

THE EU AND INTERNATIONAL ADOPTION FROM ROMANIA

INGI IUSMEN*

*Department of Politics, University of Sheffield, Sheffield, UK

ABSTRACT

The European Union (EU) has applied an anti-inter-country adoption (ICA) policy in Romania as part of EU accession conditionality, while after 2007 the EU promoted a pro-ICA approach. Romania had to overhaul its child protection system and ban ICA before it could become an EU member, while its current legislation maintains the ban on ICA. However, since 2007 the EU has been demanding that Romanian authorities resume ICA from Romania. This article examines the factors and processes which shaped the EU's 'chameleonic' policy on ICA in relation to Romania. The child protection system in Romania still faces significant shortcomings. However, it is shown that the EU's embrace of a pro-ICA policy after 2007 does not constitute a response to the problems faced by child protection in Romania. On the contrary, the EU's plea for the liberalization of ICA from Romania is the outcome of a combination of *endogenous* factors, such as the EU's own embrace of a children's rights policy and its biased interpretation of key international instruments on ICA and child rights, and *exogenous* factors, such as adoption lobbies, which succeeded in getting their grievances onto the agenda of EU institutions.

INTRODUCTION

This article examines how and why the European Union (EU)'s position on the provision of international adoption from Romania radically shifted after 2007. It will be shown that the EU's policy position regarding inter-country adoption (ICA) in Romania changed from a staunch ICA critic during the enlargement process to a supporter of ICA from Romania after 2007. However, what factors explain the EU's 'chameleonic' policy on international adoption from Romania? By drawing on the empirical case of EU intervention in the issue of international adoption in Romania before and after 2007, it will be demonstrated that both *exogenous* and *endogenous* factors shaped the EU's radical shift from an anti-ICA stance to an ICA advocate after 2007. As part of EU accession conditionality, the EU demanded that

Romania ban ICA in order to reform the child protection system; yet the ban on ICA generated a backlash in the market of international adoption and the lucrative business run by international adoption agencies via the ICA of Romanian children. Romania had to overhaul its child protection system to be in line with international instruments before it joined the EU. After 2007, however, EU institutions promoted a pro-ICA policy by urging the Romanian government to lift the ban on ICA. It will be shown that the EU's embrace of a pro-ICA policy regarding Romania has, ironically, not been triggered by the situation of child protection in Romania after 2007. On the contrary, it will be argued that the EU's 'chameleonic' position on ICA is the outcome of a combination of *endogenous* factors, such as the EU's own embrace of a children's rights policy and its biased interpretation of international instruments, and *exogenous* factors, such as adoption lobbies, which succeeded in getting their grievances onto the agenda of EU institutions.

The empirical findings of this article provide insights into the role and scope of regional organizations, such as the EU, in the regulation of international adoption and in the broader protection of children's human rights across Europe. The findings of this article draw on triangulated data collection methodology that includes semi-structured interviews¹ with EU and child rights actors, detailed documentary analysis and an examination of key international instruments on international adoption and children's rights. Qualitative interviews were conducted with key EU actors (Commission officials in Directorate-General (DG) Enlargement, European Commission Delegation in Bucharest, European Parliament (EP)'s rapporteur for Romania) and child rights experts involved in the accession negotiations with Romania (from 1999–2007) along with the main Romanian governmental actors (secretaries of state, civil servants) and non-governmental organizations and institutions (such as UNICEF) involved in different aspects of child rights and international adoption in Romania (before and after 2007). Semi-structured interviews were also conducted with key EU officials in the European Commission (DG Justice) in charge of EU internal policy on children's rights after 2007 and an expert on child rights (member of) in the UN Committee on the Rights of the Child (CRC Committee). The snowballing sampling method was employed to identify suitable interviewees for this research. Due to confidentiality reasons, the names of interviewees are not provided in the 'Appendix', and therefore, interviewees' names have been replaced by numbers, which are used in the notes supporting the empirical claims of this article. The findings of the article draw on the analysis of all interview data, although not all interviewees are cited in the text. This article is organized as follows: the section 'International Instruments on Children's Rights and ICA' examines the main international instruments regulating ICA and how scholars and practitioners have

interpreted them, while the section 'International Adoptions in Romania and EU Accession Conditionality' scrutinizes the anti-ICA policy applied by the EU in Romania as part of the EU accession conditionality. The post-2007 pro-ICA shift is explored in the section 'The Situation after 2007'. The key factors that shaped the change of EU policy line from a staunch anti-ICA position to a defender of ICA are examined in the last section. It is shown that the EU's embrace of a pro-ICA policy was not a response to the situation of child protection in Romania: rather, EU internal developments and pro-adoption lobbies influenced the EU's pro-ICA policy in relation to Romania after 2007.

INTERNATIONAL INSTRUMENTS ON CHILDREN'S RIGHTS AND ICA

The principles underpinning ICA and the mechanisms providing for its global regulation are enshrined in the main international instruments on children's rights and international adoption, namely the UN Convention on Rights of the Child (CRC) (1989) and the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague Convention, 1993). However, the legal confusion surrounding the relationship between the two instruments (Dillon, 2003: 186) and their enforcement at the national level has engendered in practice conflicting interpretations by scholars and child rights practitioners. The CRC is regarded as the 'touchstone for children's rights throughout the world' (Fortin, 2009: 49) by providing a paradigm shift in thinking about children as both 'beings' and 'becomings' (Freeman, 2011: 27). Indeed, the CRC merits include its breadth and the extent of its detailed provision for the autonomous rights of children (Kilkelly, 2001: 308–26). As the main international instrument upholding children's rights and the basic standard-setting on adoption at the global level, the CRC provides in Article 21b that ICA 'may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin', while any childcare solution has to secure the preservation of the child's cultural and ethnic identity (Article 20 CRC). According to the CRC provisions, therefore, ICA is a last resort measure.² The provisions regarding ICA have to be interpreted in conjunction with other CRC articles, such as Article 3 on the 'best interests of the child', Article 12 on the child's right to express his/her views freely or Article 9 on child's separation from parents. The widely accepted interpretation of CRC provisions is that in-country childcare solutions constitute a priority, along with the preservation of the child's

biological family, whereby the state is responsible for the development and implementation of policies designed to support family preservation (Vite, 2008: 25).

The Hague Convention, while drawing on the CRC principles, is a private international law instrument that has a different legal status and scope to the CRC: it aims to provide the minimum safeguards to protect the rights of children affected by ICA by achieving cooperation between states and recognition of adoptions that take place in line with the Convention's provisions. While the CRC is a broader convention on the general principles constitutive of the human rights of children, the Hague Convention has a narrower focus, namely it specifies the procedures and standards that should guide legal ICA by preventing the corruption and profiteering generated by it (Dillon, 2003: 203). Therefore, the Hague Convention legitimizes ICA by establishing the procedures and mechanisms to regulate and control the ICA practice (Bartner, 2000; Bainham, 2003). To this end, Article 4 of the Hague Convention states that ICA shall take place 'only if the competent authorities of the state of origin... have determined after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests'. Both the CRC and Hague Convention provide that the choice for a childcare solution is to be guided by the principle of the 'best interests of the child' (Article 21 CRC and Article 4 Hague Convention). Unlike the CRC, the Hague Convention emphasizes in its Preamble that ICA offers the advantage to 'a permanent family to a child for whom a suitable family cannot be found in his or her State of origin'. The interpretation of this particular provision has led to the view that ICA is preferred to institutional care or even foster care (Bartholet, 2007, 2010). However, the Hague Conference on Private International Law adopted guidelines on how to interpret the Hague Convention provisions regarding the hierarchy of childcare solutions, according to which 'in-country permanent family or foster care should be preferred to international adoption (Hague Conference on International Law, 2008: 29–30). Indeed, the Hague Convention has been interpreted as giving effect to Article 21 CRC (Selman, 2009; Smolin, 2010) by adding substantive safeguards and procedures to the broad CRC principles and norms.³ For instance, UNICEF endorses this interpretation of the Hague Convention and CRC, namely that 'stable family-based solutions' take precedence over international ones (UNICEF, 2010a). The CRC Committee, which is the main body in charge of monitoring the transposition of the CRC at the national level, recommends in its Concluding Observations that State parties should implement Article 21 CRC, according to which ICA is a last resort measure, and particularly that they sign and ratify the Hague Convention (Committee on the Rights of the Child, 2009a, b).

