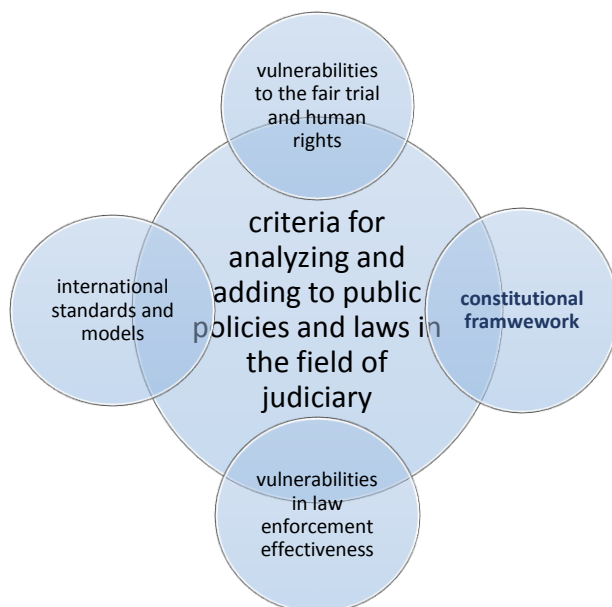

Position paper on the European Parliament Resolution

Transparency International Romania notes the debates on the state of the judiciary and the fight against corruption at European level, and appreciates that in its resolution, recommendation no. 10, the European Parliament urges the European Commission to "to resume its annual anti-corruption monitoring in all Member States without delay; invites the Commission to develop a system of strict indicators and easily applicable, uniform criteria to measure the level of corruption in the Member States and evaluate their anti-corruption policies¹" thus contributing to a strong European framework of standards and best practices.

Only assessments and debates that are objective, impartial and empirical have the potential for general support of all stakeholders and to solutions that can be successfully implemented and sustainable. In this context we emphasize that the politicization of anticorruption discourse weakens its credibility and lowers confidence in a non-partisan approach to anti-corruption policies.



Any approach to the situation in Romania must take into account the concrete materialized vulnerabilities and the international standards in the field that respond to these vulnerabilities.

Regarding the evolution of the public discourse on the resolution of the European Parliament, we stress that both sovereign card on one hand, and missuses the resolution for electoral approaches in an antagonistic internal political dynamics on the other hand, are equally detrimental to the potential for progress.

Recognizing needs and gaining consensus through dialogue on the effectiveness of law enforcement and respect for human rights are essential.

Rule of law ≠ impunity ≠ judicial abuse
Rule of law = anticorruption = human rights

¹ in line with Parliament's resolution of 8 March 2016 on the Annual Report 2014 on the Protection of the EU's Financial Interests - JO C 50, 9.2.2018, p. 2.

The rule of law is essential for the European Union and Romania and must be maintained and strengthened in all its aspects. In this context, we regret the rejection of the amendment on secret protocols between intelligence services and judicial structures that have developed an unacceptable practice throughout the European Union. In this respect the Military Court of Appeal pronounced its ruling in case no. 1/81/2018 and we also based our statement on MEDEL (*Magistrats européens pour la démocratie et les libertés*) Resolution on safeguarding the independence of the Romanian judicial system from secret and unlawful interference of the intelligence agencies².

Consistent with its constructive, solution-oriented and impact-changing approach to society, Transparency International Romania presents a comprehensive review of the steps to be followed and expresses its full readiness to support the judicial authorities, the legislative forum and practitioner communities to crystallize viable, objective and effective options for public policy and debate.

