



Protecting Children. Providing Solutions.

September 2018

Lumos' response to the European Commission Proposal for a Regulation on the European Social Fund+ 2021-2027

About Lumos

Lumos is an international NGO¹, founded by the 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; helping children move from institutions to family-based care. Lumos sits on the EU Civil Society Platform against trafficking in human beings and is a founding member of the European Expert Group on the Transition from Institutional to Community-based Care.

Institutionalisation of children

An estimated eight million children worldwide live in residential institutions and so-called orphanages that deny their human rights and do not meet their needs.² One million of these children are believed to live in the wider European region.³

There are numerous definitions of what the term 'institution'⁴ means when referring to children. The Common European Guidelines on the Transition from Institutional to Community-based Care define institutions for children "as residential setting 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.)".⁵

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

² The number of residential institutions and the number of children living in them is unknown. Estimates range from 'more than 2 million' (UNICEF, Progress for Children: A Report Card on Child Protection Number 8, 2009) to 8 million (Cited in: Pinheiro, P., World Report on Violence against Children, UNICEF, New York, 2006). These figures are often reported as underestimates, due to lack of data from many countries and the large proportion of unregistered institutions.

³ Ceecis, U. (2011). End placing children under three years in institutions. UNICEF

⁴ 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.

⁵European 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].



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Additional characteristics include an organised routine, impersonal structures and a low care-giver to child ratio.⁶

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.⁷ 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.⁸ 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 decreased life expectancy.⁹

Research consistently demonstrates that more than 80 per cent of children in institutions are not 'orphans',¹⁰ 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 trafficking.

EU policy and legal framework under the current funding period 2014-2020

In 2013, the European Union took a major step towards ending the 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 Funds¹¹. The ex-ante conditionality includes measures which effectively prohibit the use of ESIF to maintain, renovate or construct residential institutions. It also encourages Member States to prioritise programmes to support the transition from institutional to family and community-based care.

Also, the **Regulation 1304/2013** on the European Social Fund contains **in its Article 8 and Recital 19** an investment priority on the transition from institutional to community-based services.¹²

Proposed Regulations for the funding period 2021-2027

On 29 and 30 May 2018, the European Commission released its proposals for Regulations for the European Parliament and the European Council for 2021-2027 on the Common Provision on Cohesion Policy, the European Social Fund+ (ESF+) and the European Regional Development Fund (ERDF). **The commitment to end the institutionalisation of children has been reaffirmed in the proposal for a**

⁶ See Annexe 1 for more information on the characteristics of a children's institution

⁷ 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]

⁸ 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 (21st December 2007)

⁹ Mulheir, G. et al. (2012). *Deinstitutionalisation – A Human Rights Priority for Children with Disabilities*.

¹⁰ Csáky, C. (2009) *Keeping children out of harmful institutions: why we should be investing in family-based care*, Save the Children, p. vii

¹¹ European Union (2013) Regulation (EU) 1303/2013, Article 9: 9.1

¹² European Union (2013) regulation (EU) 1304/2013, Article 8 and Recital 19



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Common Provision Regulation (CPR) and the proposal for an ESF+ Regulation for the next programming period 2021-2027.

The proposal for a Common Provisions Regulation (CRP) 2021-2027 contains an **enabling condition 4.3** which requires the creation of a national strategic framework for poverty reduction and social inclusion with one of the fulfilment criteria being that it “**includes measures for the shift from institutional to community-based care**”¹³.

The proposed ESF+ Regulation states that “the Member States and the Commission shall also support specific targeted actions (...), including the transition from residential/institutional **care to family and community-based care**” (**Article 6.2**)¹⁴. In addition, Recital 28 of the proposed Regulation states that ESF+ “should also promote the transition from residential/institutional care to family and community-based care, in particular for those who face multiple discrimination”¹⁵. Furthermore, it contains the negative obligation that “ESF+ should not support any action that contributes to segregation or to social exclusion”.¹⁶

Lumos’ recommendations and suggestions for amendments to the proposed ESF+ Regulation 2021-2027

Lumos welcomes the important steps that the European Commission has taken in the proposed ESF+ Regulation to maintain its commitment to promoting the transition from institutional to family- and community-based care.

Lumos particularly welcomes that the term “family care” has been included in the ESF+ proposal. It is crucial to support families so that children can stay at home or live in a family-like setting and benefit from a loving, protective family environment.

Lumos also welcomes the inclusion of the Partnership Principle and the European Code of Conduct for Partnership (ECCP) in the proposal for a Regulation. However, the way it is phrased now, we fear that it is not strong enough to meaningfully involve social partners, civil society organisations or the inputs of children and young people.

Therefore, Lumos makes the following recommendations and suggestions for amendments to the proposed ESF+ Regulation 2021-2027:

Recommendation 1: Maintain and strengthen the references to the transition from institutional to family- and community-based care in the ESF+ Regulation

¹³ European Commission (2018) Proposal for a Regulation COM(2018) 375 final of the European Parliament and the Council of 29.5.2018, 2018/0196 (COD), ANNEX IV: Thematic enabling conditions applicable to ERDF, ESF+ and the Cohesion Fund – Article 11(1), p. 28

¹⁴ European Commission (2018) Proposal for a Regulation COM(2018) 382 final of the European Parliament and of the Council of 30.5.2018, 2018/0206 (COD), Article 6, p. 29

¹⁵ Ibid, p. 16

¹⁶ Ibid, p.20



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In the current funding period 2014-2020, the ESIF, particularly the ESF and the ERDF, are playing a pivotal role in helping Member States to advance and deliver on the transition from institutional to community-based services. As a result, several Member States have adopted strategies to shift away from institutional care, which are being translated into calls for proposals and funded projects followed by concrete actions and deliveries. At the same time, it is clear that the transition process is far from complete. Many Member States need further financial support, encouragement and incentives to elaborate a long-term vision for reforming systems. Some countries such as the Czech Republic, Greece and Poland still need to develop and adopt a national deinstitutionalisation strategy and action plan. Evidence shows that these are critical to ensure that the reform is implemented in a coordinated, systemic and successful way.¹⁷ The General Comment No. 5 of the UN Committee on the Rights of Persons with Disabilities states that “the lack of deinstitutionalization strategies and plans is one of the remaining barriers to the implementation of the right to live independently in the community”.¹⁸

Also, while Lumos believes that all children should be raised in families, good quality family-like care could be an option for a small number of children as a measure of last resort. Therefore, we would like to remove “residential” from the text, as the current wording suggests that all residential care is institutional which is not the case.

