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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPUBLIC OF MOLDOVA**

**DRAFT LAW**

**FOR THE EVALUATION OF CANDIDATES FOR ADMINISTRATIVE  
POSITIONS IN THE SELF-ADMINISTRATION BODIES OF JUDGES  
AND PROSECUTORS**

## LAW

### **for the evaluation of candidates for administrative positions in the self-administration bodies of judges and prosecutors**

In order to ensure the quality of the administration act within the professional bodies of judges and prosecutors, to increase the efficiency of the judicial system and of the prosecutor's office, the election of integer members among judges and prosecutors within the Superior Council of Magistrates, the Superior Council of Prosecutors and their specialised bodies, in order to increase the confidence of the society in their activity,

Parliament adopts this organic law.

## **Chapter I GENERAL PROVISIONS**

### **Article 1. Object of the law**

This law regulates the legal relations related to the procedure of assessing the integrity, lifestyle and living costs of candidates for administrative positions in the Superior Council of Magistracy, the Superior Council of Prosecutors and their specialized bodies, as a mandatory stage of the process of selecting candidates and appointing them to the respective positions.

### **Article 2. Subjects of the law**

(1) The provisions of this Law shall apply to candidates for the position of member, or, as the case may be, of alternate member in:

- a) Superior Council of Magistracy;
- b) Selection and Career Board of Judges;
- c) Performance Evaluation Board of Judges;
- d) Disciplinary Board of Judges;
- e) Superior Council of Prosecutors;
- f) Selection and career Board of Prosecutors;
- g) Performance Evaluation Board of Prosecutors;
- h) The College of Discipline and Ethics of prosecutors;

(2) Subjects of the planned evaluation under this law are also the close persons to the candidates, within the meaning of Law no. 133/2016 on the declaration of assets and personal interests.

## **Chapter II**

### **EVALUATION OF CANDIDATES**

**Article 3.** The Committee assessing the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors

(1) On the occasion of the election of candidates to the bodies referred to in Article 2 para. (1) as well as with the announcement of the organisation of the competition for the positions of member of the same bodies among the civil society, within the Ministry of Justice, the Committee for the evaluation of the integrity of the candidates for the administrative positions of the self-administration bodies of judges and prosecutors is established (hereinafter – the Evaluation Committee).

(2) The activity of the Evaluation Committee shall cease with the election of the candidates in the bodies referred to in Article 2 para. (1).

### **Article 4. Mission of the Evaluation Committee**

(1) The evaluation committee shall have functional independence and decision-making autonomy vis-à-vis the management of the Ministry of Justice and any other natural or legal person, regardless of the form of organisation.

(2) In its activity, the Evaluation Committee shall be headed by the Constitution of the Republic of Moldova and other normative acts regulating the fields related to its activity. The evaluation committee operates under the regulation on its organisation and functioning, approved by latter.

**Article 5. Establishment of the Evaluation Committee**

(1) The evaluation committee shall be set up on an ad-hoc basis, at the time when the cases referred to in Article 3 (1) arise.

(2) The Superior Council of Magistracy, the Superior Council of Prosecutors, the Parliament of the Republic of Moldova, the President of the Republic of Moldova, the Government or, as the case may be, the Academy of Sciences of Moldova, at the same time with the publication of the announcement on the organization of the contest for the replacement of one of the vacant positions set out in art. 2 para. (1), informs the Ministry of Justice of the need to set up the Evaluation Committee.

(3) The Ministry of Justice shall, within 3 days, contact the development partners and the Parliament with a view to their appointment of the members of the Evaluation Committee.

**Article 6. Composition of the Evaluation Committee**

(1) The evaluation committee consists of 6 members, designated as follows:

a) 3 members appointed by the development partners and 2 alternates;

b) 3 members appointed by the Ministry of Justice: 2 at the proposal of the parliamentary majority and 1 at the proposal of the parliamentary opposition and 1 alternate for the proposed in the same order.

(2) The member of the Evaluation Committee must meet the following requirements:

a) has higher education or their equivalent;

b) enjoys an irreproachable reputation;

c) has at least 5 years of experience in one of the following areas: legal, economic or integrity;

d) is not a member of Parliament, adviser or public servant in the public administration authority;

e) has not been part of a political party for the last 3 years;

f) he has not held the position of judge or prosecutor in the Republic of Moldova for the last 3 years.

