

## Lumos' Recommendations to the European Investment Bank (EIB)

### About Lumos

Lumos an international NGO founded by author J.K. Rowling, working to end the institutionalisation of children worldwide by 2050. Lumos is a founding member of the European Expert Group on the Transition from Institutional to Community Based Care (EEG), sits on the EU Civil Society Platform against trafficking in human beings and is a member of the Child Rights Action Group (CRAG). You can find more information about our work on our website.<sup>1</sup>

### Institutionalisation of children

Millions of children worldwide live in residential institutions and so-called orphanages that deny their human rights and do not meet their needs. One million of these children are believed to live in the wider European region.

There are numerous definitions of what the term 'institution'<sup>2</sup> means when referring to children. The Common European Guidelines on the Transition from Institutional to Community-based Care define institutions for children "as residential settings that are not built around the needs of the child nor close to a family situation, and display the characteristics typical of institutional culture (depersonalisation, rigidity of routine, block treatment, social distance, dependence, lack of accountability, etc.)".<sup>3</sup>

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<sup>1</sup> <https://wearelumos.org>

<sup>2</sup> See for example Eurochild's definition extracted from the UN Guidelines for the Alternative Care of Children: "a residential setting that is not built around the needs of the child nor close to a family situation and display the characteristics typical of institutional culture (depersonalisation, rigidity of routine, block treatment, social distance, dependence, lack of accountability, etc.). Cited in the Common European Guidelines on the Transition from Institutional to Community-based Care. European Expert Group on the Transition from Institutional to Community-based Care, November 2012, <http://www.deinstitutionalisationguide.eu/>. In addition, UNICEF when defining an institution considers "whether the children have regular contact and enjoy the protection of their parents or other family or primary caregivers, and whether the majority of children in such facilities are likely to remain there for an indefinite period of time". Cited in the UNICEF Consultation on Definitions of Formal Care for Children, pp.12–13.

<sup>3</sup> European Expert Group on the Transition from Institutional to Community-based Care. (2012). *Common European Guidelines on the Transition from Institutional to Community-based Care*. <http://www.deinstitutionalisationguide.eu/> [accessed 11 July 2016].

Over 80 years of research from across the world has demonstrated the significant harm caused to children in institutions who are deprived of loving parental care and who may consequently suffer life-long physical and psychological harm.<sup>4</sup> Children who grow up in institutions can experience attachment disorders, cognitive and developmental delays, and a lack of social and life skills leading to multiple disadvantages during adulthood.<sup>5</sup> Long-term effects of living in institutions can include severe developmental delays, disability, irreversible psychological damage, and increased rates of mental health difficulties, involvement in criminal behaviour, and suicide.<sup>6</sup> Research consistently demonstrates that more than 80 per cent of children in institutions are not 'orphans',<sup>7</sup> but are placed there due to reasons such as poverty, disability, marginalisation, a lack of family support services in the community and as a result of migration and trafficking. In fact, around 80% have at least one living parent and, with a little additional support, most children could live with their birth or extended families.

## EU and international legal framework

A number of international and EU policy and legal instruments declare that institutional settings are a breach of human rights. The United Nations Convention on the Rights of the Child (CRC), ratified by all EU Member States, 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>8</sup> The CRC and the UN Guidelines for the Alternative Care of Children<sup>9</sup> also call on States to ensure that families have access to services which support them in their caregiving role. The Convention on the Rights of Persons with Disabilities (UNCRPD),<sup>10</sup> to which 27 Member States and the EU itself are signatories, states that children with disabilities should enjoy their human rights on an equal basis with other children (Art. 7.1), that their best interests must be taken into account (Art. 7.2) and that all persons with disabilities have the right to community living (Art. 19).

