

Dear Member of Parliament,

Draft bill T/ 14686 (the “Bill”) aims at amending the national higher education act (Act CCIV of 2011 on National Higher Education, “HEA”). These amendments, if tabled and passed by the Hungarian Parliament, would make it impossible for Central European University (hereinafter: „CEU”) to continue to operate in Hungary.

The CEU/Közép-európai Egyetem is considered as one of the best universities operating in Europe considering its programs. For example, in 2017 CEU is ranked at 42 by Quacquarelli Symonds (QS) among world's universities with political studies, being the only Hungarian university in that ranking. CEU brings thousands of foreign students to Hungary and makes it possible for Hungarians to obtain an American degree without ever leaving Hungary. CEU/Közép-európai Egyetem employs 600 employees from 130 countries and currently teaches 1,440 students from 108 countries.

CEU/Közép-európai Egyetem has paid more than HUF 5.9 billion in 2015 in taxes and it has spent HUF 3.5 billion in 2015 in Hungary. If the Bill is passed the university considered to be of great reputation in Hungary may cease to operate, and, therefore, 823 jobs will be threatened, close to HUF 6 billion/year will be lost in taxes and the CEU will not spend in Hungary HUF 3 billion annually<sup>1</sup>. Several hundred additional Hungarian students will leave Hungary every year.

In the followings we set out the current status of the CEU, the effect of the Bill on the activities of the CEU and will describe why the Bill is contrary to Hungarian law.

## **1. The Central European University: Current Legal Status**

CEU is an international and independent graduate university, in operation since 1991, authorized and accredited to grant degrees both in the US and in Hungary.

CEU holds an absolute charter from the New York State Education Department. In the United States, CEU is accredited and continuously monitored regarding its Hungarian operation by the [Middle States Commission on Higher Education](#) that accredited higher education institutions such as Princeton University, Columbia University, Johns Hopkins University, Cornell University, University of Pennsylvania or the New York University. The [Middle States Commission on Higher Education](#) continuously supervises the operation of the CEU and conducts an overall review of the conditions for accreditation every four years.

CEU NY received its license to operate in Hungary from the Ministry of Culture and Education based on Ministerial resolution No. 5563/94, dated January 5, 1995. This operational license was modified based on the Ministerial resolution No. 2123-8/2005, issued on April 18, 2005.

Like other international universities chartered in the US, CEU does not maintain any academic or other programs in the United States of America. Its home is in Budapest and its academic activities are carried on exclusively in Hungary.

In 2004 the Hungarian Prime Minister signed an agreement with the Governor of the State of New York (“Declaration”). The Declaration confirms the parties’ joint agreement to support CEU’s goal of achieving Hungarian accreditation, while at the same time maintaining its status as an accredited American university. Following the Declaration in 2004, Hungary promulgated a special law on the establishment of Közép-európai Egyetem (“KEE”) as a Hungarian university (Act LXI of 2004 on State Recognition of Közép-európai Egyetem). Since then the Higher Education and Science Committee and the [Hungarian Accreditation Committee](#) (“MAB”) have accredited first KEE as an institution and also ten graduate and doctoral programs of the CEU in Hungary as programs of the Hungarian university KEE. While the university thus has a dual legal identity,

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<sup>1</sup> Exclusive of the amounts paid as salaries

as KEE and CEU, it is one university, with only one campus, one academic staff and one computer network etc. This dual legal identity enables CEU-KEE to comply with Hungarian and US legal norms. In compliance with Hungarian law it has a university senate and a rector, the latter appointed by the President of Hungary.

Students enrolled in programs of CEU and Közép-európai Egyetem – in contrary to what has been communicated in the press – do not receive automatically two degrees, while they study only in one program. Students enrolled in the programs of CEU receive only an American diploma, while those enrolled at the programs of KEE receive only a Hungarian diploma.

Section 94 of Hungary’s National Higher Education Law regulates KEE and entitles it to seek Hungarian accreditation of certain of its academic programs. Section 104 (7) contains certain regulations relevant for private universities, including KEE, such as exemption under the general educational organization of universities, criteria for the rector and his appointment, work permit for non- EU nationals academic staff and the degree requirements for appointment of academic staff.

CEU operates in Hungary as a foreign higher education institution based on a separate license from the Hungarian Education Authority under Section 76 and 77 (4) of the HEA. These provisions entitle us to deliver those programs which for technical reasons - different curriculum or a different length of the course - could not be easily accredited in Hungary.

## **2. The effects of the Bill on CEU**

The Bill would make it impossible for CEU-KEE to continue to function in Hungary.