In other words, the Committee interprets CRC provisions on ICA as being consistent with the Hague Convention's, namely that the subsidiarity principle is to be applied in relation to ICA.⁴ The key international child rights institutions and organizations, such as UNICEF, the CRC Committee, the Hague Conference on Private International Law, along with international NGOs such as Save the Children, share the view that stable in-country solutions are to be preferred to ICA, which is regarded as a last resort (McLoughney, 2009; Hague Conference on Private Law, 2008; Save the Children, 2010; UNICEF, 2010a; Committee on the Rights of the Child, 2009a, b).

However, some scholars have attributed conflicting interpretations to the provisions in the CRC and Hague Convention regarding the hierarchy of childcare solutions. While CRC explicitly prioritizes in-country solutions, and therefore ICA is a last resort measure, ICA advocates deem that the Hague Convention prioritizes permanent family solutions, and therefore, advances a preference for ICA over institutional care, and even over foster care (Bartholet, 2010; Barozzo, 2010). Some argue that international adoption provides the only means for finding a permanent family to unparented children, and although they acknowledge the abuses and corruption generated by ICA, they argue that the restriction of ICA cannot be justified by either adoption abuses or corruption (Bartholet, 2010: 91; 2012: 379). This perspective on ICA is particularly predominant in the USA, where foster care has proven to be problematic due to a 'lack of permanency and feelings of contingency' (Dillon, 2003: 201) which have damaging effects on children. Those who regard ICA as a last resort measure, on the other hand, invoke the corruption and child trafficking generated and fuelled by ICA (Bhabha, 2004; Smolin, 2010; Selman, 2009). Therefore, the interpretation of the two main conventions leads to antagonistic positions regarding the regulation and provision of ICA as a childcare solution.

At the heart of the heated debate between those who view ICA as a last resort measure and others who do not lies the dichotomy between the abuses and fraud underlying ICA and the damaging psychological effects of institutionalization on child development and well-being (Zeanah et al., 2003; Dillon, 2003: 235). Therefore, the quality and availability of in-country childcare alternatives along with an evaluation of domestic placements (Smolin, 2012: 385) are crucial factors influencing the choice for in-country solutions. Both conventions concede that it is the responsibility of competent national authorities to assess how the available childcare solutions, including ICA, meet the best interest of children without a family. Only if a child cannot be cared for in a 'suitable manner' domestically (Article 21 CRC) or after 'due consideration' (Article 4 Hague Convention) has been given to all in-country alternatives, can ICA be considered an option. Even then,

ICA is a viable solution only if it is allowed by the sending country's legislation (Article 21 CRC). While it is not clear what kind of standards care institutions should meet in practice (Cantwell and Holzscheiter, 2008: 53), the stigma of 'institutions' as referring only to orphanages is misleading. Although orphanages with appalling conditions still exist, international institutions and child rights experts have been promoting the development of 'institutional care' providing family-like environment.⁵ For instance, 'family-type' homes or 'group homes', which represent small, residential facilities located within a community and designed to serve children (Mezmur, 2009: 93) have been advanced as suitable childcare institutions that are widely used across Europe. To this end, the UN bodies and the main international NGOs promote de-institutionalization via the establishment of family-type care solutions or small-group care, which meet certain quality standards that would be conducive to child's development (Human Rights Council, 2009).

At the European level, the enforcement mechanisms of the European Convention on Human Rights (ECHR) have been invoked in conjunction with the rights-based content of the CRC (Kilkelly, 1999) and thus children's human rights under the ECHR have in some cases been interpreted in the light of the CRC standards and principles (Kilkelly, 2002). Under the ECHR framework, ICA has been interpreted as an extreme measure because of two factors. First, it is the state's duty to promote and facilitate contact between children and parents and work for the reunification of parent and child and, second, the state has the obligation to establish adequate child protection measures regarding child abandonment and family support (Bainham, 2003). Indeed, the implementation of the CRC provisions entails in practice the state's responsibility for protecting the rights of the child, while ensuring appropriate alternative care solutions and supervising the well-being and development of any child placed in alternative care (SOS Children's Villages International, 2009). The Hague Convention, on the other hand, does not include measures which states are obliged to take to support the birth family or to seek the reunification of the child with the family (Bainham, 2003: 7; Bhabha, 2004) given that its main objective is the safeguarding of ICA after all alternative care solutions have been exhausted. In the context of the ECHR, therefore, the practice of ICA would amount to an admission of failure on the part of the state (Bainham, 2003: 13), which is the reason why the international adoption of children from the Member States is not a common practice. In brief, it is contended that the interpretation of the Hague Convention in conjunction with the CRC should render ICA as the measure of last resort, which is further reinforced by the rights and principles included in the ECHR.

INTERNATIONAL ADOPTIONS IN ROMANIA AND EU
ACCESSION CONDITIONALITY

The fall of communism exposed the appalling conditions of Romanian orphanages and the huge number of children cared for in these institutions. In the early 1990s, therefore, international adoption became the main rescue solution for the 100,000 institutionalized children (Morrison, 2004) and Romania was the main provider of children for ICA worldwide (Selman, 2010). Yet, the ICA from Romania violated the international instruments on children's rights⁶ due to poor regulation and lack of observance of international instruments regulating the ICA practice (European Commission, 2001:24). Although Romania had signed and ratified the CRC in 1990 and the Hague Convention in 1995, the principles and provisions in the two conventions were not reflected in the Romanian legislation or institutional framework. The legal irregularities underpinning ICA in Romania were unearthed by the findings published in a report in 2002 by the Independent Group for the Analysis of Inter-country Adoption (IGAIA), a group set up by the Romanian authorities and consisting of child rights experts (Jacoby et al., 2009: 123). For instance, according to this report, the institutionalization law (11/1990) and the abandonment (47/1993) law, according to which children protected within residential care could be legally declared abandoned if their parents had shown lack of interest in the child for a period of 6 months (IGAIA, 2002: 16–17), in practice facilitated the proliferation of ICA as a solution by finding families for children in institutional care.

According to some, the post-1990 legislative framework led to the emergence of a Romanian international adoption market which was offer-driven,⁷ according to which Romania was a supplier in the activities of agencies specializing in international adoptions (IGAIA, 2002: 23). For instance, adoption agencies set up a database of children fit for international adoption whereby children would have 'price tags' with sums ranging from \$6,000–\$30,000 (Jacoby et al., 2009: 124) based on their age, health and physical features (Post, 2007). Furthermore, corrupt staff in orphanages and the lack of post-adoption monitoring provided opportunities for illicit adoptions (Dickens, 2002) and the emergence of baby trade (Jacoby et al., 2009: 117). Adoption facilitators had resorted to procuring children directly from biological families, usually in exchange for money (Roby and Ilfe, 2009: 663), and hence 'paper orphans' were manufactured (Graff, 2008: 63) as these children were neither orphans nor abandoned by their parents.⁸ They were in institutions as a result of their families' poverty (European Parliament, 2001: 17). What emerged in Romania was a system of private adoptions, whereby a form of ICA emerged in which individuals or mediating bodies outside the formal structure of

the Hague Convention Central Authority proposed a match, which is not approved by the Hague Convention system (Hayes, 2011: 289). Therefore, private ICA was promoted as a means of getting children out of the large residential institutions and placing them into families abroad. This system prioritized the best interests of adopters and not of the adopted children for three reasons (Post, 2007: 85). It generated money without putting the interests of the child first; it discouraged domestic adoptions and, above all, children who did not qualify as adoptable were adopted. According to the European Parliament's rapporteur for Romania, ICA from Romania was 'child selling... children being smuggled out of the country [...] it was no surprise to me when Romania was named by the UN as one of the top eleven countries as a source of human trafficking'.⁹ For instance, the level of ICA peaked in 2000 when 3,035 children were adopted internationally while only 1,219 children were adopted nationally (Table 3).

Given the international media coverage of the situation of children in institutions and the illegal adoption of children from Romania (Selman, 2009), child protection became a formal EU accession condition in 2000 as part of the application of the Copenhagen political accession criteria.¹⁰ Yet, the EU had no legal competence in child rights and ICA in relation to EU Member States, although within the enlargement context, the Commission could employ the accession conditionality to seek changes in a wide range of human rights areas, including child protection and international adoption. The Commission was the main EU institution which devised and managed the pre-accession process (Grabbe, 2006: 26), and therefore its role as a 'screening actor' (Hillion, 2004: 11) entailed overseeing the candidates' progress in meeting the accession criteria, even in relation to those policy sectors where the Commission lacked expertise and experience, such as in child rights matters in general.¹¹ However, it is contended that the EU has significant leverage to forge substantial changes in candidate states' human rights provision by employing the accession conditionality even if those policy sectors are not deemed to be traditional EU areas, such as ICA and child protection.

