

RE-ORGANISING THE
INTERNATIONAL ADOPTION AND
CHILD PROTECTION SYSTEM

FINAL REPORT
REVISED

ATTN: PRIME MINISTER OF THE ROMANIAN GOVERNMENT

MARCH 2002

The thanks of the members of the Independent Group for International Adoption Analysis and the Group's Executive Secretariat go to:

- Mr Adrian Năstase, Prime Minister of the Romanian Government,
- Mrs Emma Nicholson, member of the European Parliament,
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- Mr Octavian Știreanu, presidential adviser

for their confidence and time.

Even though all the efforts have been made to avoid inaccuracy and bias, any errors that might have slipped in the Report are only imputable to the Group.

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1. Legal Background

- The Independent Group for International Adoption Analysis has drawn up this report for the Prime Minister of the Romanian Government.
- The Independent Group for International Adoption Analysis, further on referred to as IGIAA, was appointed by the Prime Minister of the Romanian Government, Dr. Adrian Năstase, through Prime Minister's Decision no. 401 of November 20, 2001, on the basis of the terms of reference developed by IMAS-SA at the request of NACPA.

2. IGIAA Objectives

- The Prime Minister of the Romanian Government has authorised IGIAA to implement the following four activities:
 - a. Analyse the international adoption system in place in Romania as per Government's Emergency Ordinance no. 25/1997 and develop recommendations for improvement;
 - b. Assess and develop proposals to solve existing international adoption cases;
 - c. Analyse international adoption applications registered with the Romanian Adoptions Committee (RAC) as per Government's Emergency Ordinance no. 25/1997 and remained unsolved after Government's Emergency Ordinance no. 121/9.10.2001, and develop recommendations to solve these cases;
 - d. Look into the NACPA and RAC's institutional capacity to solve international cases and develop recommendations for improvement.
- The Prime Minister's Decision limits IGIAA life to three months (November 20, 2001 – February 20, 2002).
- Due to the great amount of work, the Final Report was rescheduled for March 2002 with the approval of the SGG.
- Although the Group's main objective as defined in Decision no. 401/November 20, 2001 of the Prime Minister of the Romanian Government is to look at the international adoption system and evaluate the specialised institutional capacity within the system, what we ascertained was that the international adoption can't be isolated from the child protection system as a whole. Therefore this report attempts a holistic perspective on the child protection system, within which international adoption is a sensitive issue.

3. IGIAA Membership

- The following persons have been assigned as members of IGIAA by Decision of the Prime Minister:
 1. Mrs Marieta Avram, doctor in legal sciences at the Bucharest University, expert in adoption issues
 2. Mr Richard Alderslade, personal adviser of the Prime Minister of the Romanian Government;
 3. Alin Teodorescu, sociologist, IMAS-SA.
- IGIAA members have worked on a strictly voluntarily basis.
- IMAS-SA has ensured the executive secretariat and logistic support of IGIAA at its headquarters in no. 44, Sfinții Apostoli street.
- IMAS-SA has ensured the budget for logistics, transportation and national and international travel on a voluntary basis entirely.

4. IGIAA Manner of Working

- The manner of working was established in December 2001 and relies on the following:
 1. primary research;
 2. in-depth structured and unstructured interviews with key actors and stakeholders in the field;
 3. full confidentiality of the data obtained in compliance with the ESOMAR code;
 4. permanent communication with the Secretariat General of the Romanian Government, European Commission, European Parliament, NACPA and ministries with competence in the field;
 5. production of basic materials by the IGIAA Secretariat and thorough debates on the results in plenary meetings.

- The methodology used by IGIAA is a combination that includes institutional analysis (especially used to determine how legislation impacts on public institutions) and restructuring of organisations according to standards (used to redesign institutions involved in the process).

5. Setting Up of IGIAA

- Following the decisions of the Prime Minister of the Romanian Government and the recommendations of European institutions, the Romanian Government adopts the Emergency Ordinance no. 121 on 8.10.2001 and temporarily suspends all procedures pertaining to international adoption. International adoption procedures were suspended for 12 months (8.10.2001-8.10.2002). Emergency Ordinance no. 121/8.10.2001 also asks NACPA and the Ministry of Justice to review the legal framework of international adoptions and harmonise it with international regulations and practice.
- As the Ministry of Justice has failed to pursue the tasks assigned to it through Emergency Ordinance no. 121, in November 2001 NACPA has asked IMAS-SA to develop the Terms of Reference for an independent group of specialists to be appointed and conduct the analysis beyond any doubts of bias.
- The terms of reference have been accepted and the Decision of the Prime Minister of the Romanian Government no. 401/20.11.2001 adopted.
- The appointment of IGIAA was welcomed and fully supported by European institutions, SGG, the Prime Minister's Cabinet and the NACPA.
- In the domestic and international mass media however – especially publications known for their links with agencies specialising in international adoptions – the independent Group was immediately treated with negative responses. Considerable negative responses have also been signalled on the Internet.

6. IGIAA's Context of Activity

- IGIAA worked in a context of rather imperative restrictions imposed by the political environment, media and public.
- On June 21, 2001, for the first time after 1990, the Romanian Government took a firm commitment before international institutions and political officials, to undertake concrete efforts with a view to analysing and solving the critical problems occurred within the child protection and international adoption system. IGIAA ranked these commitments with absolute priority.
- Even though outside the specific realm of IGIAA, the next page presents a synthesis of the various restrictions identified during the Group's activity.
- The main focus of IGIAA – to fulfil the tasks assigned to it in the Prime Minister's Decision no. 401/20.11.2001 – has been however pursued throughout the activity.

