend to continue working as judges, would be a function of unpredictable factors.

We should also note that the judges will retire and not become unemployed. If, however, the legislator would provide some sort of compensation for judges, then the question would arise whether or not other pensioners whose employment could be continued should be entitled to compensation as well. The granting of compensation, even if only in the judicial sector, would undermine those considerations of the stability of public finances which are raised in question 2.

In view of the above, the measure ensuring that the judges concerned can retire during a period of one year to one and a half years with a notice of six months (for half of which period they are under no obligation to work while receiving a full salary) seems an equitable one. In the meantime, they will be able to enjoy an increase of salary guaranteed by the increased base salary, as well as the benefits of the new, more advantageous rules of jubilee bonus.

5. Are there cases of judges who will have to retire at the general retirement age (62 years) without a full pension as a consequence of the reform? Will judges in the future even be able to obtain the right to a full pension if they retire at 62 or 65 given the new minimum age of 30, also introduced in the Constitution?

a) The pension rules applicable to judges are the same as those applying to everyone else. This means that for those born before 1 January 1952 the retirement age will be 62 years. On the basis of this, judges retiring at the age of 62 have exactly the same possibility to receive a full pension as any other worker.

b) Anyone is entitled to full old age pension if they have reached the retirement age based on his or her date of birth, have at least twenty years of service time and have no insurance legal relationship. Independently of her age, any woman is entitled to full old age pension if she has at least forty years of time giving rise to benefits and has no insurance legal relationship.

The following periods are to be considered as time giving rise to benefits: service time acquired by a legal relationship based on employment or on a comparable legal relationship, as well as service time acquired by receiving prenatal or puerperium allowance, child rearing allowance, child rearing assistance, child rearing aid, child rearing support or nursing allowance for natural or adopted children with serious disabilities.

Full old-age pension cannot be granted if the service time is shorter than 32 years, or 30 years in the case of a woman who has been entitled to an allowance for caring for her natural or adopted child with a serious disability.

The prescribed time giving rise to benefits is reduced by one year if the entitled person has raised five children in her household, and it is reduced by one year for each further child up to a maximum of seven years.

c) The Fundamental Law does prescribe the age of 30 years as the lower age limit for appointment as judge, but periods of service time giving entitlement to pension acquired before being appointed as judge are also taken into account. Persons who become a judge at the age of 30 will, after graduation, typically acquire service time as junior court clerks and later as court secretaries (judicial employee legal relationship), and it may also happen that a

member of some other profession or a person pursuing some other gainful occupation will be appointed judge. Thus, those persons who become judges only later will already have acquired service time after graduating from university, generally from the age of 23 or 24.

d) The amount of the pension is determined not only by the amount of the income earned previously, but also by the number of years served. Accordingly, from the tenth year in service, the amount of the pension will be determined as a percentage of the average monthly salary. For a service time of 10 to 40 years, the amount increases unevenly by 1, 1.5 or 2 per cent. Over 40 years of service time, the amount is increased by 2 per cent for each additional year. On the basis of the above, it can be stated as a general rule that the more service time one has acquired, the higher pension he or she will be entitled to; according to those set forth in point c), however, this rule applies regardless of the date of appointment as judge, and it applies in a sector-neutral manner.

6. What is the concrete impact of these measures (i.e. the number of judges concerned, the backlog of cases, recruitment of new judges etc)?

By 1 January 2012 228 judges and by 31 December 2012 another 46 judges will reach retirement age. For those judges who have reached the upper age limit, the starting date of release will be 1 January 2012 and its closing date will be 30 June 2012, thus the date of termination of their time in office will be 30 June 2012. This period will be the first phase of the transitional period. For those judges who reach the upper age limit between 1 January 2012 and 31 December 2012, the starting date of release will be 1 July 2012 and its closing date will be 31 December 2012, thus the date of termination of their time in office will be 31 December 2012. This period will be the second phase of the transitional period.

Parliament adopted Act CXXXI of 2011 on the Transitional Rules of Filling Certain Positions of Judges in Order to Ensure the Timely Termination of Court Proceedings, which entered into force in the middle of October 2011. The purpose of that Act is also to ensure the filling of those positions of judges that become vacant in connection with the entry into force of the Fundamental Law, ensuring thereby that the work of retiring judges be continued as soon as possible.