1. CEU, the American university chartered in the US, could only continue in Hungary if there was a binding international agreement supporting its operation as a foreign university in Hungary.
2. The proposed amendment would require CEU to offer programs in the State of New York in order to be able to continue its operations in Budapest. CEU is one of many American accredited international universities that does not operate any academic programs in the United States (such as the American University in Cairo, American University of Paris, American University in Bulgaria, American University of Bosnia Herzegovina, the American University of Central Asia, *The American University* in the Emirates, the American University of Asia in Sri Lanka, etc.) but have American style education brought to the doorsteps of local students. Introducing such an obligation for CEU would have no real educational benefit for Hungary or Hungarian students, but would, on the other hand, force CEU to spend billions of dollars to develop the already saturated and advanced educational infrastructure of the United States of America.
3. KEE, the Hungarian university, could no longer deliver the programs of the American university as it is allowed to do under Section 77 (4) of the HEA, as Hungarian universities could only deliver programs of European universities and not of countries from the OECD. Based on this current Section 77 (4) of the HEA, CEU operates in Hungary through the Hungarian University and the Hungarian University issues the CEU’s (U.S.) diplomas on behalf of CEU. The proposed new Section 77 (4) does not include the OECD countries (such as the United States of America) anymore. Consequently CEU would not be able to offer U.S. academic programs through KEE.
4. The Bill forbids CEU to continue its Hungarian operation in its current form and under its current name “Central European University” unless the Hungarian university “Közép-európai Egyetem” changes its name. In other words, this would require the two legal entities – which are jointly delivering programs – either to change the names they have used for decades or to discontinue operation in Hungary.
5. Currently academic staff engaged by KEE from outside the European Union are not required to obtain work permits for the purposes of working at KEE based on Section 104 (7) of the HEA. Based on the

proposal, the academic staff engaged by a higher education institution, the maintainer of which is a Hungarian foundation, would not be exempt from obtaining work permits. There are currently only two Hungarian higher education institutions the maintainer of which is a Hungarian foundation: CEU and Andrássy University. As the foreign staff of Andrássy University are mostly from the EU and in CEU a significant part of the academic staff is from the US and Canada, this requirement targets CEU in a discriminatory fashion. It would create additional and unnecessary barriers to hiring and recruitment.

### 3. Legal analysis of the Bill

Sections 1., 2. and 7. of the Bill are contrary to Section X (1) of the Basic Law on freedom of academic research, studies and education. They are contrary to Section XI of the Basic Law on the right to culture. They are also contrary to Section XV (2) of the Basic Law on the prohibition of discrimination.

1. Section X (1) of the Basic Law provides *„Hungary shall protect the freedom of scientific research and artistic expression, as well as the freedom of learning and - within the framework defined by law - teaching so as to attain the highest level of knowledge possible.”* Section XI (1) of the Basic Law guarantees the right to education which is ensured by Hungary *“through the dissemination of and by providing general access to, community culture, by providing free and compulsory primary schooling, free and universally accessible secondary education, and higher education made available to all on the basis of their ability, as well as by providing financial support as laid down in an act of Parliament to those receiving education”*, according to Section XI (2) of the Basic Law.

It is not mere chance that the Basic Law ensures a specific protection to these rights. According to the Constitutional Court, *„in all such cases when, in the course of history, the state has set political, ideological, religious or other limitations on the freedom of science, it has become the barrier of the development of the whole society. It is a truth based on historical experiences that freedom of science is the fundamental guarantee of progress and it is also linked to individual autonomy. A free search for scientific theses, findings and truths and the free flow of the scientific ideas and views is, therefore, the basic condition for the development of humanity and one of the guarantees of free unfolding of the individual.”* [Resolution of the Constitutional Court No. 34/1994. (VI. 24.), ABH 1994, 177, 182.]

The guarantees of Sections X and XI of the Basic Law are not limited to higher institutions with a Hungarian seat. Although Section XI (1) of the Basic Law ensures the right to education to Hungarian citizens, the institutional guarantees provided in Sections X and XI (2) of the Basic Law are applicable to all higher education institutions operating in Hungary.

