Decision 20/2014 (VII. 3.) AB

on the examination of the constitutionality of certain provisions of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy

The plenary session of the Constitutional Court, in the subject of a constitutional complaint – with concurring reasoning by Justices *Dr. Béla Pokol* and *Dr. László Salamon* and dissenting opinions by Justices *Dr. András Bragyova, Dr. László Kiss, Dr. Miklós Lévay* and *Dr. László Salamon* – adopted the following

decision:

1. The Constitutional Court holds that the wording "or their potential successors" in section 14 (4) of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy, is contrary to the Fundamental Law and therefore annuls it.

The relevant wording of section 14 (4) of the Act shall remain in force after the annulment with the following text: "The shareholder of Takarékbank Zrt. – other than MFB and Magyar Posta – may not exercise its shareholder rights and any pre-emptive or other preferential rights attached to shares if [...]".

2. The Constitutional Court holds that the wordings "- in the following order", and "if the persons ranking first in the order have not stood up for the claim and their insolvency has been declared by a final court judgement" in section 20/A (4) of Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy are contrary to the Fundamental Law and therefore annuls them with effect from 31 December 2014.

After the annulment, section 20/A (4) of the Act shall remain in with the following text: "(4) On the basis of the joint and several liability provided for in paragraph section 1 (4), in addition to the debtor, the entire claim may be asserted against the Fund, other cooperative credit institutions, the Integration Organisation and Takarékbank Zrt. In addition to the debtor, the above debts of the debtor may be claimed from the Fund if the debtor fails to pay the debt, adjudicated by a final judgement or not contested, within a further 30 days from the due date. The Fund shall pay instead of the debtor the amount due under the joint and several liability within 60 days after the above deadline. After the Fund, other cooperative credit institutions, the Integration Organisation and Takarékbank Zrt. shall be liable for the amount payable on the basis of joint and several liability."

3. The Constitutional Court holds that in applying section 19 (3), section 17/D, section 17/H (2) of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy, and Annex 1, IX. 9.1. (e) of the Act, it is a constitutional requirement originating from Article XIII (1) of the Fundamental Law that the model statutes may only contain mandatory elements which are indispensable for the attainment of the objectives of the Act, serve the implementation of the Act or are necessary to meet the requirements of the European Union governing the integrated operation of credit institutions.

4. The Constitutional Court rejects the petitions – based on Article B (1) of the Fundamental Law – for the declaration that the entire Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy is contrary to the Fundamental Law and for its annulment.

5. The Constitutional Court rejects the petitions for the declaration that section 1 (1) (e), (o), (p), (q) and (t), paragraphs (2), (3), (4), section 3, section 4 (1), (2), section 5, section 6 (3) to (4), section 11 (1), (4), (7), (8), section 12 (2), (3), section 13 (2), (3), (4), section 14 (1), (3), the entire paragraph (4), section 15 (2) to (4), (7), (9) to (14), (16), (17), (19) to (21), section 15/A (1) to (9), section 15/C, section 16, section 17 (1), section 17/C (1), (2), (4) to (7), section 17/D, section 17/E (4), section 17/H (2), (4), section 17/J (2), section 17/K (1) and (11), section 17/Q (3) to (4), section 18 (3), (4), (6), (7), section 19 (2), (3), (4), (5), (6), (8), (9), (11), section 20 (1), (2), (7), (9), (10), (12), (14), section 20/A (1), (2) (b), (12) to (13) of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy is unconstitutional and for its annulment.

6. The Constitutional Court rejects the petition for the declaration that section 20 (3) to (6) and (11) of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy, in force from 13 July to 29 November 2013, are contrary to the Fundamental Law.

7. The Constitutional Court rejects the petition for the declaration that section 8 (3) and (7) and section 11 (1) and (2) of the Act CCXXXVII of 2013 on Credit Institutions and Financial Undertakings are contrary to the Fundamental Law.

8. The Constitutional Court terminates the proceedings with respect to the petitions based on the right of association with respect to section 18 (3), the right to legal remedy with respect to section 18 (4), and the prohibition of discrimination with respect to section 1 (1)(e) and section 20 (11) of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy, in force from 13 July to 29 November 2013.

9. In other respects the petitions are refused by the Constitutional Court. The Constitutional Court publishes its decision in the Hungarian Official Gazette.

Reasoning

I

[1] 1. The National Savings Bank Cooperative Association (Országos Takarékszövetkezeti Szövetség) (H-1125 Budapest, Fogaskerekű u. 4.; hereinafter: OTSZ) filed a constitutional complaint under section 26 (2) of Act CLI of 2011 on the Constitutional Court (hereinafter: ACC) against certain provisions of the Act CXXXV of 2013 on the Integration of Cooperative Credit Institutions and Amending Certain Laws in the Field of the Economy (hereinafter: Act), alleging the violation of several provisions of the Fundamental Law, to be detailed below [section 1 (1) (t); section 4 (1); section 5; section 11 (1) to (2) and (4); section 12 (2) and (3); section 13 (3) to (4); section 14 [in particular paragraph (3)]; section 15 (2), (3), (4), (9), (12) to (14); section 16; section 17 (1); section 18 (4), (6) to (7); section 19 (3), (9) and (11); section 20 (2), (7), (9), (10) and (11)]. This was followed by 135 complaints from private individuals (cooperative members), 3 applications from cooperative credit institutions and 1 joint petition from banks operating in joint stock company form.

[2] The applications can be divided into two groups according to their content, as follows:

[3] (A) The first group consists of the OTSZ-petition and the complaints filed by individuals and cooperative credit institutions. These latter applications are based on the OTSZ-petition, although they do not contain all the elements of it. The OTSZ also submitted a supplementary submission in the course of the procedure. The petition of a member of a savings cooperative, although also based on the OTSZ-petition, contains new elements in some respects as compared to the OTSZ-petition. For example, it also challenges section 1 (1) (o) and (p), clearly the entire section 14, section 18 (2), section 19 (2) (b), (6) and section 20 (1).

[4] (B) In the second group, there is the petition which was filed jointly by three banks and their shareholders. Their petition primarily challenges section 1 (1) (t) and in this context items (e) and (q) as well, section 1 (2) to (5), section 3, section 4 (1) to (2), section 5, section 6 (3) to (4), section 11 (1) and (7) to (8), section 12 (2), section 13 (2) to (3), section 14 (1) to (4), section 15 (2) to (3), (4), (7), (9) to (13), (16) to (17), section 18 (3) to (4), (7), section 19 (1), (2), (3), (4) to (5), (8) to (9), section 20 (1) to (3), (6) to (7), (10) to (12) and (14) of the Act. They also seek the retroactive annulment of the Act in its entirety. In their supplementary application submitted after the amendment of the Act, they extended the application for annulment to a number of other provisions of the Act which have been introduced or amended in the meantime [section 11 (4), section 15 (19), section 15/A (1) to (9), section 15/C, section 17 (1), section 17/C (1), (2), (4), (5) to (7), section 17/D (1), (2), section 17/E (4), section 17/H, section 17/J (2), section 17/K (1), section 17/K (11), section 17/Q (3), section 17/Q (4), amended section 19 (3) (a) to (b), section 20/A (1), (2) (b), (12) to (13)]. They also applied for the annulment of section 5 (3) and (6) and section 8 (1) and (2) of the Act CXII of 1996 on Credit Institutions and Financial Undertakings (hereinafter: ACI). A petition submitted by a private individual petitioner is linked to the foregoing. The petitioner is a shareholder in one of the banks affected by the integration. In its application, the petitioner expressly challenges, in addition to the entire Act, section 1 (1) (e), (f) and (t), (4), section 11(1), section 15 (2) to (4), (7) to (8), (11) to (12), section 19 (2), (3) (b) to (d) and section 20 (10) of the Act.

[5] 2. With the adoption of the Act, the law-maker provided for the integration of the cooperative credit institutions sector, with two institutions as its central bodies: Magyar Takarékszövetkezeti Bank Zrt. (hereinafter: Takarékbank) and the newly established

Cooperative Credit Institutions Integration Organisation (hereinafter: CCIIO), which is also the legal successor of the former voluntary institution protection funds. According to the Act, both Takarékbank and CCIIO exercise different management powers in relation to the integrated credit institutions. The OTSZ (and the complainants on the basis of the OTSZ-petition) consider the Act to be contrary to the Fundamental Law for the following reasons.

[6] 2.1 First of all, they consider that the Act has a significant impact on the operation, management, ownership relations and the exercise of ownership rights of cooperative credit institutions, thereby infringing the right to property [Article XIII (1) of the Fundamental Law]. According to the complainants, the following provisions of the Act constitute an interference, contrary to the Fundamental Law, in the position of the owner:

(a) section 5 and section 16 of the Act, as they abolish the voluntary institution protection funds and their assets are transferred to CCIIO.

(b) section 12 (2) to (3) of the Act, because they narrow the scope of shareholders of Takarékbank and restrict the rights of those who legally obtained shares before the entry into force of the Act.

(c) section 13 (4) of the Act (each shareholder of Takarékbank may hold only one type of preference share) and, in connection therewith, section 19 (3) (compulsory deposit of series B voting preference shares and the obligation to take new series C preference shares) and section 20 (11) (exclusion of voting with series B shares). The petitioners complain that they are obliged to take the new series of preference shares instead of the old series B preference shares, but the Act does not mention the rights attached to these new shares.

(d) section 14 (3) of the Act (limitation of the right to dispose of Takarékbank shares), since, according to the petitioners' view, this provision is incompatible with the right of free disposal over the subject matter of civil law property rights.

(e) section 14 (4) of the Act, as it allows the restriction of Takarékbank shareholders rights of cooperative credit institutions in cases that depend on Takarékbank, i.e. on the owned organisation itself (e.g. the capital adequacy does not reach the level required by Takarékbank, the cooperative has not complied with the instructions of Takarékbank), which results in a thwarting situation.

(f) section 20 (10) of the Act [the purchase option of Magyar Fejlesztési Bank Zrt. (hereinafter: MFB) to purchase Takarékbank shares, when, among others, the shareholder does not vote for (or abstains, or perhaps stays away from voting) the new statutes of Takarékbank, as drafted by the Board of Directors of CCIIO], which, in the petitioners' view, empties out the possibility of free exercise of shareholder rights related to property. The provision means that after a change in the ownership of Takarékbank, the remaining minority shareholders cannot vote autonomously according to their convictions and interests, even when drafting the operating rules.

[7] 2.2. The petitioners consider the capital increase performed in Takarékbank to be an expropriation (all the ordinary shares issued in the course of the capital increase can be subscribed at par value by the state-owned Magyar Posta Zrt.), as it results in the state-owned

entities (MFB and Magyar Posta) jointly acquiring a majority shareholder position. They complain that certain Takarékbank shareholders can no longer be shareholders (or exercise their shareholder rights) under the Act, and that the law also regulates several cases when shareholders (may) even lose their Takarékbank shares. In this scope, they challenge the following provisions of the Act: section 13 (3) to (4) (rules on preference shares); section 19 (6) [a shareholder not included in section 12 (2) of the Act shall deposit its preference shares and shall not receive any of the new series of preference shares in their place]; section 19 (11) (a credit institution that is in the process of converting from a cooperative to a non-cooperative credit institution shall transfer all of its Takarékbank shares to MFB); section 20 (2) (increase of the capital of Takarékbank), (9) (prohibition of alienation), (10) (MFB's option right to purchase the Takarékbank shares of a shareholder who does not vote for/abstains/stays away from voting the new statutes), (11) (series B preference shares essentially "must" be sold to MFB, as it is mandatory to take over series C shares and a shareholder can only have one type of preference shares). The petitioners emphasise that the conditions for expropriation under Article XIII (2) of the Fundamental Law are not met, because there is neither a public interest nor an exception. The lack of public interest is also supported – they argue – by the definition of Magyar Posta and MFB: according to section 1 (1) (o) and (t), any company (regardless of the scope of its owners) in which Magyar Posta or MFB acquires or holds a share – to whatever extent – after the entry into force of the Act may be a shareholder of Takarékbank. Thus, the expropriated property "(may) also serve private interests by virtue of the provisions of the Act."

[8] In support of their request, they emphasise that Magyar Posta's share after the capital increase is unrealistic due to the capital increase at par value, as Takarékbank's share capital will increase to HUF 3.34 billion during the capital increase, but its equity is much more, approximately HUF 15.6 billion. Magyar Posta will receive about HUF 3.1 billion of the company's equity capital, as it will become a shareholder of about 19% with the share capital increase, although it will pay only HUF 655 million in the course of the share capital increase. This constitutes a deprivation of the property of ordinary shareholders before the capital increase without compensation. The petitioners also draw attention to the preamble of the Act, according to which the Hungarian State intends to sell its ownership position acquired in the sector "within a reasonable period of time, if it considers the positive processes it has initiated irreversible". This wording – in particular the fact that no conditions are specified on the identity of the future buyer, who may be a private individual or even a competitor of cooperative credit institutions – suggests that the expropriation is not in the public interest, the expropriated property "serves/may serve private interests".

[9] 2.3. According to the preamble of the Act, the State will later resell the acquired Takarékbank shares, but it is uncertain to whom. The petitioners are convinced that this is unacceptable because the majority owner of Takarékbank will have significant influence on the operation of the entire cooperative credit institution sector due to the control and indirect management powers of Takarékbank over cooperative credit institutions. However, the autonomy of economic operators includes autonomous economic activity, but the Act does not respect this, and thus the freedom of enterprise and fair economic competition are violated [Article M, Article XII of the Fundamental Law]. The provisions challenged in this context are the following:

(a) section 15 (3) to (4) of the Act [the right of Takarékbank to exercise control, give instructions, sanctions] essentially gives Takarékbank the means of an authority, while Takarékbank is in fact partly owned by the cooperatives ("Property instructs the owner" is the argument), and the decision-makers of Takarékbank are not elected by the cooperatives.

(b) section 18 (7) of the Act [compulsory bank account keeping with Takarékbank, in conjunction section 15 (9)] is incompatible with the freedom of economic competition, part of which is the freedom of contract, because it eliminates market competition in this area.

(c) section 14 (3) of the Act (restriction on the disposal of Takarékbank's shares) infringes not only the right to property but also the freedom of enterprise, according to the petitioners.

The petitioners also point out that the fact that it is not possible to establish and operate a cooperative credit institution without being a member of CCIIO also infringes the freedom of enterprise. In this respect, however, they do not refer to any provision of the Act.

[10] 2.4 The petitioners consider some provisions of the Act to be discriminatory [in violation of Article XV of the Fundamental Law] as follows:

(a) section 1 (1) (t) of the Act also classifies as cooperative credit institutions financial institutions that do not operate in a cooperative form (e.g. banks), although it is a fact that they were members of the voluntary institution protection funds abolished by the Act. They are therefore also obliged to participate in the integration process and may be subject to the possible sanctions provided for in the Act, although other financial institutions (i.e. other banks) operating in the same form as them are not subject to such provisions.

(b) according to section 12 (3) of the Act, those shareholders of Takarékbank who do not belong to the scope referred to in section 12 (2), although they may retain their ordinary shares, may not exercise their shareholder rights (e.g. the OTSZ), which constitutes an unconstitutional distinction made between shareholders as a homogeneous group of property owners.

(c) section 14 (4) of the Act (restriction on the exercise of shareholders' rights attached to Takarékbank shares) does not apply to Magyar Posta and MFB, although they are also shareholders.

(d) section 18 (6) of the Act [definition of the term "poor lending performance"] links the possibility to declare a so-called "crisis situation" in the context of cooperative credit institutions to a certain level, but the banking system as a whole currently performs under that level with an increasing trend, i.e. the Act expects a level of performance from cooperative credit institutions better than the average performance of the banking system. The significance of this provision is that the crisis situation of a cooperative credit institution may give rise to various measures [e.g. section 15 (7)].

(e) section 20 (2) of the Act (the right and obligation of MFB to take over the series C preference shares not taken over by the cooperative credit institutions) and (11) (the right – in fact: an obligation, based on the regulation – of the cooperative credit institutions to sell to MFB the series B preference shares) allows MFB, contrary to the general rule [section 13 (4)], to exclusively hold both series B and series C preference shares at the same time in Takarékbank.

(f) the prohibition on the alienation of Takarékbank shares provided for in section 20 (9) of the Act applies only to cooperative credit institutions, but not to MFB and Magyar Posta, which are also shareholders.

[11] 2.5 The petitioners also allege a violation of Article XII (1) of the Fundamental Law [freedom of choice of employment and occupation] because the Act grants the Board of Directors of Takarékbank rights to elect and remove the executive officers of cooperative credit institutions [section 15 (4) (a), section 15 (12)]. Furthermore, the Act terminates the employment relationship and their agency relationship of the executive officers of Takarékbank [section 19 (9)]. The petitioners point out that Takarékbank is owned – at least in part – by the cooperative credit institutions, and that the executive officers of the cooperative credit institutions are therefore representatives of Takarékbank's owners, thus actually "the property will control the owner". In addition, the Act allows for the recall of executive officers without defining objective criteria. According to other Acts (Act X of 2006 on Cooperatives, Act IV of 2006 on Companies, Act I of 2012 on the Labour Code), the election and removal of executive officers is the responsibility of other bodies and persons. The termination by virtue of the law of the mandate of the executive officers of Takarékbank lacks guarantees under labour law. The complainants also consider Article XII (1) of the Fundamental Law to be violated by section 15 (4) (b) of the Act, since if a cooperative credit institution is excluded from the CCIIO, it will lose its operating licence – since membership in the sector is compulsory – which could lead to job losses.

[12] 2.6 The petitioners see a violation of the right to legal remedy guaranteed by Article XXVIII (7) of the Fundamental Law in the fact that according to the Act Takarékbank may give instructions to the cooperative credit institutions and the non-compliance with the instructions may entail various sanctions [section 15 (3) to (4)], but the Act does not provide for legal remedy in this respect. Section 18 (4) of the Act [the decisions of the Supervisory Authority (National Bank of Hungary, hereinafter: MNB) may be enforced in the application of the Act irrespective of any appeal for legal remedy] violates the Fundamental Law because immediate enforceability makes it impossible to restore the situation prior to the measure that may later be classified as unlawful.

[13] 2.7 The petitioners allege the breach of legal certainty [Article B (1) of the Fundamental Law] in connection with several different provisions [section 13 (4), section 18 (2), section 19 (3) (a), section 20 (3), (7) and (11)], with reference to the prohibition of contradictory regulatory content. In addition, they also complain that there are no procedural guarantees in the case of Takarékbank's right to issue instructions.

[14] 2.8 In the opinion of the petitioners, the right to fair administrative procedure [Article XXIV of the Fundamental Law] is violated by the right of Takarékbank to issue instructions to cooperative credit institutions [the petitioners wrongly referred to section 15 (12) of the Act instead of paragraphs (3) to (4)], as well as by section 18 (4) (immediate enforceability of the MNB's decisions) and section 16 (rules on the legal succession of institution protection funds). The petitioners, however, did not provide any substantive reasoning, they merely argued that “the enforcement of impartiality is violated by a legal institution/law that gives one party additional rights to the detriment of the other party”.

[15] 2.9. The petitioners consider – without any request for annulment – the preamble (and also the reasoning) of the Act to be in breach of Article VI (1) of the Fundamental Law (protection of good reputation), as the formulations contained therein are generalisations that do not take into account the real indicators and prudential situation of savings cooperatives, in particular with regard to the operational security due to the voluntary institution protection funds that have been operating until now. The fact of state intervention undermines confidence in the sector and gives a false image of the OTSZ's member organisations, they argue.

[16] 2.10. According to the petitioners, a number of provisions of the Act are contrary to international law [and thus violate Article Q of the Fundamental Law] and contrary to the law of the European Union [i.e. they also conflict with Article E (3) of the Fundamental Law].

[17] In this context, the following reasoning was put forward. Several of the aforementioned provisions of the Act are discriminatory and therefore contrary to Articles 2 to 3 of the Treaty on European Union (TEU). The contested provisions of the Act "move away from Community law" and therefore also infringe the loyalty clause laid down in Article 4 (3) TEU. Article 8 of the Treaty on the Functioning of the European Union (TFEU) (the Union seeks to eliminate inequalities) and Article 10 (action against discrimination) are also infringed by the discriminatory provisions of the Act. The Act regulates membership in CCIIO and the takeover of the preferential Takarékbank share series C as preconditions for the operating licence, and grants power to CCIIO – without specifying the conditions – to decide on the admission/exclusion of members, which is contrary to Article 50 (2) TFEU (freedom of establishment). The freedom to provide services (Article 56 TFEU) is infringed by the Takarékbank's right to issue instructions to cooperative credit institutions and by the supervisory and intervention powers of CCIIO. The powers granted to Takarékbank in relation to cooperative credit institutions constitute an abuse of dominant position, thus they breach Article 102 TFEU. Article 107 TFEU on prohibited state aid is also violated: the ordinary shares issued during the capital increase of Takarékbank can only be taken over by the state-owned Magyar Posta, not by other shareholders [section 20 (2) and (7) of the Act], and the shares are taken over at par value, while the current shareholders could subscribe for convertible bonds at a rate of approximately 500%. For the above reasons, the petitioners also invoke a violation of the Charter of Fundamental Rights of the European Union (Article 17: right to property, Article 16: freedom of enterprise, Article 15: right to work, Article 20: equal treatment, Article 47: effective remedy and fair trial). Furthermore, they argue that section 18 (6) of the Act does not comply with Directive 2006/48/EC [Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions], which requires the creation of a level playing field for credit institutions (but the indicator defined as "poor lending performance" requires cooperative credit institutions to perform better than other operators in the banking sector). In addition, according to section 15 (9) of the Act, cooperative credit institutions may only keep their bank accounts with Takarékbank, which also excludes competition. The Act declares supervision on a consolidated basis [section 1 (6) of the Act], but according to the petitioners, the conditions for this as set out in the Act CXII of 1996 on Credit Institutions and Financial Undertakings are not met. Section 3 (2) of the Act lays down conditions for the granting of an operating licence which cannot be fulfilled by organisations established in other Member States. Because of these two

latter problems, the Act does not comply with the preamble of the Directive. It is also in breach of the preamble of the Directive that the Act does not "mutually recognise identical activities carried out with a registered office in another Member State". Section 3 (2) and section 17 (1) of the Act impose additional conditions for the granting of an operating licence than those laid down in the Directive. Finally, the exclusion of the pre-emption rights of existing shareholders concerning the takeover of shares is in breach of Article 29 (1) of the Directive 77/91/EEC [Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent] and, in addition, several provisions of the Act infringe the requirement of equal treatment laid down in Article 42 of the Directive.

[18] 2.11. The petitioners also allege non-compliance with the provisions of the Act CXXX of 2010 on Legislation (hereinafter: AL). In this context, the lack of preparation time is criticised, as well as the lack of integration into the legal system, the lack of impact assessment and the lack of a consultation procedure. The petitioners see a violation of Article R (2) of the Fundamental Law through the violation of the AL, since according to this provision of the Fundamental Law, laws are binding on everyone. One of the private petitioners, in his application which is different from the others', alleges a violation of Article B (1) of the Fundamental Law, on the grounds of the absence of a consultation procedure and – in connection with several provisions of the Act – with reference to contradictory regulatory content and violation of the clarity of the norms.

[19] 3. The constitutional complaint, filed jointly by banks operating in the form of joint stock companies and by their shareholders, seeks the annulment of certain provisions of the Act (and the Act as a whole) on the following grounds.

[20] 3.1. According to the petition, the Act infringes the autonomy of action of the banks concerned (and their shareholders) arising from the right to human dignity enshrined in Article II of the Fundamental Law, as well as the right of association enshrined in Article VIII (2) of the Fundamental Law, as it abolishes integration (and the related institution protection funds) which had been based on voluntary grounds, and forces the cooperative credit institutions under the Act – as well as the petitioner banks – into a state-created integration. Exit is only an option in principle, as it entails the loss of the existing operating licence. In this context, they challenge section 1 (1) (e) and (t) (personal scope of the Act), section 1 (2) to (3) (mandatory integration), section 3 (members of the CCIIO, conditions for the operating licence of members), section 5 (termination of voluntary institution protection funds), section 11 (7) (rules for exit from the CCIIO), section 18 (3) (declaration of the loss of force of the Savings Cooperatives' Integration Agreement) and section 19 (4) (*ex lege* membership in the integration organisation).