On the basis of the Act, 129 positions of judges have to be filled within such time as to enable the appointment of new judges before the release from work of those judges (at the earliest by 1 April 2012) who have to be released in the first half of 2012, in order to ensure the smooth replacement of the retiring judges without losing time. Parallel to this and in accordance with the pace of judges retiring, the filling of the other posts becoming vacant will also proceed according to a tight schedule, within the framework of the time-limits laid down in the Act and pursuant to the rules of Act CLXII of 2011 on the Legal Status and Remuneration of Judges.

As 129 judges will take up work on the basis of Act CXXXI of 2011 and the average period of applications for posts of judge will be shortened, with keeping the necessary guarantees, from the previous 4 to 5 months to 2 to 3 months on the basis of Act CLXII of 2011, we will be able to avoid an increase in the present backlog of cases and ensure the timeliness of passing judicial decisions.

7.) What are the objectives of the reorganisation of the judiciary and what precisely is the role of (i) the President of the new National Judicial Office, (ii) the National Judicial Office itself and (iii) the National Council of Judges?

The judiciary is primarily expected to make decisions within a reasonable time and according to a uniform practice of the application of law, regardless of where the given courts are located within the country. In view of these requirements, the most important issues of the Hungarian judicial system are the following: the timeliness of judicial decisions, an unequal distribution of the case-load, and the large number of lengthy proceedings and their geographical concentration.

a) One of the pillars of a predictable and timely administration of justice is an efficient and operational central administration that can respond quickly to social and economic changes. Apart from operative functioning and efficiency, another requirement is that differences in the case-load should not be considered as local problems affecting local interests but as issues to be solved, in their complexity, at the national level, and that the disproportionate distribution of the case-load must be eliminated with appropriate measures provided for in Acts of Parliament.

The legislator has decided to replace the former system of direction by a body, the National Council of Justice (NCJ), because this body, convening once a month, was unable to deal with situations requiring immediate decisions. The members of NCJ performed their tasks as members on top of their other functions. The judge members of NCJ were generally in leading positions within the courts, and it was NCJ itself that controlled and exercised employer's rights over them, i.e. they were in fact controlled by themselves.

This process aiming at creating an efficient and operational administrated started as early as late in 2010, when Parliament adopted an amendment to the Act on the organisation and administration of courts, whereby the competences of NCJ as a body were transferred to the President of NCJ; further steps were needed, however, in particular to separate professional and administrative direction, as well as to transfer the tasks of central administration to a new responsible person.

A principal consideration in drawing up the new regulation was that it should make the responsibility for decisions taken, and accountability therefor, more tangible than before. The person responsible for central administration is primarily expected to be familiar with the operational mechanisms of the judiciary. These were the criteria taken into consideration when the new cardinal Act, Act CLXI of 2011 on the organisation and administration of the courts, transfers the tasks of central administration to an individual coming from within the court system: the President of the National Office of the Courts (NOC)[1].

The tasks of the President of NOC will encompass the whole range of central administration, which can be divided into the following main categories:

- general central administration tasks,
- tasks related to the direction of NOC,
- tasks related to the budget,

[1] In the Commission's question above: 'National Judicial Office'.

- tasks related to the collection of statistical data, to the distribution of cases, and to the measuring of workload,
- personnel management tasks,
- tasks related to the administration of the courts,
- tasks related to training, and
- tasks related to providing information.

b) Another main pillar of a predictable and timely administration of justice is that professional direction and the unity of law be ensured, i.e. the effective direction of the principal judicial organ, the Curia. If the Curia makes use, with sufficient effectiveness, of the legal institutions created to ensure the uniform application of the law, and reacts with the required rapidity to questions of applications of law raised at lower-level courts, it promotes thereby not only the predictability but also the timeliness of the delivery of judicial decisions.