SOURCE OF CONSTRAINTS	TYPE	REQUIREMENTS
European Parliament	Official reports	Stop the market system in international adoptions Close down isolating institutions and change the concept of child protection Multiply alternative services Increase the share of domestic adoptions Enhance administrative capacity
European Commission	Official reports	Stop the market system in international adoptions Close down isolating institutions and change the concept of child protection Multiply alternative services Increase the share of domestic adoptions Enhance administrative capacity
Domestic mass media	Reports, interviews, editorials	Support the Prime Minister and the Government in restructuring the field Support the Rapporteur and the NACPA
Foreign mass media	Reports, interviews, editorials	Negative description of the Romanian child protection system Negative consequences of international adoptions
Political groups in different EU member states	Para-diplomatic activity, media declarations	Resume international adoptions Solve applications for adoption submitted under the 1997 legislation
Non-European political groups	Para-diplomatic activity, media declarations	Resume international adoptions Solve applications for adoption submitted under the 1997 legislation
Domestic public	Requirements on the public agenda	Increase the State's role in child protection Support national/international adoption
Domestic and international agencies specialising in international adoption	Lobby, PR and media	Resume international adoptions

7. Assessment of International Adoption Cases

- As Emergency Ordinance no. 121/8.10.2001 establishes a 12-month moratorium on international adoption proceedings, international adoption cases were grouped as follows:
 1. international adoption cases on which courts have issued a final and irrevocable approval prior to the moratorium and pending agreement certificates;
 2. pipeline international adoption cases.
- IGIAA has implemented the following activities within November 30 – December 3, 2001:
 1. A list of 61 applications for conformity certificates was received from the Romanian Adoption Commission, out of which three duplicates;
 2. The Group asked for and received from RAC copies of the files of 58 international adoption cases on which a final and irrevocable decision has been issued by the courts;
 3. Integral and cross-analysis of the files;
 4. Verification of dates when court decisions have been issued;
 5. Files were grouped in two categories:
 - 49 cases on which a court decision has been issued **prior to** Emergency Ordinance 121/2001 coming into force;
 - 9 cases on which a court decision has been issued **after** Emergency Ordinance 121/2001 coming into force.

- After having analysed the Hague Convention, ratified by Romania through Law 84/1994 – and the provisions of Emergency Ordinance 25/1997 and Emergency Ordinance 121/2001, IGIAA recommends the following:

*On cases for which irrevocable decisions have been issued prior to EO 121/2001 to approve international adoption, **the legal solution is for the Romanian Adoption Committee to issue the conformity certificate required by the law, and the adopted children to leave Romania.** The solution doesn't require any legislative changes, as the analysis of Art. 23, par. 1 of the Hague Convention – which has priority over domestic legislation – reveals that issuing conformity certificates is an operation subsequent to adoption approval procedures. EO no. 121/2001 comes into force on October 9 and suspends all adoption approval procedures – i.e. all procedures prior to approval by irrevocable decision of the court. Therefore operations related to issuing conformity certificates do not fall under the Ordinance.*

- IGIAA has spent three consecutive days analysing the 61 files available with RAC. Recommendations have been made to immediately issue conformity certificates on 49 cases; as for the other 9 cases and other cases on which a court decision hasn't been issued, but which raise certain humanitarian issues, recommendations have been made to modify EO 121/8.10.2001.
- The Ministry of Justice has been asked to inform IGIAA about the number of cases on roll with the courts that haven't been presented in public session. The official answer was received no earlier than the end of January 2002.

8. International Adoption Applications Unsolved through EO 121

- Following the recommendations included in IGIAA's report on December 3, 2001, the Secretariat General of the Government has promptly decided as follows:
 - The RAC to issue the 49 conformity certificates ---> carried out in December 2001;
 - The EO 121/8.10.2001 to be modified, through EO no. 161/6.12.2001.
- EO 161/6.12.2001 allows international adoption cases on the roll to be solved, considering the child's best interest;
- EO 161/6.12.2001 allows the 9 cases on which an irrevocable decision has been issued after 10/08/2001 and cases in the administrative and judicial circuit at 10/08/2001 to be solved operatively, in compliance with EO 25/1997.
- EO 121/8.10.2001 further on sets a moratorium on international adoption procedures for 12 calendar months.
- EO 121/8.10.2001 may only be modified or annulled by the Romanian Parliament.

- Based on EO 161/6.12.2001, NACPA recommended, the Secretariat General of the Government endorsed and the Romanian Government approved adoption approval applications to be referred to courts, through the following memorandums:

Memorandum on December 20, 2001:

14 adoption files of adoptive families from **Israel**
7 files of adoptive families from **France**
10 files of adoptive families from the **US**

Memorandum on February 14, 2002:

1 file of an adoptive family from **Andorra**
1 file of an adoptive family from **Germany**
17 files of adoptive families from the **US**

- IGIAA reckons, at least three more memorandums would be needed to solve all international adoption cases submitted before EO 121.

9. Increasing International Pressure after Enactment of EO 161/2001

- Although appropriate information on EO 121, IGIAA's activity and EO 161 has been disseminated to the media and interested international institutions, agencies interested in international adoption and external political groups have continued to exert increased pressure.
- Straight attacks have been directed to the Prime Minister and Mrs Emma Nicholson, member of the European Parliament, Romania Rapporteur to the European Parliament ('Ziarul Politic', February 11, 2002).
- The actual reasons of such pressure are analysed further on.
- Pressure of agencies interested in having international adoption procedures resumed has also taken the form of a new wave of adoption files being submitted to NACPA. New applications for international adoption have been submitted in December 2001, January and February 2002, as follows:
 - 170 SUA,
 - 86 Spain,
 - 27 France,
 - 15 Italy,
 - 14 Switzerland,
 - 11 Israel,
 - 4 Andorra,
 - 1 Belgium,
 - 11 Canada,
 - 4 Cyprus,
 - 5 Germany,
 - 5 Greece,
 - 1 Ireland,
 - 2 Great Britain,
 - 1 Holland,
 - 1 Slovakia,
 - 1 Turkey.

- With EO no. 25/1997 still valid, the NACPA was unable to decline registration of the new adoption applications. For at least 6 countries, out of which 4 EU member states, the amount of new requests for adoption is an indication of organised marketing practices.
- We shall also mention that the Romanian Government, the NACPA and the Prime Minister have constantly rejected pressure and restated their commitment to putting an end to the market system instituted by EO 25/1997 and restructuring the entire child protection system in Romania.