1. THE MORATORIUM ON ICA

Romania violated the international instruments on ICA (European Commission, 2001) and therefore, within the EU enlargement context, at the Commission's behest, a moratorium was placed on international adoptions in 2001 by the Romanian government.¹² The EU position was that Romania had to reform its legislation on international adoptions in order to be in line with the European practices on ICA, according to which Member States do not render children available for ICA.¹³ A key reason for the moratorium was that reform of the child protection

system and a ban on international adoptions were mutually exclusive: ie the system could not be reformed if children did not become part of the system because they had been sent abroad. The reform of the system had to be underpinned by the adoption of new legislation on ICA and protection of children's rights. At the same time, although EU receiving countries accounted for 40 per cent of all ICA from Romania, it was deemed inappropriate for EU states or prospective states to *send* children for international adoption (Selman, 2010). The reform of the system was supported by EU financial assistance under the PHARE (Poland and Hungary: Assistance for Restructuring their Economies) programme¹⁴ and was targeted at developing childcare alternatives, such as 'group home alternatives', which accompanied the de-institutionalization of children via the closure of old-style institutions. Indeed, the reform of the child protection system in Romania provides the 'most dramatic example of a country engaged in large scale movement of children from institutions to foster care and group homes' (Dillon, 2003: 202). For instance, one of the European experts on family law and children's rights deemed that the ban on ICA was the *sine qua non* condition for reforming child protection and particularly for preventing the profiteering and irregularities underlying how the ICA procedure functioned in Romania.¹⁵

The Independent Panel of Experts on Family Law – set up by the Commission to advise Romanian government on the new law – aimed to ensure that the new Romanian legislation was in line with the practices of the EU Member States regarding international adoption. The new Romanian legislation on children's rights (272/2004) and adoption (273/2004) – which was based on the CRC provisions – entered into force in 2005 and maintained the moratorium on ICA by limiting it to extreme exceptions. Romanian children could be adopted abroad only by their relatives up to the second degree of kinship.¹⁶ Foreign couples could adopt Romanian children only if they were permanent residents in Romania (law 273/2004). The new legislation on children's rights and child adoption, which was welcomed by the European Commission (European Commission, 2005b), was highly innovative and revolutionary and was recommended as a model even for some West European states. According to a member of the Independent Panel of experts 'the legislation is pushing very far the application of the UN Convention of the Rights of the Child and it contains a number of provisions by which the other EU Member States could be inspired'.¹⁷ The USA based pro-ICA lobby was critical of the new legislation that maintained the ban on ICA.¹⁸ Yet, the Independent Panel of Experts' stance on the new Romanian legislation was that it mirrored the practices of the Member States as no EU Member State expatriates its children.¹⁹ Presenting a legal rather than a political argument, the European child rights experts in the Independent Panel followed the provisions in the

international instruments on children's rights and the positions of key international child rights bodies, such as UNICEF (2010a) and the CRC Committee, according to which international adoption is a measure of last resort (Mezmur, 2009; Herczog, 2009). At the same time, the ICA policy template promoted by the EU in Romania followed the child protection model of the Member States, where a wide range of child-care services are targeted at helping biological families keep their children, while family-based alternatives are rendered available on a large scale and ICA is a last resort.²⁰ By relying on the technical knowledge provided by the child rights experts who advised the Romanian government on the new legislation, the Commission and legislation in Romania embraced a strict anti-ICA policy as part of the EU accession conditionality. Indeed, the EU contended that Romania's legislation on ICA and child rights complied with international instruments and, therefore, the EU wholeheartedly supported the new legislation on children's rights within the enlargement context (European Commission, 2005b).

THE SITUATION AFTER 2007

After Romania's accession to the EU in 2007, the EU embraced a pro-ICA position by urging Romania to lift the ban on ICA. This radical U-turn on ICA emerged incrementally at the Parliament level as members of the European Parliament (MEPs) in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) took a public pro-ICA stance at the EU level after 2007. For instance, some MEPs in LIBE signed a *Joint Declaration* (2008)²¹ which requested the support of the Commission in addressing the situation of international adoption in Europe. By highlighting the detrimental effects on child development of foster and institutional care, the Declaration requested that European states prohibiting ICA, such as Romania, should review their anti-ICA legislation by relaxing the intra-EU adoption procedure. The issue of ICA was also debated within a broader European context, for instance via the conference 'Challenges in Adoption Procedures in Europe' (2009) where the European Commission (DG Justice, Freedom and Security (JLS)) presented the findings of a study²² on the state of play of international adoptions in the 27 EU Member States. The conference provided a means for the Commission (DG JLS) to persuade Member States of the need to facilitate international adoption inside the Union and hence to force Romania to lift the ban on ICA maintained by its current legislation, as the Commission official responsible for the organization of the conference, Patrizia de Luca, put it (De Luca, 2009). The Commission's study recognized the diversity in the adoption legislation of Member States by singling out the

uniqueness of the Romanian legislation on ICA and the need to change it (Brulard and Dumont, 2009). The Commission endorsed an explicit pro-ICA position by providing its own interpretation of international instruments on children's rights and international adoption. For instance, by discarding Article 21 CRC and its principle of subsidiarity in relation to ICA due to 'uncertain interpretations', the Commission embraced a preference for ICA by interpreting the Hague Convention as prioritizing ICA over foster care and other forms of in-country care alternatives (Brulard and Dumont, 2009; De Luca, 2009: 2).²³ Yet this constituted a radical shift from the Commission's anti-ICA policy within the enlargement context, where ICA was deemed a measure of last resort. The Commission justified its pro-ICA position by drawing on the inclusion of children's rights among the Union's objectives in the Lisbon Treaty (Article 3 TEU) and its commitment to protect children's rights, as enshrined in the EU Charter of Fundamental Rights, where Article 24 covers the rights of the child (De Luca, 2009: 3). Yet neither the EU Charter of Fundamental Rights nor the Lisbon Treaty provide the Commission with the legal competence to adopt hard law measures on children's rights or to regulate international adoptions inside the Union (Piris, 2010). By highlighting the references to children's rights at the Treaty level, the Commission strategically adopted a pro-ICA position as part of its broader commitment to protect children's rights inside the Union, which is radically at odds with the anti-ICA policy line applied to Romania as part of the pre-accession process.

The only democratically elected institution of the EU, the European Parliament, took the lead in promoting a pro-ICA policy line in relation to Romania after 2007. For instance, the vice-president of the Parliament and its child rights rapporteur, MEP Roberta Angelilli, requested that the Romanian government lift the ban on ICA because of the high rate of child abandonment in orphanages and the overall huge number of children in residential institutions (Angelilli, 2010, 2011). The Parliament can employ various instruments, such as requesting the Commission's intervention or naming and shaming, to persuade Member States to take action in certain policy areas. Given the EU's lack of legal mandate to intervene in the ICA provision of the Member States, the Parliament alerted the Commission with respect to Romania's need to resume ICA. Yet, child rights organizations and NGOs monitoring the protection of children's rights in Romania contend that the situation of children in residential care has radically improved since mid 2000s, while the high demand for domestic adoption removes the need for Romania to resume ICA.²⁴ Indeed, child rights organizations view the decision to reopen ICA as a matter for competent national authorities to judge on the basis of whether the conditions for children in care are 'suitable' rather than being imposed

from outside (McLoughney, 2009). The Parliament set out its pro-ICA policy by adopting the Resolution *International Adoption in the European Union* in 2011. The Resolution expresses the Parliament's position on ICA in Europe. However, it has been claimed that the pro-ICA policy embraced by the Parliament is driven by some MEPs and adoption lobbies, especially the Italian ones, who push for the re-opening of ICA from Romania and therefore, the Resolution is the concrete outcome of this alliance between the lobbies and MEPs.²⁵ The Resolution endorses the Parliament's explicit pro-ICA stance, along with the hierarchy of childcare measures and particularly the role that EU institutions should play in this policy area. The Parliament advances its own interpretation of the CRC and Hague Convention by supporting ICA over other forms of in-country care because of its provision of a permanent family environment²⁶ (European Parliament, 2011) and indirectly urging states like Romania to reconsider international adoption as a valid childcare solution without making any reference to the availability of family-based alternatives. Notwithstanding the Resolution, the Parliament further sought to persuade Romania to reopen ICA by explicitly requesting the Commission to intervene in relation to Romania's 'violation' of adoption standards by depriving children 'of the possibility of having a family' via ICA (Angelilli, 2011). According to the Parliament, 70,000 children in institutional care in Romania are in a 'state of total abandonment' and hence deprived of the possibility of finding a family via ICA (Angelilli, 2011). Although the Parliament does not have legal competence to require Member States to change their ICA legislation, the Parliament has political clout to raise public awareness and also to name and shame those Member States that fail to uphold the EU values and norms. Its plea for the resumption of ICA from Romania echoes the ICA supporters' rhetoric: namely, that ICA is the best solution for finding a family for children in the child protection system. By advancing a pro-ICA policy in Romania, the Parliament contradicts the EU's pre-2007 anti-ICA policy as part of the accession conditionality and hence indirectly acknowledges a failure of the EU conditionality instrument that required the overhaul the child protection in Romania before 2007. In other words, the EU contradicts its pre-accession intervention regarding the reform of the child protection system and ICA policy in Romania, which had been heralded as a success by the EU itself (European Commission, 2005b).