Lumos recommends maintaining and strengthening the below references to the transition from institutional to family- and community-based care in the proposal for an ESF+ Regulation 2021-2027. We provide **suggestions for where text could be added**. Our proposals are **bold and highlighted**.

Recital 18

[...] the ESF+ should support the implementation of policies **via strategies and action plans** targeting the most disadvantaged people and should be also used to enhance timely and equal access to affordable, sustainable and high-quality family and community-based care services.

Recital 28

[...] the ESF+ should also promote the transition from ~~residential~~ institutional care to family and community-based care, in particular for those who face multiple discrimination. **This should include the development of a national deinstitutionalisation strategy and action plan.** The ESF+ should not support any action that contributes to segregation or to social exclusion.

¹⁷ European Union Agency for Fundamental Rights (2017): From institutions to community living - Part I: commitments and structures, p. 7

<http://fra.europa.eu/en/publication/2017/independent-living-structures> [accessed 6th July 2018]

¹⁸ CRPD Committee (2017), General Comment No. 5 – Article 19: Living independently and being included in the community, CRPD/C/18/1, 29 August 2017, para. 15 (e).



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Article 6

Equality between men and women and equal opportunities, and non-discrimination

(2) The Member States and the Commission shall also support specific targeted actions **such as the development of national strategies and action plans** to promote the principles referred to in paragraph 1 within any of the objectives of the ESF+, including the transition from residential/institutional care to family and community-based care.

Recommendation 2: Maintain and strengthen the Partnership Principle and the European Code of Conduct on Partnership

Civil society has a crucial role to play as a source of expertise and experience to make a success of family and community-based living. The Partnership Principle is therefore a very important instrument for civil society and service users to collaborate with managing authorities in order to ensure that EU funds are being allocated and used in the best interest of their beneficiaries. It ensures that the decisions on investments of the funds are collaborative and that the relevant stakeholders participate in the design, implementation, monitoring and evaluation of the Operational Programmes.

The European Union's recognition of the importance of the Partnership Principle was demonstrated in the 2014-2020 funding period through the CPR and the European Code of Conduct on Partnership (ECCP)¹⁹ and has been included under both the proposal for a Common Provision Regulation 2021-2027 and the proposal for the ESF+ Regulation.

However, it is important that the Partnership Principle is further strengthened to lay the foundation for truly **meaningful**, participation of social partners, civil society organisations and beneficiaries in all stages of the preparation, implementation, monitoring and evaluation of the Operational Programmes under ESF+.

Below we make **suggestions for where text could be added and changed** to the proposal for an ESF+ Regulation.

¹⁹ European Union (2013) Regulation (EU) 1303/2013, Article 5



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Article 8 Partnership

1. Each Member State shall ensure **adequate meaningful** participation of social partners, **and** civil society organisations **and beneficiaries in all stages of the preparation, implementation, monitoring and evaluation of the Operational Programmes under ESF+ in line with the principles set out in the European Code of Conduct on Partnership (ECCP). This shall apply to** the delivery of employment, education and social inclusion policies supported by the ESF+ strand under shared management.
2. Member States shall allocate ~~an appropriate amount~~ **at least 2% of the of ESF+** resources under shared management in each programme for the capacity building of social partners and civil society organisations.

Recommendation 3: Include children living in institutions and orphanages or transitioning from institutional to family- and community-based care in list of output indicators

The 2030 Agenda for Sustainable Development is committed to leaving no one behind, however, many of the eight million children currently in institutions around the world are left off the world's statistical map. Many countries do not currently apply data collection mechanisms that reach and include the children that do not live in traditional households and who are without family care, such as children in institutions and on the streets.²⁰ Many governments and national statistics offices lack the awareness and specific knowledge to include children outside families including those transitioning from institutional to family- and community-based care in data collection. In many countries, there is either no system in place for collecting this type of data, or systems are not comprehensive or robust. If these children are not included in the data, they are statistically invisible and at serious risk of being left behind. When children are counted, they are more likely to be included in government programmes which help to ensure they grow up healthy, safe, and better-prepared to contribute positively to their societies.

It is therefore important that children living in institutions and orphanages or transitioning from institutional to family- to community-based care are included in the list of output indicators. This would also be line with Article 6.2 of proposed Regulation for ESF +.

²⁰ Carr–Hill, R. (2017). Improving population and poverty estimates with citizen surveys: Evidence from East Africa. World Development. Volume 93, pp 249 -259. <http://dx.doi.org/10.1016/j.worlddev.2016.12.017> [accessed 24 July 2018].



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ANNEX I

(1b) Other common output indicators

If data for these indicators is not collected from data registers, values on these indicators can be determined based on informed estimates by the beneficiary.

- participants with disabilities**,
- third country nationals*,
- participants with a foreign background*,
- minorities (including marginalised communities such as the Roma)**,
- homeless or affected by housing exclusion*,
- participants from rural areas*.

Add new points:

- **children living in institutions and orphanages**

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