10. International Adoption System in Place in Romania between 1990 - 1997

- The first law regulating approval of national and international adoptions – Law 11/1990 – was passed on August 1, 1990 by the Parliament formed following elections on May 20, 1990.
- Law 11/1990 was adopted within a national and international context with specific implications for the Romanian child protection system.
- Right after the Revolution in December 1989, part of the domestic and international media have developed and spread the theory that terrorists that have tried to protect N. Ceaușescu would mainly come from institutions for orphans and abandoned children and be educated in the spirit of blind obeisance to Ceaușescu and his family. As a result, some of the international media visited child protection institutions within the Romanian system and described a rather unimaginable isolating and imprisoning child protection system.
- Law 11/1990, as amended in many turns until it was cancelled in 1997, included some important stipulations: the setting up of the RAC as a State organism; the courts given power to decide on adoption; preponderance of domestic over international adoptions; prison for those who make money by mediating or facilitating adoption. The legal requirements for adoption approval are therefore radically changed.
- Even though there are no figures available to fully support such opinion, what the Law 11/1990 achieved was a liberalisation of the international adoption system in Romania in a context in which international adoption has been a very rare occurrence.

- Following enactment of Law 11/1990, the legislative framework of child protection has changed slowly. The entire protection system for handicapped, abandoned, orphan or homeless children was still relying on Law 3/1970 – a law adopted by the communist administration to respond to increasing child abandonment in maternity hospitals and public venues as a result of the artificial demographic boom recorded in 1966-1970. Law 3/1970 was promoting institutionalisation as a prevailing protection method for handicapped, orphan or abandoned children.
- Hundreds of public institutions were functioning in 1990, sheltering abandoned, orphan or handicapped children; such institutions would usually be located in hardly accessible places and operate in most primitive physical and educational environments. The responsibility for these institutions would be shared by a number of institutions at a central level (the Ministry of Interior; the Ministry of Health; the Ministry of Education, etc.). The system was severely lacking specialised staff, as the number of students admitted into specific higher and post-secondary education institutions (psychology, speech therapy, general and special pedagogy, social assistance) had been drastically cut down starting with 1978, or subject matters specific to the field had been eliminated from curricula.
- The Revolution and the deterioration of the State power after 1990 has resulted in a softening of rules in these huge institutions, with impressive numbers of homeless children suddenly appearing on the streets of big cities in Romania. Neither citizens nor Romanian authorities were prepared at that time to respond to such unprecedented phenomenon. Research revealed, however, that not all homeless children came from institutions, a considerable share of them being on the street as a result of a disorganised family environment.
- The legislative framework in the field changed after 1990 as follows:
 1. Law 11/1990 on adoption, mentioned above;
 2. Law 18/1990, ratifying the UN Convention on the Rights of the Child
 3. Law 100/1992 on the Hague Convention on civil aspects of international child kidnapping

4. Law 15/1993 on the European Convention on Child Adoption (Strasbourg);
 5. Law 84/1994 on ratifying the Convention on Child Protection and Co-operation in International Adoption (Hague)
 6. Law 65/1995 on complementing and amending provisions regarding international adoption
 7. Law 47/1993 on the judicial regime of abandonment.
- The last law mentioned deserves some special attention. Law 47/1993 establishes that a child protected within a social or medical public or private institution is to be legally declared abandoned through a court decision if parents have shown lack of interest for the child for a period longer than six months. Lack of interest translates as lack of proof that the parents have made contact with the child within a period of six months.
 - **Law 11/1990 and Law 47/1993 on child abandonment set up the legal framework for the emergence of a Romanian international adoption market after 1994. These two laws create the offer – children legally declared as abandoned and prepared for adoption. In order to have an operating market, the demand needs to be created and the prices established.**

11. The 1995 National Plan

- As a response to obvious difficulties occurred within the Romanian child protection system, a National Action Plan for the Benefit of the Child is developed in 1995 and adopted through Government Decision 972/1995.
- The National Plan adopted in 1995 has no strategic relevance whatsoever, as it doesn't include an accurate evaluation of:
 1. the exact situation at the moment when the Plan was developed,
 2. the causes that have generated that situation,
 3. the specific objectives,
 4. specific action to move from the current state of the child protection system to the objectives assumed, and
 5. how the resources needed are to be put together.
- It seems the National Plan was adopted at the request of European organisms worried by the situation of handicapped, abandoned and orphan children in protection institutions and the increase of the number of international adoptions with no consistent institutional control.
- The only positive element of the National Action Plan for the Benefit of the Child adopted in 1995 is that it recommends institutionalisation as a worst case solution and states the child's best interest of having a family.

12. Romanian Child Protection System within 1990 and 1997

- One may note that the concept of the public administration in terms of child protection between 1990 and 1997 relied on institutionalisation, isolation and quasi-imprisonment.
- Much more intense contacts between the public administration and foreign government and non-government organisations right after the December 1989 Revolution and the emergence of independent mass media helped the central and local public administration discover other forms of child protection besides institutionalisation in a quasi-prison environment. Some local authorities have made constant progress right after 1990 in assimilating alternative protection models.
- With all the praiseworthy attempts to change the system, the general ethos at the level of public administration was discouragement in front of an enormous amount of problems and phenomena occurred right after December 1989. The prevailing opinion in some local administrations would very frequently suggest that the State administration and organisms are relatively incapable of dealing with all the problems occurred in the child protection system, therefore adoption – especially international – would be a rather quick solution. At the same time, international agencies promoting international adoptions have made their presence felt in different forms right after December 1989. Very efficient in terms of lobby procedures and marketing and with very sound knowledge on the international legal framework, these agencies have stimulated the liberalisation of the legal adoption system, first by modifying the legislation and subsequently by setting up practical operation systems.
- The concept of institutionalisation, isolation and quasi-imprisonment dates since before World War I and it has been intensively utilised by socialist countries after 1945. The concept relates to the handicapped, orphan, abandoned child as a social failure, a danger for the moral environment of the society. Therefore children in any of the situations mentioned above should be isolated in large, prison-like institutions. Institutionalisation as a pedagogic concept of child socialisation has been vigorously denied in the fifties by the Structuralist school of J.Piaget and Cl.Levy-Strauss.