[21] 3.2. The right to enterprise [Article XII (1) of the Fundamental Law] is infringed, according to the complainants, by section 11 (1) (the Board of Directors of the CCIIO adopts regulations binding on members), section 15 (2) (Takarékbank adopts regulations binding on cooperative

credit institutions), section 15 (3) (Takarékbank’s power to control and issue instructions), section 15 (4) (sanctioning of cooperative credit institutions for non-compliance with Takarékbank's instructions or for not operating in accordance with the law or the regulations), section 15 (7) (options for action in the case of a cooperative credit institution in crisis), (9) (compulsory account keeping with Takarékbank), (10) (unified IT system), (11) (prior approval of Takarékbank is required for the adoption of the report of a cooperative credit institution), (12) (prior approval of the Board of Directors of Takarékbank and the CCIIO is required for the appointment of the executive officers of the cooperative credit institution), (16) (right of Takarékbank to review the assets and liabilities of the members of the CCIIO from time to time), section 18 (7) (obligation to terminate bank account agreements held outside Takarékbank), section 19 (2) (restrictions on the operation and decision-making freedom of cooperative credit institutions), section 19 (3) (obligation for cooperative credit institutions to obtain a new operating licence in accordance with the Act and the obligation to adopt new articles of association/statutes), and section 19 (5) (review of the assets and liabilities of cooperative credit institutions).

According to the petitioners, these provisions effectively eliminate the autonomy, operational and managerial independence of the petitioner banks and their shareholders, and thus significantly restrict their right to enterprise.

[22] 3.3. The right to property guaranteed by Article XIII (1) of the Fundamental Law is violated by the Act, as it results in the “deprivation of the rights of the shareholders of Takarékbank, essentially the nationalisation of Takarékbank”. The Act creates an integration – under State control, it is argued – that essentially eliminates the legal, management and operational autonomy of the forcedly integrated credit institutions, including the petitioner banks, and eliminates or significantly limits the rights of shareholders. The Act removes the company management rights of the credit institutions concerned, which are autonomous legal entities, and they are forced to become not only members of the CCIIO, but essentially branches of Takarékbank, a state-controlled organisation with a national network. The State, through MFB, has actually acquired a decisive position in CCIIO – created as the successor of the institution protection funds – and through MFB and Magyar Posta in Takarékbank, and by way of them exercises strong control over the forcedly integrated credit institutions. In doing so, the Act fundamentally reorganises property relations, practically deprives the petitioners of their property and the right to dispose of it, and nationalises the assets of the owners of the institution protection funds and Takarékbank.

[23] In the complainants' view, the following provisions of the Act violate the right to property: section 1 (4) (joint and several liability of cooperative credit institutions), (5) (operation on consolidated basis, allocation of own funds), section 4 (1) to (2) (initial assets of CCIIO), section 6 (3) to (4) (voting rights at the general assembly of the CCIIO in proportion to the contribution of assets), section 11 (1) (the Board of Directors of the CCIIO shall adopt rules binding on the members), (7) to (8) (rules for exit from the CCIIO), section 12 (2) (scope of shareholders of Takarékbank), section 13 (2) (acquisition of shares by Magyar Posta in Takarékbank), (3) (cooperative credit institutions have a series C preference share in Takarékbank), section 14 (adoption of the statutes of Takarékbank, restriction on the disposal of Takarékbank shares,

restriction on the exercise of shareholders' rights), section 15 (2) (Takarékbank shall adopt regulations binding on cooperative credit institutions), section 15 (3) (Takarékbank's right to control and issue instructions), section 15 (4) (sanctioning of cooperative credit institutions for non-compliance with the instructions of Takarékbank or for non-compliance with the law and the regulations), section 15 (7) (options for action against a cooperative credit institution in a crisis situation), section 15 (9) (compulsory account keeping with Takarékbank), section 15 (10) (unified IT system), (11) (prior approval of Takarékbank is required for the adoption of the accounts of a cooperative credit institution), (12) (prior approval of the Board of Directors of Takarékbank and the CCIIO is required for the appointment of the executive officers of a cooperative credit institution), (13) (cases of suspension of the rights of shareholders of Takarékbank), (16) (Takarékbank’s right to review the assets and liabilities of the members of the CCIIO from time to time), section 19 (1) (appointment of the first board of directors of the CCIIO), (2) (restrictions on the operation and decision-making freedom of cooperative credit institutions), (3) (a) to (c) (cooperative credit institutions are obliged to obtain a new operating licence in accordance with the Act and the obligation to adopt new articles of association/statutes), (5) (review of the assets and liabilities of cooperative credit institutions), (8) to (9) (suspension of the executive officers of Takarékbank, termination of their mandate), section 20 (1) (rules on the determination of the consideration for the rights acquired by MFB and Magyar Posta and for the series B preference shares), paragraphs (2) to (3), (6) to (7), (10) to (11), (14) (rules on the increase of the share capital of Takarékbank).

[24] The petitioners also object to the abolition of the former voluntary institution protection funds by law and the manner in which it was done. They point out that, for example, in the National Savings Cooperatives Institution Protection Fund (hereinafter: NSCIPF) each member had one vote, while in the CCIIO the voting rights are proportionate to the contribution of assets, while the Act does not make clear, for example, the extent of the contribution of MFB (thus it is feared that the credit institution members will be in a minority compared to MFB and will not have a say in the functioning of the organisation). The fact that the members of the first board of directors of the CCIIO was appointed by the MFB and that the statutes were adopted by this board is an indication of the predominance of the MFB. With a possible majority position of MFB, there is no chance to change this. The petitioners point out that the State, through the MFB, fully controls the CCIIO, and thus ultimately the integrated credit institutions, since the Act grants the CCIIO significant management and control rights (credit institutions are obliged to adopt new statutes according to the model provided by the CCIIO, the Organisation may draw up regulations binding on them, etc.). Similar processes can also be observed at Takarékbank: by unilaterally rearranging the ownership – shareholder – relations – overriding, among other things, the shareholders' preferential right to acquire shares during the share capital increase – the State, through Magyar Posta and MFB, took over the control of Takarékbank. And Takarékbank, like the CCIIO, is given significant powers in relation to the integrated credit institutions.

[25] Magyar Posta was able to subscribe for the ordinary shares of Takarékbank issued in the course of the capital increase at par value, thus gaining a significant profit. This has led to a deterioration in the ratio of subscribed capital to equity in Takarékbank, which has reduced the value of the shares held by former shareholders. Shareholders were obliged to vote on the new

statutes of Takarékbank according to the Act (otherwise they would have lost their operating licence and their Takarékbank shares as well). The petitioners also object to the conversion of series B preference shares to series C preference shares, as the latter gives significantly fewer rights to their holders (e.g. in relation to the amendment of the statutes, election of supervisory board members). In addition, the series B preference shares were transferred to MFB, which now alone exercises the rights attached to them. According to the former statutes of Takarékbank, a "three-quarters majority was required" for certain decisions, but this is abolished under the new Act, and a simple majority will suffice in all cases, thus the State will have full control over Takarékbank through Magyar Posta and MFB. The petitioners consider it unconstitutional that the Act restricts in several respects the right to dispose of Takarékbank shares and the exercise of shareholders' rights.

[26] The petitioners point out that the joint and several liability construction created by the Act "eliminates the existence of separate and distinct property, which is a fundamental condition of legal personality, and makes the members of the integration a single entity in the sense of property and economy". The possibility of leaving the integration is illusory, since in this case they would have to apply for a new operating licence, which they would not be able to obtain (under the conditions for the existence of capital requirements and the rules on the time limit for obtaining a new operating licence).

[27] 3.4. According to the petitioners, the law-maker created a discriminatory regulation by extending the mandatory integration not only to cooperative credit institutions but also – arbitrarily and without justification – to banks operating in the form of joint stock companies [section 1 (1) (t) of the Act, in conjunction with (e) and (q)], which are members of the three designated voluntary institution protection funds. On the one hand, they argue that the Act treats the petitioning banks in the same way as cooperative credit institutions without justification, ignoring their characteristics and situation, and the fact that other laws treat them differently from cooperative credit institutions in all respects. The mere fact that a bank previously operated in the form of a cooperative and – voluntarily – remained a member of a cooperative institution protection fund is not an acceptable reason for extending the integration of cooperative credit institutions to it [section 1 (1) (t) of the Act]. On the other hand, the arbitrariness of the regulation is also supported by the fact that the law-maker exempted from the integration obligation those cooperative credit institutions whose application for transformation was pending at the time of the entry into force of the Act, although the only difference between these cooperatives and the petitioners is the date of transformation from the cooperative form to another form of operation (the petitioners had already been transformed into banks before the entry into force of the Act) [section 1 (1) (t) of the Act, in conjunction with item (e) referred to]. Thirdly, the petitioners also complain that the integration only covers those credit institutions that are no longer operating in the form of cooperatives and are members of the three institution protection funds specified in the Act, whereas four institution protection funds exist (existed), therefore the law-maker has also made an unjustified distinction in this respect as well [section 1 (1) (t) of the Act, in conjunction with item (q) referred to].

[28] 3.5. Section 15 (4) and (17) (rules on the right of Takarékbank to issue instructions), section 18 (4) (immediate enforceability of the decisions of the National Bank of Hungary irrespective of the right to appeal) and section 20 (12) (decision of the Board of Directors of the CCIIO in connection with the suspension of the shareholder rights of the shareholders of Takarékbank) infringe, according to the petitioning banks, the right to a fair trial guaranteed under Article XXIV (1) and the right to legal remedy under Article XXVIII (7) of the Fundamental Law.

[29] According to the petitioners, on the basis of the Act, the decision-making powers of Takarékbank and CCIIO in relation to the integrated credit institutions can be regarded as essentially administrative decisions. However, these decisions are taken in a way that does not comply with the requirements of fair procedure, they are not subject to the rules of administrative procedure or any other legally regulated procedure, the decisions are made on the basis of unknown rules, without transparency, they are not subject to review, and they are not subject to any legal remedy. Appeals against the decision of the National Bank of Hungary are ineffective because they are immediately enforceable.

[30] 3.6 The petitioners point out that the law-maker "tries to legitimize the restrictions of rights with arguments of a general nature, related to economic policy, [...] However, political considerations, goals, aspirations [...] cannot legitimize the restriction of a fundamental right" under Article I (3) of the Fundamental Law. The reasons stated in the preamble of the Act – and in the reasoning of the bill – (e.g. the capitalisation of the sector, the level of services, etc.) are not supported by any facts, in fact, the sector has been developing continuously in recent years, cooperative credit institutions are stable, their capitalisation is adequate according to the information available to the public (e.g. PSZÁF reports), and their operations are profitable. Potential problems that may arise in individual cooperatives do not threaten the system as a whole, thus there was no emergency situation that would have required this level of public intervention. The sector posed no risk to the stability or safety of the Hungarian economy or the banking system. Moreover, the applicant banks are even more efficient than the average cooperative credit institution, so even for this reason it was not justified to extend integration to them. In the petitioners' view, therefore, the purpose of the Act was merely to create a new organisation under State control.

[31] To summarise: according to the petitioners, there is no acceptable justification for the restriction of fundamental rights, there is no evidence to support the "temporary nature" of the restriction as stated in the preamble of the Act (the Act does not provide for the exact duration of the state intervention, nor whether it will restore the pre-Act situation afterwards), the Act does not provide for compensation for the "deprivation of rights", and it also makes it practically impossible to leave the integration.

[32] 3.7. The petitioners also invoke the invalidity of the Act under public law. In their opinion, the lack of a prior impact assessment, i.e. the failure to disclose the expected social and economic impacts, violated section 97 (2) of the Standing Orders of the House and section 17 (1) of the Act CXXX of 2010 on Legislation, and thus also Article B and Article N of the Fundamental Law. The adoption of the Act under the exceptional urgency procedure, i.e. the application of section 128/A to B of the Standing Orders of the House, was unjustified – abusive – and led to a violation of Article B (1) of the Fundamental Law. Furthermore, the bill was passed

in a special session, but the bill itself was not tabled with the request for a special session, in violation of section 39 (3) of the Standing Orders of the House. The President of the Republic sent the Act back to Parliament for consideration (political veto) under Article 6 (5) of the Fundamental Law, but as he had fundamental constitutional concerns, he should have referred the matter to the Constitutional Court under Article 6 (4) of the Fundamental Law. Finally, the petitioners also allege a violation of section 47 (1) of the Standing Orders of the House because 48 hours did not elapse between the circulation of the agenda to the MPs and the final debate.

[33] In the petitioners' view, the law-maker did not provide sufficient time for the persons concerned to prepare for the application of the Act (most of the provisions of the Act promulgated on 12 July 2013 entered into force the next day), which resulted in a breach of legal certainty [Article B (1) of the Fundamental Law]. The Act also set out the stages of the integration process (setting deadlines of 15, 20, 45 days, etc.), but the petitioners consider these deadlines to be extremely short.

[34] They also refer to the fact that several provisions of the Act are unclear or contradictory, which also causes a violation of Article B (1) of the Fundamental Law.

[35] The Constitutional Court consolidated the constitutional complaints and judged them in a single procedure on the basis of section 58 (2) of the ACC.

II

[36] The affected provisions of the Fundamental Law:

“Article B (1) Hungary shall be an independent and democratic State governed by the rule of law.”

“Article E (2) In order to participate in the European Union as a Member State, and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations set out in the founding treaties, exercise some of its competences deriving from the Fundamental Law jointly with other Member States, through the institutions of the European Union.

The law of the European Union may, within the framework set out in paragraph (2), lay down generally binding rules of conduct.”

“Article M (1) The economy of Hungary shall be based on work which creates value, and on freedom of enterprise.”

(2) Hungary shall ensure the conditions for fair economic competition. Hungary shall act against any abuse of a dominant position, and shall protect the rights of consumers.”

“Article N (1) Hungary shall observe the principle of balanced, transparent and sustainable budget

management.”

"Article Q (2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law be in conformity with international law.

(3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in rules of law."

"Article R (2) The Fundamental Law and the other laws shall be binding upon everyone."

"Article II Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception."

"Article VI (1) Everyone shall have the right to respect for his or her private and family life, home, communications and reputation."

"Article VIII (2) Everyone shall have the right to establish and join organisations."

“Article XII (1) Everyone shall have the right to choose his or her work, and employment freely and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and potential.”

“Article XIII (1) Everyone shall have the right to property and inheritance.” Property shall entail social responsibility.

(2) Property may only be expropriated exceptionally, in the public interest and in those cases and ways provided for by an Act, subject to full, unconditional and immediate compensation.”

“Article XV (1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(2) Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.”

“Article XXIV (1) Everyone shall have the right to have his or her affairs handled impartially, fairly and
within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act.”

"Article XXVIII (1) Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.

[...]

(7) Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests.”

"Article 6 (4) If the President of the Republic considers the Act or any of its provisions to be in conflict with the Fundamental Law and no examination under paragraph (2) has been conducted, he or she shall send the Act to the Constitutional Court for examination of its conformity with the Fundamental Law.

(5) If the President of the Republic disagrees with the Act or any of its provisions and has not exercised his or her right under paragraph (4) then, prior to signing the Act, he or she may return it once, along with his or her comments, to the National Assembly for reconsideration. The National Assembly shall hold a new debate on the Act and decide on its adoption again. The President of the Republic may also exercise this right if no conflict with the Fundamental Law has been established by the Constitutional Court during the examination conducted under the National Assembly's decision."

III

[37] First, the Constitutional Court examined whether the judicial initiatives comply with the formal and substantial criteria set forth in the ACC.

[38] 1. As regards the fulfilment of the formal requirements, it had to be examined whether the constitutional complaints had been received in due time [section 30 of the ACC] and whether they comply with the conditions of an explicit request specified in section 52 of the ACC.

[39] 1.1. Pursuant to section 30 of the ACC, a constitutional complaint submitted under section 26 (2) of the ACC must be submitted within 180 days of the entry into force of the law. According to section 21 of the Act, the Act entered into force on the day following its publication, i.e. on 13 July 2013, with the exception of some provisions. The constitutional complaints were lodged between 23 July and 25 October 2013, i.e. within the deadline. The comprehensive amendment of the Act was introduced by Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions, which entered into force on 30 November 2013. Applications challenging the amendments were also received within the prescribed 180-day deadline.

[40] It should be noted, however, that each of the petitioners also challenged a provision that had not yet entered into force at the time of filing their complaint [section 15 (2) and (4) only entered into force on 1 September 2013, and section 15 (9) on 1 November 2013]. Given that these provisions entered into force during the Constitutional Court proceedings, the Constitutional Court saw no reason to reject the complaints on the grounds of premature application.

[41] However, it is not possible to adjudicate on the complaints concerning section 15 (10) of the Act. This provision will only enter into force on 1 July 2016, thus the relevant application does not comply with section 30 of the ACC – in conjunction with its section 26 (2) – and it is premature, therefore the Constitutional Court rejected it on the basis of section 64 (d) of the ACC.

[42] 1.1. The Constitutional Court is of the opinion that the complaints submitted qualify as explicit requests in compliance with the provisions of section 52 (1) and (1b) of the ACC, as they contain a reasoned reference to the competence of the Constitutional Court under section 26 (2) of the ACC, the grounds for initiating the proceedings and the essence of the violation of rights, a detailed statement of reasons for the challenged provisions being contrary to the Fundamental Law, and the complaints contain an express request for the annulment of the provision(s) of the law held to be contrary to the Fundamental Law.

[43] 2. During the examination of the content of the constitutional complaints, the Constitutional Court examined affectedness under section 26 (2) of the ACC and the exhaustion of legal remedies.

2.1. The petitioners who submitted the constitutional complaint asked for the Constitutional Court's procedure in the competence under section 26 (2) of the ACC. According to Section 26 (2) of the ACC, the procedure of the Constitutional Court may be initiated exceptionally if, due to the application of a provision of the law contrary to the Fundamental Law, or when such provision becomes effective, rights have been violated directly, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights. "The primary aim of the legal institution of the constitutional complaint under both Article 24 (2) c) and d) of the Fundamental Law is [...] individual, subjective protection of rights: providing remedy for the injury of rights caused by law or by a judicial decision, which is contrary to the Fundamental Law and which caused an actual violation of rights. [...] being personally affected is a condition of the admissibility of the complaint, namely that the legal provision deemed by the complainant to be contrary to the Fundamental Law shall provide a rule directly, factually and actually affecting the concrete legal relationship of the complainant in person, resulting in the violation of the complainant's fundamental rights. {Decision 33/2012. (VII. 17.) AB, Reasoning [61] to [62], [66]}" {Decision 3367/2012. (XII. 15.) AB, Reasoning [13], [15]}. Therefore, "in case of an exceptional complaint, as it is aimed directly at the norm, it is in particular important to examine affectedness, as the personal, direct and actual injury of the petitioner's fundamental right is the element that differentiates the exceptional complaint from the former version of posterior norm control, which was open to petitioning by anyone. [Section 20 (2) of the Act XXXII of 1989 on the Constitutional Court (old ACC)]"{Decision 3105/2012. (VII. 26.) AB, Reasoning [3]}.

[44] The constitutional complaints in the present case fall into three categories:

[45] (a) The OTSZ was established in 1990 on the basis of the Act II of 1989 on the Right of Association and is a social organisation performing professional, economic interest representation activities, and it was registered in 1993 on the basis of section 58 of Act II of 1992 on the entry into force of and the transitional rules related to Act I of 1992 on Cooperatives.

[46] According to Article I (4) of the Fundamental Law, legal entities established by law are also guaranteed fundamental rights and are subject to obligations which, by their nature, do not apply only to human beings, and therefore there is no obstacle to the OTSZ as a legal entity to

lodge a constitutional complaint. Furthermore, section 26 (2) of the ACC – by referring back to paragraph (1) – also allows organisations to lodge a constitutional complaint.

[47] The OTSZ turned to the Constitutional Court in its own name, without attaching any authorisation from its members. Its personal and direct involvement in the case is based, on the one hand, on the fact that the Savings Cooperative Integration Agreement concluded on 13 October 1993, adopted with new content on 29 April 1998 and amended several times since then is repealed pursuant to section 18 (3) of the Act. The Act, therefore, abolishes the integration of which the OTSZ was one of the central organs and builds the system on a completely new basis. This has had a direct impact on the position and functioning of the OTSZ, as the focus of its activities has been its role played in the cooperative integration process which began in 1993, and the tasks it has performed in this context to protect and represent the interests of its member cooperatives. On the other hand, however, the OTSZ is a shareholder of Takarékbank, and therefore the rules of the Act on Takarékbank directly affect the OTSZ as a shareholder.

[48] (b) The complainants include cooperative credit institutions and banks operating in the form of joint-stock companies, which are covered by the mandatory integration introduced by the Act, and are therefore undoubtedly personally, actually and directly affected.

[49] (c) The third group of complainants are the members of the cooperative credit institutions concerned and the shareholders of banks, who attached to their application the copies of savings cooperative share certificates or savings cooperative membership certificates or copies of the share register, and also claimed that they receive dividends in the profits of the companies concerned, consequently they (their previous legal status) are suffering already now direct injury because of the provisions of the Act.

[50] The petitioners are therefore affected based on all the above.

[51] 2.2. At the same time, it can also be stated that the petitioners did not invoke a violation of their own fundamental right when they alleged the injury of the right to work of the executive officers of the cooperatives and Takarékbank [and through this Article XII (1) of the Fundamental Law]. They also complained that the exclusion of a cooperative credit institution from the CCIIO under the provisions of the Act could lead to job losses. The provisions challenged in this context are the following: Section 15 (4), (12), section 19 (9). However, pursuant to section 26 (2) (a) of the ACC, petitioners may only build a constitutional complaint on the basis of a violation of their own rights guaranteed by the Fundamental Law. As the applications do not meet the statutory requirements in this respect, the Constitutional Court refused them on the basis of section 64 (d) of the ACC (section 9 of the holdings of the decision).

[52] 2.3. The condition of a complaint based on section 26 (2) of the ACC is that the violation of rights occurs directly without the application of law by an authority or a court – as a result of the application or the entry into force of the challenged (provision of the) law – against which there is no legal remedy or the petitioner has already exhausted his/her possible legal remedies. This condition is fulfilled because the provisions under examination, which integrate the cooperative credit institutions sector, are implemented without the intervention of any

other act of the State. In the present case, the harm alleged by the petitioners is caused by the challenged law itself, and there is no remedy available to redress the harm with regard to the challenged provisions of the law.

[53] 2.4 In their constitutional complaint, the petitioners alleged the violation of several provisions, including Article B (1), of the Fundamental Law. Pursuant to sections 26 to 27 of the ACC, a constitutional complaint is only an instrument for the protection of rights guaranteed by the Fundamental Law. Even after the entry into force of the Fundamental Law, the Constitutional Court maintained its previous interpretation, according to which legal certainty is not a fundamental right in itself, therefore a constitutional complaint against a violation of Article B (1) can only be based on exceptional cases: in the case of retroactive legislation and a lack of time for preparation {Ruling 3268/2012. (X. 4.) AB, Reasoning [14] to [17]; Ruling 3322/2012. (XI. 12.) AB, Reasoning [10]; Ruling 3323/2012. (XI. 12.) AB, Reasoning [9]; Ruling 3324/2012. (XI. 12.) AB, Reasoning [9]; Ruling 3325/2012. (XI. 12.) AB, Reasoning [11]}. The petitioners complained about the lack of preparation time, therefore in this respect there is no obstacle to the examination on the merits, while at the same time the constitutionality of further objections based on Article B (1) of the Fundamental Law – formulated in the constitutional complaint – (e.g. the clarity of the norm, invalidity under public law) cannot be examined in the procedure under section 26 (2) of ACC. Furthermore, Articles E (3), M, N, Q and R (2) cannot be considered as rights guaranteed by the Fundamental Law. No specific breach of fundamental rights can be established on the basis of these provisions. With account to the above, the Constitutional Court refused the constitutional complaint in this respect as well, on the basis of section 64 (d) of the ACC (section 9 of the holdings of the decision).