**Board of
Transparency International Romania**

Bucharest, November 14th, 2018
Contact: office@transparency.org.ro

² <https://www.medelnet.eu/index.php/activities/an-independent-judiciary/445-resolution-on-safeguarding-the-independence-of-the-romanian-judicial-system-from-secret-and-unlawful-interference-of-the-intelligence-agencies>

To those noted in the Resolution, Transparency International Romania makes the following comments on the application of European standards and concrete implementation solutions

Requests of the European Parliament's Resolution	General comments of TI-România	Objective solutions proposed to national authorities
<p>1. Stresses that it is fundamentally important to guarantee that common European values listed in Art. 2 TEU are upheld in full and that fundamental rights as laid down in the Charter of Fundamental Rights of the European Union are guaranteed;</p>	<p>✚ This requirement is intrinsic to the Member States' participation in the European Union and it guarantees of independent justice and fair trial in all legal disputes needs to be adopted by all MS.</p>	<p>The Bucharest authorities can use the Score Board mechanism of DG Justice³ and the comparative law tools to analyze the solutions adopted and under development at the level of the Member States in order to continue the reform of Romanian judiciary in line with the European and international standards in the field. Establishing remedies for vulnerabilities to the fair trial defined by standards and recommendations proposed by FRA⁴, ECHR practice and UN standards in the field⁵.</p>
<p>2. Is deeply concerned at the redrafted legislation relating to the Romanian judicial and criminal legislation, regarding specifically its potential to structurally undermine the independence of the judicial system and the capacity to fight corruption effectively in Romania, as well as to weaken the rule of law;</p>	<p>✚ In itself any impairment of the independence of the judiciary (including in relation to the secret services) and the ability of the state to ensure the rule of law affects society as a whole.</p> <p>- Concern are raised without the identification of specific vulnerabilities and recommendations that can then be quantified, monitored and evaluated for progress.</p>	<p>A comparative analysis of the rules of judicial organization at the level of the Member States of the European Union is required to get inspiration form the good practices as they are set up by the European Network of Judicial Councils⁶ It is also possible to establish a common basis of understanding by analyzing the major models of judicial systems (Germany, France) in relation to the regulations in these countries on the main issues concerning the independence of courts and judges and the relationship between the executive and the prosecutor's offices on the two separate level of this relationship: the judicial and non-judicial. An analysis of the measures against Transparency International standards on the capacity of the judicial systems to combat corruption is recommended⁷.</p>
<p>3. Condemns the violent and</p>	<p>✚ Freedom of assembly is the</p>	<p>The solution that the ongoing investigation the events of</p>

³ https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf

⁴ <http://fra.europa.eu/en/theme/access-justice>

⁵ <https://www.icj.org/themes/global-security-rule-of-law/>

⁶ <http://www.ejtn.eu/About-us/>

⁷ <https://www.anticorruption-helpdesk.eu/www-standards>

<p>disproportionate intervention by police forces during the protests in Bucharest in August 2018;</p>	<p>basis of society's ability to react, within the limits of law and respect for the rule of law.</p> <ul style="list-style-type: none"> - The provision in the resolution may be perceived as a pressure on ongoing judicial inquiries coming from a political forum. 	<p>August 10th, 2018 to be comprehensive clarifying all aspects in order to respond to the needs of public opinion for transparent review of the facts. For the assessment of culpabilities it is necessary to use reference standards on the legal framework and accepted European intervention models in similar cases, as well as the legal and European standards that establish the rights of assembly and protest. The double standard on similar situations at EU level and the reaction of the European Parliament should be avoided, therefore TI Romania recommends that the EP should react now to all Member States on the basis of the precedent of this resolution.</p>
<p>4. Calls upon the Romanian authorities to put in place safeguards in order to assure transparent and legal basis for any institutional cooperation and to avoid any interference that overcomes the check and balances system; calls for parliamentary control over the intelligence services to be reinforced;</p>	<p>+ Justice is exclusively based on the law known to all parties. Imbalances or co-operation that is not directly governed by law creates a major risk for the sustainability of corruption investigations. These investigations can end in rejection of allegations within the criminal proceeding due to unlawful procedures or evidence.</p>	<p>In order to respond to these requirements, it is essential to use international standards on the independence of the judiciary, the interference limits of intelligence services, the right to a fair trial and a review of the legislation on secret services. As early as 2015, Transparency International Romania anticipated and identified this vulnerability and proposed a balancing model adapted to the Romanian constitutional framework on the basis of international standards⁸. In order to apply the criminal sanctioning policy to all corrupt persons and companies it is instrumental to eliminate any possibility of manipulating or selecting evidence that leads to impunity for certain causes of great corruption.</p>
<p>5. Urges the Romanian authorities to counter any measures which would decriminalise corruption in office and apply the National anti-corruption strategy;</p>	<p>+ The legal framework of criminal liability for corruption must be robust, comprehensive and clear in all European countries in order to generate both the capacity to punish corruption and the guarantees</p>	<p>The lack of regulation and the ambiguity of the rules on the abuse of office that governed a large number of proceedings concerning these offences led the rejection of many cases by the courts because the rule did not meet the conditions of a clear and predictable law. Transparency International Romania has analyzed and proposed since January 2017⁹ a way of integrating the</p>