- The modern socialisation and handicap pedagogy imperatively requires the insertion of the handicapped child (and adult, for that matter) in a real social environment, the education of such children within the mainstream education system, and equal treatment of the child, regardless of psycho-motor particularities. The only difference is that, unlike pedagogy of children that are not handicapped or have a family, it seeks to ensure professional specialised assistance of the child within a normal social environment. The social insertion theory relies on the fact – proven by experiments – that handicapped, abandoned or orphan children can successfully engage in competition with all other children in certain fields of activity, provided that they are given the chance.
- As a result of this theory, training in the field of psychology and socialisation pedagogy in OECD countries has witnessed a substantial growth in the past fifty years. The industry of implants and connected services has also developed intensely, reaching ca 0.5 % of the GDP in Austria in 2000.

13. The International Adoption System in Romania within 1997-2000

- Starting with 1997, the Romanian Government, under new political leadership, proceeds to restructuring the entire legislative and structural organisation of the child protection system in general and of the adoption system in particular.
- As a result, the following legislation has been passed within a very short lapse of time:
 1. EO no. 25 (approved by the Government on 9.06.1997, but issued in the Official Gazette later on 6.11.1997), on the legal procedures for adoptions, approved with amendments through Law 87/1998;
 2. EO no. 26/1997 on child protection, reissued, approved with amendments through Law 108/1998;
 3. Government Decision no. 245/1997 on the criteria for authorising private organisms operating in child protection through adoption;
 4. Government Decision no. 502/1997 on structure and functioning of the Romanian Adoption Committee;
 5. Government Decision no. 217/1998 on foster mothers;
 6. Government Decision no. 604/1998 on criteria for authorising private organisms.
 7. These documents have been complemented with methodological norms and ordinances on reorganising the public institutions in the field (Government Decision no. 117/1999, EO 192/1999, Government Decision no. 96/2000).
- EO 25/1997 sets up a mechanism for domestic and international adoption, different from the one established by Law 11/1990. In a strictly juridical view, this Ordinance is much better written than all the other pieces of legislation developed by that time. The juridical analysis on this document has been conducted by experts of great authority in the field (Prof. Marieta Avram).

- What is essential about EO 25/1997 is that it supports adoption, especially international, by maintaining a constant offer – a database of children fit for adoption. The adoption system set up by the previous legislation was demand-driven – precisely, if a family expressed its wish to adopt, a child would be identified through different methods, especially in public institutions. The system set up by EO 25/1997 is offer-driven, respectively, there would be a database of children fit for international adoption (‘rejected on the internal market’) available at any time. This database would be ‘allocated’ to agencies accredited based on different scoring systems. In other words, agencies specialised in adoptions would be now given a clear, undoubted ‘commodity’ to export according to all legal norms and international conventions.
- With a view to placing the offer, EO 25/1997 introduces Romanian and foreign private organisms as facilitators of international adoption, even stipulating the compulsory requirement for international agencies to operate through a Romanian partner.
- The fact that EO no. 25/1997 supports international adoption is emphasised by the fact that, in case of international adoption, entrustment with a view to adoption is NOT required – respectively, a period of time while the potential adopting family lives with the potentially adopted child based on mutual consensus. This requirement is imperative for families of Romanian citizens residing in Romania. Therefore a much faster way was being open towards obtaining a court decision approving international adoption than domestic adoption.
- In administrative terms, the executive apparatus of the Romanian Adoption Committee was placed under the control of the state organism assigned for child protection.
- Government Decision no. 502 is issued on 09.09.1997, on the structure and operation of the Romanian Adoption Committee, cancelling Government Decision no. 63/1991, approved through Law 11/1990.
- Government Decision 502 is even more explicit than EO 25/1997 in confirming Romania as a supplier in the activity of agencies specialising in international adoption. The Romanian Adoption Committee is clearly assigned the obligation to authorise Romanian and foreign organisms that operate in adoption.

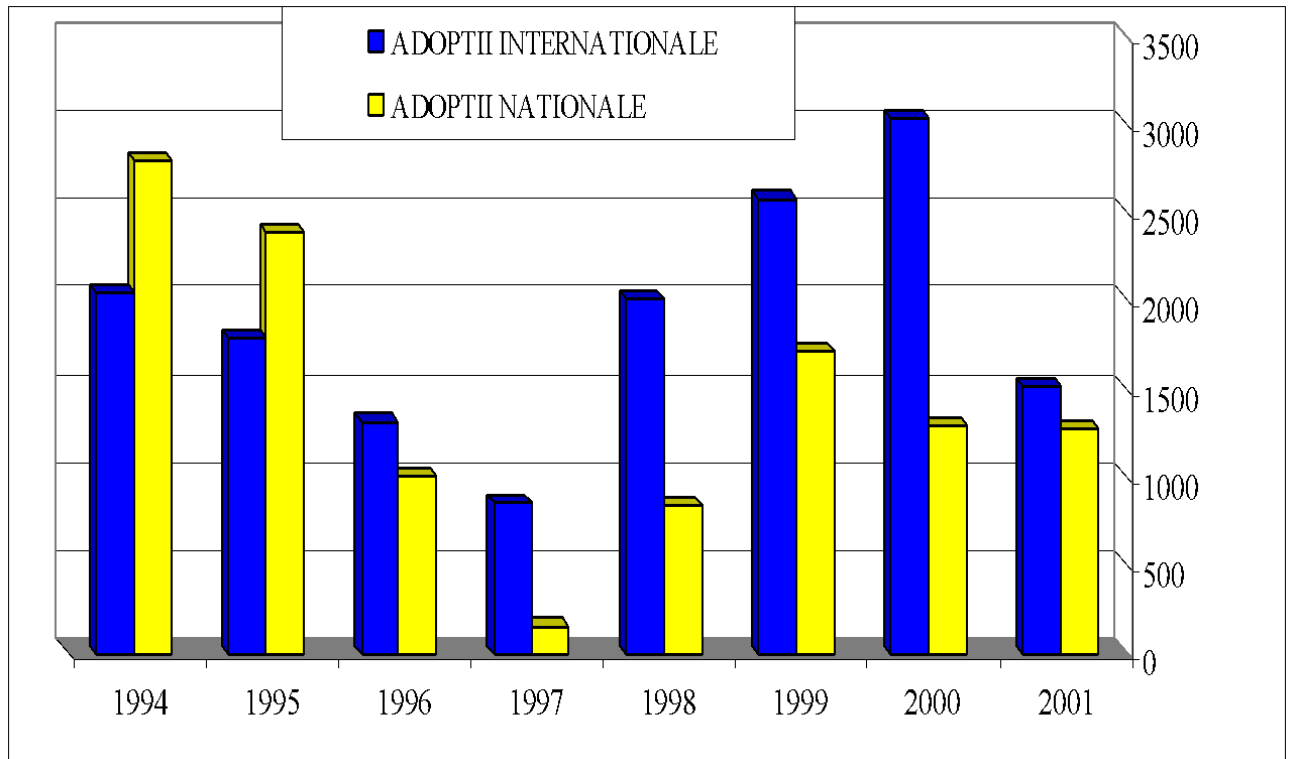
- Neither the Hague nor the UN Convention don't oblige the signatory states to make things easier for agencies that operate in international adoption. On the contrary, the UN Convention (Art. 20, par. 3) clearly shows that the hierarchy in child protection methods is foster care, adoption, and institutionalisation only if necessary. In other words, the Romanian priority in 1997 should have been de-institutionalisation, creation of alternative services, stimulation of domestic adoption, prevention of abandonment and child abuse. The problems Romania should have approached at that time relate to the concept of an institutionalised system, the quality of child protection services, training of specialised staff, awareness-building on the issue, and by no means creation of a legislative system which, under the appearance of complying with international treaties, would stimulate abandonment and financial profit from international adoption.
- In the same year 1997, the Romanian Government adopts EO no. 26, opening the way to the decentralisation of the public child protection services. County councils and councils of Bucharest sectors take over some of the child protection institutions and implement a territorial form of organisation.
- In principle, this measure was an exceptional one, as it transferred child protection institutions at a local level and opened an opportunity for modernisation.
- Even though well intended, the administrative process per se was especially slow, as funds and resources required by such operation at a national scale not being properly ensured.
- As a result, 1999 witnesses an acute crisis of the institutions within the child protection system, with three major consequences:
 1. It feeds the campaigns of international adoption agencies that promote themselves as the only ones able to ensure protection for the best interest of the child through international adoption;
 2. It leads to a drastic fall of the public support for the Prime Minister at that time and for the ruling coalition;
 3. It obliges the European Commission to grant emergency humanitarian aid consisting of food and basic items for institutionalised children, unprecedented case among countries included to join EU structures. The emergency humanitarian aid has been granted by cancellation of a PHARE programme initially