[54] 3. The petitioners referred to the fact that the President of the Republic sent the Act back to the National Assembly pursuant to Article 6 (5) of the Fundamental Law, while, in their view, he should have referred the matter to the Constitutional Court pursuant to Article 6 (4) of the Fundamental Law. The Constitutional Court does not have competence to review the relevant decision of the President of the Republic (to examine why the President of the Republic has raised a political and not a constitutional veto), therefore the related element of the petition was refused on the basis of section 64 (a) of the ACC (section 9 of the holdings of the decision).

IV

[55] Prior to examining the constitutionality of the Act, first of all, the Constitutional Court considered it necessary to review the situation and the operational characteristics of the cooperative credit institution sector and the changes introduced by the Act.

[56] 1. Characteristics of the cooperative credit institution sector

[57] 1.1. As their name implies, cooperative credit institutions are typically financial institutions operating in the form of cooperatives. Before the entry into force of the Act, their operation was therefore primarily determined by two laws: Act X of 2006 on Cooperatives (hereinafter: "Act on Cooperatives") and Act CXII of 1996 on Credit Institutions and Financial Enterprises

(hereinafter: "Act on Credit Institutions"; see in particular section 5, section 9 and sections 216 to 216/C). In the meantime, with the repeal of the relevant provisions of the Act on Credit Institutions, the law-maker transferred, with effect from 30 November 2013, the basic operating rules applicable to cooperative credit institutions into the Act (sections 17/A to L) (Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions), and the Act on Credit Institutions itself was replaced by the Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter: "new Act on Credit Institutions") with effect from 1 January 2014. Amending the Act on Credit Institutions – stating that a cooperative credit institution can operate not only as a cooperative but also as a joint-stock company – was also necessary because the Act also regulates as cooperative credit institutions ones that operate in forms other than a cooperative. [See section 5 (3) and section 8 (1) of the Act on Credit Institutions in force from 30 November 2013, as well as section 8 (3) and section 11(1) of the new Act on Credit Institutions]. The background laws of the Act regarding the establishment, organisation, operation, dissolution, transformation of cooperative credit institutions, the membership of members and certain other matters relating to them are the Act on Cooperatives, the Act on Companies, the Civil Code and the Act on Credit Institutions (section 17/A of the Act).

[58] 1.2. In a different approach [section 1 (1) (t), section 17/B of the Act], cooperative credit institutions can be divided into the following two groups: 1) savings cooperative and 2) credit union. The difference is that a credit union may only carry out financial activities among its own members, with the exception of currency exchange. According to current data, there are 118 cooperative credit institutions (114 savings cooperatives and 4 credit unions) operating in Hungary (see supervision by mnb.hu on 23 May 2014).

[59] A cooperative is an organisation with legal personality, founded with a share capital of an amount determined in the statutes, operating according to the principles of open membership and variable capital, with the aim of facilitating the satisfaction of the economic and other social (cultural, educational, social, health) needs of its members. [See section 7 of the Act on Cooperatives and section 3:325 of the Act V of 2013 on the Civil Code (hereinafter: "new Civil Code")]. Establishing a cooperative credit institution [see section 17/C (1), section 17/E (1), section 17/F, section 17/H (3)] currently requires an initial capital of at least HUF 300 million and 200 members (members may be natural or legal persons, but the number of legal persons may not exceed one third of the number of members). The nominal value of a share may not exceed HUF 10,000 and, as a general rule, the ownership proportion (share) of a holder may not exceed fifteen percent (ownership acquisition limit). Cooperative credit institutions, like other cooperatives, operate on a one-member-one-vote basis. A member may only authorise a member of the cooperative credit institution to represent him/her at the general meeting, with the proviso that a member may only represent one other member. Cooperative credit institutions may carry out almost the entire spectrum of financial activities under the Act on Credit Institutions [pursuant to section 17/B (1) of the Act, see Section 3 (1) and (2) and Section 7 (3) of the new Act on Credit Institutions]

[60] Currently, cooperative credit institutions have a share of about 5 percent of the domestic financial market, compared to which they have an extensive branch network, as the savings

cooperative sector provides financial infrastructure to a significant part of the country that commercial banks cannot/will not cover due to cost/benefit or other strategic reasons. (The number of branches is estimated at around 50-55% of all branches of credit institutions). This financial sector has therefore played a prominent role in providing financial services to the rural population, agriculture, small and medium-sized enterprises, municipalities, associations of municipalities and micro-regions (see Financial Stability Report November 2013, www.mnb.hu).

[61] 1.3. Co-operative credit institutions are legally independent entities with autonomous management and business policies, but the need for common representation of interests and integration has essentially been present in the co-operative system in various forms from the very beginning. Among the integrative efforts, the Savings Cooperative Integration Agreement, signed in 1993 and re-signed in 2004, should be highlighted.

[62] The integration of 1993 was forced by circumstances, but legally it was carried out on voluntary basis – accession was at the discretion of the cooperatives concerned –, however, participation in the state consolidation was conditional on signing the Integration Agreement and joining OTIVA, so for some of the cooperatives – due to their financial situation – this was an economic-financial constraint earlier as well.

[63] However, full integration has never been achieved. The savings cooperatives that did not join the savings cooperative integration in 1993 established the same year the National Interest Representation Association of Savings Cooperatives (TÉSZ, which operated as the other national interest representation association alongside the OTSZ) and also established their own institution protection fund (TAKIVA - National Institution Protection Fund of Savings Cooperatives) in 2000. And since 1994, credit unions also have their own institution protection fund, the First Hungarian Voluntary Deposit Insurance and Institution Protection Fund (HBA). In 2010, REPIVA, the Institution Protection Fund of Regional Financial Institutions, was the fourth to be established.

[64] 1.4. For cooperative credit institutions, "voluntary" institution protection funds were not the only financial safety net.

[65] (a) In the case of savings cooperatives, since 31 December 1993 – and still today – it is mandatory to join the National Deposit Insurance Fund (hereinafter: OBA) [see the Act LXIX of 1991 on Financial Institutions and Financial Institutions' Activities (hereinafter: "Act on Financial Institutions"), as well as section 18 (2) (g) and section 97 of the Act on Credit Institutions, and section 209 (1) of the new Act on Credit Institutions].

[66] (b) In the case of credit unions, membership of a voluntary deposit insurance fund (institution protection fund) was originally compulsory under the Act on Financial Institutions, later – with the entry into force of the Act on Credit Institutions – it was possible to choose between membership of the OBA and membership of another institution protection fund, but after 1 January 1998 both memberships were compulsory for them – unlike for savings cooperatives.

[67] 1.5. Finally, it is worth noting that according to section 216 (1) of the Act on Credit Institutions in force until 31 December 2002, all cooperative credit institutions were obliged to

join, within one year of the entry into force of a separate Act, an integration organisation complying with the conditions laid down in that law "whose central organ shall ensure the control of the institutions joined and the maintenance of their immediate and continuous solvency".

This separate Act under the Act on Credit Institutions was not adopted, thus the envisaged mandatory integration membership was not achieved, and as of 1 January 2003 the said provision was removed from the Act on Credit Institutions.

[68] 1.6. Takarékbank was founded by savings cooperatives in 1989. It is a commercial bank, but its strategic objective from the outset was to support the savings cooperative sector and strengthen its market and financial positions. Within this framework, its primary task is to promote the more unified market presence of the credit institutions participating in the savings cooperative integration, to strengthen and expand their market positions and to broaden their range of products and services. As a result, Takarékbank's most important customer group was savings cooperatives (or banks that had been transformed from savings cooperatives), in addition to providing services to the corporate sector, and since 2002 it has also been engaged in a full range of investment activities, including serving private individuals.

[69] During the financial consolidation in 1993, the State became the majority shareholder in Takarékbank, but in 1997 its shareholding was sold to a consortium of an insurance company and a foreign bank. Following the acquisition of the foreign bank shares by MFB, the ownership structure at the beginning of 2013 was as follows: (a) savings cooperative credit institutions 60.42%, (b) MFB 39.28%, (c) OTSZ 0.29%, (d) other shareholders 0.01%.

[70] Until the entry into force of the Act, Takarékbank's shares were of two types: (a) ordinary shares and (b) 235 series B voting preference shares.

[71] 2. Integration of the cooperative credit institution sector in the new institution protection organisation

[72] The previous (contractual, private law) integration of the cooperative credit institution sector is reinforced, extended and deepened by the provisions of the Act (by way of mandatory public law provisions). The integration of the sector – as explained in detail below – can be divided into three central, but closely interrelated elements under the Act: (a) the law-maker integrates cooperative credit institutions under the umbrella of a new, mandatory institution protection organisation, (b) it makes Takarékbank the central bank of the integration and (c) it creates a financial risk pool covering the entire cooperative credit institution sector.

[73] 2.1 First of all, the Act puts the integration of cooperative credit institutions on a completely new footing by annulling the Integration Agreement (section 18 (3) of the Act) and abolishing the voluntary institution protection funds (section 5 of the Act). Irrespective of all other circumstances (e.g. the form of operation of a savings cooperative or credit union, previous membership in an integration, etc.), the law unifies into an integration organisation established by the Act (a) all cooperative credit institutions operating under a licence; and (b) all credit institutions operating in a form other than cooperative, which, on 1 January 2013, were members of any of the three voluntary cooperative institution protection funds specified

by the Act (this scope covers the credit institutions which have previously been converted from a cooperative credit institution into a bank and which, due to their previous cooperative affiliation, have retained their membership of the institution protection fund despite of their conversion), [section 19 (4) of the Act in conjunction with section 1 (1)(t) of the Act]. However, cooperative credit institutions whose application for transformation (e.g. from a cooperative credit institution into a bank) was pending at the time of the adoption of the Act are exempted from the integration requirement [Cf. section 1 (1) (t) in conjunction with item (e)]. Furthermore, pursuant to Article 1 (1) (q) of the Act, the integration does not extend to a member of the fourth voluntary institution protection fund, the HBA, provided that it is not a cooperative credit institution.

[74] The CCIIO, established on the day of the entry into force of the Act, is an institution protection organisation with legal personality and compulsory membership (see sections 2 to 11 of the Act). In the case of cooperative credit institutions, membership is a condition for obtaining – and maintaining – an operating licence. Notwithstanding the mandatory nature of the organisation, the Act also regulates withdrawal (and exclusion) [section 11 (7) to (8)].

[75] The same organisation as CCIIO has not existed in the sector so far, although similar functions have been performed by interest representation bodies with their associated voluntary institution protection funds (most notably the OTSZ-OTIVA organisation, and the TÉSZ-TAKIVA organisation can be classified here as well).

[76] By virtue of the Act, in addition to (a) the aforementioned cooperative credit institutions (and banks), (b) Takarékbank and (c) MFB became members of the CCIIO [section 3 (1) of the Act].

[77] 2.2. The organisation of the CCIIO consists of (a) the General Assembly (the assembly of members, where each member has voting rights in proportion to its contribution to the assets; (b) the Board of Directors [elected by the General Assembly; however, the members of the first Board of Directors are appointed by the MFB pursuant to section 19 (1) of the Act], and (c) the Supervisory Board (sections 6 to 10 of the Act).

[78] The CCIIO operates according to the statutes established by the General Assembly, but pursuant to section 2 (5) of the Act, the first statutes of the organisation are adopted by the Board of Directors, mandated by MFB [section 19 (1)], with the content set out in the Annex to the Act [section 2 (5)].

[79] The CCIIO has strong management powers in relation to its members (except the MFB): on the one hand, a cooperative credit institution in the form of a "cooperative" can only be established and operate in accordance with the model statutes defined by the CCIIO [and previously approved by Takarékbank, see. section 3 (2) (b) of the Act] [until 30 June 2014, after which Takarékbank is entitled to issue the model statutes, see section 17/D, section 17/H (2)]. In addition, pursuant to section 11 of the Act, the Board of Directors of the CCIIO adopts rules binding on its members on the order of accounting, internal control, rules on the suitability of the executive officers, rules on the financial assistance that may be provided to the cooperative credit institution. It also monitors the solvency and capital adequacy of both Takarékbank and the cooperative credit institutions on an individual basis. Until 31 December 2013, the

appointment of the executive officers of cooperative credit institutions required the consent of the CCIIO [section 15 (12)]. Pursuant to section 17/C (1) of the Act, the CCIIO shall determine the minimum level of own funds and if the cooperative credit institution does not reach this level, it may take the measures provided for in paragraphs (2) to (5). In the case provided for in section 11 (4) of the Act, the CCIIO may even acquire ownership in cooperative credit institutions and Takarékbank – for a period of two years on a temporary basis – by increasing their capital.

[80] 2.3. In order to carry out its tasks, the Act also provides the organisation with assets (section 4 of the Act). The initial assets are composed of two parts: (a) the assets of the abolished institution protection funds (OTIVA, REPIVA, HBA, TAKIVA) (which the CCIIO will acquire by succession on the basis of the Act on the 90thday after its entry into force) and (b) the contribution of MFB, which is also composed of two parts: (ba) a one-off contribution of HUF 1 billion and (bb) the amount determined in accordance with section 20 (1) of the Act. [Section 6 (5) and Annex 1 of the Act on the statutes of the CCIIO, item 5.1.5: the contribution of the MFB shall include the amount previously provided by the State as contribution to the voluntary institution protection funds.] The law-maker has enacted a separate Act on the form of performing the MFB-contribution pursuant to section 20 (1) of the Act: Act CLVI of 2013 on the Integration Fund of Cooperative Credit Institutions (hereinafter: "Integration Fund Act"), according to which the law-maker established a separate state fund into which it provides payment in the form of budgetary support (the amount of which is HUF 135.4996 billion pursuant to Annex 1, item 5 of the Act CCVI of 2013 amending Act CCIV of 2012 on the Budget of Hungary for the year 2013). The provision of this budgetary support to the CCIIO shall be deemed to have been made by MFB as a contribution pursuant to section 4 (2) and section 20 (1) of the Act. The Integration Fund is managed by MFB [see section 2 and section 8 (2) in conjunction with section 5 (2) (a) of the Integration Fund Act, and paragraph (1) (b) referred to therein]. In addition to guaranteeing the initial assets, the Act provides for the payment of an annual membership fee to the members, with the exception of MFB. The importance of the amount of the financial contribution (initial assets and subsequent contributions) lies primarily in the fact that members have voting rights at the general assembly of the CCIIO in proportion to the financial contribution they have made.

[81] The CCIIO uses its assets for institution protection tasks, such as crisis prevention, crisis elimination; unified and mutual professional assistance for the member credit institutions, the promotion of their business cooperation and the preservation of their good business reputation, as well as strengthening the confidence of customers, and the development of a stable course of business in the long term (see Annex 1 of the Act on the statutes of the CCIIO, item 11.4).

[82] 3. Takarékbank as the central bank for the integration of cooperative credit institutions

[83] Another significant innovation of the Act is the restructuring of the ownership structure of Takarékbank as the central bank of the cooperative credit institution sector and its relationship with integrated credit institutions, as well as the strengthening, broadening and deepening of its management role.

[84] 3.1. On the one hand, the Act provides for restructuring the ownership structure of Takarékbank. Pursuant to section 12 (2) of the Act, the shareholders of Takarékbank may only be: (a) cooperative credit institutions, (b) MFB (and its legal successors), (c) Magyar Posta (and its legal successors), and (d) other organs or legal or natural persons who have acquired shares with the consent of Takarékbank.

[85] The transformation of the scope of shareholders was implemented by the Act by increasing the share capital of Takarékbank by HUF 654 986 000 [section 20 (2) of the Act], whereby the ownership of the issued shares is regulated by the Act itself as follows. In the course of the capital increase: (a) Magyar Posta subscribes for ordinary shares at par value of HUF 654 666 000; and (b) new series C voting preference shares will be issued in the value of HUF 320 000, each with a par value of HUF 2 000 (i.e. 160 shares), which will be taken over by the cooperative credit institutions, one share each (the preference shares not taken over will be transferred to MFB).

[86] 3.1.1. Preference shares issued in the course of the share capital increase

[87] The Act achieves the full integration of the sector not only by making membership of the CCIIO mandatory for all cooperative credit institutions, but also by making them, without exception, preference shareholders of Takarékbank. As a result of the Act, the series B preference shares will be transferred to MFB, and each cooperative credit institution will be obliged to take over one newly issued series C preference share of Takarékbank with a nominal value of HUF 2000 [section 20 (2) of the Act]. From this moment on, all players in the sector are preference shareholders of Takarékbank.

[88] As regards the method of implementation, the following should be noted:

[89] (a) Those cooperative credit institutions which were already preference shareholders of Takarékbank (in addition to their ordinary shares, if any) held one so-called series B preference share each, which granted the rights specified in the Statutes. Pursuant to the Act, these series B preference shares must be deposited [section 20 (3) of the Act, repealed as from 30 November 2013], and, according to section 20 (11) of the Act, the affected cooperatives have, with respect to these shares, a so called "unilateral right of selling, the obliged party of which is MFB" (this provision was also repealed by the law-maker with effect from 30 November 2013, as it has been fulfilled: according to item 7 (18) of the statutes of Takarékbank in force on 9 September 2013, MFB has purchased these shares). Thus, after selling their series B preference shares, in exchange, the cooperatives received free of charge (or, more precisely, were obliged to receive them, as this was a condition of the operating licence) the newly issued series C preference shares – one each. (The General Assembly of Shareholders of Takarékbank held on 28 March 2014 decided to withdraw all but one series B shares).

[90] (b) Those cooperative credit institutions that had not been in the past (preference) shareholders of Takarékbank, were also obliged to take over one series C preference share each, pursuant to section 20 (4) of the Act, which has been repealed in the meantime due to being fulfilled.

[91] By all cooperative credit institutions becoming preference shareholders of Takarékbank, the ownership structure of the bank changes accordingly. Although the value of the preference shares is insignificant compared to that of the ordinary shares in the share capital of the company (HUF 320 000), their importance can be found in the additional rights attached to them, which are provided for in the Statutes of Takarékbank.

[92] 3.1.2. Ordinary shares issued in the course of the share capital increase

[93] The acquisition of ownership by Magyar Posta in Takarékbank was ensured by the law-maker in such a way that pursuant to section 20 (2) of the Act Magyar Posta took over at par value the ordinary shares issued in the course of the capital increase. The change also affects the ownership structure of Takarékbank – similarly to the rules on the issuance and takeover of series C preference shares –, but in this scope, the change in the shareholders' proportions is more significant. With the implementation of the provision, Magyar Posta and MFB, which are exclusively owned by the State, have acquired a combined holding of 54.84% in Takarékbank, i.e. a majority holding. [The ownership proportions have changed slightly in the meantime: As of 6 January 2014 – according to data available at www.takarekbank.hu – Magyar Posta and MFB, for example, hold a combined 54.83% stake.)

[94] To sum up: the ownership of existing ordinary shares of Takarékbank was not affected by the Act, but the new ordinary shares issued in the course of the share capital increase were acquired by Magyar Posta alone, thus the ownership proportions changed in the bank operating in the form of a joint stock company (until now the cooperative credit institutions were jointly majority owners, afterwards the Hungarian State became an indirect majority owner through MFB and Magyar Posta). The newly issued series C voting preference shares were issued to the former preference shareholders (the cooperative credit institutions participating in the former Integration Agreement, which was terminated by the Act) and to the other cooperative credit institutions that were previously "outsiders" but became now integrated.

[95] 3.1.3. It should be noted that there is a certain group of shareholders (e.g. the petitioner OTSZ), which was a shareholder of Takarékbank at the time of the entry into force of the Act, but is not listed in section 12 (2) of the Act, therefore, in principle, it could not be a shareholder. The rights of these shareholders in respect of their existing ordinary shares are not affected by the Act [section 12 (4) of the Act – enacted with effect from 30 November 2013]. However, this does not apply to their preference shares: a shareholder not listed in section 12 (2) of the Act is not entitled to a voting preference share C pursuant to section 19 (6) of the Act [the second sentence of the said section, which was repealed on 30 November 2013, required the shareholder to deposit its preference share B, which the MFB had the right to purchase by unilateral declaration pursuant to section 20 (10) of the Act].

[96] Furthermore, cooperative credit institutions whose application for conversion (transformation into a bank) is pending must transfer all their ordinary and preference shares in Takarékbank to MFB within 30 days [section 19 (11) of the Act].

[97] 3.2. According to section 15 of the Act, Takarékbank is the central bank for the integration of cooperative credit institutions, adopting regulations that are binding on them within a

specific scope. The bank supervises the activities of cooperative credit institutions and may issue instructions to cooperative credit institutions to ensure that they operate in accordance with the laws, the regulations and the instructions issued by the CCIIO and Takarékbank. If a cooperative credit institution does not comply with the instruction, or does not operate in accordance with the laws or regulations, or is in a state of crisis, it may be subject to various sanctions. The adoption of the accounts of cooperative credit institutions requires the approval of Takarékbank. The prior approval of the CCIIO is required until the end of 2013, and thereafter of Takarékbank, for the appointment of the executive officers. In addition, in certain cases, Takarékbank shall give its prior approval to the acquisition of ownership or the sale of the acquired property by a cooperative credit institution in another entity or legal person. Cooperative credit institutions are obliged to keep their bank accounts with Takarékbank and to hold their uncommitted funds in assets sold by Takarékbank. Finally, cooperative credit institutions are obliged to notify Takarékbank in advance of all general assemblies, board meetings and supervisory board meetings (and to send the minutes of these meetings afterwards). As of 1 July 2014, a cooperative credit institution may be established and operate in the form of a cooperative in accordance with the model statute determined by Takarékbank [section 17/D (1)].

[98] 4. Financial risk pool

[99] The essence of the integration created by the Act is not only that the members operate on the basis of the same principles and regulations, but also that a financial risk pool is created that encompasses the entire cooperative credit institution sector: the CCIIO, Takarékbank and the cooperative credit institutions are jointly and severally liable for their obligations, as stipulated in section 1 (4) of the Act and section 20/A of the Act in force since 30 November 2013.

[100] The law-maker provides for the establishment of a special financial fund – the Joint Fund for Capital Coverage of Cooperative Credit Institutions (hereinafter: Fund) – in order to implement joint and several liability (financial risk pool), which is a legal entity with a separate organisation, operating with the membership of cooperative credit institutions, Takarékbank and the CCIIO (section17/M to P of the Act). The assets available to the Fund come from two sources: (a) ordinary annual payments made by the cooperative credit institutions and Takarékbank and (b) any extraordinary payments.

[101] The Act regulates the financial risk pool in an unusual way in two respects: although it provides for joint and several liability, the Fund itself only provides additional protection to the sector by standing in for deposits not covered by the OBA pursuant to section 20/A (6) of the Act. On the other hand, section 20/A (4) of the Act expressly and separately regulates the detailed rules of joint and several liability as follows: In addition to (1) the debtor, the above debts of the debtor may be claimed from (2) the Fund if the debtor fails to pay the debt, adjudicated by a final judgement or not contested, within a further 30 days from the due date. Within 60 days thereafter, the Fund must take the debtor's place. After the Fund, the (3) other cooperative credit institutions, (4) the CCIIO and (5) Takarékbank will assume liability, in the above order, for the debt if the persons ranking first in the order failed to fulfil the claim and their insolvency has been declared by a final court judgement. On the basis of the rules

introduced by the Act, this is therefore not joint and several liability in the traditional civil law sense, but essentially a novel, *sui generis* model of an underlying, rank-holding liability construction.

[102] 5. In December 2013, the Government decided to sell, through an international public tender, the shareholdings held by MFB and Magyar Posta in Takarékbank. Within the framework of the applicable provisions of the law, the call for tenders should, as far as possible, give preference to operators in the savings cooperative sector [Government Decision 1954/2013 (XII. 17.)].