⁸ https://www.transparency.org.ro/sites/default/files/download/files/TIRONewsletter201512_0.pdf

⁹ <https://www.transparency.org.ro/ro/tironews/ti-romania-transmis-ministerului-justitiei-amendamente-pe-cele-doua-oug-cu-impact>

	of an incontestable procedure in terms of fairness.	requirements of the Constitutional Court in the Criminal Code in order to ensure the effectiveness of incriminating rules, to eliminate the vulnerabilities of the text, and to avoid the risk of impunity.
6. Strongly recommends to reconsider the legislation on NGO financing, organisation and functioning as to its potential to have an intimidating effect on civil society and conflict with the principle of freedom of association and the right to privacy, and bring it fully in line with the EU framework;	+ It is essential that the legislation governing civil society organizations supports their activities, and in no way hinders their operation.	Transparency International Romania encourages the institutional transparency of NGOs and practices these standards in its work ¹⁰ . However, any legislative measures to ensure fiscal transparency must be similar to those applicable to any other legal person. A higher standard than the common one may be the choice of organizations ¹¹ , and not an administrative burden imposed by the state.
7. Expresses its deep concern regarding political restrictions of media freedom and the bill proposals penalizing denigration of Romania abroad and reintroducing defamation in the criminal code;	0 No Government proposal or Parliament's decision on criminalization of defamation in the Penal Code has been put forward.	Any limitation of the freedom of the press is unacceptable in a democratic society. International standards are clear in this respect and it is necessary to compare the legal framework with the provisions of art. 10 of the European Convention on Human Rights ¹² and the jurisprudence of the Strasbourg Court, in order to identify whether or not there are reasons for concern.
8. Urges the Romanian Parliament and government to fully implement all recommendations of the European Commission, GRECO and the Venice Commission, and to refrain from conducting any reform which would put at risk the respect for the rule of law, including the independence of the judiciary; urges to continue to engage the civil society and to address the above issues in a transparent,	+ The recommendation for alignment with international standards is welcomed within the system of constitutional democracy in Romania. - There are some points that the resolution has failed to include and which are essential for increasing public integrity with direct effect in	The application of GRECO and the National Anti-Corruption Strategy standards should lead to a robust system of public governance by expanding the scope, results and model of the Public Internal Governance Control System. In order to increase transparency and integrity, it is necessary to adopt the National Compliance Register as well as to introduce a mechanism for certifying public governance at local level. Approaching the European partners almost exclusively on the ways of criminal repression is a system error and therefore it must be accompanied by an emphasis on prevention and

¹⁰ <https://www.transparency.org/ro/ro/content/transparenta-institutionala>

¹¹ An example of this was developed by Transparency International UK: <https://www.transparency.org.uk/publications/anti-bribery-principles-and-guidance-for-ngos-2/>