(3) Membership of the Evaluation Committee shall cease in the event of:

a) termination of activity of the Evaluation Committee;

b) resignation;

c) withdrawal of membership by the institution which appointed him;

d) decease.

(4) In the event of termination of his membership of the Evaluation Committee, his/her duties shall be exercised by the corresponding alternate member.

(5) The secretariat of the evaluation committee is provided by the Ministry of Justice.

**Article 7. Powers of the Evaluation Committee**

In order to carry out its function, the Evaluation Committee shall have the following powers:

a) to assess the integrity, including the lifestyle and living costs of the candidates, verify the data and information on the incomes, expenses of the candidates and of the persons close to them, within the meaning of Law no. 133/2016;

b) to hear the candidate, persons close to him or her and other persons who have relevant information about the candidate's lifestyle and costs and integrity;

c) to request information from natural or legal persons;

d) take decisions on the results of the assessment of the integrity of candidates, including their lifestyle and living costs.

**Article 8. Assessment of lifestyle and cost of living**

(1) Assessment of the lifestyle and living costs of the candidates referred to in Article 2 consists in verifying the compliance of their standard of living with the level of income obtained and the expenses incurred by them independently or jointly with close persons within the meaning of Law no. 133/2016 on the declaration of property and personal interests, during the last 5 years.

(2) For the assessment of the candidates' lifestyle and living costs, the Selection Board shall verify their compliance with:

- a) the tax regime in the part related to the payment of taxes on the use of means and income resulting from the property owned, as well as taxable income and the payment of customs duty on goods placed under the import customs procedure.
- b) the regime of declaring assets and personal interests.

**Article 9. Assessment of the integrity of candidates**

(1) The evaluation of the integrity of the candidates for one of the functions set out in Art. 2 para.(1), which come from among judges or prosecutors consists in checking the following aspects:

- a) compliance by the candidate with the principles set out in the Code of Ethics and Professional Conduct of judges or, as the case may be, prosecutors;
- b) non-involvement of the candidate in acts of corruption;
- c) non-involvement of the candidate in acts of improper influence;
- d) the observance by the candidate of the regime of declaring and resolving conflicts of interest;
- e) violation of deontological norms that led to journalistic investigations or to complaints addressed to the Judicial Inspection or Prosecutors' Inspections, which denigrate the image of justice or compromise the honesty and dignity of judge or prosecutor.

(2) Assessment of the integrity of candidates for one of the functions set out in Art. 2 para. (1), which come from among the representatives of the civil society consists in checking the aspects set out in para. (1) letters b)-e).

**Article 10. Initiation of the evaluation procedure**

(1) The evaluation committee shall initiate the evaluation procedure on the basis of the request submitted by the competent institutions for the organisation of competitions for the selection of members in the bodies referred to in Article 2 (1), which must include:

- a) name, surname, ID number of the candidate;
- b) the function held at the time of the application;
- c) the position for which he/she is applying;
- d) contact details (address, phone, email).

(2) The evaluation committee is obliged to inform the candidate about the initiation of the evaluation procedure by any means not prohibited by law.

**Article 11. Evaluation procedure**

(1) The evaluation committee shall accumulate and verify the information held within 15 days from the date of transmission of the request by the competent institution for the appointment of members in the bodies referred to in Article 15. 2 para. (1).

(2) The evaluation committee and its secretariat shall have access to any information it deems necessary for the performance of its tasks, except for information falling under the provisions of Law no. 245/2008 on state secret. Any public authority is obliged to make available to the Evaluation Committee any information requested within 5 days.

(3) In the process of assessing lifestyle and costs, and professional integrity, the Evaluation Committee shall have the right to request from natural and legal persons of public or private law, including financial institutions, the documents and information necessary to carry out the assessment. The requested information shall be presented free of charge within 5 days from the date of the request.

(4) By derogation from the provisions of Law no. 133/2011 on the protection of personal data, processing of personal data of candidates and close persons within the meaning of Law no. No

133/2016, is admitted during the exercise of its functions by the Evaluation Committee and its secretariat. The access regime for this data will be provided by the secretariat of the Evaluation Committee.