V

[103] 1. Since the essential question of the constitutionality of the integration process challenged in the petitions is the economic role of the state (its justification, extent and manner, i.e. its necessity and proportionality), the Constitutional Court briefly looked back at the history of this role, the current challenges of the global economy and the European integration, and the relationship between the economic, financial and legal subsystems within the social system as a whole.

[104] 1.1. States have always played an obvious role in the economic life of their societies. However, the debates about the economic role of the state became polarized in parallel with the Enlightenment, the bourgeois revolutions and the industrial revolution, in opposition to the autocracy of feudal (enlightened) absolutism. They tried to separate and keep apart public law and private law, the citizen and civic nature of man, the (political) society organised to become State and the economic (civil) society. Private property, the freedoms of contract, of individual and collective enterprise, have been elevated to the rank of the innate and inalienable freedoms of every man. This was reflected in the principle of "*laissez faire, laissez passer*", which regarded any interference by the State in economic life as a restriction of freedom. However, as a result of the unregulated market and free competition, society became again divided, with innate (feudal) privileges and prerogatives being replaced by property-based privileges and prerogatives. It was an objective necessity that, after freedom had been won, there should be a demand not for formal equality before the law, but for real, material equality. The so-called equality ideologies also varied in their content and in the methods proposed: from utopian and scientific socialism to Christian-socialist programmes and modern social democracies. Violent, distorted versions of egalitarianism were (became) Italian corporatism, German national socialism and Stalinist-Maoist communisms, which resulted in a total State, a "state economy". In the struggle of the bipolar world system – fought also in the economic field – the concepts of the "social market economy" and the "welfare state under the rule of law" were formulated in contrast with state economies, resulting in the second generation of human rights, the large group of the so-called economic, social and cultural rights. Their effective enforcement (financing) requires – depending on the number, content and scope of these rights – extensive and profound involvement as well as economic and financial commitment by the State. This "contribution" can be carried out directly through

management by the State (public ownership of the public economic sector), through traditional redistributive instruments (taxes, duties, levies, contributions, etc.), or through a combination of the two in historically varying proportions. Against the excessive "generosity" of social democracy and the welfare state, neoliberal tendencies with a renewed emphasis on marketisation have been reborn.

[105] Summing up: historically, the economic role of the State has ranged from total denationalisation to total nationalisation, depending on the era, the country and the historical circumstances.

[106] 1.2. In line with the economic role of the State, the relationship between the two major social subsystems, the economic system and the legal system, must also be addressed.

[107] In a market economy of free competition without interference by the State, the legal system is subordinated to economic "laws": the law of value, competition, market interests. This subordination can be direct and intense when the economic-financial (private-proprietary) and the political powers are intertwined, or indirect and moderate when they are separated.

[108] It happened the other way round in the totalitarian states organised on the basis of a single dominant ideology that used law as a mere instrument to achieve their ends: there the economic system was subordinated to the legal system, and law dominated (also directly or indirectly) the economy.

[109] The experience of two centuries proves that both extreme poles can have disastrous effects on the social system as a whole, and therefore, instead of the dominance (let alone the autocracy) of one or the other, an optimal balance of these two great subsystems must be sought. This can be hoped for only if both economy and law take into account the operating laws of the other subsystem, the values and aspects it carries and seeks to enforce. Law should act as a restraining force when the economy "becomes dominant" and as a stimulating force when the economy is weakened. The optimal balance may vary from era to era and from country to country, and the search for it is an ongoing public policy task.

[110] 1.3. Specific reference should also be made to the internationalisation of the economy – its regional, transnational and global nature – and its impact on individual national economies and national legal systems. After two world wars, the creation of a larger and more unified economic areas, cooperation based on the same principles, the prevention of conflicts and resolving them peacefully were consciously chosen means of avoiding a third world war (and likewise of preventing local wars) . This required supranational institutions and procedural reforms (see EEC, EU, GATT, WTO, IMF, etc.). An essential element of the process was the removal of national economic and legal barriers to the internationalisation of the economy and the prohibition of their application. However, the undoubted benefits of internationalisation have not been distributed in a proportionate (equitable) manner, with the primary beneficiaries being the already developed (richest) countries, recreating the gap between the "centre and the periphery" that was to be bridged, and even dependency and vulnerability recalling the colonial period. The decisive reason for this is that regional and global economic considerations – without legal frameworks, control and monitoring mechanisms and limits existing on the

same levels – have taken precedence over other (humanitarian, human rights, social) values protected by law, subordinating national economies and national legal systems as well.

[111] Having seen and experienced unintended negative impacts, a search for a way forward is now under way on the level of the EU as well as other regional and global levels. A solution must be found between the interests and concerns of the internationalised (global) economy and the fundamental (constitutional) values protected by law, in order to set an optimal balance and make it sustainable.

[112] 1.4. However, negotiations on the level of – and between – the EU, other regional and global levels are (for a variety of political, cultural, religious and other reasons) slow and of dubious outcome. For this reason, and also because of nation-state reflexes of self-defence, the search for own ways forward by some countries has accelerated and intensified. A striking example of this is the aftermath of the 2008-2009 global financial crisis. Nation-state legislation has been stepped up everywhere, with mass amendments of laws and new legislation to respond to the effects of the crisis and to try to avert or mitigate its negative consequences. Sectors of the national economy, financial sectors had to be consolidated, damaged masses (families) had to be rescued from bankruptcy. New regulatory authorities and supervisory bodies have been created, and the responsibilities and powers of the old ones have been extended and tightened. The content of a large number of permanent legal relationships has been amended and unfair clauses have been annulled. In individual cases, court procedures have been tightened, the principle of protection of the weaker party and consumer protection have been strengthened. The atypical solutions to this process – which is far from being over – have given rise to a wide range of legal (and political, social, economic, financial) conflicts within the countries as well as at EU and global level. However, at least two important conclusions can already be drawn from what has happened so far: (a) the EU and the global economic system cannot operate at the extreme pole of the "*laissez faire, laissez passer*" market economy; (b) if and when the economy operates at the transnational level, the protection of fundamental (human) rights must be ensured at that level with an effective legal toolbox. Making legal attempts at national level, while inevitable, is not enough.

[113] 2. In the context of the State's economic role – bearing in mind the current national economic, financial and public finance circumstances and the values of the Fundamental Law – it is also necessary to review the Constitutional Court's practice to date, since it is precisely in the area of the State's economic role that Hungary underwent a specific and radical change during the "regime change" (the transition from a planned to a market economy).

[114] As regards the relation to economic policy, the foundations were generally laid by the Decision 33/1993. (V. 28.) AB. [115] It stated that "under the preamble of the Constitution, the Constitution of the Republic of Hungary was drafted by the Parliament, among others, in order to promote the peaceful political transition to a state based on the rule of law and realizing a social market economy. According to this preamble, the social market economy in the Republic of Hungary is only a State objective. [...] Beyond declaring a market economy, the Constitution is neutral in terms of economic policy. The magnitude or extent of State intervention, and especially its prohibition, or the restrictability and the extent of the assets owned by the State may not be deduced directly from the Constitution. The direct constitutional provision on the

economic policy of the State is Article 10 (2) of the Constitution, according to which the scope of the exclusive property of the State and its exclusive economic activity is determined by the Act of the Parliament. This means that, within the limits of Article 9 of the Constitution, the law-maker has a great deal of freedom to determine the economic policy of the State, and the competence of the Constitutional Court is very limited". (ABH 1993, 247, 249-250)

[116] The Constitutional Court further developed these statements in its decision 21/1994 (IV. 16.) AB, stating that "as a direct characteristics of market economy, the Constitution only contains that public and private property are equal and they receive equal protection. The Constitution does not otherwise commit itself to any substantive model of the market economy. [...] The Constitutional Court can therefore define the critical level of »state interference« in an abstract, general way, limited to extreme cases, and exceeding this level is unconstitutional because it is detrimental to the market economy. Intervention which would conceptually and obviously exclude the existence of a market economy, such as the introduction of general nationalisation and strict planned economy, could be so classified. [...] But apart from such extreme cases, »market economy« is irrelevant in the case of any constitutional review. No one has a right to the market economy, that is it may not be classified as a fundamental right; no alleged unconstitutionality of any fundamental right may be decided by asserting the violation of market economy. [...] Changing governments in changing economic circumstances are free to shape their economic policies, free to liberalise or tighten governance, as long as they make »market economy« manifestly impossible. When can (must) freedom be protected against itself is liberalism's eternal dilemma. While it is true that the restrictions imposed on free market must also serve to maintain its existence, there is no constitutional criterion for determining when this goal has been reversed; more importantly, the ideal of market freedom varies, reflecting changes in economic policy, and the Constitutional Court is not authorized to substitute the legislature's conception of the market economy with one of its own. [...] With regard to market economy as a constitutional task and as a constitutional feature of the economic order, the situation is similar in one but essential respect to that of the rule of law: with the entry into force of the Constitution, market economy became a fact under constitutional law and remained a programme. [...] The maintenance and protection of market economy is also a continuous constitutional task, which the State can and must achieve on the one hand by »supporting« economic competition, as provided for in the Constitution, but above all by enforcing and protecting certain fundamental rights. However, this protection of fundamental rights has its own methodology and its own criteria. (For example, the »transitory nature« of property restrictions, as a component of proportionality, is already a true standard of constitutionality. This is the consistent case-law of the Constitutional Court: ABH 1991, 22, 27.; ABH 1992, 95, 126, 129.)". (ABH 1994, 117, 119 to 120)

[117] On this issue, the Constitutional Court, in its Decision 8/2010 (I. 28.) AB on the taxes on certain high value assets, maintaining its previous case-law, supplemented it with the following, with reference to Decision 59/1995 (X. 6.) AB. "Determining economic policy, including the promotion of certain activities, the encouragement of investment or even the marginalisation of investment, is not in itself a constitutional issue. (Decision 620/B/1992 AB, ABH 1994, 542). It becomes a question of constitutionality if the specific legislative implementation of economic

policy is carried out in a way that violates a constitutional right or is discriminatory. [Decision 59/1995 (X. 6.) AB, ABH 1995, 295, 300]" (ABH 2010, 23, 54)

VI

[118] The constitutional complaints are partly well-founded.

[119] Due to the scope of the petitions and the contested legislation, as well as the partial identity of the petitions, the Constitutional Court considered it appropriate to consider the petitions together, grouped according to the provisions of the Fundamental Law referred to.

[120] 1. Invalidity under public law

[121] 1.1. In the petitioners' view, the law-maker did not provide sufficient time to prepare for the application of the law, thereby violating the rule of law – and legal certainty derived from it – enshrined in Article B (1) of the Fundamental Law. {As stated in paragraph [53] of the reasoning of the present decision, the Constitutional Court rejected in paragraph 9 of the holdings of the decision the other elements of invalidity under public law based on grounds other than the lack of preparation time}.

[122] According to the Constitutional Court's guiding case-law, it is a requirement of the rule of law that the date of entry into force of a law must be determined in such a way as to allow sufficient time to prepare for the application of that law. The requirement of legal certainty imposes an obligation on the law-maker, as regards the determination of the date of entry into force of a law, to allow sufficient time to

- get to know the text of the law;

- prepare for the application of the law by the law enforcement bodies;

- decide how to adapt to its provisions by the bodies and persons affected by the law. The Constitutional Court also points out that the assessment of whether the preparation period is adequate and whether it infringes the requirement of legal certainty must be carried out in the light of changes in the content of the regulation. The Constitutional Court also emphasises that unconstitutionality can only be established on the grounds of a blatant failure to provide time to prepare for the application of the law, or the absence of such a period, which seriously jeopardises or undermines legal certainty [In summary: Decision 6/2013 (III. 1.) AB, Reasoning [233] to [238], [241]]

[123] Accordingly, the Constitutional Court examined when the Act entered into force, from when its provisions can be applied, what exactly their content is, and whether the period of preparation for familiarisation with and application of the law was sufficient.

[124] The Act was adopted by the Parliament on 5 July 2013 and was promulgated on 12 July 2013, and its provisions entered into force on the day following its promulgation, i.e. on 13 July 2013, pursuant to section 21 of the Act.

[125] According to the Act, the main stages of the integration agenda were as follows. On the date of the entry into force of the Act, the integration was completed and the Savings Cooperative Integration Agreement was terminated. Within 3 days, the first Board of Directors of the CCIIO had to be set up (all members were appointed by the MFB), from the 8th working day to the 90th day, legal succession of the institution protection funds had to be prepared. Within 10 days, the first statutes of the CCIIO was adopted with a content in accordance with the annex to the Act. Within 15 days of the entry into force, the cooperative credit institutions were obliged to make a so-called "statement of preliminary commitment" to Takarékbank on receiving one series C preference share with a nominal value of HUF 2,000 and to deposit their series B preference shares (they had the right to sell them unilaterally to MFB within 60 days of the deposit). Within 20 days, cooperative credit institutions were obliged to apply for the issue or maintenance of their operating licence in accordance with the Act. Within 30 days, the Board of Directors of CCIIO determined the text of the new statutes of Takarékbank; MFB provided the required HUF 1 billion for the start-up assets of CCIIO; and the credit institutions with pending licence applications (in the process of becoming banks), since they did not become members of the integration, were obliged to sell all their Takarékbank shares to MFB; subsequently, two independent auditors carried out the asset valuation required by section 20 (1) of the Act. Finally, the Act also provided that, as from that date, no shareholder could hold both series B and series C preference shares at the same time. The general assembly of Takarékbank had to be convened on the 45th day after the entry into force in order to take decisions pursuant to section 20 (7) of the Act. All series B preference shares had to be sold to MFB within 45 days of the entry into force, by which time the cooperative credit institutions were obliged to adopt new statutes (articles of association) with the wording determined by the Board of Directors of the CCIIO. For the period from day 45 to day 365, the law-maker required Takarékbank to review the assets and liabilities of cooperative credit unions. The capital increase in Takarékbank had to be implemented within 60 days. Cooperative credit institutions were required to obtain an operating licence within 75 days, in accordance with the Act. On the 90th day after entry into force, the former institution protection funds ceased to exist with legal succession by virtue of the Act. On 1 November 2013, the obligation to terminate the bank accounts of cooperative credit institutions (held outside Takarékbank) came into force (the obligation to terminate was imposed on the organisations holding the bank accounts). Within 120 days, Takarékbank had to adopt a risk management policy for the members of the integration other than MFB. Finally, MFB was obliged to provide the CCIIO within 150 days with the amount determined by the auditor pursuant to section 20 (1).

[126] The scope and the depth of the changes affecting the sector are therefore clearly significant. There is also no doubt that the law-maker essentially enacted and applied the provisions of the Act without any preparation time, which is an unusual and extraordinary solution in the context of the requirement of sufficient preparation time derived from legal certainty. The enacted provisions were restrictive in nature, but at the same time the law set out a precise schedule for the implementation of the provisions of the Act and the manner in which the entities concerned, including the petitioners, would have to adapt – actively – to the changed legal environment governing their activities. The latter is of particular relevance in

assessing whether the parties concerned have had sufficient time to bring their conduct into conformity with the law.

[127] The Act contains only a few provisions that required active conduct from the cooperative credit institutions (and the banks involved in the integration): they had 15 days to make the statement of preliminary commitment on receiving the series C Takarékbank preference shares and to deposit their series B preference shares; 20 days to initiate with PSZÁF the issuance of the operating licence in line with the Act; 45 days to adopt new articles of association/statutes with the text determined by the Board of Directors of the CCIIO and 75 days to obtain the operating licence (with the proviso that the Act granted the Supervisory Authority a deadline of 8 working days to decide).

[128] Thus, despite the fact that the integration itself brought about fundamental innovations in the specificities of the functioning of the sector, the integration schedule described in the Act – secured with deadlines – provided for the credit institutions concerned by the integration to take only a few steps. The time periods indicated are short, however, in view of the particularly "sensitive" financial sector, they cannot be considered to be blatantly short, seriously jeopardising legal certainty, and have not made it clearly impossible to adapt to the legal provisions. The law under review was designed to transform a major sub-system of the financial sector, based on a complex regulatory approach. This fact, together with the particular sensitivity of the sector, may have prompted the law-maker to limit the process of preparation and getting ready to the narrowest possible scope. It was also in the interest of the credit institutions and their customers/depositors that the uncertainty resulting from the transformation should be kept to a minimum, avoiding panic and negative chain reactions.

[129] Regarding the element of the petition that the law-maker failed to consult the organisations concerned by the integration, the Constitutional Court points out that "the preparation of Bills is not part of the legislative process, therefore the failure to fulfil the statutory obligation of holding consultations or organising a public debate results in a political responsibility on the part of the law-maker, but does not result in the invalidity of the Act of Parliament under public law" [Decision 165/2011. (XII. 20.) AB, 478, 500]

[130] On the basis of the above, the Constitutional Court found the petitions alleging the invalidity of the Act under public law – based on the lack of consultation and preparation time – to be unfounded and rejected them.

[131] 1.2. The Constitutional Court notes, however, that the stability and timeliness of laws is a requirement derivable from the principle of the rule of law. The circumstances of the adoption of laws (its speed, the lack of consultation with stakeholders), errors resulting from the forced pace of norm drafting (e.g. in section 13 (1) of the Act the value of the share capital of Takarékbank specified in numbers did not correspond with the value written down in letters), the rapid and sometimes difficult to follow amendment of norms may erode the trust of the subjects of law in the quality of legislation, the predictability and foreseeability of the legal order. The tight schedule set for the implementation of the Act under review and the related almost immediate repeal of the provisions that had already been implemented, as well as the comprehensive amendment and supplementing of the Act within a relatively short period of

time, also made the examination of constitutionality under section 26 (2) of the ACC very difficult. Attention should be drawn to all this even if a "rapid reaction" is justified in the financial market, where every word, every news item, every planned measure has a rapid, spill-over effect and may have undesirable consequences.

[132] 2. The freedom of association

[133] According to the petitioners, the provisions of the Act on compulsory integration [section 1 (1) (e) and (t), (2) to (3), section 3, section 5, section 11 (7), section 18 (3), section 19 (4)] infringe the freedom of association guaranteed by Article VIII (2) of the Fundamental Law (and, in this context, the autonomy of action derivable from Article II of the Fundamental Law). The banks extended their request to the following provisions of the Act in their supplementary submission following the amendment of the Act: section 20/A (1), (2) (b), (12), section 17/C (1), section 17/D (1), as well as section 5 (3) and (6) of the Act on Credit Institutions, amended as of 30 November 2013, and its section 8 (1) to (2), also amended.

[134] 2.1. The Constitutional Court finds that with the Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions, the law-maker repealed section 18 (3) of the Act with effect from 30 November 2013. The Constitutional Court shall examine the conflict of an annulled law only exceptionally, if the law should still be applied in a specific case [section 41 (3) of the ACC]. In the present case, the reason for the annulment was that the provision had been implemented. Therefore, the Constitutional Court terminated the proceedings on the basis of section 64 (e) of the ACC in relation to section 18 (3) of the Act (section 8 of the holdings of the decision).

[135] The provisions of section 5 (3) and (6) and section 8 (1) to (2) of the Act on Credit Institutions were repealed by the new Act on Credit Institutions, but section 8 (3) and (7) and section 11 (1) and (2) of the new Act on Credit Institutions has taken over the content of the repealed rules. The Constitutional Court examined the provisions in force at the time of the judgement.

[136] 2.2. Article VIII (2) of the Fundamental Law guarantees the right to form and join organisations as a fundamental right. Article 63 (1) of the former Constitution regulated the content of the right of association in the same way.

[137] In addition to comparing the content of the specific rules, the Constitutional Court also examined whether the regulatory context might lead to a different content being attributed to the relevant provisions of the Constitution and the Fundamental Law that replaced it. The Fundamental Law regulates in Article VIII (in one provision, one after the other) the freedom of assembly, the freedom to form (and join) organisations, the freedom to form political parties, and the freedom to form trade unions and other interest representation bodies. In comparison, the Constitution provided for these fundamental rights in different articles {freedom to form political parties [Article 3 (1)], trade unions and interest representation (Article 4), right of assembly [Article 62 (1)], right of association [Article 63 (1)]}.

[138] The right of association is related to the right of assembly, both are freedoms that can be exercised collectively, and several other rights can be derived from it (e.g. the freedom to

form political parties or to establish interest representation organisations). Social organisations are manifestations of democracy and social self-organisation in the broad sense. However, despite the fact that the Fundamental Law regulates the right of association in the same article as, for example, the right of assembly and the freedom to form political parties, social organisations established on the basis of this right are not necessarily linked to a political goal or ideology, nor are they only for natural persons. The right of association is a fundamental freedom, everyone – including natural persons and legal entities – shall be entitled to it; as the aim of the organisation established on the basis of the right of association is not specified concretely by the legislator adopting the constitution or the law, organisations may be established for any purpose that is in line with the Fundamental Law and not prohibited by the law [Cf. Article I (4) of the Fundamental Law, and section 3 of the Act CLXXV of 2011 on the Right of Association, the Public Benefit Status and the Functioning and Support of Civil Organisations].

[139] Based on the above, the Constitutional Court did not see any obstacle to taking into account in the present case the principles and findings developed in its previous case-law – based on the Decision 13/2013. (VI.17.) AB {Reasoning [32]}.

[140] In the case law of the Constitutional Court the content of the right of association means that everyone shall be entitled to establish organisations or communities with others and to take part in their operation. It is up to the affected person to decide about establishing any organisation or community or to participate in their activities. [Decision 1/2002 (I. 11.) AB, ABH 2002, 33, 38]. Fundamental rights may entitle not only natural persons; even legal entities may refer to the violation of certain rights [see e.g. Decision 38/2006. (IX. 20.) AB, ABH 2006, 489, 493], the right of association is also a fundamental right from the exercise of which legal persons are not excluded. (Decision 489/B/2006. AB, ABH 2392, 2396). "Organisations of the society and companies also possess autonomy of action. They should make decisions on the basis of the aims laid down in their statutes, deed of foundation, or articles of association prepared on their foundation, by taking into account their economic or other, e.g. public interest purpose. According to the Constitutional Court, the acting autonomy of such organisations should also be protected. This protection is different from the protection of the constitutional rights of natural persons. While the right to human dignity is an absolute, unconditional and inalienable right, the autonomy of an association or a company is linked to the purpose of the organisation. Since the Constitution recognises as a fundamental right the right of association, the freedom to establish undertakings, including business organisations, and to form organisations for the protection of economic and social interests, the State must also respect the autonomy of organisations established for the exercise of these rights." [Decision 24/1996 (VI. 25.) AB, ABH 1996, 107, 111 to 112] This concept is reflected in Article I (4) of the Fundamental Law, which states: "Fundamental rights and obligations which, by their nature, do not only apply to man shall be guaranteed also for legal entities established by an Act."

[141] The Act extends the integration to essentially all actors of the cooperative credit institution sector (and even partly to actors outside the sector, which are connected to it only through the voluntary cooperative institution protection funds – certain banks), the essence of

which is to unify the activities of financial institutions operating independently or in voluntary integration, and to operate them according to the principles, regulations and instructions set by the top bodies of integration – the CCIIO and Takarékbank. Henceforth, a credit institution may only operate in the form of a cooperative if it establishes/maintains membership in the institution protection organisation of the integration (in case of withdrawal, a new operating licence must be applied for and the cooperative form of operation cannot be maintained). At the same time, the law-maker repealed the Integration Agreement concluded by the cooperative credit institutions and introduced compulsory integration. Membership entails both obligations (e.g. payment of membership fees, obligation to comply with regulations and instructions) and rights (e.g. use of institution protection services as decided by the Board of Directors of the CCIIO, underlying protection provided by the Fund).