In addition, the updated “EU Guidelines for the Promotion and Protection of the Rights of the Child (2017)”<sup>11</sup> highlight the importance of appropriate alternative care for children that allows them to participate in community life, of preventing family and child separation, and of taking into

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<sup>4</sup> Berens & Nelson (2015). The science of early adversity: is there a role for large institutions in the care of vulnerable children? The Lancet. [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)61131-4/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)61131-4/abstract) [Accessed 16 September 2016]

<sup>5</sup> Nelson, C., Zeanah, C., et al. (2007) “Cognitive recovery in socially deprived young children: The Bucharest early intervention project”. Science 318 (no.5858); 1937–1940 (21<sup>st</sup> December 2007)

<sup>6</sup> Mulheir, G. et al. (2012). *Deinstitutionalisation – A Human Rights Priority for Children with Disabilities*.

<sup>7</sup> Csáky, C. (2009) *Keeping children out of harmful institutions: why we should be investing in family-based care*, Save the Children, p. vii

<sup>8</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>9</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 27 Jul 2017].

<sup>10</sup> United Nations (2007), UN Convention on the Rights of Persons with Disabilities (Adopted by the UN General Assembly, 24 January 2007, A/RES/61/106).

<sup>11</sup> European Union (2017), Guidelines on the Promotion and Protection of the Rights of the Child p.19. [accessed 06 Mar 2018]

consideration the child's best interests.<sup>12</sup> They further recommend the need for greater coherence in the EU's external action on children, including that carried out by Member States.<sup>13</sup>

The European Parliament "Resolution on children rights in occasion of the 30th anniversary of the Convention on the Rights of the Child"<sup>14</sup> (November 2019) calls on the Member States "to ensure that unnecessary family separation is prevented, and that family- and community-based services are strengthened to allow all children to grow up not in institutions but in families and communities" and on the Commission "to use EU funds to support the transition from institutional to community-based services, both inside and outside the EU".<sup>15</sup>

The UN Resolution on the Rights of the Child<sup>16</sup> (December 2019) highlights that "where alternative care is necessary, family and community-based care should be promoted over placement in institutions".<sup>17</sup> Furthermore, it recalls "the importance of promoting and protecting the human rights and fundamental freedoms of all migrant children, regardless of their migration status, with the best interests of the child as a primary consideration".<sup>18</sup>

### Ceasing the EU funding for institutional care

In 2013, the European Union acknowledged the harm of the practice of institutionalisation of children with the introduction of an ex-ante conditionality on social inclusion (9: 9.1.) in the Regulation 1303/2013 on the European Structural and Investment Funds.<sup>19</sup> The ex-ante conditionality includes measures which effectively prohibit the use of ESIF to maintain, renovate or construct residential institutions and encourages Member States that have not yet made the transition, to prioritise programmes that support the transition to community-based services. The European Commission has reaffirmed its commitment to the transition from institutional to family- and community-based care within the EU, by introducing enabling conditions 4.3/4.3.1 in the draft Cohesion Policy Regulations for 2021-2027.

More recently, for the first time ever, this commitment has been extended to the EU's external action. In 2018, the European Commission proposed a Regulation establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI), that contains explicit reference to promoting the transition from institutional to community-based care for children in international development funding outside Europe. Moreover, in the European Parliament's and Council's position on the Instrument for Pre-Accession III, it is stated that this instrument should promote the transition from institutional to family- and community-based care and the development of accessible, affordable, sustainable and high quality family- and community-based services for all IPA III beneficiaries (Annex II(i)).

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<sup>12</sup> Ibid, p. 21

<sup>13</sup> Ibid, e.g. p. 13

<sup>14</sup> (2019/2876(RSP)) [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0066\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0066_EN.pdf)

<sup>15</sup> P9\_TA(2019)0066, para 43

<sup>16</sup> UNGA (2019), Promotion and protection of the rights of children. Report of the Third Committee, A/74/395 <https://undocs.org/A/74/395> [accessed 04 Feb 2020]

<sup>17</sup> Ibid, p. 14

<sup>18</sup> Ibid, p. 10

<sup>19</sup> Regulation (EU) 1303/2013, Article 9: 9.1

It is our position that in the interest of achieving policy coherence, the same criteria should be applied to other important funding sources worldwide, with connected goals and priorities, including the loans provided by the European Investment Bank. You can find more information on this in our latest publication *Transforming Care Systems through EU External Action*.

