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April 2017

## **Lumos' recommendations to the Maltese Presidency of the Council of the EU: Empowering and protecting children in families**

### **About Lumos**

Lumos is an international NGO<sup>1</sup>, founded by author J.K. Rowling, working to end the institutionalisation of children around the world by transforming education, health and social care systems for children and their families and helping children move from institutions to family-based care. We are a founding member of the European Expert Group on the Transition from Institutional to Community-based Care. Lumos also sits on the Leaders' Council of the Washington-Based Global Alliance for Children, a coalition of US government departments, the World Bank, the Canadian government and major foundations. Lumos is a member of the EU Civil Society Platform against Trafficking in Human Beings.

### **Institutionalisation of children**

Across the world an estimated eight million children live in large residential institutions that cannot meet their needs.<sup>2</sup> One million of these children are in the European region.<sup>3</sup> <sup>4</sup> Eighty years of research has demonstrated the harm caused to children by institutionalisation.<sup>5</sup> These studies highlight issues for children in relation to their ability to form secure attachments conducive to healthy development, due to a lack of emotional and physical contact and a lack of stimulation and interaction in institutional environments. This inability of the institutional environment to meet individual needs can lead to specific developmental delays and challenging behaviours.<sup>6</sup> Recent research into Early Brain Development (EBD) demonstrates that institutionalisation has a severe impact on EBD and that this impact is even greater than

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<sup>1</sup> Lumos Foundation (Lumos) is a company limited by guarantee registered in England and Wales number: 5611912 | Registered charity number: 1112575

<sup>2</sup> Pinheiro, P.S. (2006). *World Report on Violence against Children*. UNICEF: New York.

<sup>3</sup> EveryChild (2005) *Family matters: A study of institutional childcare in Central and Eastern Europe and the former Soviet Union*.

<sup>4</sup> This is the European Region as defined by the UN, including all CEE/CIS countries.

<sup>5</sup> Berens, A. & Nelson, C. (2015) The science of early adversity: is there a role for large institutions in the care of vulnerable children? *The Lancet*. 2015.

<sup>6</sup> Mulheir, G. (2012). Deinstitutionalisation – A Human Rights Priority for Children with Disabilities. *The Equal Rights Review*, p119–121.



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the impact of child abuse.<sup>7</sup> For more information, please, check: [Lumos Factsheet: How institutions are harmful to children](#).<sup>8</sup>

Evidence and experience have shown that a caring and protective family, immediate and extended, is central to a child's health, development, and protection. The Convention on the Rights of the Child (CRC) affirms that, as far as possible, all children have a right to live with their families and that parents or other legal guardians have the primary responsibility to protect and care for the child.<sup>9</sup> The CRC and the UN Guidelines for the Alternative Care of Children (A/RES/64/142)<sup>10</sup> also call on States to ensure that families have access to services which support them in the caregiving role. The Guidelines state that, "[e]very child and young person should live in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment". Children in alternative care have also been recognised as a particularly vulnerable group by the European Commission in its recommendation on Investing in Children.<sup>11</sup> The recommendation declares that "a focus on children who face an increased risk due to multiple disadvantage such as (...) children in alternative care" needs to be ensured. The UN Convention on the Rights of Persons with Disabilities (UNCPRD)<sup>12</sup> to which the EU is a signatory, clearly states that "States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others" (Art 19). For children this means being in family environment and receiving quality care and protection.

### The role of the Maltese Presidency in promoting deinstitutionalisation of children

Lumos welcomes the decision of the Maltese Presidency of the Council of the EU to opt for a focused agenda, prioritising issues that affect the EU and its citizens the most<sup>13</sup> and its decision to include poverty and social exclusion among key issues to be discussed during its

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<sup>7</sup> Nelson, C. and Koga, S. (2004). *Effects of institutionalisation on brain and behavioural development in young children*. Findings from the Bucharest early intervention project, paper presented at the International Conference on 'Mapping the number and characteristics of children under three in institutions across Europe at risk of harm', 19 March 2004, EU Daphne Programme 2002/3 and WHO Regional Office for Europe, Copenhagen, Denmark.

<sup>8</sup> Lumos, *Children in Institutions: The Risks*.

[http://wearelumos.org/sites/default/files/Risks\\_Factsheets\\_Lumos\\_0.pdf](http://wearelumos.org/sites/default/files/Risks_Factsheets_Lumos_0.pdf) [accessed 26 Oct 2016].

<sup>9</sup> United Nations (1989) *Convention on the Rights of the Child* (Adopted 20 November 1989, entered into force 2 September 1990) Vol.1577, p.3.