When drawing up the Act on the organisation and administration of the courts, it had to be taken into account that the Fundamental Law defines the Curia as the principal judicial profession organ, standing at the top of a judicial organisation with increased tasks, including those of a constitutional nature. This judicial organisation with its tasks increased both in quantity and quality, and within it the Curia with its role to unify law, requires concentrated and effective professional direction. These circumstances made it impossible to uphold the present structure in which the President of the main professional organ, i.e. the Supreme Court, is at the same time the President of the central body for administrative direction, i. e. the National Council of Justice. It was thus necessary to set up a system where the President of the Curia bears the main responsibility for professional activities, and who, in order to be able to perform this task to a high standard, needs to be relieved of central administrative competences.

c) In the future central administrative competences will be exercise by the President of the National Office of the Courts, whose work will be assisted by the National Office of the Courts as the work organisation under him or her.

d) The President of the National Office of the Courts cannot remain without control. Control will be guaranteed, on the one hand, by the public nature of his her activities, and on the other hand by the control and supervision carried out by the National Council of Judges and by the removability of the President of NOC.

One important requirement regarding courts is that transparency should be insured. The president of NOC will have a wide range of obligations to provide information in order that both the courts and the legislative power should be able to follow the situation of the courts, the outcome of their activities, the possible problems, and the activities of the central administration. Within its task to provide information, the President of NOC will report on his or her activities to the National Council of Judges every six months, and annually to Presidents of the Curia, of the regional courts of appeal, and of the tribunals, and he or she will also present an annual report to Parliament on the general situation of the courts and on their administration activities.

Only judges elected by judges may become members of the National Council of Judges, while the President of the Curia will be a member ex officio. The National Council of Judges supervises the central administration activities of NOC, controls the financial management of

the courts and, in cases laid down in Acts, participates in the application proceedings for filling posts of judges and of leading positions at courts.

On the basis of what it has experienced in the course of exercising the above competences, the National Council of Judges may use its main and most important power over the President of NOC: it may submit a motion to Parliament initiating his or her removal from office (this power of the National Council of Judges is shared by the President of the Republic, who has also the right to nominate the President of NOC).

8) What are the guarantees provided for ensuring the independent administration of the courts?

a) Only judges may be elected President of NOC. Judges

- may not be members of a political party;
- may not engage in political activities;
- may not be Members of Parliament, members of a local government body, mayors, members of the government, or state executives falling within the scope of the Act on the legal status of state secretaries;
- may only perform task related to their office, excepting academic, educational, training, umpiring, refereeing, and artistic activities, activities falling under copyright protection, proof-reading or editing activities, and creative technical work as a gainful occupation; in doing so, however, they may not jeopardise their independence or impartiality or make the impression thereof, nor may these activities hinder the performance of the tasks of their office as judge.

The person of the President of NOC is nominated by the President of the Republic, who, in the system of the separation of powers, is separated from the other powers. The person nominated for President of NOC will be heard by the standing committee of Parliament dealing with the judiciary and by the National Council of Judges. The President of NOC shall be elected by a two-thirds majority of the Members of Parliament.

b) In his or her responsibilities related to the budget, the President of NOC will draw up his or her proposal for the budget chapter of the courts and its implementation, and his or her report, which the government, similarly to the regulations in force at present, will submit to Parliament for part of the bill on the central budget and on its implementation. Regarding the budget of the Curia, the President of NOC has the obligation to obtain the opinion of the President of the Curia.

9) Which authority has a decisive influence on the appointment and promotion of judges and on disciplinary measures against them, and what is the decision making process?

a) The president of NOC will have the right to decide on the applications for positions of judges, except for those of the Curia. Several rules laid down in Acts of Parliament ensure that applications be evaluated on the basis of objective criteria and that the most suitable candidate should obtain the post:

- Applicants will be heard by the President of the court to which they apply.
- The ranking of applications will be done by a council of judges.

- In ranking the applicant only criteria laid down in Acts of Parliament may be taken into consideration, with the individual criteria to be evaluated along a marking system laid down in a separate rule of law.
- Although the President of NOC may depart from the ranking established by the council of judges, but he or she may only propose the second or third person on the list; no one lower on the list may be proposed. In every case of such departure, he must inform the National Council of Judges in writing of his reasons and present them at the new meeting of the National Council of Judges.
- Judges will be appointed by the President of the Republic.