(5) Natural and legal persons of public or private law, including financial institutions, may not refuse to submit the information set out in para. (3) for the protection of personal data, bank secrecy or other data with limited access.

(6) The candidate has the following rights:

a) be informed about the initiation of the evaluation;

a) be assisted by a lawyer or a trainee lawyer during the evaluation procedure;

b) to become aware of the evaluation materials;

c) to submit in written form data and information additional to those accumulated by the Evaluation Committee, which it deems necessary, in order to dispel suspicions about the integrity and costs of living, including its own assessment of the real value of the assets, to be examined by the Evaluation Committee;

(d) challenge the Committee's decision.

(7) The selection board may invite the candidate to a hearing.

#### **Article 12. Meetings of the Evaluation Committee**

(1) The evaluation committee shall carry out its work in closed meetings.

(2) The meetings of the Evaluation Committee shall be held with the presence of at least 5 members.

(3) The members of the Evaluation Committee shall be obliged to attend the meetings. If the member is unable to attend the meeting of the Evaluation Committee, he shall communicate the given fact to the Secretariat, which shall ensure that his duties are exercised at that meeting by the corresponding alternate.

(4) The members of the Evaluation Committee and their alternates, appointed pursuant to Article 6 para. (1) point b) shall benefit for each meeting attended by an allowance equivalent to that of part (1/5) of the average monthly salary in the economy forecasted for the current year.

#### **Article 13. Decision of the Evaluation Committee**

1. Following the conduct of the evaluation procedure, the Evaluation Committee shall issue a reasoned decision on the finding of the promotion or non-promotion of the integrity assessment.

2. The decision shall contain the conclusion of the Evaluation Committee as to whether or not the integrity assessment was passed, the reasons for it and the indication of the appeal and the time limit for the appeal. The decision shall be taken by a majority of the members. The members of the Evaluation Committee shall not have the right to abstain from voting.

(4) The decision on the non-promotion of the integrity assessment shall constitute a legal basis for the non-admission of the candidate to the competition for which he/she participates.

(5) The decision shall be delivered to the candidate against signature, by means of the authorized person, by post, by registered letter and by notice of receipt, to the electronic address indicated in the application, or by other methods that allow the transmission of the decision and the confirmation of its receipt.

6. The decision of the Evaluation Committee shall be final if:

a) the deadline for submitting the appeal has expired and it has not been contested;

b) after examining the appeal in an order of appeal, if the court of appeal has upheld the decision.

#### **Article 14. Appeal against the decision of the Evaluation Committee**

(1) The decision of the Evaluation Committee may be appealed within 3 days by the evaluated candidate or any interested person who participated in the administrative procedure for evaluating the candidate.

(2) The action for appeal against the decision of the Evaluation Committee shall be submitted to the Chisinau Court of Appeal.

(3) By way of derogation from Article 209 of the Administrative Code of the Republic of Moldova no. 116/2018, the action for challenging the decision of the Evaluation Committee shall be submitted within 3 days from the date of receipt of the decision.

(4) By way of derogation from Article 245 (4) of the Administrative Code of the Republic of Moldova no. 116/2018, the recourse against the decisions of the Court of Apel Chisinau as a court of first instance, pronounced against the decisions of the Evaluation Committee shall be submitted within 3 days from the date of pronouncement of the decision of the Chisinau Court of Appeal.

### Chapter III

#### AMENDMENTS AND ADDITIONS TO SOME LEGISLATIVE AAEAS

**Article 15. Law no. 947/1996 on the Superior Council of Magistracy** (republished in the Official Gazette of the Republic of Moldova, 2012, no. 185, art. 620), as subsequently amended, is amended as follows:

1. The following paragraph 3<sup>1</sup> is added to Article 3:

"(3<sup>1</sup>) Candidates for the position of member of the Superior Council of Magistracy, provided for in para. (3) are subject to integrity assessment by the Committee for the assessment of the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors, consisted on the basis of the law under the Ministry of Justice. Its decision shall be included in the candidate's file. The candidate who has not passed the evaluation cannot be elected as a member and alternate member of the Superior Council of Magistracy. "

2. In Article 3<sup>1</sup>:

the following point (c) shall be added to paragraph 1:

"c) has promoted the integrity assessment carried out by the Committee for the assessment of the integrity of candidates for the administrative positions of the self-administration body of judges and prosecutors."

the following point (d) shall be added to paragraph 2:

"d) the decision of the Committee for the assessment of the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors."