aimed at supporting the institutional reform in child protection – process at an advanced stage of implementation at that time.

- However, the process of facilitating the activity of agencies specialising in international adoption was already set up through Government Decision no. 245/1997, confirming the accreditation system for such agencies.
- Instead of becoming a solution for child protection, as the UN and the Hague Convention recommend, international adoption was being facilitated and encouraged by the new legal framework, developed remarkably quickly between June and September 1997.
- The new legal framework has triggered sharp criticisms from the media, experts in child protection and some political parties, among which PSD – the winning party at the 2000 elections. In spite of that, the system has continued to operate and reached a peak level in 2000.
- The international adoption system was very simple:
 1. International agencies would look for clients – persons and families willing to adopt a Romanian child – using specific marketing procedures;
 2. Once the clients identified, the Romanian partner (the list of accredited organisations was including no less than 105 agencies at a moment) would offer the child, by choice, from the database;
 3. The child would be visited (or not) by the future adoptive parents;
 4. The paperwork would be completed sometimes in less than three months by the Romanian partner.
- As the system was growing, methods were being identified for ‘increasing productivity’: some agencies would take children from institutions or at risk for abandonment in their care and create true adoption pools. Others wouldn’t even bother to obtain all the documents required, but simply copy the existing ones. Some facilitators have even started to negotiate with expecting mothers, including on how the child would be abandoned at the maternity hospital.
- There is a case record and sound evidence to prove such behaviour.

- There is no reasonable argument to support the idea that the legislation adopted in 1997 has initiated the process of international adoption in Romania. It is however clear that the legislation adopted in 1997 and subsequent legislation has changed the domestic/international adoption ratio.
- Statistical data available shows that the process was ongoing in 1996 (see table further on). What happened was, however, that the 1997 legislation regulated the activity of agencies specialising in international adoption, eliminated occasional or permanent competitors of these agencies and made the process as such much easier.
- More over, public organisms responsible with child protection, having a minor role in national and international adoption as per the law issued in 1990, take over the process. In other words, public child protection services shift focus from increasing quality to stimulating and facilitating international adoption. From a public body responsible for child protection through adoption, the Romanian Adoption Committee becomes the regulator of international adoptions and the guarantor on the international adoption market that the law will be applied.
- In-depth interviews implemented by IGIAA reveal that the activity of the RAC within 1997-2000 was dominated by international adoption, with almost no effort to support national adoption, in spite of a large number of Romanian families residing in Romania seeking to adopt institutionalised children. More over, the common perception is that some of the executive staff and even some of the RAC members have indulged in operations that contravene to moral norms and regulations that govern the activity of civil servants.

14. Trends in Adoption within 1994-2001



15. Attempts to Dissolve the International Adoption Market. December 2000-February 2002

- As soon as December 2000, right after having taken the political power, the new President, Mr Ion Iliescu and the new Prime Minister, Mr Adrian Năstase, unequivocally state their commitment to improving the quality of child protection services, conducting a thorough analysis of the international adoption system, complying with EU joining criteria in the field and dissolving the international adoption market system.
- In June 2001, after repeated efforts to analyse and identify the problem, the Romanian Government and the Prime Minister in person take the public commitment to revise the system of protection of children's rights and impose a one-year moratorium on international adoptions. Legislative and staff changes have taken place during the entire 2001-year, and action programmes have been developed, suggesting the serious concern, with which the Government of Romania addresses this problem.
- However, the October 2001 moratorium has had a remarkable vicious effect. Dozens and hundreds of families in many countries of the world who had already paid considerable amounts of money to specialised agencies find themselves in impossibility to benefit from the services they paid in advance. The situation has generated considerable pressure on key factors at Government level. As a result, the Romanian Government is forced to look for legal ways of solving the applications of those well-intended foreign citizens that are in no way guilty for how the Romanian international adoption market was organised in the past.