REFLECTING ON THE EU'S 'CHAMELEONIC' ROLE IN ICA

The EU applied an anti-ICA policy in Romania before 2007 as part of the accession conditionality. However, after 2007, the main EU institutions adopted an explicit pro-ICA policy line, which is anchored in an

opportunistic interpretation of the CRC and Hague Convention. What factors brought about the EU's radical shift in relation to ICA from Romania and how do they shape the EU's role in ICA and in the broader protection of children's rights? It is argued below that the pro-ICA position embraced by the EU after 2007 was not a response to the situation of child protection in Romania. Instead, other *exogenous* factors, such as the pro-adoption lobby actions at the EU level, along with EU *endogenous* conditions, such as the emergence of an EU children's rights policy, caused the EU's 'chameleonic' embrace of a pro-ICA position in relation to Romania.

1. CHILD PROTECTION IN ROMANIA AFTER 2007

The Romanian child protection system underwent a root-and-branch reform before 2007, while the moratorium on ICA was maintained by the post-2007 legislation. The EU requested that Romanian authorities resume ICA after 2007 for two main reasons: the rate of child abandonment in maternity wards and the high number of children in institutional care (Brulard and Dumont, 2009; Angelilli, 2011). The quick fix to this situation was, according to the Parliament, the resumption of ICA as the only viable solution for providing children with a family (Angelilli, 2011). The depiction of institutional care in Romania by the EU, however, does not reflect the situation on the ground. The child protection system in Romania, despite its radical overhaul in the early 2000s, still suffers from significant shortcomings, such as the slowness of the domestic adoption procedure.²⁷ However, these are not related to the reasons given by the European Parliament in its promotion of a pro-ICA policy for Romania. The difficulties faced by the Romanian child protection system are qualitatively distinctive from those signalled by the EU after 2007. The domestic adoption process is slow and highly bureaucratic, while there are some categories of children, such as children with disabilities and older children, who are hard to adopt nationally (UNICEF, 2011) but also globally (Smolin, 2012). These factors are explored below.

The reformed child protection system and children's rights legislation in Romania prioritize the family-type childcare services, such as the placement of children in his/her extended family, with a guardian or with foster families. Because of EU pre-accession financial assistance, the old residential institutions have been restructured into family-type apartments providing care and accommodation for children with disabilities or for those not yet placed in a family-type service (Transtec, 2006). After the ban on ICA, the number of children in residential care dropped sharply from 57,181 in 2000 to 22,742 in 2011 due to de-institutionalization, while the number of children placed in family care solutions doubled, peaking to 43,518 in 2011 (Table 1).

Table 1. Romania: number of children in child protection system from 1998 to 2011

Date	Number of children in public and private residential care	Number of children in family care (extended family, foster care, foster families)
31/12/1998	38,597	17,044
31/12/1999	33,356	23,731
31/12/2000	57,181	30,572
31/12/2001	49,965	37,553
31/12/2002	43,234	43,092
31/12/2003	37,660	46,568
31/12/2004	32,679	50,239
31/12/2005	28,786	47,723
31/12/2006	26,105	47,871
31/12/2007	25,114	48,172
31/12/2008	24,437	47,159
31/12/2009	23,696	45,550
31/12/2010	23,183	43,817
30/06/2011	22,742	43,518

Source: Romanian Office for Adoption (www.adoptiromania.ro).

The number of children in residential institutions in Romania is not high compared with other former communist states and even the old EU Member States. For instance, if the figures are related to the size of population, according to data for 2010,²⁸ the number of children in residential care per 10,000 inhabitants is: 11 (Romania), 10 (Bulgaria), 10 (Estonia), 10 (Hungary), 28 (Lithuania), 12 (Latvia), and 20 (Czech Republic). In the 'old' Member States the figures indicate: 11 (Denmark), 15 (Finland), 6 (Netherlands), 9 (Portugal), 3 (Spain), and 16 (Belgium). Therefore, Romania is not an outlier regarding the number of children in residential care. On the contrary, both the West European countries and the former communist states have higher numbers of children in residential care than Romania. Similarly, the rate of child abandonment in Romanian hospital wards averages around 700 children per year, with the great majority of these children being either reintegrated into their families or placed in family-based alternative care ([General Office for Child Protection, 2011](#)). Indeed, since 2005 more than 50 per cent of children abandoned in hospitals have been returned to their biological families ([Jacoby et al., 2009](#)) while substantially fewer children are now abandoned each year ([Murray, 2006: 3](#)). At the same time, the development of family-based alternative care, such as fostering or guardianship, was the key target of the reform of child protection in Romania before 2007. According to aggregated data on family-based care for countries in Eastern Europe, Romania has the highest number of children placed in family-based alternative care (see [Table 2](#)).

Since 2001 the demand for domestic adoptions has been flat, averaging around 1,300 adoptions per year (see [Table 3](#)). Before the ban on

Table 2. South-Eastern Europe: Children in family-based care (with foster parents or guardians: absolute numbers and rates per 100,000 children 0–17 years old.) in 2000, 2005 and 2007, at the end of the year

South Eastern Europe	Number of children in Family-based care			Rate (per 1000,000 children 0–17 years)		
	2000	2005	2007	2000	2005	2007
Romania	26,917	47,723	46,160	537	1100	1132
Albania		4,074	5,964	–	302	462
Bosnia & Herzegovina	3,783	3,311	3,296	402	368	378
Croatia	4,376	3,774	3,574	470	437	425
Montenegro Serbia ^a		2,700	3,350		187	241
TFYR Macedonia	1,126	1,157	1,126	206	235	238

^aFoster care only

Source: TransMONEE database 2009 as cited in UNICEF study *At home or in a home? Formal care and adoption of children in Eastern Europe and Central Asia* (UNICEF, 2010b).

Table 3. Romania: number of international and national adoptions 1998–2008

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Domestic adoptions	840	1,710	1,291	1,274	1,346	1,383	1,422	1,136	1,421	1,294	1,300
Inter-country adoptions	2,017	2,575	3,035	1,521	407	279	251	2	0	0	0
Total	2,857	4,285	4,326	2,795	1,753	1,662	1,673	1,138	1,421	1,294	1,300

Source: ANPDC statistics (www.copii.ro).

ICA, the number of international adoptions exceeded by far the number of domestic adoptions, while after 2001 the number of domestic adoptions approved yearly varied between 1,300 and 1,400 (Table 3). At the same time, according to the Romanian Office for Adoption, the number of families requesting to adopt nationally exceeds by far the number of adoptable children in the system²⁹ (UNICEF, 2011). Therefore, the EU's demand that Romania lift the ban on ICA due to the significant number of children in institutions and who are denied a family in their home-country is not supported by the figures. However, the shortcomings of the child protection system in Romania are of a different kind. The procedure of domestic adoption is extremely slow and bureaucratic, while several categories of children, such as older and disabled children, are hard to adopt (UNICEF, 2011). The Romanian legislation forbids the institutionalization of children under three, and therefore such children are placed in residential care only for medical reasons (National Authority for the Protection of Child's Rights, 2006). Indeed, the vast majority of children in residential care have mental and

physical disabilities and their age is above three (National Authority for the Protection of Child's Rights, 2006). According to post-2007 statistical data, disabled and older children are difficult to adopt, particularly those children who are over ten and have special needs, both factors that make them less likely candidates for adoption (Jacoby et al., 2009; Smolin, 2012). The adoption of older children and particularly of children with disabilities is a recurrent problem encountered also in other European countries, such as the UK (Baker 2007; Cousins 2009).