3. The following paragraph 1<sup>1</sup> shall be added to Article 9:

"(1<sup>1</sup>) In case of termination of the mandate of more than 2/3 of the members of the Superior Council of Magistracy and their alternates, the Superior Council of Magistracy continues to function, having limited competences only in the part referring to art. 3 para. (5), Art. 4 para. (1) points (c) and (e), para. (2) point c<sup>2</sup>), para. (4) points (d), (d)<sup>(1)</sup> and (f).

**Article 16. Law nr. 154/2012 on the selection, evaluation of performances and career of judges** (published in the Official Gazette of the Republic of Moldova, 2012, no. 190-192, art. 636), with subsequent amendments, is amended as follows:

1. The following paragraph 2<sup>1</sup> is added to Article 4:

"(2<sup>1</sup>) Candidates for the position of member of the college for selection referred to in para. (1) and (2) are subject to integrity assessment by the Committee for assessing the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors, established on the basis of the law and within the Ministry of Justice. A candidate who has not passed the integrity assessment may not be elected as a member and alternate member of the selection Board."

2. The following paragraph 4<sup>1</sup> is added to Article 16:

"(4<sup>1</sup>) Candidates for the position of member of the evaluation Board referred to in para. (1) and (2) are subject to integrity assessment by the Integrity Assessment Committee of candidates for administrative positions in the self-administration bodies of judges and prosecutors within the Ministry of Justice. The candidate who has not passed the integrity assessment may not be elected as a member and alternate member of the selection Board."

**Article 17. Article 10 of the Law no. 178/2014 on the disciplinary responsibility of judges** (published in the Official Gazette of the Republic of Moldova, 2014, no. 238-246, art. 557), as subsequently amended, is completed with paragraph (3<sup>1</sup>) with the following content:

"(3<sup>1</sup>) Candidates for the position of member of the disciplinary Board referred to in para. (1), (2) and (3) are subject to integrity assessment by the Committee for verification of integrity of

candidates for administrative positions in the self-administration bodies of judges and prosecutors, established on the basis of the law under the Ministry of Justice. The candidate who has not passed the integrity assessment may not be elected as a member and alternate member of the disciplinary board."

**Article 18. Law nr. 3/2016 on the Prosecutor's Office** (published in the Official Gazette of the Republic of Moldova, 2016, no. 69-77, art. 113), as amended, is amended as follows:

1. Article 69:

in paragraph (3<sup>2</sup>) after the words "the candidate who" shall be completed with the words "promoted the integrity assessment carried out by the Committee for the assessment of the integrity of the candidates for the administrative positions in the self-administration bodies of judges and prosecutors, established on the basis of the law under the Ministry of Justice," and after the words "motivation letter" is completed with the text "the decision of the Committee to assess the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors";

in paragraph (4) after the text "3 years," shall be completed with the words "to promote the integrity assessment carried out by the Committee for the assessment of the integrity of candidates for administrative positions in the self-administration bodies of judges and prosecutors";

paragraph (7) shall be supplemented by the words "as well as those that have not promoted the integrity assessment carried out by the Committee for the assessment of the integrity of candidates for administrative positions in the bodies of self-administration of judges and prosecutors";

3. The following paragraph 2<sup>1</sup> is added to Article 73:

"(2<sup>1</sup>) In case of termination of the mandate of more than 2/3 of the members of the Superior Council of Prosecutors and their alternates, the Superior Council of Prosecutors shall continue to function, having restricted competences only in the part referring to art. 70 para. (1) lit. h), p), r), art. 66 para. (2).

### Chapter III.

#### FINAL AND TRANSITIONAL PROVISIONS

**Article 19.** (1) This Law shall enter into force on the date of its publication in the Official Gazette of the Republic of Moldova.

(2) The Government shall take the necessary measures to ensure the functioning of this Law.