<sup>10</sup> United Nations (2009) *Guidelines for the Alternative Care of Children* (2009) A/RES/64/142

[http://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf) [accessed 26 Oct 2016].

<sup>11</sup> European Union (2013) Commission Recommendation of 20 February 2013 investing in children: breaking the cycle of disadvantage, OJ L 59, 2.3.2013. [http://ec.europa.eu/justice/fundamental-rights/files/c\\_2013\\_778\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf) [accessed 26 Oct 2016].

<sup>12</sup> United Nations (2006) *Convention on the Rights of Persons with Disabilities* (Adopted 13 December 2006, entered into force 3 May 2008), Art. 19. <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> [accessed 26 Oct 2016].

<sup>13</sup> MaltaToday. (2 February 2016). Malta's EU presidency will have 'focused agenda', Grech says.

[http://www.maltatoday.com.mt/news/national/61835/maltas\\_eu\\_presidency\\_will\\_have\\_focused\\_agenda\\_grech\\_says](http://www.maltatoday.com.mt/news/national/61835/maltas_eu_presidency_will_have_focused_agenda_grech_says) [accessed 26 Oct 2016].



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term, as stated by Mr Louis Grech, Deputy Prime Minister and Minister for EU Affairs.<sup>14</sup> **Lumos calls on the Maltese Presidency to make the best use of the opportunity** and place deinstitutionalisation high on the EU political agenda.

### **From implementing Regulation 1303 / 2013 to achieving policy coherence for development**

Lumos welcomes the initiative of the Presidency Trio, of which Malta is part, to focus on the implementation of the European Structural and Investment Funds (ESIF) within its agenda.<sup>15</sup>

The EU has recognised the harm that institutionalisation causes and has played an instrumental role in the efforts to end this form of care. By introducing an ex-ante conditionality on social inclusion (9: 9.1.) with an investment priority on the “transition from institutional to community based services” in the Regulation 1303/2013 on the ESIF, the EU has prohibited their use on the maintenance, renovation or construction of residential institutions. In effect with the adoption of the Regulation it is forbidden for the ESIF to be used for the maintenance or renovation of existing, and the construction of new, large residential institutional settings. Now when the ex-ante conditionality is in place, it is crucial to make sure that it is implemented. The forthcoming mid-term review of the Multiannual Financial Framework 2014-2020 (MFF) will provide an opportunity for assessing progress also in this respect.

**Lumos calls** on the Maltese Presidency to promote, in all its actions and statements related to the ESIF, the principles of the aforementioned ex-ante conditionality and make sure that it is fully implemented.

Lumos welcomes the increasing attention the Council of the European Union has devoted to Policy Coherence for Development over the last years.<sup>16</sup> Seeking to build synergies between different EU policies to benefit developing countries, Policy Coherence for Development has immense potential to realise equal rights for all children around the world. It is our position that in the interest of achieving policy coherence and assuring that the EU meets its international human rights commitments, the same criteria should be applied to all the European Union funding sources worldwide, with connected goals and priorities, including the EU Neighbourhood Instrument (ENI), the European Development Fund (EDF), the Instrument for Pre-accession Assistance (IPA), humanitarian aid and the loans provided by the European

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<sup>14</sup> Malta Independent. (17 June 2016). Deputy PM Louis Grech outlines Malta's EU Presidency priorities. <http://www.independent.com.mt/articles/2016-06-17/local-news/Deputy-PM-Louis-Grech-outlines-Malta-s-EU-Presidency-priorities-6736159569> [accessed 26 Oct 2016].

<sup>15</sup> Council of the European Union. (11 Dec 2015). *Taking forward the Strategic Agenda - 18 month programme of the Council* (1 January 2016 - 30 June 2017). <http://data.consilium.europa.eu/doc/document/ST-12396-2015-INIT/en/pdf> [accessed 26 Oct 2016].

<sup>16</sup> European Commission. (n.d.) Policy Coherence for Development [http://ec.europa.eu/europeaid/policies/policy-coherence-development\\_en](http://ec.europa.eu/europeaid/policies/policy-coherence-development_en) [accessed 26 Oct 2016].