To sum up the above, judges will be appointed according to objective criteria and in a procedure laid down in a rule of law, in the course of which application will be evaluated by the President of NOC but it will be the President of the Republic who appoints judges. Applications for posts at the Curia will be evaluated by the President of the Curia instead of the President of NOC.

b) The basis for regulations on judges holding leading positions were laid down by Parliament at the end of 2010, on the basis of which regulations it is the President of the National Council of Justice who at present appoints presidents and vice-presidents of regional courts of appeal and of county courts, as well as the heads of specialised groups at courts. Compared with that regulation, the appointing competence of the President of NOC has in fact been narrowed, since, according to the future regulation, the heads of specialised groups of the Curia will be appointed by the President of the Curia and not the President of NOC.

In cases where an applicant whom the President of NOC or of the Curia wants to appoint has not obtained, before being appointed into a leading position, the approval of the majority of the members of the judicial organ entitled to give an opinion on the applications, the appointing authority must obtain a preliminary opinion of the National Council of Judges on the applicant. The applicant may only be appointed after the opinion has been obtained and taken note of. The above consultation between the President of NOC as appointing authority and the National Council of Judges goes beyond a traditional consultation, since in Hungarian customary law this type of consultation is practically binding, which is supported by the obligation of the President of NOC to provide information and report on the appointing practice in general and on personnel policy. The regulation in question is not without precedent in Hungarian law: a similar procedure is followed in the appointing practice of rectors of universities.

c) In disciplinary matters of judges, proceedings will not be conducted by an authority but by a two-level service court consisting of judges appointed specifically for this office by the National Council of Judges. This service court will be the one to proceed in disciplinary matters and the ensuing matters on the payment of damages, as well as in litigations deriving from the professional evaluation of the work performed as judges or as judges in leading positions. The service court will conduct its proceedings, both at first and second instances, in appointed chambers consisting of three members. Preparations for disciplinary proceedings will be made by commissioners of examination. The service court may, in its decision, acquit the judge under disciplinary action, it may established his or her disciplinary liability and impose a disciplinary punishment, or it may terminate the proceedings started against the judge. Disciplinary punishments that may be imposed on a judge who has committed a disciplinary offence are: warning, reprimand, scaling back by one step in pay, removal from a leading position, and removal from the position of judge.

10. What is the competence of the Curia and the power of its President in comparison to the existing Supreme Court?

The judicial reform aims at the elimination of dysfunctional operation resulting from the parallelisms and the overlaps in personnel between the Supreme Court and the National Council of Justice. With the setting up of new organisations not only the names of the present organisational units but also their competences and structures will be changed. Although the Presidents of the Curia and the National Office of the Courts will become the legal successors of the Presidents of the Supreme Court and the National Council of Justice, respectively, this legal succession, given the new structure, will concern other types of competences as well. As a general rule, the Curia will become a legal successor exclusively in respect of judicial activities; however, in respect of its own activities and operation it will also have its own administrative competences.

The judicial organisation has been given new tasks: the courts have to decide on whether a local government decree is contrary to another rule of law and on its annulment, as well as on the establishment of the failure of a local government to comply with its law-making obligation based on an Act (Article 25(2) of the Fundamental Law). This task is similar to that falling within the competence of the Constitutional Court, with the difference that the courts may only decide on whether there is a conflict with a legal rule; the examination of conflicts with the Fundamental Law is within the competence of the Constitutional Court.

As a result of the four-level court system, fewer and fewer cases get to the Curia by way of (ordinary or extraordinary) legal remedy, and consequently the specialised thematic groups of the Curia find it harder to obtain a reliable database that would be necessary for a complete horizontal and vertical overview of jurisprudence. In view of the above, the Curia will have, besides the right to make decisions on the uniform application of the law, some new instruments at its disposal to ensure the unity of law: on the one hand it will have groups analysing the jurisprudence of the courts with a task to study jurisprudence according to different subject areas determined yearly, and on the other hand the Curia may, in addition to court decisions of principle, issue court rulings of principle as well. Specialised groups of the Curia may publish decisions made by a judicial council of the Curia as a decision of principle, provided they concern questions of principle in matters affecting large groups of society or in matters of outstanding importance for public interest. Apart from the above, specialised groups of the Curia may also decide to publish, as a decision of principle, a decision made by a lower-level court in matters affecting large groups of society or in matters of outstanding importance for public interest.