(3) Within 2 months from the entry into force of this Law:

a) The Superior Council of Magistracy will convene the General Assembly of Judges for the selection of its members and specialized bodies in order to fill the vacant positions;

b) The Superior Council of Prosecutors will convene the General Assembly of Prosecutors for the selection of its members and its specialized bodies, in order to fill the vacant positions.

(4) Within 10 days from its establishment, the Evaluation Committee shall elaborate and approve, during its first meeting, its Rules of Organization and Functioning.

#### PRESIDENT OF PARLIAMENT

## INFORMATION NOTE

### to the draft law on evaluation of candidates for administrative positions in the self-administration bodies of judges and prosecutors

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| <b>1. Name of the author and, where appropriate, of the participants in the project preparation</b>   |
| The draft law for the evaluation of candidates for administrative positions in the self-administration bodies of judges and prosecutors was drafted by the Ministry of Justice.   |
| <b>2. The conditions that imposed the elaboration of the draft normative act and the objectives pursued.</b>  |
| <p>On November 19, 2021 and December 3, 2021, elections for administrative positions in the self-administration bodies of judges and prosecutors are to be held.</p> <p>The current normative framework regulating the procedure of verification of candidates for the positions of member of the Superior Council of Magistracy (hereinafter – the SCM) and the Superior Council of Prosecutors (hereinafter – SCP) and their specialized bodies is insufficient, because currently the persons running for the respective positions are not subject to verification from the point of view of integrity and of the lifestyle and cost of living.</p> <p>At the moment, the risk is obvious that the general assemblies of judges and prosecutors, established for December 3, 2021 and November 19, 2021, respectively, will not take place due to the restrictions related to the pandemic. The option of organising the general meetings of judges and prosecutors on-line is not feasible, given the short deadline to find a reliable technical solution that would allow both online participation and the exercise of the right to vote in a secret and secure manner for judges and prosecutors.</p> <p>At the same time, the election of integrity members among judges and prosecutors within the SCM, SCP and their specialized bodies is an essential condition for increasing the confidence of society in the judicial system, as well as for the proper functioning of these institutions.</p> <p>According to the provisions of art. 3 para. (5) of Law no. 947/1996 on the Superior Council of Magistracy and art. 66 para. (4) of Law no. 3/2016 regarding the Prosecutor's Office, the general assemblies of judges and prosecutors are organized on the basis of the decisions of the two councils.</p> <p>In these circumstances, in order to be possible to efficiently organize the process of electing the members of the SCM, the SCP of their specialized bodies, it is necessary: (1) the creation of the mechanism for the evaluation of candidates by an autonomous commission that will verify the integrity, style and living costs of the candidates; and (2) establishing the organisation of general meetings within a reasonable time limit in order to enable the mechanism to be implemented.</p> |
| <b>3. The main provisions of the draft and the highlighting of the new elements</b>   |
| <p>The draft law provides for the modification of the following normative acts:</p> <ol style="list-style-type: none"> <li>1. Law nr. 947/1996 on the Superior Council of Magistracy;</li> <li>2. Law nr. 154/2012 on the selection, performance evaluation and career of judges;</li> <li>3. Law nr. 178/2014 on the disciplinary responsibility of judges;</li> <li>4. Law nr. 3/2016 on the Prosecutor's Office;</li> <li>5. Administrative Code of the Republic of Moldova no. 116/2018.</li> </ol> <p>The mechanism for assessing the integrity and style and living costs of candidates for administrative positions within the SCM, SCP and their specialised bodies involves the creation of a specialised ad hoc integrity assessment committee in this regard.</p> <p>Based on the specificity of the activity of the Evaluation Committee, as well as from the need to exclude any form of control or interference in its activity, it is proposed to set up the respective committee within the Ministry of Justice. The evaluation committee will have functional</p>  |



independence and administrative autonomy. Thus, any interference by the ministry's management in its activity will be avoided.

The evaluation committee will have 6 members and will decide by vote on the results of the evaluation carried out.

We note that three of the members of the evaluation committee will be appointed by the development partners of the Republic of Moldova, an aspect that is relevant in the governmental effort to increase the credibility of the chosen direction of reforms and to ensure the transparency of the mechanisms proposed in order to achieve the commitments assumed at international level in connection with the reform of the justice field.