[142] The Constitutional Court has already examined the institution of compulsory membership in organisations (so-called forced membership) on several occasions. It has found that "freedom of association may be restricted both by prohibiting association for some reason and by imposing an obligation to associate, i.e. forced association. However, restrictions on the right of association – as a constitutional right – may be subject to the requirements (necessity and proportionality) also set out in the cited decision." [Decision 41/2002 (X. 11.) AB, ABH 2002, 295, 302] This decision therefore reiterated and confirmed the previous finding that "forced membership is in any event a direct restriction on a fundamental right – whether, depending on the theoretical conception, it is the right of association or the general freedom of action (Article 54 of the Constitution) – and its constitutionality must therefore be assessed by the usual test of fundamental rights." [Decision 38/1997 (VII. 1.) AB, ABH 1997, 249, 257]

[143] On the basis of all this, compulsory membership of the CCIIO – forced membership – is directly related to – and limits – the freedom of association and the autonomy of action of organisations. However, when examining the constitutionality of this public law restriction, the private law specificities of the autonomy of action of organisations must also be borne in mind. Legal persons have legal personality and property separate from the founding members, and their personal autonomy, autonomy of action and property are manifested in the partial entitlements of the "right of membership", which has a rich content, and are subordinated to the organisational autonomy of action. This is a voluntary restriction under private law of the members' autonomy. However, the right of association is also granted to organisations (further association, association for coordination purposes, creation of an interest grouping, etc.), in which the autonomy of action of the member organisations is also voluntarily limited, compensated for by the common interest. Individual voluntary organisation systems operate as subsystems of wider (national economic, financial) systems, which may express and promote different levels and qualities of interest. If the unification or coordination of interests can no longer be ensured by private law, the law-maker can intervene – within the constitutional framework – by creating mandatory rules to enforce the public interest.

[144] 2.3. On the basis of the above, the Constitutional Court had to examine in the present case whether the restriction of the right of association and the autonomy of action by the Act complied with the necessity-proportionality test of Article I (3) of the Fundamental Law, according to which a fundamental right may only be restricted in order to allow the exercise of

another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right.

[145] With regard to the necessity of the restriction, the Constitutional Court considered the following. The specificity of the CCIIO as a compulsory institution protection organisation is that on the one hand, it can define and coordinate the activities of its members in a general way by drawing up regulations (e.g. concerning accounting rules, internal control, rules on the suitability of senior officials). On the other hand, it also contributes to the financial security of the sector by providing various institution protection (and, in addition, deposit protection) services (it intervenes in the event of a crisis situation of its members, provides financial assistance from its own assets and, under section 20/A (4), is liable for the debts of cooperative credit institutions, following the Fund and the other cooperative credit institutions). A logical and natural precondition for the use of financial assistance is compliance with the standards issued by the institution protection organisation to ensure the operational stability of credit institutions.

[146] In the law-maker's view, the balanced functioning of the sector requires more than voluntary contractual integration to ensure that the credit institutions concerned operate according to uniform principles, under closer supervision than hitherto, and that there is a possibility of rapid, immediate intervention to prevent crisis situations or to intervene in case of their occurrence. One element of integrated operation is the compulsory membership of the institution protection organisation (the CCIIO) established by the Act. The benefits of the CCIIO include reducing the operational costs and risks. On the one hand, this may result from the elimination of institutional and organisational duplication and fragmentation (e.g. the merging of institution protection funds performing the same function), and the integration of the whole sector is obviously more financially stable than the smaller funds that have been operating so far. On the other hand, uniform criteria and controls significantly reduce the risk of irresponsible lending and increase the safety of the financial operations of credit institutions, thereby increasing the safety of depositors who deposit their savings with cooperatives. Coordinated operations, setting professional expectations for the executive officers of credit institutions and the development of a long-term, coherent operational strategy will help to prevent ad hoc lending practices and the resulting crisis situations. The institutional structure set up to ensure that members operate prudently and profitably and the mechanisms (instructions, sanctions) put in place to enforce the rules actually serve the operation of the integration. Ensuring transparent, prudent operations and enhancing deposit security (and, in this context, protecting customers' right to property) are constitutional values that make the restriction of the right of association and the related freedom of action as a fundamental right necessary and constitutional.

[147] Moreover, compulsory integration does not affect the right of member organisations to establish professional, interest representation organisations of their own choice on the basis of the freedom of association, exercising their right guaranteed by the Fundamental Law: the establishment of the CCIIO by law does not legally exclude the existence of such organisations in parallel (this is also supported by the fact that the OTSZ continues to operate as an interest

representation body even after the entry into force of the Act). Furthermore, it is not excluded that cooperatives may establish a voluntary deposit insurance or institution protection fund on the basis of section 241 (1) of the Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (new Act on Credit Institutions) (membership of CCIIO is mandatory but not exclusive).

[148] Finally, although the Act institutionalises compulsory integration, it also allows for opting out of it under certain conditions. There is no doubt that in this case the cooperative form of operation cannot be maintained, but the right to carry on a particular activity in a particular form under company law cannot be derived from the Fundamental Law.

[149] The disadvantages that this restriction entails (such as the obligation for members to pay membership fees and the obligation to comply with the regulations issued by the integration bodies) are compensated by the benefits it brings, namely the increase in service quality and the reduction of operational risks, as well as the increase in confidence in the stability and operators of the sector through the financial safety net provided by the CCIIO and the Fund, which may lead to an increase in their market share. In order to protect the stability and security of the sector, the State, through MFB, contributes a total of HUF 136.5 billion to the protection of institutions, thus providing a significant safety reserve for the sector's participants (cooperative credit institutions and Takarékbank). For all these reasons, no disproportionality of the restriction can be established.

[150] On the basis of the above, the Constitutional Court rejected the petitions challenging the contested provisions of the Act as regards the freedom of association and the right of organisations to autonomy of action.

[151] 2.4. The Constitutional Court also found that there is no constitutional connection between section 8 (3) and (7) and furthermore section 11 (1) to (2) of the new Act on Credit Institutions and the right of association, based on the arguments put forward in the petitions, and therefore the Constitutional Court rejected them.

[152] 3. The right to property

[153] 3.1. The petitioners allege a violation of the right to property guaranteed by Article XIII (1) of the Fundamental Law in connection with several provisions of the Act.

[154] First of all, it must be stressed that, according to the two decades' case-law of the Constitutional Court [Decision 64/1993 (XII. 22.) AB], "the sphere and means of constitutional protection of property does not necessarily follow the legal concepts of civil law. That is so, as the necessary and proportional restriction and the essential content of the right to property are concepts which have no civil law analogies. The partial rights of property [...] cannot be identified with the essential content of the right to property, which enjoys constitutional protection. [...] The content of property as a fundamental right must always be understood within the framework of (constitutional) public and private law restrictions. The extent of the constitutional protection of property is always concrete; it depends upon the subject-matter, the object and the function of property, as well as the nature of the restriction. On the other hand: the constitutional permissibility of the intervention of public authorities into property

right varies according to these considerations.” (ABH 1993, 373, 379-380). As laid down by the same decision: Because of the particularities of the nature of property protection, the central point of the enquiry into the constitutionality of state intervention, the field of the constitutional review has become the adjudication of proportionality between the ends and the means, the public interest and the restriction on property. At the outset of an enquiry into the necessity and unavoidability of restricting a fundamental right, it must be borne in mind that Article 13 (2) of the Constitution merely requires “public interest” to justify expropriation; that is, if the value guarantee is enforced, it is not a constitutional requirement to present a more compelling necessity. The social and economic role of property, especially the way in which specific regulatory measures fit into the given tasks of economic policy renders the determination of necessity or unavoidability more difficult than is the case with other fundamental rights, where it may be easier to make generally valid comparisons. In a democratic society it is just natural that “public interest” is evaluated in significantly divergent ways in terms of questions of economic and social nature. Accordingly, the constitutional review of “public interest” enforced by the law does not focus on the question whether the option chosen by the law-maker was unavoidably necessary, but it is limited to the question – even if formally it is not directed at ascertaining the existence of public interest but applies the criterion of “necessity- proportionality” – whether the invocation of public interest was justified and whether the solution itself, adopted for the public interest violated some other constitutional right [...]. Nevertheless, in investigating the proportionality of public interest and the restriction on property rights, the Constitutional Court may generally decide upon those criteria that determine the constitutionality of an intervention. This can compensate for the inevitable loss of legal certainty due to the limited review of the public interest necessity. For instance, the Constitutional Court considers a property restriction disproportionate, if its duration cannot be calculated. [...] In other cases compensation may be necessary for the proportionality of the restriction on property.” (ABH 1993, 373, 381-382).

[155] Thus the right to property does not constitute an unrestricted fundamental right: State intervention is not ruled out in the case of compliance with the conditions laid down in the Fundamental Law and if respect is paid to the appropriate guarantees of fundamental rights. Of particular relevance in this context is the fact that, as declared in the second sentence of Article XIII (1) of the Fundamental Law, “property shall entail social responsibility”. Accordingly, when assessing the constitutionality of the rules restricting property, the Constitutional Court relied on its case-law established on the basis of the previous Constitution, but also took into account that the Fundamental Law itself emphasises the social responsibility of property, its national economic and social function and the interconnectedness of these, as well as the resulting constraints on property.

[156] In the context of the challenged provisions, the Constitutional Court had to examine whether, in so far as they constitute a restriction on the right to property, the restriction was imposed to the extent strictly necessary to protect another fundamental right or a constitutional value, or to protect the public interest, as provided for in Article I (3) of the Fundamental Law, and whether the proportionality of the restriction could be established.

[157] As regards property rights, two categories of restrictions can classically be distinguished. The taking of property (nationalisation, expropriation) is the most serious intervention, since it completely eliminates the rights over property – the rights of disposal – and all the partial rights of property. The second group includes regulations governing the use of property (typically e.g. building regulations) and the payment of public charges on property (e.g. taxes). However, in addition to this traditional classification, there is a third group: it consists of those State interventions which cannot be classified in the previous two groups, which do not completely remove the owner's rights to the property, but which nevertheless affect the object of the property in a significant way, even comparable to expropriation, and which limit (e.g. weaken) the rights of the owner.

[158] 3.2. The Constitutional Court has considered it appropriate to deal with the applications concerning the right to property in groups. It first examined the elements of the Act concerning the integration, then the capital increase implemented in Takarékbank (see Reasoning, clause 3.3), followed by the petitions challenging the rules of the financial risk pool (see Reasoning, clause 3.4), then the provisions on the legal succession of the institution protection funds (see Reasoning, clause 3.5), and finally the complaints challenging other provisions of the Act (see Reasoning, clauses 3.6 to 3.9).

[159] 3.2.1. In the petitioners' view, the regulation establishing mandatory integration deprives cooperative credit institutions of the right to make economic decisions autonomously, within the limits of the law, on the basis of their own discretion. The management rights granted to the top bodies of integration (and the associated sanctioning possibilities) therefore infringe the property rights of the financial institutions concerned.

[160] Based on the rules of the integration under the Act, the cooperative credit institutions' right to make decisions concerning their own economic operation is greatly reduced: the Board of Directors the CCIIO may issue binding regulations within the scope of section 11 (1), may prescribe a specific level of own funds and, in the event of non-compliance, may apply the measures provided for in section 17/C (2) [or, if the measures are unsuccessful, it may even acquire ownership in the cooperative credit institution concerned by increasing capital, see section 11 (4)]. Takarékbank is also entitled to adopt mandatory regulations and instructions for cooperative credit institutions [see section 15 (2) to (3), sanctions are provided for in section 15 (4)], to apply sanctions in the event of a crisis situation of a cooperative credit institution [section 15 (7)], the prior approval/consent of Takarékbank is required for the adoption of the report of the cooperative credit institution and the appointment of its executive officers, and in certain cases to acquire or sell property [section 15 (11), (12) and (19), as well as to issue of bonds, reduce or increase the capital of a cooperative credit institution [section 17/K (1)]. A cooperative credit institution may not hold a general assembly, a meeting of the supervisory board and a meeting of the board of directors without prior notification to Takarékbank, and in certain cases Takarékbank may require the board of directors and the supervisory board to amend their rules of procedure (section 15/A). Pursuant to section 17/K (11), the bank accounts and securities accounts of the cooperative credit institution shall be kept by Takarékbank. In addition to this, cooperative credit institutions may only operate on the basis of the model statutes established by the CCIIO (and from 1 July 2014 by Takarékbank).

[161] These (detailed) rules directly affect, in a fundamental way, the property and economic autonomy of the cooperative credit institutions concerned by the integration, their right to "take economic decisions shaping economic relations independently and freely" [Cf. cited in the Decision 64/1993 (XII. 22.) AB (ABH 1993, 373) and the Decision 10/2001 (IV. 12.) AB (ABH 2001, 123)], and therefore the possible infringement of the right to property must be examined in relation to the statutory provisions establishing the integration.

[162] During the review, it is important to bear in mind that individual credit institutions do not operate in a fully autonomous manner under private law, but as a subsystem of a highly organised financial system. The financial system is a subsystem of the national economy, which in turn is one of the most important subsystems of the social system (e.g. alongside the political one). Due to the "domino effect", the failure of even a single financial institution can spill over, worsening country risk, causing downgrades and increases in sovereign debt, negatively affecting investment, employment, social welfare systems, etc. Risk assessment and analysis, prevention and mitigation are now a primary duty not only in the financial sector, but also among economic and political decision-makers, including in the economic strategy and operational management by the Government. The Constitutional Court must also take this into account when assessing the constitutionality of economic policy measures.

[163] The subject-matter of the constitutional review – in accordance with the content of the petitions – is the provision on membership in the integration [section 3 (1)], i.e. the integration itself as a restriction of the right to property. In its decision, the Constitutional Court also reviewed and took into account the background and the content of the specific rules introduced in order to achieve compulsory integration, in particular the provisions identified and challenged by the petitioners [section 11 (1), (4), (7) to (8), section 15 (2), (3), (4), (7), (9), (11), (12), (13), (16), (19), section 15/A (1) to (9), section 15/C, section 17 (1), section 17/C (1), (2), (4) to (7), section 17/E (4), section 17/J (2), section 17/K (1) and (11), section 17/Q (3) to (4), section 19 (2), (5), (8) to (9), section 20/A (12) to (13)]. It should be noted, however, that the petitioners did not challenge these rules – the provisions ensuring a unified, coordinated operation – separately and in isolation, but in their entirety, in their interconnectedness and in view of their combined effect, and therefore attacked the integration itself. Therefore, in the absence of a specific, reasoned request, the Constitutional Court did not examine the impact of the challenged detailed rules on the right to property individually, and thus did not examine whether, if there is such an impact, the given provision meets the test of necessity and proportionality of the restriction of fundamental rights, but assessed the provisions (the integration as a whole) in their entirety.

[164] 3.2.2. According to the preamble of the Act, the regulation was necessary because the cooperative credit institution sector is undercapitalised, its organisation and service level are inadequate, and its long-term operational security needs to be strengthened.

[165] The stability of the financial sector as a whole also depends on the safe functioning of credit institutions in the form of cooperatives. The importance of this sector is due to its extensive network of branches, the fact that in a significant proportion of municipalities financial services are available exclusively through cooperative credit institutions, and the fact that cooperatives play a key role in financing individual and collective enterprises in the

agricultural sector. Maintaining and ensuring the viability of this financial infrastructure is a public interest that may justify intervention affecting property (and property autonomy) as part of public economic and financial policy, given the social responsibility that comes with property, the role of property in the national economy and its socially bound nature.

[166] Since 2008-2009, the legal conditions for the establishment and operation of financial institutions, their supervision and control by public authorities, their consolidated management and coordination have been tightened worldwide. The aim of the management powers granted to the integration itself and its bodies is to coordinate the operation of cooperative credit institutions by means of regulations of a general nature or by means of specific measures and instructions. These are necessary to coordinate the operations of the credit institutions concerned and to ensure integrated operations. The issues listed in section 15 (2) of the Act – risk management, business policy, marketing and IT systems – are undoubtedly important from the operational point of view, and the law-maker has authorised Takarékbank to draw up binding regulations in this regard. In exercising its right of control, Takarékbank monitors compliance with the regulations issued and may issue individual instructions. As compliance with these regulations and instructions is a prerequisite for integrated operation, the law-maker has also authorised the application of certain sanctions. As the operational management of the cooperatives is carried out by the executive officers, their mandate may also be suspended or terminated. The sanctioning of cooperatives that do not comply with the mandatory rules (suspension of membership in the CCIIO, exclusion) is one of the means of ensuring integrated operation. Exercising the management rights of Takarékbank and applying sanctions if a cooperative is in a crisis situation are also justified, as the operation of one member may jeopardise the safety of the whole system due to the financial risk pool. Similarly, the law-maker has introduced similar powers of action with regard to Takarékbank, primarily with regard to the financial risk pool [section 19 (8) to (9)]. The obligation set out in section 15 (9) is justified on the one hand by the financial risk pool of the sector's stakeholders, and on the other hand by the central banking role of Takarékbank and the right of control granted to the bank under section 15 (3). Section 15 (11) is directly related to the requirement of coordinating risk management and business policy. The provision on suspending shareholders' rights in Takarékbank is a provision that promotes the establishing and maintenance of integration and compliance with the integration rules. The purpose of the right to review the assets and liabilities of the members of the integration [section 15 (16)] [subject to the rule referred to in the provision, section 19 (5)] is to ensure transparency and regularity of the cooperatives' operation.

[167] In addition to Takarékbank, which has the operational management rights for the operation of the members of the integration, the Act also grants management rights to CCIIO as an institution protection body. The CCIIO plays a role in ensuring transparent, predictable operating conditions and has crisis prevention and crisis management functions. In this context, it shall, among other things, establish binding regulations on the accounting system, the internal control system, the rules on the suitability of the managing officers and the rules on the financial assistance that may be provided to the cooperative credit institution [section 11 (1) of the Act]. Monitoring the solvency and capital adequacy situation on an individual basis

[section 11 (3)] and the related possibilities for action by the CCIIO contribute to the prevention of crisis situations.

[168] In addition, the Act also introduces further restrictions on the financial operations of cooperative credit institutions [section 19 (2)] and provides that the assets of the CCIIO shall be included in the consolidated own funds of Takarékbank and the cooperative credit institution [section 11 (5)]. These rules also aim to ensure predictable, stable and prudent operations and to minimise business risk and increase safe lending activity.

[169] 3.2.3. Thus, the organisational system and the toolbox of integration significantly limit the independence of cooperative credit institutions in making economic decisions, which limits the autonomy of cooperatives. The Constitutional Court reiterates that, in the context of the restriction of the right to property, the scope of its examination is relatively narrow as regards the legitimacy of the law-maker's invocation of public interest. This is particularly so in the case of reform Acts such as the current one, which transform an economic sector on the basis of economic policy objectives.

[170] The elimination of the fragmentation of the cooperative credit institutions sector, the unification of operation and certain aspects of the financial services provided by cooperatives will contribute significantly to reducing the risks of lending activities (in addition to the fact that the sector will increase its lending intensity as a result of the law, which will also contribute to the development of the economy), increasing the safety of customers and, in this context, increasing confidence in the more organised sector as a whole. The protection of the interests of hundreds of thousands of savings cooperative depositors and the safety of their deposits is clearly in the public interest, since a loss of confidence in savings cooperative deposits affects the safety of all deposits (including bank deposits) and, through this, the interests of all depositors in the country and the entire economy. The autonomy of the hitherto fragmented, small entities is weakened on the one hand, while, on the other hand, their combined economic and financial strength, efficiency and security are strengthened. However, this strengthening can also be measured against the Hungarian financial institutional system as a whole, the EU and the global financial market system. (It is worth noting that the cooperatives themselves have recognised the importance of co-ordination, and have been working towards it for a decade and a half.) In addition to the stability of the sector (which protects the interests of depositors), profitability can also be improved (restructuring is in the long-term also the interest of the owners). The desire to create greater security in the sector, as a matter of public interest, is also confirmed by section 19 (5) of the Act [and, related to this, section 15 (16)], which provides for the due diligence of integrated credit institutions. These provisions guarantee an assessment of the real state of the sector as a whole and make it possible to identify the potential risks inherent in its operation.

[171] The due diligence of cooperative credit institutions – and thus the disclosure of hidden risks, i.e. revealing the real situation – can be considered to be in the public interest. It was also a public interest objective to reduce the operational risk of the sector, which is ensured by the risk management under a single set of rules as implemented in the integration and the financial contribution by the State. Finally, it is in the public interest of national economic development

to intensify the lending activities of cooperative credit institutions, allowed by the financial contribution of the State and the capital base character of the CCIIO's assets.

[172] In the Constitutional Court's view, the reference to public interest with respect to creating an integrated operation is well-founded in the overall and broad context.

[173] When examining the proportionality of the restriction, the Constitutional Court considered as an important aspect that although the management rights of the integration bodies have a decisive impact on the operational autonomy of cooperative credit institutions, this is compensated by the benefits resulting from coordinated operation (primarily the reduction of business risks and the increase in profitability) and the fact that – in order to protect the stability and security of the sector – the State, through MFB, contributes a significant amount to the performance of the tasks of institution protection, thus increasing the financial stability of the sector. In legal terms, the State not only takes away from the system (the autonomy of individual credit institutions), but also adds to it (material coverage, security). At the same time, the Constitutional Court emphasises that the law-maker – by granting Takarékbank and the CCIIO management rights in the manner provided for in the Act – has significantly reduced the economic autonomy of the credit institutions concerned by the integration, and has thus interfered with the right of ownership in a way that would be contrary to the Fundamental Law in the absence of compensatory benefits. The value of economic-material autonomy (and its reduction) cannot be quantified in an exact way, thus only the fact of the HUF 136.5 billion of the assets of the CCIIO – according the auditor's valuation – provided by MFB could be taken into account as compensation for the restriction, rather than the value of the other (desired) benefits.

[174] Since even the complete withdrawal of property may be constitutional in the public interest – with the enforcement of the guarantee of value –, the integration of cooperative credit institutions and the coordination of their activities, in comparison, is a measure affecting their autonomy to a lesser extent. Moreover, the Constitutional Court has already found in the Decision 64/1993. (XII. 22.) AB that "in response to the multiplication of restrictions under the law, the concept of »classic expropriation« has been broadened, a concept applied by the State to acquire property (usually real estate) deemed indispensable for the public good whenever a civil law transaction proved ineffective to acquire that property. But just as more and more property restrictions implied protection analogous to that afforded in cases of expropriation, also a growing number of restrictions must be borne without any compensation at all" (ABH 1993, 373, 381.). This constitutional argument has been strengthened by virtue of the second sentence of Article XIII (1) of the Fundamental Law ("Property shall entail social responsibility.") and by the need for economic policy measures in sectors threatened by the economic and financial crisis.

[175] Taking into account the specificities of the cooperative credit institution sector and the arguments explained above, the necessity and proportionality of the restriction of fundamental rights can be established, therefore the Constitutional Court rejected the requests for annulment of the challenged provisions.

[176] 3.2.4. Since according to the petitioners, section 19 (3) of the Act [and in this context section 17/D (2) and section 17/H (2)], which requires cooperative credit institutions to adopt new statutes with the wording determined by the Board of Directors of the CCIIO, also violates, in itself, the right to property, the Constitutional Court also conducted a separate constitutional review of the provision on the basis of an express, separately reasoned request.

[177] The petitioners who submitted the constitutional complaint challenged their obligation to adopt a new statute (articles of association) with the wording determined by the Board of Directors of the CCIIO within 45 days of the entry into force of the Act. [It should be noted that the legislator has in the meantime amended the contested provision, moving it from point (c) to point (a). Accordingly, the constitutional review concerns point (a) currently in force.]

[178] The right to determine the wording of the statutes (articles of association) – within the limits of the law – is one of the most important powers of the supreme body of a company (in this case cooperatives and banks), i.e. the general assembly of all the owners. When adopting the deed of incorporation, members (shareholders) exercise their ownership rights and establish the organisational (legal personality) and operational (use) rules of their united property. The contested provision of the Act affects the essence of this right.

[179] At the same time, from the point of view of the integration introduced by the Act, it is of fundamental importance that the statutes (articles of association) of integrated credit institutions comply with the provisions of the Act and do not contain provisions that conflict with or deviate from the provisions of the Act. This is the only way to ensure a harmonised operation in line with the objective of the Act. The constitutionality of property restriction (also in the light of the validity of the value guarantee) can also be established in this respect, as set out in paragraphs [159] to [175] of the reasoning of the present decision.