The CRC Committee signalled the shortcomings underlying the national adoption process in its latest Concluding Observations (2009c). Apart from requesting Romanian authorities to speed up the process of national adoption, the Committee also recommended that Romania 'withdraw the existing moratorium as a barrier to the full implementation of Article 21 of the Convention' (Committee on the Rights of the Child, 2009c: 13). Therefore, the Committee recommends the full implementation of Article 21 CRC, whereby international adoption would be governed by the principle of subsidiarity and thus would be a last resort measure, which would put the Romanian adoption legislation in line with the Member States'. However, the resumption of ICA in order to meet the provisions in Article 21 CRC – according to which ICA is a measure of last resort – would still fall short of addressing the EU's pro-ICA pleas, according to which institutional care rather than ICA is a measure of last resort. The Romanian legislation was amended in November 2011 to speed up the process of domestic adoption and also to allow Romanian citizens living abroad to adopt children from Romania, provided that within two years' after the child has been declared adoptable no eligible family, including the child's extended family, is found for the child. This amendment of the legislation reflects the situation after 2007 when many Romanian citizens chose to live in other European countries and wanted to adopt Romanian children (Panait, 2011). Therefore, the Romanian government has slightly relaxed the ICA provision, although this does not amount to the full resumption of ICA. In short, the current situation of child protection in Romania does not indicate the need to resume ICA, as adoption advocates, including the EU, claim. On the contrary, as child rights organizations and Romanian governmental officials contend, the system of domestic adoption has to become more effective and efficient in processing the adoption applications received rather than that ICA be resumed.³⁰

2. EXOGENOUS FACTORS: ADOPTION LOBBIES

Adoption agencies played a key role in influencing the EU institutions' shift to a pro-ICA policy after 2007. There is evidence of intensive pro-adoption lobby activity at the EU level aimed at persuading

Romanian authorities to resume international adoption.³¹ The pro-adoption lobbying strategies targeted the EU's opportunity structures to persuade Romanian authorities to lift the ban on ICA. After Romania's accession to the EU in 2007, adoption lobbies accessed those EU venues, such as the Parliament's LIBE, which have leverage over EU internal policy, in order to re-open ICA.³² The employment of the Parliament as a lobbying venue attaches political salience to the issue of ICA in Europe. The adoption agencies' commonly employed tactic was to send petitions to the Parliament or contact various MEPs in order to raise awareness regarding the situation of children in institutions. By employing an 'emotionally loaded' tactic regarding the situation of children in institutional care in Romania after 2007, the lobbies framed ICA as a matter of EU internal policy by pleading that the EU should play a leading role in establishing an open market for ICA (European Parliament, 2010). Adoption agencies, such as Solidarite Enfants Roumains Abandonnees (SERA), Amici dei Bambini (Friends of Adoption) or Angels Children, found supportive EU politicians in the Parliament to launch an EU campaign on the need to facilitate ICA in Europe, especially from Romania.³³

The Italian NGO, Amici dei Bambini, lobbied the Parliament by sending petitions and letters regarding the situation of Romanian children in institutions and the need to lift the ban on ICA (European Parliament, 2010). For instance, Marco Griffini, the leader of the adoption NGO Amici dei Bambini, petitioned the Parliament in 2010 requesting its explicit intervention in the situation of ICA from Romania. By employing the common pro-ICA strategy, ie the emphasis on the huge number of Romanian children in institutions, Griffini requested that Romanian authorities reopen ICA as a legitimate and necessary way of finding a family for Romanian children (European Parliament, 2010). However, adoption lobbies employ an opportunistic interpretation of international instruments. By completely disregarding Article 21 CRC, they overemphasize the Hague Convention's reference to 'permanent family' and hence endorse a preference for ICA over in-country solutions, such as foster care (European Parliament, 2010).

The lobbies were most successful in setting the EU's policy agenda when their framing of the situation of institutionalized children in Romania converged with the EU's own endeavour to expand its remit in new policy sectors. EU institutions can use the lobbies' agenda as a 'window of opportunity' (Kingdon, 1984) to rationalize the EU's role in ICA inside the Union. It has been argued that the EU usually engages a wide range of non-state actors at the EU level in order to generate grounds to push for the extension of EU competence 'by stealth' (Majone, 2005). The European Parliament was quick to embrace the lobbies' pleas for ICA when this could be justified as a legitimate area

for EU internal policy by drawing on EU responsibility to protect children's rights after the entry into force of the Lisbon Treaty (European Parliament, 2011). Indeed, the involvement of interest groups, such as adoption agencies, at EU level can enhance the EU's legitimacy (Scharpf, 1998) regarding its engagement with the issue of international adoption and children's rights. Therefore, it is contended that the adoption lobby brought the issue of ICA to the forefront of the Parliament's child rights agenda, and subsequently, the Parliament has embraced the EU's role in improving the operation of the Hague Convention by 'eliminating unnecessary bureaucracy and enabling adoption procedures to be completed more expeditiously while protecting the paramount rights of the child' (European Parliament, 2011). The lobbies' self-interested actions to liberalize ICA in Europe and in Romania were arguably most successful when they chimed with the self-interest of EU institutions to acquire a scope and role in ICA inside the Union. As shown above, the external influence exerted by adoption lobbies on EU institutions relied on an interpretation of the Hague Convention prioritizing ICA at the expense of in-country solutions, such as foster care.

3. ENDOGENOUS FACTORS: EU CHILD RIGHTS AGENDA

The EU's pro-ICA policy line adopted after 2007 can be justified by the emergence of an EU child rights agenda. Since 2006 in particular, the European Commission has extended its embrace of human rights norms to children and young people, inside and outside the European Union, as set out in the Communication *Towards an EU Strategy on the Rights of the Child* (2006). The 2000 EU Charter of Fundamental Rights specifically mentioned children's rights to protection and participation, while the Commission's 'strategic objectives' for 2005–2009 included the protection of the rights of children as 'a particular priority' and promised that 'the Union [would] act as a beacon to the rest of the world' in respect of children's rights (European Commission, 2005a). The 2006 Communication attempted to bring together all European Commission policies affecting children into an integrated, rights-based framework (European Commission, 2006a, b). The Parliament had been a long-standing advocate of the EU's children's rights agenda (Stalford and Schuurman, 2011), for instance, showing its support by adopting policy documents such as the Resolution *Towards an EU Strategy on the Rights of the Child* (2008), and particularly after the entry into force of the Lisbon Treaty. Indeed, since 2006 there has been an emergent child's rights rhetoric and agenda (Stalford and Drywood, 2009) in relation to EU internal policy. Various actions and measures on matters related to children were framed as being part of the EU's endeavour to uphold children's rights. Therefore,

EU institutions justified their support for a pro-ICA policy as being part the EU's commitment to protect children's rights as enshrined in Article 3 TEU (Lisbon Treaty), according to which the protection of children's rights is one of the EU's objectives. To this end, the Parliament embraced the self-ascribed commitment to addressing 'the problem of precarious childhood, and in particular that of abandoned and institutionalised children' (European Parliament, 2011: 3).

The emergence of an EU children's rights agenda provided the EU with the normative framework to embrace a pro-ICA policy after 2007 in relation to Romania. Yet, the EU's support of a pro-ICA stance fell short of pursuing the spirit and letter of the CRC and Hague Convention. The European Parliament in particular attached its own interpretation to these conventions by promoting its own hierarchy of childcare solutions, which prioritizes ICA at the expense of foster care or any other in-country solution, except domestic adoption. In the same vein, the Commission's relationship with the CRC, as part of the EU's child rights policy, is underpinned by lack of genuine allegiance to the principles and rights enshrined in the CRC (Stalford and Drywood, 2011: 214). Key EU policy documents, such as the *Communications Towards an EU Strategy on the Rights of the Child* (2006) and *An EU Agenda for the Rights of the Child* (2011) mention the CRC as the main source of rights. However, in relation to ICA, the Parliament does not refer to the provisions in Article 21 CRC. The reason why the Parliament disregards the CRC provisions on ICA is related to the CRC's stance on ICA as a last resort measure, which is at odds with the Parliament's pro-ICA attitude.