## Lumos' Recommendations to EIB policy documents and funding instruments

### 1. EIB List of Excluded Activities

The EIB is driven by the policy objectives of the EU.<sup>20</sup> This means that the operations funded by the EIB should be in line with EU legislation. As the EU has recognised the harm of institutional care by introducing an ex-ante conditionality on social inclusion 9.1 with an investment priority on the transition from institutional to community-based care in ESIF Regulation 1303/2013, Lumos calls on the EIB to ensure that the projects and operations funded with its loans comply with EU legislation and policy in this area. In order to avoid EIB money being used for the continuation of a practice which presents a clear breach of human, including children's, rights **Lumos recommends that the building of new and the maintenance of existing residential institutions are added to the EIB List of Excluded Activities.**

### 2. InvestEU Programme 2021- 2027

Lumos is pleased to see that the policy areas to be supported by InvestEU Programme 2021-2027 include **Social Investment and Skills**. Projects in social housing, schools, social innovation, healthcare, long-term care and accessibility, social enterprise, and the integration of migrants, refugees and vulnerable people are listed as eligible for funding under this policy area, which could contribute to the successful and sustainable transition from institutional to community-based care, thus – for the achievement of the EU policy objective, supported by the EU Cohesion Policy funds thematic objective on social inclusion. There is a risk however that should awareness raising, and guidance not be provided, these funds might be used for institutional forms of residential care, including for refugee and unaccompanied minor children. Therefore, it is essential that it is clearly stated that **the Programme will fund only operations which contribute to social inclusion. When it comes to projects in the domain of infrastructure, it is of crucial importance to clarify, that any infrastructure funded by InvestEU should contribute to family and community-based care and independent living, and that no residential institutions and other segregated services and settings will be funded under the Programme.**

In order for the EIB and EC to secure that the above principles are respected, Lumos recommends, that:

- A **guidance note** on projects and operations to be funded under the Social Investment and Skills policy area should be created. It should contain a list of activities which contribute to

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<sup>20</sup> European Investment Bank (2018), Environmental and Social Standards p. 8, [https://www.eib.org/attachments/strategies/environmental\\_and\\_social\\_practices\\_handbook\\_en.pdf](https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf) [accessed 11 Feb 2020]

social inclusion as well as a list of excluded activities which won't be funded under the Programme, including any form of institutional care.

- The **InvestEU Advisory Hub** should be aware of the international and EU human rights policy and legislation, including the instruments listed in the relevant section of this paper. Experts sitting in the Hub should undergo training course, run by civil society organisations with expertise and/or representing the target groups in the operation areas of the Programme. This should include a training session on the transition from institutional to community-based care, organised together with and offered by the European Expert Group on the Transition from Institutional to Community-Based Care (EEG).
- Projects which breach fundamental human rights and lead to social exclusion, should be banned and removed from the **European Investment Project Portal**. Staff in charge of monitoring the portal should participate in the above-mentioned training.

### 3. EIB Environmental and Social Standards

Lumos is delighted to see that 'children' and their rights have been addressed in the updated EIB Environmental and Social Standards. As the Standards are a living document, Lumos recommends that the below suggestions are introduced in the next revision.

- **References to ESIF/Cohesion Policy Funding Regulations and the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child, should be added at all relevant places, including under the Principles of Standard 7.** As all EIB-financed operations shall comply with national legislation and international conventions and agreements ratified by the host countries as well as with EU horizontal and/or applicable sectoral legislation, it makes sense that these key EU Regulations and UN human rights Conventions are included in the list. In this way any omission of their principles and clauses would be avoided and – thus – the compliance of the EIB funded operations with them would be guaranteed.
- **The right to family or family-like care for children should be addressed under the Specific Objectives of Standard 7.** There is still a widespread miss-conception that institutions are a social good while, in reality, they harm children and breach their rights. Therefore, it is essential to remind of the right of all children to grow up in a family, as enshrined in the UN Convention on the Rights of the Child.<sup>21</sup> This would prevent EIB loans being used for the maintenance or the construction of residential institutions.
- **'Institutionalisation' should be included in the definition of Vulnerability and 'children in institutions' in the definition of Vulnerable groups.** As already explained, children in institutions are particularly vulnerable, being deprived by the daily love and care they need for their development and exposed to long-term harm resulting in various disorders and self-harming behaviours.
- **Relevant CSOs and service users should be consulted and meaningfully engaged during all stages of a project lifecycle obligatory,** in line with the European Code of Conduct on Partnership in the framework of the European Structural and Investment Funds. It is crucial to take the views, the expertise and the first-hand experience of CSOs and service users into