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Investment Bank. If the European Commission has accepted that institutions are harmful to children and as a consequence has significantly altered its funding and policy priorities for children inside the European Union, it follows that wherever the Commission has policy and funding influence, the same logic should apply. The evidence is clear: children are harmed by institutionalisation; they only thrive in a family environment, irrespective of where they live. You can find more information on this in our publication [In Our Lifetime: The Role of Donors in Ending the Institutionalisation of Children](#).<sup>17</sup> This is also in line with the programme of the Presidency Trio, made up of the Netherlands, Slovakia and Malta, which announced its intention to focus on implementation of policies and ensuring coherence between all relevant policies and instruments, including the external aspects.<sup>18</sup>

**Lumos calls** on the Maltese Presidency to send a message about making sure that no EU funding, expended either within the European Union or internationally, is used for supporting the maintenance of the existing institutions for children or for the creation of new ones.

**Lumos calls** on the Maltese Presidency to send a message about ensuring that a similar mechanism to the ex-ante conditionality on social inclusion with an investment priority on the transition from institutional to family and community based care is introduced for all the EU external funding, including the EU Neighbourhood Instrument (ENI), the European Development Fund (EDF), the Instrument for Pre-accession Assistance (IPA), the humanitarian aid and the loans provided by the European Investment Bank.

## **Inclusive education**

Lumos welcomes the decision of the Maltese government “to tackle problems of poverty and social inequality” and its view that “the Union’s economic dimension should be complemented by a strong social vision”.<sup>19</sup> Inadequate access to quality education is one of the main drivers of poverty and social inequality.

The UN Convention on the Rights of Persons with Disabilities (CRPD), to which the EU and Malta are signatories<sup>20</sup>, states that governments “shall ensure an inclusive education system at all levels and lifelong learning” (Art 24).<sup>21</sup> Nevertheless, across Europe and around the

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<sup>17</sup> [http://wearelumos.org/sites/default/files/In%20Our%20Lifetime\\_2015\\_Sept2015\\_0\\_0.pdf](http://wearelumos.org/sites/default/files/In%20Our%20Lifetime_2015_Sept2015_0_0.pdf) [accessed 26 Oct 2016].

<sup>18</sup> Council of the European Union. (11 Dec 2015). *Taking forward the Strategic Agenda - 18 month programme of the Council (1 January 2016 - 30 June 2017)*. <http://data.consilium.europa.eu/doc/document/ST-12396-2015-INIT/en/pdf> [accessed 26 Oct 2016].

<sup>19</sup> MaltaToday (3 Jun 2016). Cabinet meets EC delegates to discuss Malta’s EU presidency. [http://www.maltatoday.com.mt/news/europe/66007/commission\\_delegates\\_in\\_malta\\_to\\_discuss\\_eu\\_presidency](http://www.maltatoday.com.mt/news/europe/66007/commission_delegates_in_malta_to_discuss_eu_presidency) [accessed 26 Oct 2016].

<sup>20</sup> United Nations (2006) *Convention on the Rights of Persons with Disabilities* (Adopted 13 December 2006, entered into force 3 May 2008), Art. 19. <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> [accessed 26 Oct 2016].

<sup>21</sup> *Ibid*, Art. 24



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world, a significant number of children with disabilities still live in residential special education schools, often far from their home, due to a lack of inclusive education. In many cases, both the conditions in these institutions and the outcomes for the children, living in them, are poor. Even in developed countries, where significant funds are invested in residential special schools, there is emerging evidence that educational and developmental outcomes are considerably better for children with disabilities educated in inclusive mainstream school environments. This is because education cannot be construed narrowly as the attainment of knowledge. For children to thrive and flourish, they need to be raised in their families and included fully in their communities. The emerging jurisprudence relating to the CRPD emphasizes and clarifies Member States' responsibilities to develop inclusive education for all children.

The development of an inclusive education system is also a key element of a successful deinstitutionalisation process. Lumos has demonstrated how they complement each other in practice in three pilot regions in Moldova.<sup>22</sup>

**Lumos calls** on the Maltese Presidency to initiate an action towards the promotion of social inclusion and tackling poverty through ensuring equal access to quality education for all children, including those with disabilities, in line with priorities of the Presidency Trio Programme.<sup>23</sup>

### **Post-Cotonou framework**

The Maltese Presidency will play an important role in the ongoing negotiations regarding Europe's position on the future relations between the EU and the countries of Africa, the Caribbean and the Pacific (ACP) after the Cotonou Agreement expires in 2020. The successive framework should recognise the crucial importance of children growing up in family environment and the harm institutions cause to their wellbeing and development.

**Lumos calls** on the Maltese Presidency to lay the foundations for the new Agreement to include a clause providing that the funds for its implementation should never be used for the construction, maintenance or renovation of institutions, but instead should be directed towards supporting the transition from institutional to family and community-based care and other related child protection objectives.