The draft proposes that the three members of the Evaluation Committee, which are to be proposed by the Parliament, be distributed between the majority and the parliamentary opposition in a proportional manner, based on the number of parliamentary mandates held. Thus, the parliamentary majority is to propose two members, and the opposition – one member.

According to the provisions of the legislation regulating the activity of the SCM, the SCP and their specialised bodies, before conducting the competitions for the selection of candidates, they must submit to the SCM or, as the case may be, to the SCP their candidacy file.

This draft provides for the obligation to include the decision of the Evaluation Committee in the candidates' competition file. Thus, the institution competent for the appointment of members to the SCM, the SCP and their specialized bodies will refer the matter to the Evaluation Committee, requesting the assessment of the integrity of the candidates who applied for the competition.

As a result of its work, the Evaluation Committee will issue a decision. Based on the fact that the respective decision is an administrative act, its appeal will be made in accordance with the provisions of the Administrative Code no. 116/2018 with the derogations in this draft law.

It also intervenes in the lists of criteria according to which candidates for administrative functions are selected by establishing a new mandatory criterion – presentation of the decision to promote the integrity assessment carried out by the Evaluation Committee.

In addition, taking into account the limited terms in which the issue of unblocking the activity of the SCM, SCP and specialized bodies must be solved, it is proposed that the appeals of the decision of the Evaluation Committee be examined by the Chisinau Court of Appeal, as a court of first instance. In the same context, the draft provides for the establishment of limited terms for the submission of the appeal (3 days) and for the submission of the recourse (3 days).

These restricted terms of contestation are justified by the fact that the integrity assessment is carried out in respect of persons participating in "elections", which is why here are to be used the considerations made for the consecration of the limited terms for the similar appeal procedures provided by the Electoral Code.

We note that the result of the assessment of the integrity and style and life costs of the candidates for the administrative positions of the SCM, the SCP and their specialized bodies **will have no effect on their career as judges or prosecutors**. The evaluation proposed through this project is made only in relation to the administrative function for which they are applying and does not aim to assess the professional skills of the **candidates**. Consequently, the mechanism proposed by this draft does not affect the guarantee of constitutional independence of judges and prosecutors, not further defending the exercise of the duties of the candidates who are judges and prosecutors.

Another new element introduced through this draft is the express provision of the restricted powers for the SCM and SCP in case the mandate of more than 2/3 of the members has ceased. In other words, in the event that the mandates of the majority of the members of the self-administration bodies of judges and prosecutors have ceased, the respective councils will exercise only some limited, administrative duties, related to the convening of general assemblies, the preparation of activity reports, the delegation of participants in seminars, conferences, etc. administrative issues that are strictly necessary to avoid institutional blockages.

We emphasize that the present draft law does not aim to modify the competences of the SCM or SCP, nor to exclude some of them. The aim is to ensure a balance between their representativeness and on the other hand their minimum functionality.

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| <b>4. Economic and financial substantiation</b>   |
| <p>The implementation of the project will involve additional expenses from the state budget in the part related to the remuneration of the activity of the members of the Evaluation Commission. The draft provides for the payment of an allowance in the amount of 20% of the average salary in the economy for each meeting attended.</p> <p>For 2021, by Government Decision nr. 923/2020 was approved an average monthly salary in the economy in the amount of 8716 lei. As a result, each member or alternate of them will receive for a meeting approximately 1642 lei.</p> <p><b>The administrative costs of the activity of the respective commission will be ensured from the budget of the Ministry of Justice.</b></p> |
| <b>5. The method of incorporation of the draft law in the system of normative acts in force</b>   |
| <p>As a result of the adoption of this draft, it is not necessary to modify the related normative framework.</p>  |
| <b>6. Approval and public consultation of the project</b>   |
| <p>In order to comply with the provisions of <i>Law no. 239/2008 on transparency in the decision-making process</i>, the draft will be placed on the official website of the Ministry of Justice <a href="http://www.justice.gov.md">www.justice.gov.md</a>, at the Directorate of <i>Decisional Transparency</i>, section <i>Announcements on the initiation of the elaboration of normative acts</i>.</p>   |