In addition to providing new instruments, the new regulation also reforms the procedure for the uniform application of the law: it lays down in detail the exchange between courts of information necessary for starting proceedings for the uniform application of the law, it widens the circle of those persons who may submit motions, and draws up identical and detailed rules of procedure for proceedings for the uniform application of the law both in criminal and civil law matters.

11. What is the regime applicable to the various aspects of the transformation of the Hungarian Supreme Court into the Curia, in particular as regards the appointment of the judges, and why will the mandate of the Chair of the current Hungarian Supreme Court terminate before the end of the regular term?

Above all, it must be pointed out that legal succession between the Supreme Court and the Curia does not affect the status of the judges of the Supreme Court, and that logically the competence to appoint judges cannot but remain unaffected since it continues to be exercised by the President of the Republic.

Secondly, the mandate of the President of the Supreme Court will terminate prematurely because the Supreme Court itself will cease to exist. (As explained above in point 10, the transformation of the Supreme Court into the Curia is not merely a change of names.)

As for legal succession, the bill on the transitional provisions of the Fundamental Law makes it clear that the Supreme Court and the National Council of Justice will be replaced by two separate units. The rule on legal succession stipulates that the Presidents of the Curia and the National Office of the Courts are to be considered as the legal successors of the Supreme Court, the National Council of Justice and of its President.

The transitional provisions of the bill on the organisation and administration of courts regulate the first-time election of the President of the National Office of the Courts and of the President of the Curia, the first-time election of the judge members of the National Council of Judges, as well as the termination of mandates and the starting dates of the new mandates.

As a result of the structural reforms and changes, the Presidents of the newly set up Curia and of the National Office of the Courts must be elected by a two-thirds majority of Parliament. In order to ensure that the two new organs be operational as of 1 January 2012, the Constitution of 1949, in force until the end of 2011, as well as the new Act on the organisation and administration of courts provide that the Presidents of the Curia and of the National Office of the Courts must be elected by the end of 2011.

In the new organisational and institutional framework and competences, nominees are expected to meet increased requirements. One of the professional associations with a membership of more than half of Hungarian judges has suggested to the legislator that heads of courts, and especially the Presidents of the Curia and of the National Office of the Courts, should meet special requirements. According to the proposal of this association of judges, only persons with at least five years of service relationship as a judge should be elected President of the Curia or of the National Office of the Courts. As for the heads of the newly set-up organs, the changes in tasks and competences make it necessary to re-examine the persons to be appointed on the basis of the professional qualities required in these high positions.

12. Given the importance of an independent judiciary in upholding rights enjoyed under EU law, how is it ensured that the ending of the mandate before the end of the regular term does not effectively put in question the independence of the judiciary?

a) Judicial power is mainly manifested in making judicial decisions. Accordingly, the independence of judges means that they may not be given instructions in the exercise of their

judicial functions. This basic principle is not affected either by the Fundamental Law or the new cardinal Acts, which preserve in its entirety the institution of judicial independence and the rules guaranteeing them (judges shall not be instructed, they shall be politically independent, they shall be selected exclusively on the basis of professional criteria, they shall be appointed and dismissed by the President of the Republic, i.e. in the case of judges the legal institution of 'ordinary dismissal' shall not exist, judges shall have the right to immunity, etc.)

In order for judges to be independent, they need further guarantees as to their legal status and judicial organisation. Judges must be independent of everyone, including other judges, and their independence must be ensured against all types of influence, whether coming from those exercising external powers or from within the judicial organisation. Making judicial decisions independently of any external influence is an unconditional requirement and is protected unconditionally by the Fundamental Law.

As follows from the above, there is no legally meaningful relation between changes in the person of the President of the Supreme Court and the institution of judicial independence, since the President of the Supreme Court may not give instructions to judges in the exercise of the judicial activities, nor does he exercise the power of appointment and dismissal over judges (including those of the Supreme Court).

b) Judicial power is characterised by being permanent and neutral, unlike the other two, more 'political' powers: the legislature and the executive. This neutrality, together with the fact that judges are only subject to Acts of Parliament, is an essential component of judicial independence.