16. Analysis on the NACPA and RAC Institutional Capacity to Solve International Adoption Cases; Proposals for Improvement

- Following a thorough analysis of:
 1. the existing and historical legislation;
 2. the institutional capacity of RAC and NACPA;
 3. the demands of local and central authorities in terms of child protection;
 4. the views of European and international institutions;
 5. the view of agencies specialising in adoption and in non-adoptive child protection measures,
- IGIAA has identified four groups of major problems in child protection policies, institutional structure, legislative framework and perspective for the future.

17. Critical Problems

1. The absolute need could be emphasised, to **revise the legislation** in the field of protection of the rights of the children, including protection through domestic and international adoption;
 2. It is absolutely necessary to **dismantle NACPA and the RAC** as they exist now and **establish new public organisms in the field, on new grounds and legislation**;
 3. It is imperatively necessary to **promote the concept of social reinsertion of children in need and reject the prison-like institutionalisation concept, increase awareness of the public and media and intensively train specialised staff in the field**;
 4. It is fundamental to **stimulate the national training system for specialised staff (at both higher and secondary education levels) in child protection, speech therapy, special pedagogy, psycho-motor recovery, and management and organising of specialised institutions.**
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- The list critical problems identified by the Group during its activity is much longer. However, we short-listed the issues mentioned above bearing in mind that transforming the child protection system is a priority for the next 5-7 years.
 - The child protection system was, is and will be a part of the central and local public administration, with an increasing focus on partnerships with the civil society and private sector. Past experience shows that the central and local administration need to provide a system immune to corruption and mercantile influences, clear in terms of legislation and fully operational in terms of execution. Analysis of the past 12 years' experience reveals that all the requirements are now met to rebuild the child protection system on modern grounds, in compliance with morality and legislation and with consistent public and international support.

18. The Need to Review the Legislation: an Integrated Pack

- The legislation listed below is seen as strictly necessary for restructuring the system.
 1. Law on the judicial regime of adoption;
 2. Law on preventing and ascertaining child abandonment;
 3. Law on the structure, operation and funding of the Romanian Adoption Authority;
 4. Law on the structure, operation and funding of the State Inspectorate for Child Protection;
 5. Law on the rights and obligations of children within the public childcare system at the age of 18;
 6. Law on the structure, operation and funding of the child protection system;
 7. Amending the Criminal Code of Law on articles referring to child mistreatment (art. 312, 315, 325, 326, 329, etc.)
 8. Law on the structure and operation of the Child Ombudsman's Office and of the Child and Family's Ombudsman Office within the Ombudsman institution.

Law on the Judicial Regime of Adoptions

- Definition of the adoption;
- Codification of situations in which a child may be adopted by a foreign family;
- The right to inform the child according to its age;
- Interdictions referring to adoption;
- Eligibility criteria for foreign citizens applying for adoption of a Romanian child (at least 18 months residence on Romanian territory confirmed in writing by the Police General Inspectorate)
- The child compulsorily entrusted to foreign adopted families; entrustment period equal to the period established for Romanian adopting families;
- Certification of families that apply for adoption;
- Consent of the parent(s);
- Cessation of parental rights;
- Role of the National Adoption Authority;
- Role of the court in judging and approving the adoption clearly described;
- Conditions for cancellation of the adoption;
- Abolition of any adoption fees, including fees for international adoption;
- The right of adopting persons to legal counsel, at the expense of the NAA to an amount stipulated in NAA Regulations;
- Other provisions meant to eliminate marketing, advertising or lobby activities of agencies specialising in adoption, either domestic or international.

Law on Preventing and Ascertaining Abandonment

- Clear measures for investigating and identifying categories of families and persons at high risk for abandonment at birth, during childhood or adolescence;
- Description of the form and periodicity of abandonment prevention procedures; assignment of competent institutions;
- Definition of abandonment - de facto and de jure -, much clearer than as described in Law 43/1993;
- Abandonment may be declared exclusively by decision of a court, under much stricter terms than the ones contained by Law 47/1993;
- With the declaration of abandonment, a tutor to be appointed to legally represent the child by the age of 18;
- Obligations in terms of decisions and rights of tutors.

Law on the Structure, Operation and Funding of the National Adoption Authority

- Organism having its own executive secretariat and budget, subordinated to the Parliament (following the pattern of the National Audio-Visual Council);
- The leading structure of the NAA is the NAA Board, consisting of 11 voting members: 2 appointed by the President, 3 by the Prime Minister, 2 by the Senate, 2 by the Chamber of Deputies, and one by the Foundation for Development of the Civil Society, respectively Centras as organisations of the civil society actors;
- The NAA Board makes decisions on:
 1. analysing and referring adoption files to courts;
 2. approving and presenting to the Parliament an annual activity report;
 3. approving the NAA budget and activity plan;
 4. post-adoption control and relevant measures;
 5. negotiation and recommendations to the Government on approving international co-operation agreements in child protection through adoption and combating cross-border traffic;
 6. representing the Government and Parliament at conferences, conventions and debates on adoption issues;
 7. proposals and action plans to rectify legislation in the field submitted to the Government and Parliament.
- The Board is chaired by a president elected from the members by vote of the Board members for a period of 6 months.
- The NAA executive staff includes 12 people speaking at least one language of European circulation plus English (compulsory).
- Job descriptions, structure of primary documents, circuits of documents and ROI to be established through a report of a consulting organisation appointed through open bidding.