[180] In its review of the regulation under examination, however, the Constitutional Court noted that the incorrect application of the legal norms, which are in conformity with the Fundamental Law, on the determination of the content of the model statute may result in a violation of the right to property of the persons concerned. On the basis of section 46 (3) of the ACC, in the procedure carried out in the course of exercising its competences, the Constitutional Court may, *ex officio*, specify in a decision constitutional requirements – that result from the Fundamental Law's regulation and that enforce the provisions of the Fundamental Law – the law reviewed and applicable in the court procedure has to comply with. The need to determine a constitutional requirement has been examined by the Constitutional Court in the present case, using this statutory authorisation.

[181] According to the correct interpretation, the Act authorises the CCIIO (and later Takarékbank) to determine the essential content elements necessary for the realisation of the purpose of the Act – integration. Consequently, restrictions on the right to property are constitutional only insofar as they affect the right to determine the content of the statutes (deed of foundation) to the extent strictly necessary for the realisation of integration.

[182] At the same time, the challenged law does not exclude an interpretation according to which the model statute may be issued as a complete document not allowing any individualisation (supplementation, specification), or that it may contain provisions not directly

derivable from the provisions of the Act. Moreover, the content of the model statute cannot be challenged by the credit institutions concerned (cooperatives, banks) before any forum, and in fact, section 17 (1) of the Act explicitly states that if the integrated credit institutions do not adopt the new statute as defined by the CCIIO, their operating licence shall be withdrawn.

[183] On the basis of the foregoing, and confirming that the petitioners would not suffer any legal prejudice if the rules in force were correctly applied, the Constitutional Court considers it necessary and justified to define the constitutional requirement as follows. In applying section 19 (3), section 17/D, section 17/H (2) of the Act and Annex 1, IX. 9.1. (e) of the Act, the right to issue model statutes shall be strictly interpreted: it is a constitutional requirement originating from Article XIII (1) of the Fundamental Law that the model statutes may only contain mandatory elements which are indispensable for the attainment of the objectives of the Act, serve the implementation of the Act or are necessary to meet the requirements of the European Union governing the integrated operation of credit institutions. This also means that the statutes (articles of association) of integrated credit institutions cannot be in conflict with the model statutes, but may contain additional elements compared to those contained therein: subjects not related to the integration, organisational and operational rules not derivable from the Act may be individually determined in the future, too, within the framework of other relevant laws.

[184] 3.3. The Constitutional Court then examined the provisions relating to the capital increase in Takarékbank. In this regard, the petitioners sought the annulment of sections 12 (2), 13 (2), 14 (1) and 20 (1) to (2) of the Act (capital increase in Takarékbank) as well as section 20 (7) and (10) (amendment of the statutes of Takarékbank in connection with the capital increase).

[185] 3.1.3. The capital increase in Takarékbank regulated by the Act and implemented accordingly did not lead to the loss (withdrawal) of the former ordinary shares, thus in the strict sense the property rights of the former shareholders were not violated. However, as a result of the capital increase – during which the issued ordinary shares were taken over by the state-owned Magyar Posta pursuant to section 20 (2) of the Act, the subscription priority of the other shareholders being excluded by section 20 (7) of the Act – the Hungarian State became the indirect majority shareholder of Takarékbank, and the State thus indirectly had a majority at the general assembly of Takarékbank. (In exceptional cases, listed in the Statutes, the affirmative vote of shareholders representing more than half of the series C preference shares is also required, but in such cases one shareholder has one vote. It means that there is a majority of the cooperative credit institutions.)

[186] The joint-stock company itself – as a company – is an independent legal person, i.e. a legal entity and not the object of ownership, therefore, in this respect, no infringement of property rights can be raised with regard to the provisions of the Act concerning Takarékbank (the capital increase). However, the share, unlike the joint-stock company itself, is an object of ownership, although it is a special object different from the classical objects of ownership: a negotiable security embodying membership rights, produced by printing or existing only in dematerialised form [section 177 (1) of the Act IV of 2006 on Companies; section 3:213 (1) of the new Civil Code]. The share must therefore always be considered in its entirety, together with the rights attached to it (voting rights, dividend rights, etc.). The member's ownership of

the contributions (monetary and non-monetary) provided by the member at the time of the company's formation is replaced by membership rights. Changes to membership rights can have a profound effect on the shareholder position even if they do not specifically affect the ownership of the share. {The European Court of Human Rights took a similar position in the case Sovtransavto Holding v. Ukraine [(48553/99), 25 July 2002], where the applicant, a Russian national, complained about losing his controlling position in a joint stock company as a result of repeated capital increases and his shareholding proportion was reduced from 49% to 20.7%. Since the shareholder's rights and opportunities to participate in the operation of the company and to manage its assets were thereby altered, the Court found that the shareholder's right to the peaceful enjoyment of his property had been infringed [paragraph 92]}

[187] In fact, even before the entry into force of the Act, the largest (ordinary) shareholding in Takarékbank was held by an entity owned by the Hungarian State – MFB. However, the shareholding of this company did not in itself guarantee a majority in the general assembly, while due to the capital increase implemented by the Act the organisations owned by the Hungarian State now do have such a collective majority. The capital increase implemented in Takarékbank by means of the Act therefore had a significant impact on the situation of the former ordinary shareholders as their rights concerning the operation of the joint-stock company were changed. In this context, it should be noted that, although the cooperative credit institutions had only a joint majority in the general assembly prior to the capital increase, they had already coordinated their activities as members of the Integration Agreement, which was abolished by the Act. [According to clause 3.4.3. b) of the Integration Agreement, the members shall exercise their shareholder rights at the general assembly of Takarékbank "uniformly, [...] representing a majority position in accordance with the ownership ratio".]

[188] It can also be noted that the acquisition of Magyar Posta's shares was made at par value, thus the ratio of subscribed capital to equity capital has undoubtedly decreased, which also adversely affects the position of ordinary shareholders and their membership rights (their right to dividends and, in the event of a possible distribution of equity capital, their share of it).

[189] According to the case-law of the Constitutional Court, the concept of property under constitutional law is not identical with the definition of property under civil law, but is broader than that, and "property is afforded constitutional protection in its capacity as the traditional means of securing an economic basis for the autonomy of individual action. The constitutional protection must follow the changing social role of property so as to be able to fulfil the same protective task. Thus, when the protection of individual autonomy is at stake, the constitutional protection of property extends to rights with an economic value which today perform this former role of ownership, as well as entitlements under public law (for instance, social insurance claims)." [Decision 64/1993. (XII. 22.) AB, 373, 380] The Decision 935/B/1997 AB also underlines that: "The scope of the protection of fundamental rights [...] would be excessively narrowed by the Constitutional Court, if it did not extend the application of Article 13 (1) of the Constitution to certain property law components of company membership. One of the main aims of the rules on the protection of minorities in company law [...] is precisely to ensure that the property interests of members who represent themselves with a smaller financial contribution are adequately protected against those who have a dominant economic position within the

company. The reasoning of the Constitutional Court's Decision 33/1993 (V. 28.) AB on the law on joint-stock companies also points in the direction of considering minority protection rules as ones that indirectly realise constitutional property protection: »The protection of the minority is a basic institution of company law, as one of the concrete manifestations in company law of the right to property and other property rights guaranteed by Article 13 (1) of the Constitution.« [Decision 33/1993. (V. 28.) AB, ABH 1993, 254]. The Constitutional Court found a similar result in connection with examining certain rules applicable to limited liability companies, when it deliberately speaks of the ownership of the share [Decision 1524/B/1992 AB, ABH 1995, 655], from which it clearly follows in the present case that in the case of a violation of the rights embodied in the share, ownership is always indirectly affected." (ABH 1998, 765, 769-770)

[190] On the basis of the above, the Constitutional Court considers that, although no expropriation has taken place (the ownership of the ordinary shares of the previous owners has been preserved), the rights of the members embodied in the share have been infringed. Membership rights of company law origin may be covered by constitutional property protection under certain conditions. In the Constitutional Court's view, the capital increase implemented by virtue of the law, excluding the shareholders' pre-emptive subscription rights, in view of the fact that the capital increase was carried out in order to enable the State to become – indirectly and temporarily – the majority owner of the company concerned, constituted an interference with and restriction of the petitioner ordinary shareholders' right to property. It should be stressed that the acquisition of majority ownership by means of legislation may only be carried out in compliance with the rules of constitutional property protection (property restriction), even if the acquisition of ownership was not carried out by expropriation (nationalisation). If the Constitutional Court were not to establish the existence of a restriction on ownership and not to examine its constitutionality, in view of the way in which the State acquired ownership – indirect way – (simply because the acquisition was not made by purchasing existing ordinary shares, but by means of a "statutory" capital increase), it would leave the persons concerned without protection against the clear interference of the State in their property rights.

[191] 3.2.3. The right to property is not an absolute, unlimited fundamental right under the Fundamental Law. As explained above, restrictions on the right to property may be constitutional in order to protect other fundamental rights or constitutional values, on the basis of the social responsibility (socially bound nature) of property, or in the public interest.

[192] The changes affecting the ownership structure of Takarékbank cannot be separated from the issue of the integration of the entire cooperative credit institution sector. The law-maker designates the CCIIO as the institution protection body of the integration, but at the same time it makes Takarékbank – by providing it with management powers – the central bank of the integration, as one of its top bodies.

[193] The Constitutional Court has already emphasized that the constitution is neutral in terms of economic policy, the law-maker enjoys a great deal of freedom in determining the economic policy of the State, and the competence of the Constitutional Court is very limited, indeed, "the law-maker has the constitutional right to determine, from the point of view of the national

economy, the types of activities over which it wishes to exercise not only general, indirect-regulatory, but also actual, direct, proprietary influence. It covers a narrow range of economic activities whose strategic importance is determined by their qualitative aspects." (Decision 1103/B/1990 AB, ABH 1993, 539, 541). The State – in this case, as a public authority in the field of economic governance and financial administration – has set the objective of strengthening the cooperative credit institution sector within the financial institutional system, ensuring its stability, viability and efficient and competitive operation. In the view of the Constitutional Court, the restriction on the right to property of ordinary shareholders is duly justified and counterbalanced.

[194] In this context, too, it should be emphasised, however, that the Constitutional Court's examination of the public interest asserted by an Act is not directed at the absolute necessity of the law-maker's choice, but must be limited to whether the invocation of public interest is justified [Decision 64/1993. (XII. 22.) AB, ABH 1993, 373, 381 to 382.], in addition to the fact that the reference cannot be purely formal, the public interest must be defined in such a way that the Constitutional Court can take a position on the question of the necessity of the restriction for reasons of public interest [Decision 50/2007 (VII. 10.) AB, ABH 2007, 984, 994] In the present case, the Constitutional Court held that the public interest cannot be considered as a purely formal reference: since Takarékbank is one of the governing bodies of the integration, it is acceptable for the State to acquire at least a temporary majority shareholding in the bank in order to ensure its coordinated operation.

[195] It should also be stressed, however, that the statutory acquisition of majority ownership, while not an expropriation, had a similar result. The indirect majority State ownership in Takarékbank put the former ordinary shareholders in a position similar to the one as if the State had decided on a "partial and temporary" expropriation of the bank. This is particularly true with account to the management powers over cooperative credit institutions, granted to Takarékbank by the Act. In Takarékbank, the combination of State majority ownership and the management rights of Takarékbank accounted to the owner's control over the entire cooperative credit institution sector. Bearing this in mind, the Constitutional Court held that, in addition to the necessity of such a specific restriction on property, its proportionality can only be verified if the restriction is accompanied by financial compensation for the owners (value guarantee).

[196] The acquisition of ownership by the State – indirectly, through Magyar Posta – and the resulting restriction of the rights of the existing ordinary shareholders did not only mean the acquisition of control rights, but also implemented the real, complex financial strengthening of the sector. The State provided capital to the sector in two ways: on the one hand, it provided the central bank of the integration with additional funds by increasing the capital of Takarékbank, and on the other hand, it provided a significant amount of money to the institution protection organisation of the integration, the CCIIO (according to the Act CCVI of 2013 amending the Act CCIV of 2012 on the Budget of Hungary for the year 2013, this amount is approximately HUF 136.5 billion). The latter amount is to be used to restructure, professionalise and reorganise the sector. It is not disbursed as State aid, but, pursuant to Article 20(1) of the Act, corresponds to the consideration for the rights acquired by MFB and

Magyar Posta in the CCIIO and, through CCIIO, in Takarékbank. The preamble of the Act also states that this is an amount that “would be an appropriate consideration for a market investor in a similar situation as the countervalue for the rights and position acquired by the Hungarian State in the sector”. Section 11 (5) of the Act is also significant in this context, according to which the assets of the CCIIO are to be included in the consolidated own funds of Takarékbank and the cooperative credit institution.

[197] Thus, the capital increase by the Act has adversely affected the shareholders' rights of Takarékbank shareholders, but at the same time, the fact that the capital increase and the State resources made available to the sector have made the operation of Takarékbank more stable and strengthened its position on the financial markets, which has a positive effect on the financial situation and the perception of the safe operation of cooperative credit institutions, provides compensation in this respect. The equity capital of Takarékbank is about HUF 15 billion, the contribution from the State is (1) HUF 654 million allocated to Takarékbank (for the acquisition of shares by Magyar Posta) and (2) HUF 135.5+1 billion provided to the CCIIO. In this regard, no disproportionality of the restriction can be established.

[198] In its decision, the Constitutional Court did not disregard the fact that the compensation was not received directly by the shareholders concerned (cooperative credit institutions): the amount made available by MFB was an increase in the assets of the CCIIO. It is therefore not a value guarantee in the traditional constitutional sense. At the same time, State interference – the restriction of property rights – cannot be defined in the usual terms either. In fact, there is no way to assess and directly compare the value of the disadvantages suffered by shareholders (affecting their membership rights) and the benefits gained (affecting the security of the sector). It was only possible to quantify the value of the State's ownership position acquired in the sector (according to the auditor, it is HUF 135.5 billion), but this is clearly not the same as the level of restriction suffered by former shareholders.

[199] On the basis of the above, the Constitutional Court considers that the restriction of ownership by means of capital increase and the acquisition of majority state shareholding cannot be found to be contrary to the Fundamental Law.

[200] The Constitutional Court stresses, however, that in view of the similar nature of interference with the right to property as expropriation, the guarantee of the constitutionality of the restriction of fundamental rights in the present case is that the restriction is compensated by appropriate benefits. Therefore, if the law-maker were to provide for a possible withdrawal of the assets provided through the MFB to the CCIIO, or if the EU were to impose such a withdrawal, another form of value guarantee would have to be provided.

[201] It should also be noted that the “transitory nature of a property restriction, as a component of proportionality, is already a genuine constitutional standard” [Decision 21/1994 (IV. 16.) AB, ABH 1994, 117, 120], and "[a restriction of property [...] is considered disproportionate by the Constitutional Court if its duration is not calculable.” [Decision 64/1993 (XII. 22.) AB] (ABH 1993, 373, 382). It is important to note that the preamble of the Act declared in line with this the transitory nature of the property restriction “Although the Hungarian State acquires an important ownership position in the sector, it will use this to restructure,

professionalise and reorganise the sector, and intends to sell its position in the sector, thus upgraded and strengthened, within a reasonable timeframe if it sees the positive processes it has set in motion as irreversible." Accordingly, it should be underlined that in the present case, the restriction of ownership by the State is not unconstitutional only as long as it is of a truly transitory nature, i.e. until the objectives set out in the preamble of the Act (restructuring, professionalisation and reorganisation of the sector) are achieved. Since "Government has reviewed the status of the restructuring of the cooperative credit institution sector and concluded that the restructuring is progressing as defined by the Government and that the positive changes are irreversible" [Government Decision 1954/2013 (XII. 17.)], it decided to sell its indirect stake. In so doing, it has complied with the constitutional requirement – mentioned above – that the restriction on property should be temporary.

[202] 3.3.3. Given that the Constitutional Court did not find that the rules on capital increase were unconstitutional, it also rejected the applications for a declaration that the ancillary provisions indispensable for its implementation [section 14 (1), section 20 (7), (10), (14)], were unconstitutional.

[203] 3.4. The Constitutional Court then examined section 1 (4) of the Act (financial risk-sharing in the integration of savings cooperatives) from the point of view of whether it constitutes a violation of the right to property.

[204] 3.4.1. According to the contested provision, the CCIIO, Takarékbank and the cooperative credit institutions are jointly and severally liable for their obligations from the date specified in the relevant provision. The detailed rules for this are set out in section 20/A (4) of the Act, which was introduced on 30 November 2013. In view of the close connection between the two provisions, the Constitutional Court extended its constitutionality review to this rule on the basis of Article 24 (4) of the Fundamental Law.

[205] Pursuant to section 20/A (4) of the Act, under the joint and several liability, in addition to the debtor, the entire amount may be claimed – in order of priority, from the Joint Fund for Capital Coverage of Cooperative Credit Institutions, the other cooperative credit institutions, the CCIIO and Takarékbank. As explained above, the law-maker, although providing for joint and several liability, does not use this concept in the traditional civil law sense, since according to civil law doctrine, joint and several liability means that the debt can be claimed from any of the persons jointly and severally liable, without keeping any order of priority. In essence, therefore, the law-maker has institutionalised an underlying liability scheme – a type of deficiency suretyship – with the Act. Furthermore, it is also clear from section 20/A (4) that the liability for debts only exists in relation to the cooperative credit institutions as debtors, i.e. the members of the integration are not liable for the debts of Takarékbank and the CCIIO. This follows from the fact that the law-maker refers to "other" cooperative credit institutions in the third place in the order, thus only a cooperative credit institution can be a "debtor" for the purposes of the rule.

[206] The Act regulates the integration of the cooperative credit institution sector, the purpose of the integration is to coordinate the operation of cooperative credit institutions in order to ensure the financially secure and predictable operation of the sector. Coordinated, integrated

and secure operation is the responsibility of the CCIIO, which is the legal successor of the former voluntary institution protection funds and to which cooperative credit institutions pay annual membership fees (and possibly also make extraordinary payments), and of Takarékbank – through its extensive management powers. In addition, financial security is provided by the Joint Fund for Capital Coverage of Cooperative Credit Institutions, which, according to section 17/M (1) of the Act, is intended to be the primary body for the enforcement of claims against the members of the cooperative integration on the basis of joint and several liability. The financial safety net provided by the Fund complements the safety net provided by OBA membership (i.e. it mainly serves the purpose of protecting deposits).

[207] Examining the system of integration established by the Act, it is clear that the law-maker intended to create a financial risk pool through the CCIIO (institution protection tasks), through Takarékbank and the Fund (deposit protection). This is supported not only by the wording of section 17/M (1), but also by the fact that the Fund is managed from the annual payments made by Takarékbank and the cooperative credit institutions, but if the amount to be paid under section 20/A (4) of the Act would exceed the Fund's balance, an extraordinary payment must be ordered. [section 17/P (1) and (5)].

[208] 3.4.2. From the above, one may conclude that the "joint and several" liability is in fact a rank-holding liability, and the fact that the entire debt can be claimed from any cooperative credit institution after the default of the debtor and the Fund, but before the CCIIO and Takarékbank, constitute a limitation of property right in their respect. This provision actually means that if, for whatever reason, the Fund fails to settle the claim in question after the debtor, and the conditions laid down in the Act are complied with, the claim in question becomes enforceable against any other cooperative credit institution. The joint and several liability scheme (in its special, rank-holding version as institutionalised by the Act) has an impact on the functioning of cooperative credit institutions. This is because they must always be prepared for the potential possibility of having to pay the debts of any other cooperative in the sector.

[209] With the creation of the Fund and the compulsory membership of cooperative credit institutions in it, taking into account the parallel OBA membership, the law-maker wanted to ensure the security of depositors and at the same time to strengthen confidence in the financial stability of the sector. The Constitutional Court does not consider the institutionalisation of the (joint and several) liability of cooperative credit institutions for each other's debts to be necessarily justified in the public interest of protecting the security of the financial sector, including the cooperative credit sector. However, in the regulatory context outlined above, and in particular with regard to the rules applicable to the Fund, in particular the possibility of ordering an extraordinary payment, the Constitutional Court considered that the necessity of the contested rules restricting the right to property was justified. The confidence of the customers of a given cooperative is strengthened by the existence of a Fund that complements the protection provided by the OBA and the institutionalisation of the underlying responsibility of the CCIIO. The institutionalisation of the cooperatives' liability for each other's debts provides an additional layer of security for depositors and also encourages responsible, prudent lending and safe operation of cooperatives. The cooperatives control each other's activities indirectly (as members of the CCIIO and shareholders of Takarékbank).

[210] The overall aim of the regulation under the Act is the distribution of financial burdens and risks, in order to ensure that the crisis situation of any cooperative shall not lead to the loss of customers' money. The regulation in question, however, partially results in a reverse situation: if the conditions laid down in the Act are met, any cooperative can be sued after the Fund for the debts of another cooperative. In addition, the order of litigation is mandatory, i.e. the creditor is obliged to sue the other cooperatives first, after the Fund, and cannot sue the institution protection organisation, the CCIIO, which is financed by the members' contributions and is several orders of magnitude more capitalised than its members. In view of the mandatory nature of the integration and the fact that the law-maker compensates the interference in the property rights with the assets allocated to the CCIIO, the current regulatory solution does not meet the requirements of constitutional property protection.

[211] It is not excluded that cooperatives may voluntarily assume liability for each other, or that the law-maker may establish an order of priority for the liability regime of the cooperative credit institution sector (ultimately allowing to sue cooperatives for each other's debts after exhausting other options). However, in the present regulatory environment – taking into account the mandatory nature of the integration and the other provisions of the Act restricting property – the provision explicitly binding cooperative credit institutions to pay each other's debts before the CCIIO constitutes an unnecessary restriction of the right to property, thus violating the Fundamental Law.

The Constitutional Court holds that the wordings "- in the following order", and "if the persons ranking first in the order have not stood up for the claim and their insolvency has been declared by a final court judgement" in section 20/A (4) of the Act are contrary to the Fundamental Law and therefore annuls them.

[213] The Constitutional Court took into account that although the due diligence of the cooperative credit institutions sector is still ongoing [section 19 (5), section 20/A (2)], several cooperatives have already become *de facto* members of the financial risk pool. Due to the financial operations already carried out in this regard, in order to protect legal certainty, the Constitutional Court decided – on the basis of section 45 (4) of the ACC – to annul the texts deemed to be contrary to the Fundamental Law with effect from 31 December 2014.

[214] 3.5. The petitioners consider the provisions of the Act on the succession of the former institution protection funds to be contrary to the Fundamental Law. [section 4 (1) to (2), section 5, section 6 (3) to (4), section 16].

[215] The petitioners allege a violation of their right to property due to the fact that the law-maker changed the content and scope of the right to dispose of the assets of the former institution protection funds – which operated as independent legal entities – by the Act: the assets were transferred to the ownership of the CCIIO and the general assembly of the organisation has discretionary power over them (the members have voting rights in proportion to their contribution to the assets, whereas previously the institution protection funds operated on the basis of the one member – one vote principle).

[216] Institution protection funds had legal personality under section 128 (1) of the Act on Credit Institutions. The assets of the funds resulted from the contributions of the members,

and even in the event of withdrawal, the members could not claim back the contributions paid [section 128 (2) of the Act on Credit Institutions]. Members could dispose of the assets of the funds by attending and voting at general assembly. Based on all the above, with regard to the membership of the institution protection funds, there is no distraction of property, since the Act merely provides that the contributions paid for institution protection – which have already become the property of the funds – will be managed in the future by another independent legal entity, a new institution protection organisation (the CCIIO). At the same time, it is also beyond doubt that with respect to the dissolution of the former institution protection funds and the transfer of their assets to the successor CCIIO – in the context of the restructuring of voting rights in proportion to contributions, i.e. the change of influence on the use of the assets – the potential infringement of the right to property may be examined.