Judicial independence, as regards the independence of making judicial decisions, lies in the fact that the courts interpret even Acts of a political content, and administrative norms, in an autonomous way. Jurisprudence is independent of political changes, and its coherence is served by its continuity, traditions and interrelations with theory. Ultimately, what courts define as 'law' follows their own interpretation. The fact that courts are only subject to Acts of Parliament does not only exclude their being influenced in making judicial decisions by the other two powers, but it also ensures judicial independence by the courts' independent, continuous and systematic interpretation of Acts and application of law.

c) As to the administrative model of the judiciary there are no international standards. The documents of the UN, the Council of Europe and the International Association of Judges, as well as international conventions do declare the requirement of, and the right to, independent and impartial courts of justice, but they contain no standards regarding their administration. [See the Rome Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, published by Act XXXI of 1993; the International Covenant on Civil and Political Rights adopted by the General Assembly of the UN at its XXI session of 16 December 1966 and published by Law-decree No. 8 of 1976; Recommendation no. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges; and the European Charter on the Statute for Judges.]

The changes that have raised objections only result in the separation of the central professional and administrative management of the courts of justice; they do not, however, affect the institution of judicial independence, as outlined in points a) and b) above. As the

Supreme Court and the National Council of Justice cease to exist, and the Curia and the National Office of the Courts are being set up, these changes – involving not merely a change of names but also essential modifications of tasks and competences – necessarily entail personnel changes at the top of the organs as well.

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In Member States of the European Union, determining the organisational structure of the judiciary forms part of national sovereignty. In this area the Commission has no general competence, so Member States have to right to freely shape their own judicial systems and adopt national legislation laying the foundations thereof.

In summary, one can also conclude that neither the Fundamental Law, nor the new cardinal Acts and their transitional provisions or the organisational and personnel changes based thereon result in any infringement of judicial independence, either in the enforcement of fundamental rights guaranteed by the European Union or in the application of law in other areas of the legal system. The newly adopted Hungarian legislation, therefore, complies in every respect with fundamental EU and international principles and requirements governing the judiciary.

Questions related to data protection

I. About the creation of the new Data Protection Authority

"Why was it decided to replace the current supervisory authority with a new one?"

The question of changing the institutional model had been raised several times in Hungary before. It has been considered whether or not the ombudsman model, created in 1992, could (or should) be replaced with an authority, with more and stronger competences, making a more efficient supervision possible. Experts of the field, including the academia, have discussed possible amendments regarding the institutional framework. Finally, as a conclusion of the discussions, the authority model has been given preference.

The choice of model was decided by the adoption of the new Fundamental Law in Hungary. Article VI of the Fundamental Law provides for: "[a]n independent authority set up by a cardinal Act shall supervise the enforcement of the right to the protection of personal data and of the right to access data of public interest'". To our knowledge, in most of the Member States an authority is in charge of supervising the implementation of data protection related legislation, and not an ombudsman. We believe that Hungary is, as are other Member States free to choose the most appropriate institutional model for the protection of the fundamental rights in question.

It is the Member States' responsibility to provide for an efficient supervision in order to guarantee that data protection related legislation, implementing the Data Protection Directive, is complied with. Based on the experience of the one and a half decade of functioning, the ombudsman was not vested with enough power to properly remedy infringements. Therefore, in our understanding, Hungary is obliged also by European Union law to amend its legislation accordingly, including first and foremost the institutional framework and powers vested in it.

As regards the status and powers of the Data Protection Commissioner and the new National Authority for Data Protection and Freedom of Information, please see Annex II.

"What are the reasons for not providing any interim measures until the term of the current data protection supervisor is due to end in 2014?"

As it is outlined above, from the legislative point of view, conditions for an effective supervision were not fully guaranteed. If the legislator had decided to keep the ombudsman model, and wait until 2014, Hungary would have run the risk of not complying with European Union standards, and therefore, of possible infringement proceedings. The new Fundamental Law of Hungary includes the necessary institutional amendment regarding the supervision in the field of data protection and freedom of information. The amendment aims at ensuring the continuous and improved supervision in this field, in line with the respective Directive.