¹² https://www.echr.coe.int/Documents/Convention_ROM.pdf

<p>inclusive process; encourages to seek pro-actively evaluation by the Venice Commission of the legislative measures at stake before their final approval;</p>	<p>development welfare and avoiding corrosive effects in the social and economic environment.</p>	<p>administrative measures. Romanian judicial authorities have to assume the effectiveness of criminal liability of legal persons in order to avoid the impunity that transnational companies benefited from in Romania's corruption cases (Siemens, EADS, etc. have escaped investigations because the facts were ruled out for status of limitation in the investigative phase at the prosecutor's offices). In order to avoid subjective approaches, the changes to the legislation of the judiciary should be checked against the standards of the Venice Commission in the <i>European Standards regarding the independence of the Judicial System</i>¹³.</p>
<p>9. Calls on the Romanian government to cooperate with the European Commission pursuant to the principle of sincere cooperation as set out in the Treaty;</p>	<p>0 The principle of loyal cooperation is enshrined in the Treaty but also in the CVM agreement</p>	<p>The principle of loyal cooperation requires a bold approach for both the Commission and the Member State. In this respect, a real dialogue on both sides and maximum transparency of used notions and working tools with full objectivity and impartiality is needed.</p>
<p>10. Reiterates its regret that the Commission decided not to publish the EU Anti-Corruption Report in 2017, and strongly calls on the Commission to resume its annual anti-corruption monitoring in all Member States without delay; invites the Commission to develop a system of strict indicators and easily applicable, uniform criteria to measure the level of corruption in the Member States and evaluate their anti-corruption policies, in line with Parliament's resolution of 8 March 2016 on the Annual Report 2014 on the</p>	<p>+ Transparency International recommendations on the protection of whistleblowers, the transparency of lobbying, the regulation of registers of real beneficiaries of companies and investment funds, financial transparency, etc. must be transposed in a robust way in European regulations. The European Parliament can assume a tangible and positive role in this process at the legislative level not only at the</p>	<p>The Romanian authorities can contribute effectively and constructively to the adoption of the highest standards in the fight against corruption in all the Member States, requesting within the EU Presidency the extension of good practices in Romania in the fight against corruption to the other EU Member States. Thus, the Romanian institutional system in the field of anti-corruption law enforcement agencies, appreciated in the CVM reports, can become a standard model for the EU. As well as good practice in the Union, especially in countries with longer democratic tradition, can be adapted to the Romania context. We propose to the Romanian authorities, within the rotating presidency that begins on January 1st, 2019, to put forward a courageous action plan for the Union to transpose the highest</p>

¹³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e) ;
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)029-f](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)029-f)
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)040-e)

Protection of the EU's Financial Interests; ¹⁴	level of resolutions.	standards and recommendations into regulations at Community level. In this respect, Recommendation 11 of the resolution adopted on November 13 th in Strasbourg is also relevant.
11. Strongly calls for a regular, systematic and objective process of monitoring and dialogue involving all Member States in order to safeguard the EU's basic values of democracy, fundamental rights and the rule of law, involving the Council, the Commission and Parliament, as proposed in its resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (the DRF Pact) ¹⁵ ; reiterates that this mechanism should consist of an annual report with country-specific recommendations; ¹⁶		
12. Calls on the European Commission as guardian of the Treaties to monitor the follow-up given to the recommendations by the Romanian authorities while continuing to offer full support to Romania in finding adequate solutions;	0 This principle requires real cooperation from both sides to analyze solutions from a comprehensive perspective and with clear result indicators	It is necessary for the credibility of the cooperation mechanism to set expectations in concrete and quantifiable terms for the mechanism. It is also necessary that the interests of society and those of the justice seekers will be equally a priority, as are the interests of magistrates in order to ensure full coverage of all the European standards contained in Art. 2 of the Treaty. Reforming justice is a benefit to society, not a regulation only in the interest of the judiciary.
13. Instructs its President to forward this resolution to the European Commission, the Council, the governments and Parliaments of the Member States and the President of Romania.	0 Standard procedure for making the positions of the European Parliament known	It is necessary to develop a reasoned answer where the concerns of the European Parliament were based on a lack of information from the Romanian authorities and a plan of measures for those elements that are not covered at national level or have potential for improvement.

¹⁴ Texts adopted, [P8_TA\(2016\)0071](#).

¹⁵ Texts adopted, [P8_TA\(2016\)0409](#).

¹⁶ Texts adopted, [P8_TA\(2016\)0485](#).