As stated earlier, the Parliament's request that the Romanian government lift the ban on ICA, despite the EU's lack of competence in this area, relies on inaccurate factual data regarding the situation of child protection in Romania after 2007. Furthermore, the Parliament's pro-ICA policy makes no reference to family-based alternatives available at the national level. The Parliament deems that the situation of children in institutions would be solved by having a liberalized ICA provision across Europe, without targeting the root of the problem, namely how and why children become separated from their biological parents in the first place (Smolin, 2012: 382). Some politicians in the Parliament promote ICA as a 'panacea' for the plight of children without parents in the child protection system, by ignoring the impact of this radical solution on the wide range of rights enjoyed by children as provided in the CRC. Indeed, it has been argued that MEPs 'endorse easy child care solutions by overlooking the broader child rights framework as provided by international instruments and conventions'.³⁴ Decisions regarding ICA have to be taken in the context of all the rights enshrined in the CRC, while the choice for the childcare solution is to

be determined according to the 'best interest of the child', which is contingent on the child's concrete circumstances. However, the EU's pro-ICA stance does not reflect the complexity of thinking that children have rights (Eekelaar, 1992) which have to be applied consistently in all policy measures, including ICA, affecting them. The Parliament's pro-adoption rhetoric echoes that of the ICA supporters, namely a focus on the consequences of child relinquishment (Bartholet, 2010) – the only solution to it being ICA – rather than its prevention, namely by addressing the economic or social circumstances which can lead to child abandonment. Even the ratification of the CRC and Hague Convention does not oblige state parties to prioritize ICA or make children available for ICA (Bainham, 2003; Dillon, 2003). Yet, the Parliament's pro-ICA stance after 2007 is fuelled by its partial interpretation of the international instruments, such as the Hague Conventions, regulating ICA and its lack of accurate factual evidence regarding the situation on the ground. By endorsing a reflective approach to the interpretation of international instruments on children's rights and the situation of child protection on the ground across Europe, the Parliament could adopt a more nuanced position regarding its role in ICA, which could make a difference to children's lives. Yet, the Parliament's pro-ICA position as part of its commitment to promote children's rights demonstrates that the EU has *de facto* joined the ICA advocates by espousing an opportunistic interpretation of the main international provisions on ICA to favour international adoptions at the expense of in-country solutions, such as family-based care. In short, the current pro-ICA position adopted by the EU constitutes a radical U-turn from the position adopted during Eastern enlargement.

CONCLUSION

This article scrutinized how and why the EU's position on ICA from Romania shifted after 2007. The situation of child protection and the corruption underpinning ICA in Romania after 1989 led to the ban on ICA as part of the EU pre-accession requirements. EU financial assistance and intervention radically overhauled the child protection system before Romania joined the EU in 2007. However, after 2007 the EU pursued a pro-ICA policy line in relation to Romania, which was radically at odds with its anti-ICA pre-accession policy. The key empirical evidence presented in this article demonstrates that the pro-ICA turn at the EU level was not determined by the situation on the ground in Romania. On the contrary, statistical data from Romania highlight that there is no need for Romania to resume ICA. Therefore, it appears that *exogenous* factors, such as adoption lobbies,

and *endogenous* processes, such as the EU's embrace of a child's rights agenda, provided the EU with the rationale to endorse a pro-ICA role and scope inside the Union. The EU's advancement of a pro-ICA agenda was underpinned by its skewed interpretation of the main international instruments on children's rights and international adoption.

This article provides insights into the role and scope of regional organizations in affecting the practice of international adoption and the broader protection of children's rights. Child abandonment and unparented children constitute serious violations of children's rights. The key international instruments providing the legal framework for ICA and children's rights have been widely invoked by EU institutions to tackle these violations of children's human rights on the ground. However, the legal ambiguity (Vite, 2008) underpinning the relationship between the CRC and Hague Convention has generated in practice conflicting interpretations between those who regard ICA as a child rescue solution and those who do not. To this end, scholars and child rights practitioners have highlighted both the damaging effects of institutionalization (Zeanah et al., 2003; Dillon, 2003) and the exceptional character of employing ICA as a childcare solution (Smolin, 2010). The polarized views on the issue of ICA, as embraced by ICA advocates and ICA critics, fail to provide a more nuanced and reflective account of the diversity of child protection provisions on the ground across EU Member States.

The EU does not have legal mandate to intervene in the ICA practice of the Member States, yet it does have the political force to address at the EU level those social and economic circumstances conducive to child abandonment and unparented children. However, the promotion of ICA as the most viable and effective solution to tackle child abandonment and the plight of children in care, as the EU has been advocating since 2007, does not address the key factors which generate child relinquishment in the first place (Selman, 2009). Rather than addressing the consequences of child abandonment, the EU could develop policies and measures targeting those national factors conducive to circumstances whereby children are separated from their biological families. At the same time, ICA is an extreme measure of childcare and a wide range of complex factors have to be assessed in line with the 'best interests of the child' (Article 3 CRC) before national authorities regard it as the best solution for children without a family. The EU's advancement of ICA as a solution meant to provide a quick fix to child abandonment and institutionalization overlooks the complexity and distinctiveness of the child rights provision across the Member States. By considering these factors, the EU's role in ICA would be consistent with the provisions of the main international instruments, and furthermore, would have a long-term impact on the overall protection of the rights of the child at the national level.

NOTES

¹ This article draws on a set of 22 qualitative interviews (conducted from 2008 until 2011) with Commission officials, Members of the European Parliament, Romanian authorities and child rights experts and organisations. All interviewees, with some exceptions, approved to be cited anonymously and are not, therefore, named.

² This position is endorsed by the UN Committee on the Rights of the Child and is evident in the Committee's Concluding Observations (Interviewee 20).

³ See Explanatory Report to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Inter-country Adoption*, by G. Parra-Aranguren, at paragraph 6. Available on the Hague Conference website, www.hcc.net. under Inter-country Adoption Section/Explanatory Documents.

⁴ For instance, in its Concluding Observations on Malawi the Committee recommends that 'the State party review and ensure that its legislation on adoption is in conformity with article 21 of the Convention. The Committee reiterates its previous recommendation. . .and in particular encourages the State party to ratify the 1993 Hague Convention on the Protection and Cooperation in Respect of Inter-country Adoption' (Committee on the Rights of the Child 2009a). The same recommendation is done in relation to Niger (Committee on the Rights of the Child, 2009b).

⁵ Interviewee 21.

⁶ According to Commission Regular Reports the 'Commission expressed concern with regard to legislation and practices on inter-country adoption that allowed considerations other than the best interest of the child to influence adoption decisions' (European Commission, 2001: 24).

⁷ Interviewee 9.

⁸ It has been shown that the Romanian children adopted by foreigners were neither orphans nor abandoned by their families, they were in fact being sold by their parents due to poverty-related reasons (Dillon, 2003:249).

⁹ Interviewee 9.

¹⁰ According to the Copenhagen political criteria, the applicant country has to have 'achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (Conclusions of the Presidency, Copenhagen Council 1993).

¹¹ According to a Commission official in DG Enlargement: 'We are not a human rights organisation: our bread and butter business is the *acquis communautaire*', ie the complete body of EU legislation covering all policy areas where the EU has competence to act (Interviewee 12).

¹² Interviewee 4 and interviewee 11.

¹³ Interviewee 3.

¹⁴ For instance, between 1990 and 2000 the EU provided more than 100 million Euros as humanitarian aid to the childcare system (Jacoby et al., 2009: 120). After the adoption of the moratorium on ICA, the EU financial aid was channelled towards the reform of the system rather than humanitarian aid (Post, 2007).

¹⁵ Interviewee 3.

¹⁶ The 2005 legislation (law 274/2004) provided that children could be adopted internationally only by their grandparents living abroad. The legislation was amended in 2009 to include the provision that children can be adopted internationally by their relatives up to the third degree of kinship.

¹⁷ For instance, the child rights experts who advised the Romanian government on the new legislation took into account the provisions in the latest conventions covering aspects on child rights, such as the Convention on Contact Concerning Children (Council of Europe).

¹⁸ Interviewee 2 and interviewee 6.

¹⁹ Interviewee 3.

²⁰ Interviewee 5.

²¹ *Joint Declaration* by Claire Gibault and Jean Marie Cavada See Factsheet, Towards a European adoption procedure available at http://www.coe.int/t/DC/Files/Source/FS_children_adoption_en.doc.

²² 'Comparative study relating to procedures for adoption among the Member States of the European Union, practical difficulties encountered in this field by European citizens within the context of the European pillar of justice and civil matters and means of solving these problems and of protecting children's rights' (2009).

²³ According to the Commission 'If national adoption is not possible, inter-country adoption has to be considered as a possible alternative for the care of the child [. . .] By making the child's right

to a family an absolute principle it would always be possible to act in the child's best interest, giving clear preference to the possibility of European adoption over institutionalisation or long-term foster care in the child's country of origin' (De Luca, 2009: 2–10).

²⁴ Interviewee 21.

²⁵ Interviewee 13.

²⁶ According to Parliament Resolution 'if primary care of children by the family is unavailable, adoption should be one of the natural secondary choices, whilst placing a child in institutional care should be the very last option' (European Parliament, 2011: 2).

²⁷ Interviewee 17.

²⁸ According to data available in the Eurochild study 'Children in alternative care. National surveys January 2010-2nd edition' (2010), available at http://www.eurochild.org/fileadmin/user_upload/Publications/Eurochild_Reports/Eurochild%20Publication%20Children%20in%20Alternative%20Care%20-%202nd%20Edition%20January2010.pdf.

²⁹ For instance, each year 1,100 children are declared adoptable while there are 2,500 families requesting to adopt nationally (Interviewee 17).

³⁰ Interviewee 18 and interviewee 21.