The Info Act (Act CXII of 2011 on Informational Self-determination and Freedom of Information[2]), based on the mandate stemming from the Fundamental Law, established the new Data Protection Authority (DPA) of Hungary. It must be emphasised that neither the Fundamental Law nor the Info Act implied any personal decision regarding the new position,

[2] Approved by Parliament on 11 July 2011, with 255 votes for and 66 against

namely whether the President of the new DPA should be Mr Jóri, the current Data Protection Commissioner or someone else. However, just two days before the voting by Parliament on the draft act, Mr Jóri declared in a press interview that he is not willing to continue his work as President of the new DPA[3]. The ombudsman declared that he is not willing to have this new position, without having any information about possible interim measures. This statement on his part made it unavoidable for the Government to seek another person to be mandated as the President of the new DPA.

In accordance with the Info Act, the Prime Minister has made his proposal in mid-November and the new President of the DPA, Mr Attila Péterfalvi was appointed by the President of the Republic. Mr Péterfalvi had served as Data Protection Commissioner for six years (between 2001 and 2007).

"How is it ensured that early ending of the Data Protection Commissioner's Office does not put in question the independence of the data protection authority as provided in EU law?"

The independence of the Data Protection Authority is a common European value Hungary shares with many countries in and outside of Europe. According to the intentions of the legislator, the early ending of the term of the Data Protection Commissioner does not have any detrimental effect on the functioning and independence of the national data protection authority. The early ending of the Data Protection Commissioner's term and the independent supervision do not exclude one another. The new DPA will be set up in January 2012. The Info Act was passed in July this year, thus an appropriate timeframe has been provided for preparing the application of the new legislation. In our view, independent supervision in the field of data protection will be ensured in Hungary without interruption.

In this context it must be recalled that the Fundamental Law replaces the old constitution of Hungary, which, in its own preamble, declared itself to be temporary. The Fundamental Law is the permanent constitution of Hungary, anchoring the institutional model in various fields. Institutional changes are intended to be permanent. Changing the model of the supervisory authority in the field of data protection is not a precedent, but a necessary measure to have a final institutional framework for the future.

II. About the ending of term of the President of the new Data Protection Authority

As regards failure to meet the conditions necessary for the appointment of the supervisory authority; determination of incompatibility of the supervisory authority; discharge and disqualification from holding office, I refer to the below points of the Info Act

Section 40 reads:

(1) The Authority shall be headed by a President. The President of Authority shall be appointed by the President of the Republic at the proposal of the Prime Minister from among those Hungarian citizens who have a law degree, the right to stand as a candidate in elections of Members of Parliament, and at least five years of professional experience in supervising

[3] The interview is available at the homepage of [origo]:
http://webcache.googleusercontent.com/search?q=cache:G3yZUmGXIUcJ:www.origo.hu/itthon/20110708-interju-jori-andras-adatvedelmi-biztossal.html+j%C3%B3ri+andr%C3%A1s+origo+interj%C3%BA&cd=1&hl=hu&ct=clnk&gl=hu

proceedings related to data protection or freedom of information or a Ph.D. degree in either of these fields.

(2) No one may be appointed President of the Authority who – in the four years preceding the proposal for his or her appointment – has been a Member of Parliament, Member of the European Parliament, President of the Republic, Member of the Government, state secretary, member of a local government body, mayor, deputy mayor, Lord Mayor, Deputy Lord Mayor, president or vice president of a county representative body, of member of a local, regional or national nationality self-government, or officer or employee of a political party.

(3) The President of the Republic shall appoint the President of the Authority for nine years.

(4) After his or her appointment the President of the Authority shall take an oath before the President of the Republic; the content of the oath shall be governed by the Act on the oath and pledge of certain officers of public law.

Section 41 reads:

(1) The President of the Authority may not be member of a political party or engage in any political activity, and his or her mandate shall be incompatible with any other state or local government office or mandate.

(2) The President of the Authority may not pursue any other gainful occupation, nor accept pay for his or her other activities, with the exception of academic, educational or artistic activities, activities falling under copyright protection, or proof-reading or editing activities.

(3) The President of the Authority may not be executive officer of a business organisation, member of its supervisory board or such member of a business organisation as has an obligation of personal involvement.

Section 42 reads:

(1) The President of the Authority shall make a declaration of assets, identical in contents to those of Members of Parliament, within thirty days of his or her appointment, then by 31 January of each year, and within thirty days of the termination of his or her mandate.