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<sup>22</sup> Lumos. (2014). *Ending the institutionalisation of children. A summary of progress in changing systems of care and protection for children in Moldova, the Czech Republic and Bulgaria.*

<http://wearelumos.org/sites/default/files/Ending%20Institutionalisation%20of%20Children.pdf> [accessed 26 Oct 2016].

<sup>23</sup> Council of the European Union. (11 Dec 2015). *Taking forward the Strategic Agenda - 18 month programme of the Council* (1 January 2016 - 30 June 2017). <http://data.consilium.europa.eu/doc/document/ST-12396-2015-INIT/en/pdf> [accessed 26 Oct 2016].



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**Lumos calls** on the Maltese Presidency to ensure that the framework contains an explicit reference to the transition from institutional to family and community based care as a priority. This would provide a basis for the creation of national and local deinstitutionalisation strategies and action plans and for the use of available funds to support families and contribute to poverty eradication. This provision would be in line with existing EU legislation, namely the Regulation 1303/2013 on the European Structural and Investment Funds (ESIF).

**Lumos calls** on the Maltese Presidency to ensure that the future partnership provides for more effective joint action on tackling transnational security challenges. Children living in poverty in developing countries are the most vulnerable to human trafficking and the future partnership must address this, as well as the particular vulnerabilities of certain groups including children in institutional care and children with disabilities.

For more information, please, read [Lumos' Position on future ACP – EU relations](#).<sup>24</sup>

### **Sustainable Development Goals (SDGs)**

As outlined in the Programme of the Netherlands, Slovakia and Maltese Presidency Trio, significant efforts will be devoted to implementation of the 2030 Agenda for Sustainable Development.<sup>25</sup> Lumos welcomes the initiative of the Presidency Trio to focus on this key aspect of the EU development policy.

The core principle of the 2030 Agenda for Sustainable Development is to leave no-one behind.<sup>26</sup> Many of children's holistic needs are included in the 2030 Agenda, most notably health care, education, and protection from violence, exploitation, and abuse. It also acknowledges the importance of cohesive communities and families to deliver a nurturing environment for a child to grow and thrive.<sup>27</sup> However, the estimated eight million children living in institutions are at risk of being left far behind, because the global monitoring framework does not assess the most vulnerable populations. The current monitoring framework fails to count children who live outside them. Therefore, children without parental care, including those in institutions are invisible.

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<sup>24</sup> <https://wearelumos.org/sites/default/files/2016%2003%2007%20Lumos%20position%20on%20Cotonou.pdf> [accessed 26 Oct 2016].

<sup>25</sup> Council of the European Union. (11 Dec 2015). *Taking forward the Strategic Agenda - 18 month programme of the Council (1 January 2016 - 30 June 2017)*. <http://data.consilium.europa.eu/doc/document/ST-12396-2015-INIT/en/pdf> [accessed 26 Oct 2016].

<sup>26</sup> United Nations (2015) *General Assembly resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September 2015), p. 1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E) [accessed 26 Oct 2016].

<sup>27</sup> See paragraph 25 of the introduction: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> [accessed 26 Oct 2016].



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**Lumos calls** on the Presidency to lead the European Union to use the forthcoming UN World Data Forum to highlight the fact that a great number of children are at risk of being left behind by the SDGs. The presidency should advocate for changes in the global monitoring framework allowing all children to be counted.

**Lumos calls** on the Maltese Presidency to lead the European Union in making sure that children living outside of households and/or without parental care are represented in disaggregated data. Data disaggregation by care-giving setting/living arrangement is key to tracking progress for all children, particularly regarding Goals 1, 3, 4, 8, 10 and 16. This is critical to a) analysing how trends differ between children living outside of households and/or without parental care and the general child population; and b) ensuring that programs and policies prioritize the most vulnerable children. Data collection should reflect the goals and definitions included in the UN Convention on the Rights of the Child, the UN Guidelines for the Alternative Care of Children, and the UN Convention on the Rights of Persons with Disabilities.

**Lumos calls** on the Maltese Presidency to support the improvement and expanding of the data collection methodologies to ensure all children are represented. Eurostat must include an indicator on children temporarily or permanently living outside of households.