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<sup>21</sup> Convention on the Rights of the Child, Preamble, Articles 9, 20, 23, 27, <[www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx)>.

account in order to secure that a project complies with human rights and best practice standards.

- **An addition to Definitions under Standard 10 should be made, stating that information offered during public consultations should be accessible, including easy-to-read formats for children and adults with intellectual disabilities.** In line with the principle for non-discrimination, information should be offered in formats which allow to anyone to understand it and offer informed feedback.
- **An addition in Definitions under Standard 10 should be made, stating that any public consultation and participation should take into account and be responsive to the needs, rights and interests of children, including children outside of households.** Children and young people must be appropriately consulted on any operation which concerns their lives and their views should be taken into account for the final decision.
- **Children should be explicitly mentioned under the Overarching Requirements of Standard 10 (p. 19) where it states that consultation should be accessible to vulnerable groups.** It is essential to make sure that children's views are properly taken on board and considered when designing, monitoring and implementing projects which concern their lives and wellbeing.

In addition, we recommend that:

- The EIB ensures that the project promoters and the staff members of the Project Directorate and the Environment, Climate and Social Office (ECSO) **have received adequate training on the social risks including the harm which large residential settings cause to both children and adults.** The European Expert Group on the Transition from Institutional to Community-based Care and its members at national level could offer such training.
- The EIB ensures that the use of framework loans to municipalities is monitored and that an accountability mechanism is put in place on how the money is spent.

#### **4. 2009 EIB Statement of Environmental and Social Principles outlining the role of the bank on environmental and social matters**

While the EIB Environmental and Social Standards were updated in 2018, the Statement has not followed. It is very much focused on the environmental and less so on the social standards. There is no explicit mentioning of children's rights. The closest it gets is: "policies, practices, programmes and activities developed and implemented by the promoter should pay special attention to the rights of vulnerable groups. Such groups may include (...) **the very young**".<sup>22</sup>

In view of the forthcoming update of the Statement, Lumos recommends that the new Statement:

- includes references to ESIF/Cohesion Policy Funding Regulations and international human rights instruments such as UN CRC and UNCRPD
- confirms that EIB only finances projects which promote the EU policy objective of social inclusion

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<sup>22</sup> European Investment Bank (2009), The EIB Statement of Environmental and Social Principles and Standards, para 52 p. 18, [https://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf) [accessed 11 Feb 2020]

- addresses children's rights
- highlights the role of civil society in the monitoring and evaluation of the funded projects as per the EU Code of Conduct on Partnership<sup>23</sup>

## Additional Information

For more information on the transition from institutional to family- and community-based care check the Common European Guidelines on the Transition from Institutional to Community-based Care<sup>24</sup> and the Toolkit on the Use of European Union Funds for the Transition from Institutional to Community Based Care<sup>25</sup>.

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<sup>23</sup> Regulation (EU) 240/2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

<sup>24</sup> European Expert Group on the Transition from Institutional to Community-based Care. (2012). Common European Guidelines on the Transition from Institutional to Community-based Care. <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf> [accessed 11 Feb 2020]

<sup>25</sup> European Expert Group on the Transition from Institutional to Community-based Care (Revised edition, June 2014), Toolkit on the Use of European Union Funds for the Transition from Institutional to Community-based Care. <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/toolkit-10-22-2014-update-web.pdf> [accessed 11 Feb 2020]