³¹ Interviewee 14 and interviewee 15.

³² Interviewee 13.

³³ Interviewee 13.

³⁴ Interviewee 21.

APPENDIX

INTERVIEWS WITH EU OFFICIALS

Interviewee 1 (member of the 'Coordination' unit, DG Enlargement) Interview. Brussels, 26 May 2009.

Interviewee 2 (member of the 'Coordination' unit, DG Enlargement) Interview. Brussels, 30 May 2009.

Interviewee 3 (member of the Independent Panel of Experts on Family Law) Interview. Brussels, 10 December 2008.

Interviewee 4 (head of the Romania team 2005–2006, DG Enlargement) Interview. Brussels, 27 May 2009.

Interviewee 5 (member of the Romania team, DG Enlargement) Interview. Brussels, 29 May 2009.

Interviewee 6 (member of the Commissioner Olli Rehn cabinet, DG Enlargement) Interview. Brussels, 27 May 2009.

Interviewee 7 (head of the Romania team 2004–2005, DG Enlargement) Interview. Brussels, 29 May 2009.

Interviewee 8 (member of the country desk in the Romania team, DG Enlargement) Interview. Brussels, 29 May 2009.

Interviewee 9 (European Parliament rapporteur for Romania, 1999–2004) Interview. Brussels, 28 May 2008.

Interviewee 10 (head of the Romania team 1999–2004, DG Enlargement,) Interview. Brussels, 28 May 2009.

Interviewee 11 (task manager for children's rights in the Romania team 2000–2005, DG Enlargement,) Interview. Brussels, 26 May 2009.

Interviewee 12 (member of the country desk in the Romania team, DG Enlargement) Interview. Brussels, 27 May 2009.

Interviewee 13 ('Civil justice' unit, DG Justice). Interview. Brussels, 5 July 2011.

Interviewee 14 (head of the EC Delegation in Romania, 2000–2006) Interview. Brussels, 26 May 2009.

Interviewee 15 (member of the Romania team, DG Enlargement, 2005–2006) Interview. Brussels, 28 May 2009.

Interviewee 16 ('Fundamental Rights and Rights of the Child' unit, DG Justice) Interview. Brussels, 19 September 2009.

INTERVIEWS WITH ROMANIAN GOVERNMENTAL ACTORS

Interviewee 17 (secretary of state in the Romanian Office for Adoption) Interview. Bucharest, 8 July 2009.

Interviewee 18 (secretary of state in the National Authority in the Protection of Child's Rights and former task manager for child protection in the EC Delegation in Romania) Interview. Bucharest, 7 July 2009.

Interviewee 19 (member of Romania's EU chief negotiator's team) Interview. Brussels, 30 May 2009.

INTERVIEWS WITH CHILD RIGHTS ORGANIZATIONS

Interviewee 20 (UN Committee on the Rights of the Child), phone interview, 10 November 2011.

Interviewee 21 (UNICEF Romania). Interview. Bucharest, 5 September 2011.

Interviewee 22 (project manager for 'Children's Rights High Level Group-Romania') Interview. Bucharest, 10 July 2009.

REFERENCES

- Angelilli, R. (2010). *Parliamentary Questions. 17 August 2010. Subject: Alarming situation of orphans in Romania*, E-6272/2010, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2010-6272+0+DOC+XML+V0//EN&language=CS> (accessed 5 September 2011).
- Angelilli, R. (2011). *Parliamentary Questions. 1 April 2011. Subject: Romania: alleged violation of international adoption standards in the EU*, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2011-003127+0+DOC+XML+V0//EN> (accessed 5 September 2011).
- Bainham, A. (2003). 'International Adoption from Romania-Why the Moratorium Should Not Be Ended', *Child and Family Law Quarterly* **15** (3), 1–18.
- Baker, C. (2007). 'Disabled children's experience of permanency in the looked after system', *British Journal of Social Work* **37**, 1173–1188.
- Barrozo, P. (2010). 'Finding home in the world: a deontological theory of the right to be adopted', *New York Law School Law Review* **55**, 701–731.

- Bartholet, E. (2007). 'International adoption: thoughts on the human rights issues', *Buffalo Human Rights Law Review* **13**, 151–198.
- Bartholet, E. (2010). 'International adoption: the human rights position', *Global Policy Volume 1* (1), 91–100.
- Bartholet, E. (2012). 'The debate. Elizabeth Bartholet and David Smolin' in J. L. Gibbon and K. S. Rotabi (eds), *Intercountry Adoption: Policies, Practices and Outcomes*, Surrey: Ashgate Publishing, 370–402.
- Bartner, N. G. (2000). 'Intercountry adoption and the convention on the rights of the child: can the fee market in children be controlled?', *Syracuse Journal of International Law and Community* **27**, 405–26.
- Bhabha, J. (2004). 'Moving babies: globalization, markets and transnational adoption', *The Fletcher Forum of World Affairs* **28** (2), 181–97.
- Brulard, Y. and Dumont, L. (2009). *Comparative study relating to procedures for adoption among Member States of the European Union, practical difficulties encountered among in this field by European citizens within the context of the European pillar of justice and civil matters and means of solving these problems and of protecting children's rights*, LS/2007/CA/017-30-CE-0157325/00-64, available at http://ec.europa.eu/civiljustice/news/docs/study_adoption_legal_analysis_en.pdf (accessed 5 September 2011).
- Cantwell, N. and Holzscheiter, A. (2008). 'Article 20: children deprived of their family environment' in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (eds), *A Commentary on the United Nations Convention on the Rights of the Child*, Leiden: Martinus Nijhoff Publishers.
- Committee on the Rights of the Child (2009a). *Concluding Observations: Malawi*, CRC/C/MWI/CO/2 27 March.
- Committee on the Rights of the Child (2009b). *Concluding Observations: Niger*, CRC/C/NER/CO/28 June.
- Committee on the Rights of the Child (2009c). *Concluding Observations: Romania*, CRC/C/ROM/4 30 June.
- Cousins, J. (2009). 'Placing disabled children with permanent new families' in G. Schofield and J. Simmonds (eds), *The Child Placement Handbook*, London: BAAF.
- De Luca, P. (2009). Civil Justice Unit, DG Justice, Freedom and Security, European Commission (2009). *European Commission Study on Adoption - Outline of Presentation*, available at <http://www.coe.int/t/dghl/standardsetting/family/Adoption%20conference/Presentation%20DE%20LUCA.pdf> (accessed 5 September 2011).
- Dickens, J. (2002). 'The paradox of inter-country adoption: analysing Romania's experience as a sending country', *International Journal of Social Welfare* **11**, 76–83.
- Dillon, S. A. (2003). 'Making legal regimes for inter-country adoption reflect human rights principles: transforming the United Nations convention on the rights of the child with the Hague Convention on inter-country adoption', *Boston University International Law Journal* **21**, 179–257.
- Eekelaar, J. (1992). 'The importance of thinking that children have rights', *International Journal of Law and the Family* **6**, 221–235.
- Eurochild (2010). 'National surveys on children in alternative care', available at http://www.eurochild.org/fileadmin/user_upload/Publications/Eurochild_Reports/FINAL_EXEC_SUMMARY.pdf (accessed 5 September 2011).
- European Commission (2001). *Regular Report on Romania's Progress towards Accession*, accessed from http://crib.mae.ro/upload/docs/9402_2001_Regular_Report.pdf (accessed 5 September 2011).
- European Commission (2005a). *Strategic Objectives 2005-2009*, COM(2005) 12 final, Brussels.
- European Commission (2005b). *Romania 2005 Comprehensive Monitoring Report*, SEC (2005) 1354, Brussels, 25 October, Brussels.
- European Commission (2006a). *Communication from the Commission: Towards an EU Strategy on the Rights of the Child*, COM (2006) 367 final, Brussels.
- European Commission (2006b). *Commission staff working document accompanying the communication from the commission: towards an EU strategy on the rights of the child. Impact assessment*, SEC 367 final, Brussels.
- European Council (1993). *Conclusions of the Presidency*, SN 180/93, Copenhagen, 21–22 June.
- European Parliament (2001). *Report on Romania's application for membership of the European Union and the State of Negotiations*, A5-0259/2001 final, 24 July.
- European Parliament (2008). *European Parliament Resolution of 16 January 2008: Towards an EU Strategy on the Rights of the Child*, P6_TA (2008)0012.