Over 175 organisations have highlighted their concerns about the way children are counted, in a letter addressing the UN and its' Member States, which you can find [here](#).<sup>28</sup>

## Children in migration

Lumos welcomes the decision of the Maltese Presidency to include migration crisis in Europe among its three overarching priorities.<sup>29</sup>

In the context of the current migrant crises in the EU, it is reported that, in Greece, for example, the system in place to care for unaccompanied minors is heavily under-resourced and not able to respond to the high demand. Many children are placed in detention facilities on arrival. Often children are kept in custody at the Greek border for a considerable amount of time before being referred to hostels or residential care facilities. Anecdotal evidence points towards unaccompanied minors who go missing after having been placed in institutional care before they have been registered by authorities. Once these vulnerable children go missing they enter an underground off the radar world and are easy prey for traffickers. Given that many of these children are particularly vulnerable, having experienced the trauma of war, Lumos notes an

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<sup>28</sup> ALL CHILDREN COUNT BUT NOT ALL CHILDREN ARE COUNTED: An open letter to the UN and its Member States – Over 175 signatories.

<https://wearelumos.org/sites/default/files/All%20children%20count%20but%20not%20all%20children%20are%20counted.pdf> [accessed 26 Oct 2016].

<sup>29</sup> Malta Independent. (1 July 2016) Minister Carmelo Abela discusses Malta's EU Presidency priorities in Bucharest. <http://www.independent.com.mt/articles/2016-07-01/local-news/Minister-Carmelo-Abela-discusses-Malta-s-EU-Presidency-priorities-in-Bucharest-6736160292> [accessed 26 Oct 2016].



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urgent and clear need for child protection custodians to be provided to protect these children from further harm and ensure that each child's placement is in their best interest.

**Lumos calls** on the Maltese Presidency to, within its competence, support measures addressing the situation of unaccompanied migrant children in the EU, making sure that they receive appropriate level of protection and that their rights are safeguarded.

### **The links between institutionalisation and trafficking**

There is a strong, but largely unrecognised, connection between institutionalisation and trafficking. Firstly, institutionalised children are at high risk of becoming victims of trafficking compared with those raised in families<sup>30</sup> and, secondly, children recovered from traffickers are often placed (back) in institutions by the authorities, reinforcing the trauma they suffer. This creates a vicious circle for trafficked children and additional risks to their peers in institutions. This response also effectively penalises the child for their victimisation and can place them at greater risk: the specific institutions where trafficked children are placed are often known to the traffickers, who will target them there for re-trafficking.

There is evidence that institution managers and staff have actively solicited parents living in poverty to place children in their facilities, marketing their services, nutrition, shelter, access to education, health care, and improved life chances<sup>31</sup>.

Establishing institutions has become a 'business' in a number of countries, including Haiti, Cambodia and Uganda. A galaxy of private actors (including NGOs and faith based organisations) run orphanages/institutions for children and often operate without any proper regulation or supervision.

When this is the case, the model usually functions as follows: an orphanage is established; children are recruited through purchase; coercion or deception; children are neglected, abused and exploited, usually for profit; orphanage advertises for support, funds and volunteers; foreigners donate money; volunteers arrive to provide support; children often go missing; few prosecutions or follow up; some institutions close, but many continue to function<sup>32</sup>.

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<sup>30</sup>Kane, J., (2005). *Child Trafficking – The People Involved: A synthesis of findings from Albania, Moldova, Romania and Ukraine*. International Labour Office.

[http://www.humantrafficking.org/uploads/publications/ipecc\\_balkana\\_05.pdf](http://www.humantrafficking.org/uploads/publications/ipecc_balkana_05.pdf) [accessed 18th Jan 2017]; International Organisation for Migration (2007) *Protecting Vulnerable Children in Moldova*.

<sup>31</sup>Lumos (2016) *Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children*

[https://wearelumos.org/sites/default/files/Haiti%20Trafficking%20Report\\_ENG\\_WEB\\_NOV16.pdf](https://wearelumos.org/sites/default/files/Haiti%20Trafficking%20Report_ENG_WEB_NOV16.pdf) [accessed 31<sup>st</sup> March 2017]

<sup>32</sup> *ibid*





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The UNICEF Factsheet Residential Care in Cambodia highlights that “many centres turn to orphanage tourism to attract more donors, fuelling a system that exposes children to risk.”<sup>33</sup>

**Lumos calls** on the Maltese Presidency to, within its competence, ensure that the issue of institutionalisation remains high on the agenda in discussions on measures to prevent trafficking of human beings and particularly children.

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<sup>33</sup> UNICEF, *Residential Care in Cambodia*, [https://www.unicef.org/cambodia/Fact\\_sheet\\_-\\_residential\\_care\\_Cambodia.pdf](https://www.unicef.org/cambodia/Fact_sheet_-_residential_care_Cambodia.pdf)