According to the Constitutional Court’s practice, *„the freedom of science, scientific knowledge and scientific learning, although not unrestrictable, but still such a freedom, that should allow only those restrictions, the aim of which is to protect and enforce fundamental rights or which have been designed to ensure the unconditional dominance of an abstract constitutional value (e.g. confidentiality based on law).”* [Res. of the Constitutional Court No. 34/1994. (VI. 24.), ABH 1994, 177, 182-183.]. According to the Constitutional Court, the right to education ensures the establishment and operation of higher education institutions, while on the basis of the freedom of science in the broad sense, the state should provide solutions regulated in law that duly ensure scientific activity that is free from outside influence, free, and professional [Res. of the Constitutional Court No. 41/2005. (X. 27.), ABH 2005, 459, 473]. *„Therefore, the basic guarantee for freely exercising scientific, educational and research activities is establishing higher education institutions with self-governance and autonomy.”* [Res. of the Constitutional Court No. 41/2005. (X. 27.), ABH 2005, 459, 474].

The independence of higher education institutions is also ensured by the second sentence of paragraph 3 of Section X of the Basic law, as follows: *„As regards the contents and methods of research and teaching, institutions of higher education shall have sovereignty, whereas their organizational structure shall be governed by an act of Parliament.”* This provision of the Basic Law recognizes the scientific and educational autonomy of higher education institutions and authorizes the Hungarian Parliament to determine uniformly applicable organizational rules that respect the freedom of research and education. These organizational rules may even limit scientific and educational autonomy, however, such limitation may only serve the purpose of protecting another basic right or constitutional value – most importantly, to protect the rights and interests of students – and cannot be disproportionate.

The Basic Law guarantees not only the establishment of independent higher education institutions, but also excludes the possibility of abolishing higher education institutions discretionally or undermining their operation. It is not compatible with the freedom to scientific life and teaching as well as with the freedom to education if the existence or operation of a higher education institution depends on the discretionary decision of the maintainer [Res. Const. Court No. 41/2005. (X. 27.), ABH 2005, 459, 483]. It is possible, of course, that a law regulates the conditions of operation of higher education institutions, however, it cannot give a discretionary right to the Government or to the Minister related to the existence or Hungarian operation of higher education institutions.

It is just not possible, because – as the Constitutional Court put it – “*in a broader sense, the freedom of science, in general, is linked to the freedom of expression.*” [Res. of the Const. Court No. 34/1994. (VI. 24.), ABH 1994, 177, 182.], and as such, deserves special protection.

2. Point a) of Section 76 (1) of the HEA determined by Section 2 of the Bill, together with Section 77 (2) determined by Section 3 of the Bill leads to a result where higher education institutions having a seat outside the territory of states of the European Economic Area can operate in Hungary depending on the discretionally decision of the Hungarian Government. Based on the cited provisions, in order to operate, it is necessary for higher education institutions to conclude an international agreement with a theoretical support of their Hungarian operation; according to Section 5 (1) and (2) of Act L of 2005 on the procedures related to international agreements, the prime minister gives authorization to conclude an international agreement on the basis of the proposal of the minister and the minister for foreign affairs, while authorization to determine the final wording of the international agreement shall be given by the Government – in exceptional cases, between the two sessions of the Government, by the prime minister. Therefore, the Government may, at its own discretion, without any legal or substantive limitations, decide not to enter into an international agreement on the Hungarian operation of the foreign higher education institution, and thus, exclude unilaterally the Hungarian operation of a foreign higher education institution. To this end, the Government does not need to refer to the protection of any right or constitutional value, moreover, it does not need to justify the proportionality of the measure or the lack of any such measure. According to the above, this is clearly contradictory to Sections X and XI of the Basic Law.

3. Point b) of Section 76 (1) of the HEA determined by Section 2 of the Bill disproportionately limits the freedom of academic life and teaching as well as the right to education, by requiring from foreign higher education institutions to actually provide higher education programs in their country of origin. It may not be considered as of particular concern in itself for the legislator to determine quality assurance rules related to the Hungarian operation of foreign higher education institutions for the protection of the students’ rights and interests. However, for quality assurance, it is sufficient that the foreign higher education institution fully complies with the accreditation rules of its country of origin, as required by Point c) of Section 76 (1) of the HEA determined by Section 2 of the Bill - and currently by Section 76 (1) of the HEA. If the competent authorities of the country of origin consider, according to their own rules, the program provided on the territory of Hungary as a state recognized program, no aspect of quality assurance justifies to examine, whether the higher education institution provides this same program in its country of origin.

It is particularly anomalous and disproportionate to apply without distinction Point b) of Section 76 (1) of the HEA determined by Section 2 of the Bill in case of higher education institutions established in the United States. In particular, Central European University was accredited by the same organization that accredited, among others, Columbia University. This accreditation provides sufficient guarantee for the quality of the programs, and therefore, Point b) of Section 76 (1) of the HEA determined by Section 2 of the Bill unnecessarily and disproportionately limits CEU’s right to operation ensured by the Basic Law.