[217] In this context, it should also be stressed that the asset movement complained about took place as a result of a fundamental restructuring of the cooperative credit sector. The law-maker considered that the integration of the stakeholders in the sector into a single organisation and their coordinated operation was essential to ensure the long-term stability and viability of the financial sector concerned. Given its role in the country's financial infrastructure, preserving the stability and viability of the cooperative credit institution sector is considered to be in the public interest.

[218] One of the central bodies of the integration is the CCIIO, which is responsible for institution protection and can only perform its duties under the Act with an appropriate financial coverage [joint and several liability, possible lending, capital increase, crisis prevention, crisis management, etc. (see the Statutes of the CCIIO in clause 11 of Annex 1 to the Act)]. The Act provides for the obligation to pay membership fees in order to secure the assets necessary for its operation, and at the same time provides for the dissolution of the former institution protection funds and their succession. As the CCIIO will also take over the functions of the former institution protection funds, it is not objectionable that the legislator provided for the transfer of the assets of the institution protection funds to the CCIIO in order to ensure integrated operation and to eliminate duplication. It should be stressed, on the one hand, that the CCIIO is functioning by taking over the tasks of the funds, thus that the assets acquired by succession serve the same purpose as before. Furthermore, the aim of the law-maker was to harmonise the operation of cooperative credit institutions in order to ensure the financially secure and predictable operation of the sector. Accordingly, the unification of the previously fragmented system of institution protection funds (while eliminating duplication) was a necessary condition for the creation of integration.

[219] On the basis of the examined regulation, one may conclude that the cooperative credit institution members will continue to have influence on the use of the assets through the exercise of their voting rights at the general assembly of the CCIIO (similar to the previous situation when they had voting rights at the general assemblies of the institution protection funds).

[220] Undoubtedly, the Act changed the extent and the nature of the influence of cooperative credit institutions on the use of assets accumulated for the purpose of institution protection. On the one hand, decision-making in OTIVA was previously based on the principle of one

member – one vote, whereas under the Act the voting rights are based on the proportion of their financial contribution. The influence of individual cooperative credit institutions on the use of the assets has thus changed. Furthermore, the assets of the CCIIO consist not only of the assets of the former institution protection funds, as the MFB (from State budget funds) provides the CCIIO with approximately HUF 136.5 billion. Since the voting rights at the general assembly of the CCIIO are adjusted to the extent of the contribution to the assets, it is obvious that the influence of the cooperative credit institutions in the use of the assets acquired from the former institution protection funds by succession is reduced – but at the same time they also have a say in the use of the HUF 136.5 billion that will be added to the system as additional resources.

[221] The change in decision-making rules is related to the right to property, but it does not, in itself, necessarily entail a violation of the right to property. The case under examination is similar to that of condominium decisions concerning common property, the details of which have been examined by the Constitutional Court on several occasions. It stated that "the rules of decision-making can only raise a constitutional question with due ground in extreme cases. A number of instruments, various decision-making ratios, etc., may be equally suitable for balancing in the regulation the different interests of the subjects of condominium property" (Decision 3/2006 (II. 8.) AB, ABH 2006, 65, 85), and "it cannot be deduced from Article 13 (1) of the Constitution [...] on the right to property [...] whether the consent of all co-owners is required for certain decisions concerning common property, [...] nor the minimum proportion of votes required for majority decision-making in case the Act allows majority decision-making" (ABH 2006, 65, 84).

[222] Consequently, the shift from the one member – one vote principle to the principle of proportionality of material contributions does not raise concerns about the right to property. No unconditional obligation to apply either of the decision-making mechanisms can be derived from the Fundamental Law. In the case under consideration, the right to vote adapted to the contribution of assets is an appropriate way of ensuring a balance between the interests of the CCIIO's members. This is with particular regard to the size of the state contribution made available to the sector through the CCIIO (and its value in relation to the assets of the former institution protection funds) and the fact that the CCIIO performs institution protection functions only for cooperative credit institutions and not for MFB. MFB – despite its voting rights – cannot therefore benefit from the HUF 136.5 billion paid in.

[223] On the basis of the above, the Constitutional Court did not find that the law at issue was contrary to the Fundamental Law, and dismissed the petitions in this respect.

[224] 3.6. Concerning section 12 (3) of the Act [according to which the shareholder rights in Takarékbank cannot be exercised on the basis of a Takarékbank share acquired in violation of paragraph (2) (definition of the scope of shareholders of Takarékbank)], the Constitutional Court held the following.

[225] In their joint reply to the request of the Constitutional Court, the Secretary of State in charge of the Prime Minister's Office and the Government Commissioner for Domestic and Cooperative Financial Services explained that the contested provision does not affect the rights

of shareholders acquired before the entry into force of the Act, the restriction only constitutes a limitation on the acquisition of shares after the entry into force of the Act. Subsequently, the law-maker inserted a new paragraph (4) into section 12 of the Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions, the second sentence of which ["Section 12 (2) shall not restrict the persons who legally own the shares of Takarékbank Zrt. at the time of the entry into force of the Act in exercising their ownership rights."] confirmed the aforementioned interpretation of the law. On this basis, the Constitutional Court found the petitions to be unfounded in this respect and rejected them.

[226] 3.7. The petitioners consider section 13 (3) to (4), section 19 (6) and section 20 (3) to (6), as well as the part of paragraphs (9) to (10) referring to section 19 (6) as well as section 20 (11) of the Act to be expropriation, as in their opinion these provisions, in conjunction with other provisions of the Act, will lead to the loss of their existing series B preference shares in Takarékbank [they were transferred to MFB following the application of section 20 (11) of the Act, which has since been repealed].

[227] First of all, it should be noted that section 20 (3) to (6) and (11) of the Act have been repealed by the law-maker in the meantime with section 15 (d) of the Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions, with effect from 30 November 2013. The Constitutional Court shall examine the conflict of an annulled law with the Fundamental Law only exceptionally, if the law should still be applied in a specific case [section 41 (3) of the ACC]. At the same time, the Constitutional Court also stated that "A constitutional complaint under section 26 (2) of the ACC is a special type of procedure replacing the abstract ex post review of norms, which presupposes personal involvement. Thus, the complaint is based on the application or effectuation of the law, but without any specific (judicial) proceedings having been/are being conducted. The Constitutional Court points out that if a provision of the law has been applied (entered into force) and the complainant claims that this has caused a fundamental rights violation, the investigation may be conducted – in the case of a request received within the deadline – even if the law-maker has amended – or even repealed – the challenged law (provision of the law) in the meantime, but has not eliminated the alleged fundamental rights violation." {Decision 3208/2013. (XI. 18.) AB, Reasoning [42]} On this basis, it is in principle not excluded to review the already repealed provisions of the Act. The contested provisions were undoubtedly repealed because they were implemented, since the relevant part of the process regulated by the Act was completed: all series B preference shares of Takarékbank were first transferred to MFB and then to a limited liability company (the ownership structure of Takarékbank is available at www.takarekbank.hu). The annulment does not justify the termination of the proceedings, because if the constitutional review finds that the challenged regulation has caused a violation of fundamental rights in relation to property rights, the Constitutional Court cannot leave the persons concerned without legal protection.

[228] The regulation classifies the persons concerned into two groups: (a) one group consists of cooperative credit institutions, in respect of which the law-maker has provided for a "right of sale" [section 20(11)], (b) the other group consists of those preference shareholders who, under section 12 (2) of the Act, could not become shareholders of Takarékbank, in respect of

whose preference shares the Law granted MFB a right of purchase combined with a prohibition on alienation [section 20 (9) to (10)].

[229] The institutionalised right of sale in relation to the first group (the purchase-obligor of which was MFB) was only formally considered a right, in fact [Cf. section 17 (1) on the withdrawal of the operating licence] it was clearly an obligation for the shareholders: according to the Act, a cooperative credit institution may only operate as a member of the integration in such a way that it is obliged to hold one preference share of series C and may not hold any other type of preference share in Takarékbank. The statutory obligation to sell the object of the property is the same, in the present regulatory context, as the purchase option, since the law-maker has regulated the sale in both cases without taking into account the owner's intention. "Purchase option is different in nature from expropriation regulated in Article 13 (2) of the Constitution. According to Decisions 16/1991 (IV. 20.) AB and 28/1991 (VI. 3.) AB, purchase option – whether based on contract or law – is not a deprivation of property, but a burdening, i.e. a restriction of the right to property. Here the change in ownership, depends on whether or not the holder of the purchasing right exercises this right. The statutory creation of a purchase option is a very serious encumbrance on the property of the debtor, since if the holder exercises the purchase option, the property is transferred to it. Ownership is therefore not lost by the debtor by operation of the law (as in the case of statutory expropriation), but there is no judicial review of the unilateral act of the holder of the right to transfer ownership, comparable to that of an individual expropriation by administrative decision (also based on law). The lawfulness of the exercise of the purchase option cannot therefore be challenged in court, and only the application of the principle of a significant change of circumstances can provide relief to the owner in exceptional cases. The lack of a judicial way to protect property can be remedied by the Constitutional Court's examination of the legal basis of the purchase option; [...]" [Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 379]

[230] The question to be examined is therefore whether the public interest of the restriction in question can be established. As explained above, the law-maker considers that ensuring the coordinated and integrated operation of cooperative credit institutions is essential for the long-term, stable operation of the sector, which is considered to be in the public interest given the sector's role in the country's financial infrastructure. Takarékbank is the sector's central bank, which exercises significant control and management rights over cooperative credit institutions, thus facilitating their integrated operation. Accordingly, all cooperatives involved in the integration process should be connected to the system and have voting rights in the decisions of Takarékbank, and the entities not related to the integration process should not have preferential voting rights in Takarékbank This was to be achieved by issuing new preference shares. The Act establishes the same powers for Takarékbank with regard to the operation of all cooperatives, and in line with this, it also regulates their preferential voting rights in the same way: all cooperatives received the same number of shares of the new series of preference shares (unlike the previous situation, when not all cooperative credit institutions had a preference share in Takarékbank). On the basis of the above, the public interest of the property restriction can be established.

[231] In the scope of examining the proportionality of the restriction, the Constitutional Court assessed the following aspects.

[232] “Purchase option is in itself a heavy burden” [Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 387], similarly to the obligation to sell as regulated by the Act. If the burden is imposed on the property for too long, possibly for an uncertain period, the proportionality of the restriction may be questioned [Cf. Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 387]. Such a concern does not arise in the present case, as the law-maker has set the exercise period for purchase option at one year and for the right to sell at 60 days from the date of deposit.

[233] “Since the purchase option, if exercised, leads to the loss of property, proportionality between the public interest and the intervention with the right to property demands compensation. Purchase option may only be constitutional if accompanied by the enforcement of a value guarantee. [Decision 64/1993 (XII. 22.) AB, ABH 1993, 373, 387]. In the case in question, the law-maker also provided for a consideration: according to paragraphs (1), (10) and (11) of section 20 of the Act, the shares were to be sold at a market price, the arithmetic mean of the sum of the valuations of two independent auditors, and the purchase price was to be paid within 90 days of the date of the sale/purchase declaration. The law-maker has therefore acted in accordance with the requirement of a value guarantee, and there has been no reduction in the assets of the shareholders.

[234] On this basis, the proportionality of the property restriction can also be established.

[235] On the basis of the above, the Constitutional Court rejected the petitions challenging section 13 (3) to (4), section 19 (6) and section 20 (10) of the Act, as well as the petitions seeking a declaration that section 20 (3) to (6) and (11) of the Act, which was in force from 13 July to 29 November 2013, were in conflict with the Fundamental Law.

[236] 3.8. The petitioners also challenged section 20 (9) of the Act, considering the prohibition on the disposal of shares regulated therein to be a restriction on property contrary to the Fundamental Law. Section 20 (9) provides for a temporary (365 days from the entry into force of the Act) prohibition of alienation of Takarékbank (ordinary and preference) shares held by the cooperative credit institutions (except for share transfer agreements concluded before the entry into force of the Act and for sales to MFB).

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[237] The contested regulation does not prevent the disposal of the share as an object of ownership, only restricts contractual freedom, which is not a fundamental right: if the shareholder decides to sell the share, it is not free to choose the contracting partner (for 365 days after the entry into force of the Act, it can only contract with MFB). On the basis of the above, no infringement of the right to property can be established in relation to the law at issue, and the Constitutional Court therefore rejected the applications.

[238] 3.9. In the Constitutional Court's view, the petitioners have not justified, in relation to certain provisions [section 1 (5), section 14 (2), (3) to (4) of the Act], in a manner suitable for a substantive assessment and have not substantiated with constitutional arguments the connection with the right to property as a fundamental right and the alleged violation of the

fundamental right. Therefore, the motions – since they do not contain an explicit request according to section 52 (1b) of the ACC – do not comply with section 64 (d) of the ACC. Therefore, the Constitutional Court has refused these elements of the petition.

[239] In connection with the challenged section 19 (11) of the Act (provisions concerning credit institutions with pending applications for licence), the Constitutional Court points out that there are no credit institutions with pending applications for licence among the petitioners, therefore the petitioners are not affected by the challenged provision. Therefore, the Constitutional Court refused the relevant elements of the petition on the basis of section 64 (d) of the ACC.

[240] In conclusion, the Constitutional Court held that there is no constitutional connection between section 1 (1) (o) and (p), section 15 (12) and section 19 (11) of the Act and the right to property, and therefore rejected the petitions in this respect.

[241] 4. The prohibition of discrimination

[242] The Constitutional Court examined whether the petitions of the petitioners challenging – on the ground of violation of the prohibition of discrimination (Article XV of the Fundamental Law) – section 1 (1) (t) of the Act [and, in connection therewith, items (e) and (q) referred to in item (t)], section 12 (3), section 14 (4), section 18 (6), section 20 (2) and (11) in conjunction with each other, and section 20 (9) are well-founded.

[243] 4.1. According to the case-law of the Constitutional Court, the requirement of equality of rights means that the law must treat everyone equally, i.e. when legislating, the law-maker must assess the aspects of each person with equal care, impartiality and fairness, taking into account the individual aspects to the same extent. [Cf. Decision 9/1990 (IV. 25.) AB, ABH 1990, 46, 48] In the case-law of the Constitutional Court, the prohibition of impermissible discrimination also applies to legal persons [e.g. Decision 63/2008 (IV. 30.) AB on the support of the foundations of political parties], this case-law is confirmed by the wording of Article XV (1) and (2) of the Fundamental Law, which explicitly applies the general rule of equal rights to "everyone", and guarantees fundamental rights to "everyone" without discrimination.

[244] In the case-law of the Constitutional Court, the prohibition of discrimination has been interpreted as a constitutional principle permeating the entire legal system. The prohibition mainly applies to discrimination in the field of fundamental constitutional rights. An unconstitutional negative discrimination between persons can only be established if a person or a group of people are discriminated against in comparison with other persons or a group in the same position. [Decision 21/1990 (X. 4.) AB, ABH 1990, 73, 78; Decision 32/1991 (VI. 6.) AB, ABH 1991, 146, 162; Decision 43/B/1992 AB, ABH 1994, 744, 745] The discrimination shall only be considered unconstitutional if the regulation differentiates, without a constitutional reason, between the subjects of law who belong to the same group in terms of the regulation (i.e. they are comparable). (Decision 191/B/1992 AB, ABH 1992, 592, 593). The Constitutional Court also pointed out that the unconstitutionality of discrimination between persons or any other restriction concerning their rights other than fundamental ones may only be established if the injury is related to any fundamental right, and finally, to human dignity, and there is no reasonable ground for the distinction or the restriction, i.e. it is arbitrary [Decision 35/1994

(VI. 24.) AB, ABH 1994, 197, 200] {See most recently in summary: Decision 14/2014. (V. 13.) AB, Reasoning [32]}. Finally, it should also be noted that, in exceptional cases, an unconstitutional situation may arise by grouping despite different criteria: "if the State establishes an identity between different situations – by ignoring the essential differences between them – in a way that results in unequal treatment, it results in prohibited discrimination between persons and is therefore unconstitutional" [Decision 1/1995 (II. 8.) AB, ABH 1995, 31, 56]

[245] In its Decision 42/2012 (XII.20.) AB, the Constitutional Court stated that the "provisions of the Fundamental Law and the provisions of the Constitution in force before 1 January 2012 maintain unchanged the requirement of equality [...] – or as the Constitutional Court often called it: the requirement of the equality of rights – and the prohibition of discrimination. Therefore, the Constitutional Court considered its previous case-law on the general rule of equality – according to the [...] Decision 22/2012 (V. 11.) – [...] as having guiding force" {Reasoning [27]}.

[246] 4.2. The petitioners consider that the law-maker has arbitrarily and without reasonable justification been selective as to which financial institutions it has extended the mandatory integration implemented by the Act [section 1 (1) (t) in conjunction with items (e) and (q)]. For example, the integration obligation does not apply to cooperative credit institutions that have not yet been transformed but are in the process of applying for such conversion. At the same time, however, the scope of the Act extends to credit institutions that have already been transformed into banks and have only a connection with the sector in that they have decided to remain members of a voluntary savings cooperative protection fund, given their cooperative past. However, the law-maker's discretion is not consistent in this respect either, as it only requires the participation in the integration of banks that are members of OTIVA, REPIVA or TAKIVA, while the obligation of integration does not apply to the bank(s) that is/are member(s) of the fourth existing cooperative institutional protection fund, the HBA. Accordingly, the petitioners allege the discriminatory and arbitrary nature of the law-maker's group-forming and regulation in several respects.

[247] According to the preamble of the Act, the law-maker's aim is "to restructure the savings cooperative sector, as it is undercapitalised, its organisation and level of services are inadequate and it is feared that it will not be viable in the long term in its current form", and the preamble also includes a reference (following an amendment which entered into force on 30 November 2013) to the fact that the law-maker intends to extend the integration to those credit institutions which no longer operate in a cooperative form but which have not lost their (sectoral) link with the savings cooperatives as they are still members of the institution protection fund.

[248] The law-maker distinguishes two groups in the definition of the personal scope of the Act [see section 1 (1) (e), (q) and (t) of the Act] with regard to participation in the integration: (1) the group of integrated credit institutions (cooperative credit institutions and credit institutions that are members of OTIVA, REPIVA or TAKIVA but do not operate in cooperative form), and (2) non-integrated credit institutions (credit institutions that were in the process of converting from cooperative to non-cooperative form at the time of the entry into force of the Act and credit institutions that are members of HBA but do not operate in cooperative form).

[249] The criteria of group formation are difficult to grasp from an objective point of view: operating in the form of a cooperative is not necessarily a criterion of integration, since it also extends to individual credit institutions (banks) operating in a non-cooperative form. Neither is being a cooperative in the present or in the past an exclusive criterion of the classification, as the mandatory integration does not apply to cooperative credit institutions that are still in the process of transformation, but does apply to those that have completed their conversion before 1 January 2013. Finally, membership of a cooperative institution protection fund is not a clear grouping factor either, as only membership of OTIVA, REPIVA or TAKIVA leads to integration membership for banks, HBA membership does not.

[250] However, this does not in itself constitute a breach of the Fundamental Law. The definition of the personal scope of laws – as a type of group-forming by the law-maker – is closely related to the question of the necessity and expediency of laws, the examination of which is beyond the scope of the criteria that can be considered and examined by the Constitutional Court.

[251] In the present case, the Constitutional Court had to examine whether the law-maker's classification was done in a way that did not comply with the discrimination test explained above.

[252] In the Constitutional Court's view, the legal entities concerned by the regulation are in a comparable situation on the basis of a specific criterion: in relation to the credit institutions in question – taking into account the legislative objective formulated in the preamble of the Act, which is also present throughout the legislation – their link to the sector is the essential and determining element of group-forming. In fact, the law-maker cited the low level of capitalisation and the inadequate level of organisation and services in the savings cooperative sector as the reason for the restructuring of the sector.

[253] The basic objective of the law-maker, as set out in the Act, is the integration of the cooperative credit institution sector, which, of course, essentially and primarily concerns credit institutions operating in the form of cooperatives. However, the law-maker is free, on the basis of necessity, expediency, economic and financial policy considerations, to further expand or possibly narrow the range of subjects covered by the regulation (e.g. for reasons of closer links with the cooperative credit institution sector). The principle of non-discrimination does not preclude the law-maker from defining the personal scope of an Act by applying a combination of several criteria in a given regulatory concept.

[254] The law-maker extends integration to credit institutions that have already been transformed into banks at any time before the entry into force of the Act, but not to credit institutions that are in the process of applying for a conversion licence. These two groups are in a comparable situation (their link to the cooperative credit institution sector is clear through their previous cooperative form of operation, but their operating rules have fundamentally changed/are changing with their transformation into banks), but the difference between them is not simply the time of transformation from cooperative to non-cooperative form of operation.

[255] When examining the reasonableness of this distinction, one cannot ignore the fact that the cooperatives that had already been transformed into banks maintained their voluntary

membership in the cooperative institutional protection fund, so that despite the change in their form of operation, their strong attachment to the cooperative credit institution sector remained by their own choice. Membership of the fund provided them with a special financial safety net, but under the Act, these funds ceased to exist. Their legal successor is the CCIIO, thus it makes sense for this organisation to protect all credit institutions that were previously members of one of the voluntary funds. Accordingly, it was necessary to extend the integration to credit institutions that had already become banks, by giving them the possibility to opt out of the integration if they decide so (an option that one of the banks concerned has in the meantime taken up).

[256] In the case of credit institutions with a "pending application for a licence" at the time of the entry into force of the Act (i.e. credit institutions in the process of transforming from a cooperative into a bank), the link to the sector is still in place, but it is uncertain and it depends on the decision of the parties concerned. Section 1 (1) (t) of the Act makes an exception for credit institutions operating as cooperatives at the time of the entry into force of the Act, which meet the three conjunctive conditions under section 1 (1) (e) of the Act: (1) the savings cooperative has submitted an application for conversion to the Supervisory Authority by the date of adoption of the Act, (2) the conversion has taken place on the basis of the Supervisory Authority's approval by 31 December 2013, (3) the credit institution ceases to be a member of the voluntary institution protection fund (or its successor, the CCIIO) within 100 days of the entry into force of the Act. These credit institutions will therefore not be covered by the integration if they voluntarily cease to be members of the institution protection fund. In this respect, they differ from those credit institutions which, after becoming banks, did not wish to terminate their membership of one of the voluntary institution protection funds and thus, by their own choice, continued to operate as part of the cooperative credit sector.

[257] Accordingly, the different treatment of the two groups (cooperative credit institutions that have already been established as banks and the one that are in the process of applying for a licence) is based on economic-financial terms and reasonable grounds in this regulatory concept, and is therefore not discriminatory and contrary to the Fundamental Law.

[258] The Constitutional Court also examined whether the regulatory solution, according to which the law-maker integrated the members of OTIVA, REPIVA and TAKIVA – irrespective of their form of operation – by reference to their "cooperative link", the link to the cooperative credit institution sector, constituted discrimination contrary to the Fundamental Law, whereas the HBA membership did not create an integration obligation for the members of non-cooperative credit institutions. The HBA (as the fourth voluntary institution protection fund) had only one member-bank, which differed from the banks that were subject to compulsory integration because of their OTIVA membership, as this bank has never been a cooperative, but was established as a bank. In addition, this bank has essentially acted as the "central bank" for HBA member credit unions from the outset. In the view of the Constitutional Court, this fact constitutes a decisive difference compared to the other banks involved in the integration, but without a similar specific function. The integration can have only one body performing central banking functions, which, according to the Act, is Takarékbank. The different treatment of

integrated banks and non-integrated HBA member banks is therefore based on reasonable grounds, it is not arbitrary.

[259] On the basis of the above, the Constitutional Court rejected the petition for declaring that section 11 (1) (e), (q) and (t) of the Act are contrary to the Fundamental Law.