(2) Should the President of the Authority fail to make a declaration of assets, he or she may not perform the tasks deriving from his or her office, and may not receive remuneration until he or she submits the declaration of assets.

(3) The declaration of assets shall be public and an authentic copy thereof shall be published without delay on the website of the Authority. The declaration of assets may not be removed from the website of the Authority for one year following the termination of the mandate of the President of the Authority.

(4) Anyone may initiate proceedings related to the declaration of assets of the President of the Authority by the Prime Minister with a statement of facts specifically indicating the contested part and content of the declaration of assets. The Prime Minister shall reject the initiative without conducting proceedings if it does not meet the requirements contained in this subsection, if it is manifestly unfounded or if a repeatedly submitted initiative does not

contain new facts or data. The veracity of those contained in the declaration of assets shall be checked by the Prime Minister.

(5) In the course of declaration of assets proceedings, at the invitation of the Prime Minister the President of the Authority shall notify the Prime Minister without delay and in writing of the supporting data on the property, income and interest relations indicated in his or her declaration of assets. The Prime Minister shall inform the President of the Republic of the outcome of the check by transmitting the given data. The data may be accessed only by Prime Minister and the President of the Republic.

(6) The supporting data submitted by the President of the Authority shall be deleted on the thirtieth day following the termination of the declaration of assets proceedings.

Section 45 reads:

(1) The mandate of the President of the Authority shall terminate

a) upon expiry of the term of his or her mandate;

b) upon his or her resignation;

c) upon his or her death;

d) upon establishment of the absence of the conditions necessary for his or her appointment;

e) upon establishment of a conflict of interest;

f) upon his or her dismissal; or

g) upon removal from office.

(2) The President of the Authority may at any time resign from his or her mandate in a written declaration addressed to the President of the Republic through the Prime Minister. The mandate of the President of the Authority shall terminate on the date indicated in the resignation, which date shall be posterior to the communication of the resignation or, in the absence thereof, on the day of communication of the resignation. No statement of acceptance shall be necessary for the validity of the resignation.

(3) If the President of the Authority fails to terminate a conflict of interest within thirty days of his or her appointment or if, in the course of the exercise of his or her office, a conflict of interest arises, the President of the Republic shall, at the written motion of the Prime Minister, decide on the question of the establishment of a conflict of interest within thirty days of receipt of the motion.

(4) At the motion of the Prime Minister the President of the Republic shall dismiss the President of the Authority if, for reasons not imputable to him or her, the President of the Authority is not able to perform the duties deriving from his or her mandate for more than ninety days.

(5) At the motion of the Prime Minister the President of the Republic shall remove the President of the Authority from office if, for reasons imputable to him or her, the President of the Authority fails to perform the duties deriving from his or her mandate for more than ninety days or if he or she deliberately makes a false declaration on important data or facts in his or her declaration of assets.

(6) The absence of conditions necessary for the appointment of the President of the Authority shall be established by the President of the Republic at the motion of the Prime Minister.

(7) In the event of termination of the mandate pursuant to Points a), b) or f) of subsection (1), the President of the Authority shall be entitled to an additional payment three times the amount of his or her monthly salary at the time of termination.

(8) Decisions assigned to the competence of the President of the Republic by subsections (3) to (6) or by Section 40 need not be counter-signed.

Annex II.

Comparative chart of status and powers of the old and new data protection supervisory bodies

	Parliamentary Commissioner for Data Protection and Freedom of Information	**National Authority for Data Protection and Freedom of Information**
Legal status of the institution	Parliamentary Commissioner / Ombudsman	Autonomous state administration organ
Appointment	By Parliament	By the President of the Republic
As regards financial independence, is it vested with powers of a budgetary chapter?	NO	YES
Is it entitled to apply the general rules of administrative procedure?	NO	YES
Is it entitled to support the claimant in court proceedings?	NO	YES
Is it in charge of the management of the data protection register?	YES	YES
Is it entitled to comment on draft legislations concerning DP&FOI	YES	YES
Does it publish and present its annual report to the Parliament?	YES	YES
Is it entitled to impose fine?	NO	YES
Is it entitled to audit data processing operations?	NO	YES