Law on the Structure, Operation and Funding of the State Inspectorate for Child Protection

- NACPA as established through EO no. 12/26.01.2001 is abolished.
- SICP is a public organism co-ordinated by the Minister for Co-ordination of the Secretariat General of the Government.
- Job descriptions, structure of primary documents, circuits of documents and ROI to be established through a report of a consulting organisation appointed through open bidding.
- SICP has at least five functions and at least six functional departments.
- Below is a list of the minimal functions:
 1. State authority in the field;
 2. Regulating, including in terms of harmonisation of legislation and practice;
 3. Control and monitoring;
 4. Development and funding (integral or partial) of training programmes, monitoring, control, quality standards and policy in the field;
 5. Representation of the Romanian Government.
- SICP has at least 6 departments and three departmental institutions to ensure implementation of all its functions.
- Minimal requirements in terms of departments, co-ordinated by State sub-secretaries:
 1. Statistics and Prognosis, supplying measuring indicators and specific prognosis into the system;
 2. Standards, Regulations, Evaluation and Control – to develop quality standards for child protection services, State authority regulations, evaluation of public services in the field and implementation monitoring;
 3. International Programmes and European Harmonisation – to produce the regulatory and legislative framework underlying international co-operation, PHARE and bilateral programmes
 4. Monitoring, Public Relations and Information – to monitor the media on different topics and provide information to the media and public;
 5. Logistics – administration, budgeting, bookkeeping, human resources, management, informatisation

6. Staff Training and Evaluation – to produce training materials, organise training sessions and periodically conduct evaluations on the staff at the level of the local administration.
- The three departmental institutions minimally required to ensure proper operation of SICP are:
 1. Institute for Mother and Child Protection, currently subordinated to the Ministry of Health and focused on medical aspects of nutrition and healthcare; *in case the IMCP can't be transferred, is not properly staffed or professionally unfit, a National Institute for Child Protection should be created, carrying out the function of research-development and practical applications;*
 2. Centre for Socialisation Pedagogy, focused on socialisation pedagogy research and practice for institutionalised, abused, handicapped children (neuro-motor and psycho-motor handicaps);
 3. The Centre for Professional Documentation and Training, ensuring the logistics, staff and materials for research, staff training (around 35,000 staff to over 52,000 children under different forms of institutional or foster care).

Law on Rights and Obligations of Children within the Public Childcare System at the Age of 18

- 5,381 persons having turned 18 and coming from the child protection system were under different forms of institutional protection at 31.12.2001. Some of these youngsters are following some form of education – including special education – that lasts longer than mainstream education. Others are merely accommodated in these institutions because they have no place to go.
- The PHARE RO 9905.02 programme ‘Children First’ has financed a number of projects that have enabled local Departments for Child Protection to purchase houses on the free market and ensure specialised assistance to eliminate socialisation deficits in youngsters over 18 coming from the institutional system.
- Experience shows that a structured legislative framework is required, to support youngsters over 18 at the moment of completing their education and/or turning to full age.
- The Law on the rights and obligations of children under State care at the age of 18 should include specifications on:
 - how to identify these persons in order to avoid abuse of benefits that could result from using the system;
 - non-reimbursable material support at the moment of turning 18;
 - non-reimbursable material support to continue and complete their education;
 - reimbursable material support for ensuring housing (including acquisition) and minimal endowments in a place selected by the youngster;
 - bonus on the score at admission exams organised by education institutions belonging to the Ministry of Defence, Ministry of Interior, Ministry of Transports, Ministry of Agriculture;
 - procedures offering jobs through the local Labour and Social Solidarity Department.

Law on the Structure, Operation and Funding of the Child Protection System

- The decentralisation of child protection services, setting up of the National Adoption Authority, State Inspectorate for Child Protection, Child Ombudsman's Office require a coherent legal framework on the structure, operation and funding of the child protection system.
- The main objective of the Law is to ensure the shift from prison-like isolation in treating children institutionalised, with psycho-motor deficiency, homeless, at risk within its biological family, to a concept of progressive socialisation and reinsertion in mainstream social structures.
- IGIAA has identified two drafts (enclosed) of emergency ordinance or law in this field. Therefore writing a new draft shouldn't require any special efforts, especially that the local authorities and NACPA have accumulated intense practical experience in the past years.
- The law proposed should be of a strongly practical nature, allowing local authorities to use a seamless framework in setting up, operating and funding such services. The law also needs to discourage final institutionalisation as a protection procedure and encourage alternative socialisation and social reinsertion forms. The new law should stipulate clear procedures and action with respect to homeless children, children with psycho-motor handicaps, abused children, abandoned children, and children who commit or are pushed to commit anti-social deeds.
- The new law should also provide simple proceedings for abandonment prevention, reinsertion in the biological family, maternal counselling, and ensure a clearly defined statute for the staff in child protection, especially foster parents.

Changing the Criminal Code of Law on Articles on Child Mistreatment

Documents on the changes required in the Criminal Code of Law will be enclosed.

Government Emergency Ordinance on the Structure, Operation and Funding of the Child and Family Ombudsman Office

Documents will be enclosed on how the Child and Family Ombudsman Office should function.

19. Setting up the New Institutional System and Certification of Administrative Capacity

- Experience accumulated within 1990-2000, as well as the attempts to reform the child protection system within 2001-2001 show that, beyond legal grounds, the following are fundamental for the proper operation of the system:
 1. Continuous professional training and control of the active staff in the field;
 2. Written proceedings for action and decision checked and properly disseminated for every individual situation.
- IGIAA has noticed during its activity that the only written proceedings existing within the child protection and adoption system are included in laws, ordinances and government decisions, plus records of official documents. Most of the current activity relies on tradition, negotiation and discussions within the specialised staff.
- This verbal system of public administration has negative effects on the entire activity and organisational ethos. The main negative effects are listed below:
 1. An institution relying on verbal procedures can't implement consistent control on how tasks are carried out;
 2. A series of habits, a tradition is built and transmitted verbally, which can't be audited and permanently generates tension and conflicts;
 3. The possibility is drastically reduced to transmit organisational experience to newcomers – they have to undergo a long 'apprenticeship' on the job, which diminishes productivity;
 4. In absence of written rules all problems build at the level of the higher management of the institution, which becomes overloaded and enters 'crisis management' mode;
 5. The load of work is unevenly distributed among staff in the institution, with some persons overloaded and some others with a low institutional load at every hierarchic level.

- When designing and setting up the new institutions, respectively:
 - the National Adoption Authority
 - the State Inspectorate for Child Protection
 - the Child and Family Ombudsman Office,

it is absolutely vital to stipulate the consultant's obligation to produce the complete file of the newly created institution, including staff structure, job descriptions, staff selection terms, the form of primary documents and the flow of institutional documents.