[260] 4.3. The Constitutional Court examined section 12 (3) of the Law, according to which shareholder rights cannot be exercised on the basis of a Takarékbank share acquired in violation of paragraph (2). According to the petitioners, this provision discriminates between shareholders in an unconstitutional manner. As mentioned above, the law-maker inserted a new paragraph (4) into section 12 of the Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions, the second sentence of which ["Section 12 (2) shall not restrict the persons who legally own the shares of Takarékbank Zrt. at the time of the entry into force of the Act in exercising their ownership rights."] confirmed the aforementioned interpretation of the law that the contested provision does not affect the rights of shareholders acquired before the entry into force of the Act. The Constitutional Court therefore found the petitions to be unfounded as regards discrimination and rejected them.

[261] 4.4. The petitioners also consider section 14 (4) of the Act to be discriminatory, since it only provides – in the cases listed therein – for the suspension of the exercise of the cooperative credit institutions' Takarékbank shareholder rights. However, this sanction does not apply to MFB and Magyar Posta, which also hold shares in Takarékbank.

[262] The contested regulation distinguishes between the shareholders of Takarékbank. In the context of the challenged provision, the Constitutional Court had to examine, first of all, whether the law-maker's group-forming was done in a way that fails at the discrimination test. This is because "it is not inadmissible discrimination if the legislation lays down different provisions for different categories of persons. [...] the discrimination is only considered unconstitutional if the regulation differentiates, without a constitutional reason, between the subjects of law who belong to the same group in terms of the regulation (i.e. they are comparable) {See most recently: Decision 14/2014. (V. 13.) AB, Reasoning [41]}. In the Constitutional Court's view, the legal entities concerned are in a comparable position as shareholders and form a homogeneous group.

[263] For the assessment of the constitutionality of the distinction, it is therefore of decisive importance – since it is not a distinction based on fundamental rights – whether the regulation is arbitrary or has a reasonable justification.

[264] The Constitutional Court reviewed the contested regulation and found that the suspension of shareholder rights may take place in cases which, according to the rules of the Act, can only affect cooperative credit institutions [e.g. since under section 15 (3) of the Act, Takarékbank may only give instructions to cooperative credit institutions, accordingly, the consequences of non-compliance with the instruction can only affect them, and the suspension of membership of the CCIIO – or their exclusion – is only relevant for cooperative credit institutions, since the Act only allows for the suspension of their membership – their exclusion – etc.].

[265] As regards cooperative credit institutions, Takarékbank performs central banking functions and exercises management rights. In addition to the central bank's powers of control and instruction, sanctions may be necessary to encourage members to comply with their obligations. On the other hand, it is reasonable that the cooperative credit institution against which Takarékbank may take action for non-compliance with an obligation should not be able to exercise influence as a shareholder on the operation of Takarékbank. The exclusion of the exercise of shareholders' and other rights serves this reasonable purpose. In contrast with the foregoing, Magyar Posta and MFB are not part of the cooperative credit institution sector, and neither the CCIIO nor Takarékbank possess management rights over them.

[266] Consequently, from a constitutional point of view, the distinction made by section 14 (4) between integrated cooperative credit institutions and Magyar Posta and MFB is reasonable and therefore not objectionable.

[267] It should be noted, however, that section 14 (4) also mentions as an exception the "potential successors" of Magyar Posta and MFB. This provision is considered by the Constitutional Court to be a matter of concern in the regulatory context under examination. In the absence of competence, the Constitutional Court may not review the State's decision on the possible sale of the package of shares owned by Magyar Posta and MFB. At the same time, it should be noted that the Takarékbank shares of Magyar Posta and MFB may be transferred by way of succession to a person (e.g. an actor of the cooperative credit institution sector), in which case the arguments outlined above do not hold: the distinction applied by the Act to the predecessor in law, which may be considered reasonable, may not necessarily apply to the successor in law. By defining the successors of Magyar Posta and MFB as a general exception, the law-maker has extended the exception under section 14 (4) to a future, uncertain group of persons, which does not satisfy the requirement of reasonableness.

[268] On the basis of the above, the Constitutional Court rejected the petition for the annulment of the entire section 14 (4), while annulling the wording "or their potential successors" in the first sentence of paragraph (4).

[269] 4.5. Subsequently, the constitutionality of section 18 (6) of the Act ["Until 1 January 2016, the applicability of the concept of poor lending indicator as defined in section 1 (1) (f) may be established if the share of non-performing loans (overdue by more than 90 days) in the total loan portfolio exceeds 12 %"] was examined.

[270] In the opinion of the petitioners, this provision is discriminatory because the Act expects a better level of operation from cooperative credit institutions than the average operation of the banking system. It may be noted, however, that there are no similar provisions in the legislation relating to the operation of other credit institutions, and therefore, contrary to the petitioners' argument, it cannot be established, in the absence of a point of reference, whether the contested law relating to cooperative credit institutions is prejudicial to them. Furthermore, integrated cooperatives are not in a comparable position with other financial undertakings under the new Act on Credit Institutions, in particular because of the financial risk-sharing regulated in the Act. This is yet another reason why no discrimination can be established in the

case. The Constitutional Court, therefore, rejected the petitions aimed at establishing that section 18 (6) of the Act is in conflict with the Fundamental Law and at its annulment.

[271] 4.6. The petitioners consider as discriminatory the provisions which, in violation of section 13 (4) of the Act, allow MFB to hold two types of preferential voting shares in Takarékbank, by discriminating between shareholders [section 20 (2) and (11) of the Act].

[272] On the basis of the provisions of the Act and the current Statutes of Takarékbank, it is a fact that the series B preference shares – in accordance with the provisions of the Act – have been taken over, without exception, by MFB (section 20 (10) and (11) of the Act; section 8 (4) of the Statutes of Takarékbank). Furthermore, it is also a fact that the Act provides for the issue of more series C shares than the number of operating cooperative credit institutions, and obliges MFB to take over the shares not taken over by them [section 20 (2) of the Act]. Thus, the Act allowed MFB to have, unlike other shareholders, two types of preference shares in Takarékbank.

[273] The challenged section 20 (11) of the Act have been repealed by the law-maker with section 15 (d) of the Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions, with effect from 30 November 2013. The Constitutional Court shall examine the conflict of an annulled law with the Fundamental Law only exceptionally, if the law should still be applied in a specific case [section 41 (3) of the ACC]. At the same time, the Constitutional Court also stated that "A constitutional complaint under section 26 (2) of the ACC is a special type of procedure replacing the abstract ex post review of norms, which presupposes personal involvement. Thus, the complaint is based on the application or effectuation of the law, but without any specific (judicial) proceedings having been/are being conducted. The Constitutional Court points out that if a provision of the law has been applied (entered into force) and the complainant claims that this has caused a fundamental rights violation, the investigation may be conducted – in the case of a request received within the deadline – even if the law-maker has amended – or even repealed – the challenged law (provision of the law) in the meantime, but has not eliminated the alleged fundamental rights violation." {Decision 3208/2013. (XI. 18.) AB, Reasoning [42]} On this basis, it is in principle not excluded to review the already repealed section 20 (11) of the Act. The question to be examined in the present case was whether the annulment of the contested provision had terminated the breach of fundamental rights alleged by the petitioners.

[274] The reason for the repeal of the contested provisions was that the relevant provision had been fulfilled, since the relevant part of the process regulated by the Act had been completed and, as a consequence, all the series B preference shares of Takarékbank had been transferred to MFB. Indirectly, however, the annulment also eliminated the violation of fundamental rights alleged by the petitioners, as the annulment of the challenged provisions meant that the main rule of the Act – section 13 (4) – could now be enforced unconditionally without exception: this provision clearly and expressly excludes any shareholder from holding more than one type of preference share, thus the general assembly of Takarékbank had to set the conditions for operation in accordance with the Act. (Though it is of no significance from the point of view of the constitutionality of the legislation, it should be noted that this has taken place: according

to the Statutes of Takarékbank adopted on 28 March 2014, MFB does not hold any series B preference shares.)

[275] Based on the above, the Constitutional Court rejected the petitions related to section 20 (2) of the Act and terminated the proceedings with regard to paragraph (11).

[276] 4.7. According to the petitioners, section 20 (9) of the Act is discriminatory because it precludes cooperative credit institutions from disposing of their Takarékbank shares (except for share transfer agreements concluded earlier and disposals to MFB) within 365 days of the entry into force of the Act, while the law-maker does not impose a similar prohibition on MFB and Magyar Posta that also possess shares.

[277] Undoubtedly, the restriction on the disposal of shares regulated by section 20 (9) of the Act makes a distinction between the shareholders of Takarékbank.

[278] In the Constitutional Court's view, the legal entities concerned are in a comparable position as shareholders and form a homogeneous group. In order to assess the constitutionality of the distinction, it is therefore necessary to examine whether – since the distinction does not concern a fundamental right – the regulation is based on reasonable grounds.

[279] The Act aims to achieve the full integration of the cooperative credit institution sector, and accordingly credit institutions may only operate in the form of cooperatives as members of the integration. Integration is achieved by unified operation realised through the Act’s rules and the exercise of the management rights of the CCIIO and Takarékbank. Accordingly, until their exclusion or exit, cooperative credit institutions shall continue their activities not only as members of the CCIIO, as a mandatory institution protection organisation, but also as shareholders of Takarékbank as a company.

[280] The role of MFB and Magyar Posta in this system is fundamentally different from that of the cooperative credit institutions. These joint-stock companies are not part of the cooperative credit institution sector, the CCIIO does not perform any institution protection functions in relation to them (Magyar Posta is not even a member of the CCIIO), and Takarékbank does not exercise any management rights with respect to them.

[281] In their joint reply to the request of the Constitutional Court, the Secretary of State in charge of the Prime Minister's Office and the Government Commissioner for Domestic and Cooperative Financial Services pointed out that the reason for the discrimination, i.e. the purpose of the challenged provision, is “to ensure that sufficient time is available for the establishment of an integrated framework for the sector and the realisation of the conditions for stable operation. The law-maker intended to prevent a situation where the shareholders of Takarékbank, fearing the reform measures, would sell their Takarékbank shares to speculators at below fair value before the new integration framework is established”.

[282] The Constitutional Court considers that the prevention of speculation during the transitional period can be considered a legitimate legislative objective. Unlike in the case of cooperative credit institutions, for State-owned shareholders such as MFB and Magyar Posta,

speculation can be prevented by means of ownership, thus there is no need for a moratorium on sales.

[283] Finally, Takarékbank plays a decisive role in the management of the integration (it performs central banking functions), which may also justify the limitation of the scope of the bank's shareholders [the examined section 20 (9) is only one – temporary – instrument of this, the fundamental limitation can be found in section 12 (2) of the Act].

[284] The distinction between the shareholders is based on reasonable grounds, therefore the Constitutional Court rejected the petitions concerning section 20 (9) of the Act.

[285] 5. The right to enterprise

[286] The petitioners allege a violation of the right to enterprise [Article XII (1) of the Fundamental Law and, in this context, Article M (1)] in connection with several provisions of the Act. [section 3 (1), section 4 (1), section 11 (1), section 13 (2), section 14 (3), section 15 (2), (3), (4), (7), (9), (10), (11), (12), (16), (19), section 15/A (1), (3) to (9), section 15/C, section 17 (1), section 17/C (1), (2), (4), (5), section 17/D (2), section 17/H (2) and (4), section 17/J (2), section 17/K (1) and (11), section 17/Q (3) to (4), section 18 (7), section 19 (2), (3), (5)]. They saw the violation of their fundamental right in the change of the conditions of the activity of cooperative credit institutions and in the fact that the rules in question restrict the autonomy of the credit institutions concerned in taking decisions of an economic nature.

[287] Given the fact that sections 17/D and 19 (3) of the Act were annulled by the Constitutional Court on the grounds of infringement of the right to property, the application based on the right to enterprise was no longer subject to adjudication in relation to these provisions.

[288] It should be noted that the petitioners primarily challenge the establishment of the integration itself, and they contest the challenged provisions of the law in relation to each other, because of their combined effect on the whole, and their reasoning is structured in this way. Therefore, the actual object of the constitutional review in this context, too, is section 3(1) of the Act, and the Constitutional Court assessed the other challenged provisions in their entirety, on the basis of their relationship to integration.

[289] According to the case-law of the Constitutional Court, the right to enterprise is a fundamental right, which means that anyone shall have the right, granted in the Fundamental Law, to run an enterprise, i.e. to be engaged in a business activity. However, the right to enterprise shall mean providing an opportunity to enter into a system of legal and economic conditions created by the State for the enterprises, in other words, granting the possibility of becoming an entrepreneur that may be, in certain cases, bound by or limited to conditions motivated on professional grounds. Therefore, the right to enterprise is not an absolute one and it may be subject to restrictions: no one has a subjective right to exercise an entrepreneurial activity connected to a specific occupation, nor to exercise it in a particular legal form of enterprise. The right to enterprise means only – but this much is set as a constitutional requirement – that the State should not prevent or make impossible becoming an entrepreneur {Cf. Decision 54/1993. (X. 13.) AB, ABH 1993, 340, 341 to 342.; reinforced in Decision 3062/2012. (VII. 26.) AB, Reasoning [154]}.

[290] Undoubtedly, compared to the previous regulation, the exercise (continuation) of the activity of a cooperative credit institution is subject to additional conditions, namely the establishment/maintenance of membership in the CCIIO, and membership presupposes compliance with the conditions set out in the Act. However, this does not mean a restriction of the fundamental right to enterprise. The challenged legislation does not render the activity under examination impossible {see Decision 26/2013 (X. 4.) AB on examining the regulation on the operation of slot machines, Reasoning [177]}, and the activity of a credit institution may still be started or continued under the conditions set out in the relevant laws. Neither do the contested provisions of the law preclude the continuation of the activities of credit institutions in the form of cooperatives. Nor does it follow from the right to enterprise that the legal conditions of an activity carried out in a specific legal form are immutable.

[291] According to the case-law of the Constitutional Court, "the economic and organisational autonomy of the non-natural person entities of the economy (including cooperatives) is based on the constitutional requirement that the economy of the country is a market economy, i.e. not a planned economy, meaning that there is no system of economic management and organisation which covers all economic and entrepreneurial activities and is centrally controlled by the State. This requirement is deductible from the clause on declaring market economy, in particular with regard to what was said in the reasoning of the Decision 21/1994 (IV. 16.) AB [ABH 1994, 119.]. The organisational-legal autonomy of the non-natural person entities of in the economy is based on the provisions guaranteeing freedom of association [Article 63 (1) of the Constitution], recognising the right to property [Article 13 (1) of the Constitution] and the right to enterprise [Article 9 (2) of the Constitution], and, with respect to cooperatives, supporting the cooperative movement based on voluntary association [the first phrase of Article 12 (1) of the Constitution]. Economic autonomy, i.e. the autonomy of the decision-making to dispose of assets, rights and claims, can be determined primarily from the right to property and, in a subsidiary way, from the right to enterprise. However, the autonomy of a company, which is an integral part of market economy, may not be interpreted as an individual fundamental right, just like the market economy doctrine." [Decision 595/B/1992. AB, ABH 1996, 383, 387 to 388.; reinforced in: Decision 646/B/2003. AB, 1643, 1644, 1645.].

[292] On this basis, there is a constitutional link between the right to enterprise and the autonomy of economic management. However, a similar –- even closer – link exists in this respect in relation to the right to property, and the constitutional problem raised has already been examined and judged upon by the Constitutional Court in clause VI.3 of this decision. Without repeating the arguments explained, the Constitutional Court also points out that, in addition to public interest, ensuring the transparent and prudent operation of cooperative credit institutions and increasing deposit security are constitutional values that constitutionally allow the restriction of the right to enterprise. Therefore, the Constitutional Court did not hold that the restriction of the right to enterprise was contrary to the Fundamental Law and rejected the applications.

[293] 6. Right to legal remedy, right to the judicial way

[294] The petitioners alleged a violation of Article XXVIII (7) of the Fundamental Law in connection with section 15 (3) to (4) and (17), section 18 (4) and section 20 (12) of the Act,

because the law-maker does not provide for a legal remedy against the regulations, instructions and other decisions of Takarékbank and the CCIIO. The Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions amended section 15 (3) of the Act, which now provides that the instructions of Takarékbank may be challenged in court. Paragraphs (20) to (21) have been inserted into section 15 of the Act, which provide for a general possibility of judicial review against all individual decisions and instructions of Takarékbank and the CCIIO. The petitioners have nevertheless maintained their application on the grounds that there is still no legal remedy against the regulations of the CCIIO and Takarékbank.

[295] 6.1. The Constitutional Court points out that none of the petitioners has the right to submit an application for a declaration of the existence of an infringement of the Fundamental Law caused by an omission, pursuant to section 46 (1) of the ACC – if the conditions set out therein are complied with – the Constitutional Court may do so *ex officio* in the exercise of its powers. Therefore, the Constitutional Court refused the applications in connection with section 15 (3) to (4) and (17) and section 20 (12) of the Act on the basis of section 64 (b) of the ACC.

[296] Section 18 (4) of the Act have been repealed by the law-maker with the Act CXCVI of 2013 amending certain acts related to the integration of cooperative credit institutions. In this respect, the petitions have therefore become purposeless, and therefore the Constitutional Court has terminated the proceedings pursuant to section 67 (2) (e) of the Rules of Procedure.

[297] 6.2. However, the Constitutional Court notes the following. As an instrument of management rights, the Act empowers the integration bodies to make various rules and decisions (with the terminology of the Act: (1) regulation, (2) instruction and (3) other decision), thus providing them with the power to exercise a fundamental influence on the operation of the cooperative credit institutions concerned. The improper exercise or abuse of this right may also lead to a serious breach of the rights of the affected entities. To counterbalance this, the Act has – since 30 November 2013 – provided cooperative credit institutions with the right to go to court:

[298] (a) section 15 (3) of the Act grants this right to the addressee of the instruction against the instructions issued by Takarékbank. An instruction may be issued in order to secure operation in accordance with the laws and the regulations or previous instructions issued by the CCIIO and Takarékbank. The court examines whether the challenged individual act complies with the Act, other laws and the regulations issued by Takarékbank and the CCIIO.

[299] (b) pursuant to section 15 (20) of the Act, the cooperative credit institution may also challenge the decision or instruction of Takarékbank before the court in accordance with the rules on the judicial review of corporate decisions. [According to section 45 of the Act IV of 2006 on Companies (hereinafter referred to as the "Companies Act"), any member (shareholder) of a company may request the judicial review of the decisions taken by the company's organs on the grounds that the decision is contrary to the provisions of this Act or other legislation or the company's articles of association. The Companies Act was repealed on 15 March 2014 by the new Civil Code, section 3:35 of which similarly regulates the judicial review of the decisions of legal persons.] The "decision" of Takarékbank may be a sanction

applied to cooperative credit institutions under the Act, but it may also be a mandatory regulation adopted by the Board of Directors (the body of Takarékbank as a joint-stock company) under section 15 (2) of the Act.

[300] (c) section 15 (21) of the Act provides for a judicial remedy against the decisions of the CCIIO only to the cooperative credit institution which is the addressee of the decision. The court may examine whether the decision complies with the law, other laws and the regulations issued by the integration bodies.

[301] On the basis of all the above, one may conclude that the right to go to court is guaranteed in section 15 (3) and (20) of the Act with regard to the instructions issued by Takarékbank, and in section 45 of the Companies Act and section 3:35 of the new Civil Code [confirmed by section 15 (20) of the Act] replacing it, regarding its mandatory regulations.

[302] With respect to the regulations of the CCIIO, the Act does not contain a similar provision regulating judicial review. At the same time, the regulations drawn up by the CCIIO are enforced through specific instructions or other specific acts. If a regulation may be directly applicable, non-compliance with it will result in legal consequences for the cooperative credit institution if Takarékbank takes action (issues an instruction) to enforce the regulation by means of an individual measure pursuant to section 15 (3) of the Act or applies sanctions under the Act. However, these individual acts can be challenged in court, and the regulations on which the individual act is based can and must necessarily be examined and scrutinised in the course of judicial review.

[303] 6.3. In connection with the instructions and other decisions of Takarékbank and the CCIIO, the law-maker explicitly opened up the possibility of judicial review with effect from 30 November 2013. One of the petitioners objected to the amended provisions on the grounds that bringing an action with the court does not have a suspensive effect on enforcement, therefore legal protection is ineffective.

[304] Decision 1074/B/1994 AB pointed out that on the basis of Article 57 (1) of the Constitution the State is not only bound to offer a judicial way for the civil law disputes of persons, but also to effectively make going to court a real option. Decision 39/1997 (VII. 1.) AB also highlighted the requirement that, a fair trial is required to render possible the actual realisation of lawfulness and the effective protection of rights (ABH 1997, 263, 272) The Fundamental Law regulates the right of recourse to the courts in the same way as the previous Constitution, therefore the cited findings are also applicable in the present case. The requirement of immediate enforceability is linked to the requirement of effective judicial protection, since in certain cases enforcement may the remedy a formality [Cf. Decision 39/2007 (VI. 20.) AB (ABH 2007, 464) with regard to mandatory vaccination]

[305] "Ordering immediate enforceability is constitutionally justified if the protection of the fundamental rights of others or the enforcement of a constitutional public interest absolutely requires it and the desired objective cannot be achieved in any other way." [Decision 39/2007 (VI. 20.) AB, ABH 2007, 464, 505] On the basis of the above, the Constitutional Court examined whether the restriction under section 15 (3), (20) and (21) of the Act (the exclusion of the

suspensive effect of turning to court, which means the immediate enforceability of decisions and instructions) is compatible with the requirement of effective judicial protection.

[306] Takarékbank and the CCIIO ensure the operation of integrated cooperatives primarily by means of general regulations. Instructions and other decisions are issued when a circumstance requiring intervention exists or such an event occurs [e.g. section 11 (2), section 15 (4), section 17/C (2)]. In a specific case when intervention is necessary due to an event requiring swift action or in order to prevent or avert serious – significant or irreparable – damage, immediate enforcement is in the interest of the cooperative credit institution concerned, and thus also in the interest of its members and customers, and also serves to protect their right to property, i.e. their fundamental right. In addition, the fundamental purpose of the Act – to operate in a harmonised and uniform manner, which is a characteristic feature of integration – and the position of the members of the financial risk pool could be jeopardised if the enforcement of the necessary decisions were to be postponed indefinitely.

[307] On this basis, the regulation of immediate enforceability in the Act does not violate Article XXVIII (1) of the Fundamental Law, therefore the Constitutional Court rejected the applications.

[308] 7. Right to a fair administrative procedure

[309] The right to a fair administrative procedure [Article XXIV of the Fundamental Law] is violated in the opinion of the petitioners by section 15 (3) to (4), (17), section 16, section 18 (4) and section 20 (12) of the Act.

[310] The regulation under review grants management and decision-making rights to Takarékbank and the CCIIO as the central bodies of the integration in relation to the members of the integration. Neither of these bodies is an administrative body or authority exercising public power, and their decisions cannot therefore be considered to be in breach of Article XXIV of the Fundamental Law. The Constitutional Court therefore rejected the applications for lack of a substantive constitutional context.

[311] 8. Right to reputation

[312] In connection with the preamble (introductory part) of the Act, the petitioners claim a violation of their right to reputation, as in their opinion the provisions contained therein are capable of portraying their operations and financial situation in a negative light. However, they have not applied for annulment in this respect.

[313] The number, the title and the introductory part of a law (in the case of an Act of Parliament, the preamble) are of course as much a part of the law as the rules of conduct organised in individual sections [Cf. Decision 56/2009 (V.12.) AB, 464, 475], therefore in principle, the examination of their constitutionality cannot be excluded.

[314] The Constitutional Court points out, however, that the preamble of the Act under review defines the reason and purpose of the regulation in a general manner, and does not make any negative statements concerning the petitioners or their situation. Furthermore, in the absence of a request for annulment, the petitions do not comply with section 64 (d) of the ACC [in

conjunction with section 52 (1) (f) of the ACC], and therefore the Constitutional Court refused them.

VII

[315] The publication in the Official Gazette is based on section 44 (1) of the ACC.

Budapest, 30 June 2014.

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Justice of the Constitutional Court

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