4. The modification of Section 77 (4) of the HEA proposed by Section 7 of the Bill also limits the academic freedom and teaching disproportionately and in a discriminative manner. According to this provision, the possibility of the so-called “license-programs” will be terminated for higher education institutions having their seat in an OECD member state. In case of these programs, the foreign higher education institution offers its programs recognized by the foreign state on the basis of an agreement with a Hungarian higher education institution without having a Hungarian establishment, by entrusting the Hungarian institution to organize part of its programs (licensing).

This modification is also not justified by quality assurance. No information supports that higher education shall be of lower level in OECD member states – such as United States – than in the EU member states, for e.g. Romania or

Bulgaria. Therefore, this modification also puts a disproportionate limit to the freedom of academic life, teaching and education.

Furthermore, the modification is also obviously discriminative, since it has no other purpose than to make it impossible for Közép-európai Egyetem to take over programs of Central European University in the form of license-education, which it will not be able to provide on the basis of the new Section 76 of the HEA.

5. Finally, Section 9 (2a) and (2b) of the HEA determined by Section 1 of the Bill infringe non-discrimination guaranteed by Section XV (2) of the Basic Law. The only goal of these provisions is to make the parallel operation of the Hungary-based Közép-európai Egyetem and the New York-based Central European University impossible. Obviously, it is a discriminatory provision tailored to specific institutions which therefore, breaches Section XV (2) of the Basic Law.

6. The Bill is not in line with the provisions of Act CXXX of 2010 on Law-Making (hereinafter as “LMA”) and of the requirements of Act CXXXI of 2010 on social participation in the preparation of legislation (hereinafter as the “PPA”), since according to our information, an impact assessment was not made, and the Bill was not preceded by social consultation. Section 17 of the LMA determines an impact assessment to be prepared in case of a Bill. According to section 19 (2) of the LMA “*the one responsible to prepare the legislation shall make sure that the draft of the legislation is available for information and comments as determined in the PPA.*”. Section 5 (1) of the PPA provides that “*the draft law and its reasoning shall be submitted for social reconciliation (hereinafter together as the “Draft”).*” There was no social reconciliation in relation to the Bill. The affected parties, including the universities, the professional organizations, the Hungarian Academy for Sciences, the Hungarian Accreditation Agency (MAB), the Rector’s Conference did not have any information about the Bill and they are submitting their opinions about the draft legislation prepared in full secrecy only in these days.

Finally, the importance of CEU in international academic life is well illustrated by the fact that it has received an immense number of messages of solidarity from more than 73,000 academics and private citizens, including 17 Nobel laureates, and more than 1,000 letters and a 30,000 strong petition are being delivered to government officials. Amongst the supporters of CEU are the Hungarian Academy of Sciences, Andrassy University, Corvinus University, several ELTE Departments and Colleges of Advanced Study, including *ELTE Bibó István Szakkollégium közössége, Janus Pannonius Közgazdasági Szakkollégium, Kepes György Szakkollégium, Kerényi Károly Szakkollégium, Liska Tibor Szakkollégium, Széchenyi István Szakkollégium, Szent Ignác Jezsuita Szakkollégium, Társadalomelméleti Kollégium.* We attach a few examples of messages of solidarity to our present letter.

An array of international academic institutions including the following, also stand with CEU: Austrian Academy of Sciences, British Academy, Cambridge University European Societies, Canadian Association of University Teachers, representing 70,000 members, European University Association, European Association for International Education, INSEAD, Max Planck Institute for the History of Science, Princeton University, Oxford University, Regius Professors of History at Oxford and Cambridge, Wissenschaftskolleg zu Berlin – Institute for Advanced Study, World International Studies Committee, representing 25 member associations from around the world, etc. The survival of the university is supported among others by outstanding representatives of the academia such as the Vice Chancellor of Oxford University, the President of Princeton University, or the Chancellor of University of California Berkeley. I attach their letters of support to this letter.

Based on the above, we ask you not to support the Bill and do all you can in order to prevent the Parliament from adopting the Bill, since as a result of the proposal Hungarian higher education and Hungarian culture will become poorer an important national institution. Any legislative change that would force CEU not to continue its operation in Budapest would adversely affect Hungarian academic life and would also negatively influence the relations of the Hungarian Government with the neighboring countries, the EU member states and the United States of America.

Budapest, April 2, 2017 / Budapest, 2017. április 2.

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Liviu Matei  
Provost and Pro-Rector / Rektorhelyettes

*Annex: Examples of messages of solidarity / Támogató levelek - példák*