- European Parliament (2010). *Committee on Petitions. Petition 1120/2009 by Marco Griffini on behalf of Amici dei Bambini, on Romania's compliance with international conventions on children's rights*, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/cm/805/805927/805927en.pdf (accessed 5 September 2011).
- European Parliament (2011). *European Parliament Resolution of 19 January 2011 on international adoption in the European Union*, P7_TA-PROV(2011)0013, Strasbourg.
- Fortin, J. (2009). *Children's Rights and the Developing Law*, 3rd edn, Cambridge: Cambridge University Press.
- Freeman, M. (2011). 'The value and values of children's rights' in A. Invernizzi and J. Williams (eds), *The Human Rights of Children. From Vision to Implementation*, Surrey: Ashgate Publishing, 21–35.
- General Office for Child Protection (Directia Generala Protectia Copilului) (2011). 'Situation of children abandoned in hospital wards', *Sem. 1-2011 (Situatie copii parasiti in unitati sanitare)*, available at http://www.copii.ro/Statistici/copii_parasiti_in_unitati_sanitare_iunie_2011.doc (accessed 5 September 2011).
- Grabbe, H. (2006). *The EU's Transformative Power. Europeanization Through Conditionality in Central and Eastern Europe*, Basingstoke: Palgrave Macmillan.
- Graff, E. J. (2008). 'The lie we love', available online at http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love (accessed 5 September 2011).
- Hague Conference on Private Law (2008). *The implementation and operation of hague intercountry adoption convention: guide to good practice, Guide No. 1*, available at http://www.hcch.net/upload/adoguide_e.pdf.
- Hayes, P. (2011). 'The legality and ethics of independent intercountry adoption under the Hague Convention', *International Journal of Law, Policy and the Family* 25 (3), 288–317.
- Herczog, M. (2009). member of the UN Committee on the Rights of the Child (2009). *Challenges in Adoption Procedures in Europe: Ensuring the Best Interests of the Child. Presentation for Joint Council of Europe and European Commission Conference*, available at <http://www.coe.int/t/dghl/standard-setting/family/Adoption%20conference/Presentation%20M%20%20HERCZOG%20-%20E%20rev.pdf> (accessed 5 September 2011).
- Hillion, C. (2004). *EU Enlargement: A Legal Approach*, Oxford, Portland Oregon: Hart Publishing.
- Human Rights Council (2009). *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Rights to Development. Guidelines for the Alternative Care of Children*, A/HRC/11/L.13.
- IGAIA (Independent Group for Analysis of Inter-country Adoption) (2002). *Re-Organising the International Adoption and Child Protection System*, available at http://www.afaener.org/Rapport_FINAL_ang.doc (accessed 5 September 2011).
- Jacoby, W., Lataianu, G. and Lataianu, C. M. (2009). 'Success in slow motion: the Europeanization of Romanian child protection policy', *Review of International Organizations* 4, 111–33.
- Kilkelly, U. (1999). *The Child and the European Convention on Human Rights*, Surrey: Ashgate Publishers.
- Kilkelly, U. (2001). 'The best of both worlds for children's rights? Interpreting the European Convention on Human Rights in the light of the UN Convention on the Rights of the Child', *Human Rights Quarterly* 23 (2), 308–26.
- Kilkelly, U. (2002). 'Effective protection of Children's Rights in Family Cases: An International Approach', *Transnational Law and Contemporary Problems* 12 (2), 336–54.
- Kingdon, J. W. (1984). *Agendas, Alternatives and Public Policies*, New York: Harper Collins.
- Majone, G. (2005). *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth*, Oxford: Oxford University Press.
- McLoughney, E. (2009). UNICEF Romania (2009). *The Right to a Family in the International Legal Framework and in Practice. The Experience of Romania*, available at <http://www.coe.int/t/dghl/standardsetting/family/Adoption%20conference/Presentation%20McLoughney.pdf> (accessed 5 September 2011).
- Mezmur, B. (2009). 'Intercountry adoption as a measure of last resort in Africa: advancing the rights of a child rather than a right to a child', *International Journal on Human Rights* 6 (10), 83–103.
- Morrison, L. (2004). 'Ceausescu's Legacy: family struggles and institutionalisation of children in Romania', *Journal of Family History* 29 (2), 168–82.
- Murray, R. W. (2006). 'A true revolution', *Transitions Online*, January 2.
- National Authority for the Protection of Child's Rights (2006). *Child Welfare in Romania*, Bucharest: National Authority for the Protection of Child's Rights.

- Panait, B. (2011). (secretary of state in Romanian Office for Adoption) *Annual Number of Adoptions Is Below the Daily Situation of the Protection System* (Numărul anual de adopții este sub realitatea de zi cu zi din sistemul de protecție), Interview. 8 June, Bucharest, available at <http://www.mediafax.ro/social/interviu-panait-numarul-anual-de-adoptii-este-sub-realitatea-de-zi-cu-zi-din-sistemul-de-protectie-8324155> (accessed 5 September 2011).
- Piris, J.-C. (2010). *The Lisbon Treaty. A Legal and Political Analysis*, Cambridge: Cambridge University Press.
- Post, R. (2007). *Romania: For Export Only. The Untold Story of the Romanian 'Orphans'*, Amsterdam: Hoekstra.
- Roby, J. L. and Ife, J. (2009). 'Human rights, politics and intercountry adoption: an examination of two sending countries', *International Social Work* 52 (5), 661–71.
- Save the Children (2010). *International Adoption. Policy Brief*, available at http://www.savethechildren.org.uk/sites/default/files/docs/International_Adoption_FEBB_edit_18_01_10_1.pdf (accessed 6 September 2011).
- Scharpf, F. W. (1998). 'Balancing positive and negative integration. The regulatory options for Europe' in D. Dettke (ed), *The Challenge of Globalization for Germany's Social Democracy. A Policy Agenda for the Twenty-first Century*, Oxford/New York: Berghahn Books, 29–57.
- Selman, P. (2009). 'The rise and fall of intercountry adoption in the 21st century', *International Social Work* 52, 575–94.
- Selman, P. (2010). 'Intercountry adoption as globalized motherhood' in W. Chavkin and J. Maher (eds), *The Globalization of Motherhood: Deconstructions and Reconstructions of Biology and Care*, New York: Routledge, 79–104.
- Smolin, D. M. (2010). *Abduction, sale and traffic in children in the context of intercountry adoption. Information Document No 1 for the attention of the Special Commission of June 2010 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, available at <http://www.hcch.net/upload/wop/adop2010id01e.pdf>.
- Smolin, D. M. (2012). 'The Debate. Elizabeth Bartholet and David Smolin' in J. L. Gibbon and K. S. Rotabi (eds), *Intercountry Adoption: Policies, Practices and Outcomes*, Surrey: Ashgate Publishing, 370–402.
- SOS Children's Villages International (2009). *Guidelines for the Alternative Care of Children. A United Nations Framework*, available at <https://www.sos-usa.org/documents/downloads/SOSpublication-Guidelines-AlternativeCare.pdf> (accessed 6 September 2011).
- Stalford, H. and Drywood, E. (2009). 'Coming of age?: children's rights in the European Union', *Common Market Law Review* 46, 143–72.
- Stalford, H. and Drywood, E. (2011). 'The use of the CRC in EU law and policy-making' in A. Invernizzi and J. Williams (eds), *Children's Rights: Revisiting Visions, Assessing Progress, Rethinking Implementation*, Surrey: Ashgate Publishers, 199–217.
- Stalford, H. and Schuurman, M. (2011). 'Are we there yet? The impact of the Lisbon Treaty on the EU Children's Rights Agenda', *International Journal of Children's Rights* 19, 381–403.
- Transec (2006). 'Lessons learnt from Romania. An assessment of the EU role and intervention in the reform of the child protection system in Romania', *Commission internal document*, Brussels: Transec.
- Vite, S. (2008). *A Commentary on the United Nations Convention on the Rights of the Child*, Leiden: Martinus Nijhoff Publishers.
- UNICEF (2010a). *UNICEF's position on Inter-country adoption*, available at http://www.unicef.org/media/media_41918.html (accessed 6 September 2011).
- UNICEF (2010b). *At home or in a home? Formal care and adoption of children in Eastern Europe and Central Asia*, available at http://www.unicef.org/ceecis/At_home_or_in_a_home_report.pdf.
- UNICEF (2011). *Profile of Adoptive Parents from Romania and the Adoption of Children Difficult to Adopt in Romanian: Profilul parintilor adoptivi din Romania si adoptia copiilor greu adoptibili*, available at http://www.unicef.ro/&files/profilul-parintilor-adoptivi_raport_7-septembrie-2011.pdf.
- Zeanah, C. H., Nelson, C. A., Fox, N. A., Smyke, A. T., Marshall, P., Parker, S. and Koga, S. (2003). 'Designing research to study the effects of institutionalization on brain and behavioural development: The Bucharest early intervention project', *Development and Psychopathology* 15, 885–907.