- It is also vital that setting up of the new institutions stipulates resources for specialised training of the staff selected through contest or appointed by executive decision. Child protection, socialisation pedagogy, executive assistance of children with psycho-motor deficiencies, management and organisation of child protection institutions, treatment of homeless children, relations with international institutions are **NOT** studied within any form of education in Romania. Staff training in this field should therefore be of ad-hoc nature.
- Administrative capacity at the level of central and local public administration in Romania is certified using ISO (International Standards Organisation) procedures. There are some dozens of organisations delivering ISO certification procedures in Romania both for public and private institutions. Some of these quality certification institutions could be contracted at the very stage of setting up child protection institutions, with a view to establishing quality standards and certify these institutions.
- With no staff training programmes, no basic documents of setting up and organising activity and no quality certification we can't say that the new institutions would have the administrative capacity mentioned also in the note signed by the Head of the European Commission Delegation in Bucharest, Mr Jonathan Scheele, on 19.12.2001, to the attention of the Prime Minister of the Romanian Government. The note clearly shows that Government Emergency Ordinance no. 121/2001 should be kept and even extended, should it be ascertained that there is no mechanism in place to certify administrative capacity in international adoption and, implicitly, child protection.

20. Estimated Required Capacity of the National Child Protection System for 2002-2010

- The system capacity required for the period 2002 – 2010 has been estimated with a view to enabling accurate sizing of expenditure required to support the national child protection system.
- Capacity has been assessed based on very limited measuring values. Although the analysis relies on partial data, IGIAA wished to illustrate the system's needs in the future period.
- The following values have been used in estimating capacity and costing:
 - 1.2 cases of abandonment per 1000 live births (OMS abandonment rate);
 - 14.5 identified psycho-motor handicap cases per 1000 children over 1 year of age.
 - Values recorded with the system on 31.12.2001.
 - Birth rates envisaged by the National Demographic Commission for the period 2002-2010 (with a sharp decrease in the first three years followed by a slight increase)
- Find below the conclusions of the simple statistical analysis:
 1. The system will contain an average of 83,000 children at the end of every year, with a slightly decreasing trend after 2006, and reaching 78,000 children in 2010;
 2. Out of these children, around 57% were in private or public childcare institutions at the end of 2001. If the trends noticed continue and if annual campaigns will be organised to stimulate domestic adoption, we expect to have around 29,000 children – around 40% of the children under State care – in childcare institutions at the end of 2010.

3. One of the difficult problems within the institutional system is the pyramid of ages of the children within the system. Statistics show 5,381 youngsters that have turned 18 within the system at 31.12 2001. 18,544 more children will turn 18 within the next 4 years, with an annual average of around 4,500 children. 32,543 children will turn 18 within the next 8 years (until 2010) (Analysis has not considered institutional death rates and the number of children who legally quit the institution before turning 18). Bearing in mind these youngsters' difficult situation at the beginning of their adult life, a special law has been proposed.
4. At the existing standards, annual average per capita costs within the system seem to be around 1,750 Euro. These costs may increase faster than the average economic growth, considering that some settings within the system don't comply with average standards in terms of equipment and quality of services. Assuming an average annual increase of per capita costs of around 7%, average per capita costs in public child protection institutions should double every 10 years. The total cost of the system (for 87,518 children) in 2001 seems to have been around 153,156,500 Euro, respectively 0.43 % of the GDP or 1.2% of the consolidated budget. Considering, however, that the local administration covers most of the costs, the average annual cost in 2001 seems to have been around 7% of the local budgets. We should however bear in mind that there is great variation between budgets of different local councils. It seems counties with low local budgets (due to a poor development of the local economy) shelter the largest number and the most populated of the child protection institutions. The calculation, however, should be drawn based on concrete figures. A budget adjustment procedure will probably be required to ensure inter-county adjustment of child protection expenditure.
5. Costing (to the extent to which it is more or less close to the real situation) shows that costs are not as high as we could have expected before the preliminary calculations. There will certainly be a need for additional funding within the system besides state and local budget funding. Such needs however will only be clearly identified when the new institutions suggested will start their current operation.

21. Recommendations on Working Procedures and Timetable for the Next Period

- The activities recommended within this Report will be difficult to manage with lack of proper co-ordination.
- IGIAA recommends that the Prime Minister of the Romanian Government and the Minister for Co-ordination of the Secretariat General of the Government set up three work groups directly co-ordinated by the SGG:
 - **The legislative group**, led by a child protection expert, but including legal experts, having as a main task to produce the integrated legislative pack recommended in this report in a correlated manner;
 - **The institutional organisation group**, led by an expert in organising and management with knowledge of child protection, to develop the terms of reference for consulting companies that will develop staff structures, job descriptions, primary documents, management programmes, and organise public contests to fill in key positions within the new structures (Inspectorate for Child Protection, National Adoption Authority, Child and Family Ombudsman, Institute for Mother and Child Protection, Centre for Socialisation Pedagogy Studies, Training Centre);
 - **The group for identification of training needs and means**, led by an expert in education, to identify secondary, higher and permanent education resources and recommend the main training sources for the staff within the system and for high schools and higher education institutions.
- The three work groups will ensure the documentary basis needed to begin progressive restructuring of the system. One major danger of this restructuring process is to continue crisis management identified by IGIAA as currently existing within the system. It is absolutely necessary that the integrated legislative pack, the organisational structures and proceedings pack and the training resources pack be correlated, analysed at all levels of the central public administration and debated with the interested international institutions. It is also necessary not to give any illusion to lobby and international adoption agencies that the Romanian Government will return to the child protection system in place between 1997 and 2000.

- Below is a possible timetable of the activities envisaged in this report:
 - **March 2002 – the report presented to the Minister for Co-ordination of the Secretariat General of the Government; corrections and suggestions;**
 - **March 2002 – the report presented to the Prime Minister of the Romanian Government; corrections and suggestions;**
 - **April 2002 – meeting of the High Level Group in Bucharest; report presented; corrections and suggestions;**
 - **April 2002 – establishment of the three Work Groups; required resources allocated to ensure their functioning;**
 - **June 2002 – documentation of the work groups analysed and approved; legislative pack;**
 - **September 2002 – selection of consultants; legislative pack approved by the Government and referred to Parliament; new institutions included in the draft budget to be submitted to the Parliament by October 10, 2002;**
 - **November 2002 – moratorium instituted by EO 121/2001 extended for one more year, with the modifications brought by EO 161/2001;**
 - **January 2003 – central institutions start operating on the new legal grounds.**