



Protecting Children. Providing Solutions.

May 2017

## Lumos' recommendations to the Estonian Presidency of the Council of the EU: Protecting the most vulnerable children, inside and outside of Europe

### 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 4</sup> Eighty years of research has demonstrated the harm caused to children by institutionalisation.<sup>5</sup> These studies highlight how institutions damage children's 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 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 demonstrate 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

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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.

<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 (2014), *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].



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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 EU has recognised the harm that institutionalisation causes to children 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”<sup>13</sup> in the **Regulation 1303/2013 on the ESIF**, the EU has prohibited for the ESIF to be used for the maintenance or renovation of existing, and the construction of new, large residential institutional settings.<sup>14</sup>

The recently published “EU Guidelines for the Promotion and Protection of the Rights of the Child (2017) Leave no child behind” include institutionalisation among the risks for children in vulnerable situations<sup>15</sup>. The document highlights the importance of appropriate alternative care for children that allows them to participate in community life, and preventing family and child separation (see section 5.A)<sup>16</sup> and states that the primary consideration for spending should be the best interests of the child (see section 5.D)<sup>17</sup>. It further recommends improving the coherence in the EU’s external action on children, including that carried out by member states<sup>18</sup>. The Guidelines also underline the importance of data to design effective policy, and especially the **importance of disaggregated data (“crucial”) in order to ensure no child is left behind**<sup>19</sup>.

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<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> European Union (2013) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, OJ L 347, 20.12.2013, p. 320–469, Article 9: 9.1

<sup>14</sup> Ibid

<sup>15</sup> European Union (2017), *Guidelines on the Promotion and Protection of the Rights of the Child* [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf), p. 4

<sup>16</sup> Ibid, p.19

<sup>17</sup> Ibid, p. 21

<sup>18</sup> Ibid, e.g. p. 13

<sup>19</sup> Ibid, p. 24



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

Lumos was pleased to note that the Estonian Presidency of the Council of the EU has decided to include amongst the four pillars of its programme a focus on ensuring that Europe is safe and secure, as well as inclusive and sustainable<sup>20</sup>. As is clear from the above, promoting deinstitutionalisation is key in ensuring that Europe is a safe and inclusive place for all its children, and indeed for all its citizens.

Lumos has previously cooperated with Estonia on deinstitutionalisation. Sir Roger Singleton, in his role as a Managing Director at Lumos, was a speaker at a DI conference in Estonia in 2015 and was impressed with the commitment of the government to deinstitutionalisation. An outcome of his participation in the conference was organising a study visit to the UK in September 2015, attended by officials from the Estonian Ministry of Social Affairs, the Social Insurance Board and the Ministry of Education.

Lumos is very encouraged to see that deinstitutionalisation continues to be a priority for the current Estonian government, and particularly welcomes the commitment made by the Estonian Presidency of the EU Council to hold a Conference on Deinstitutionalisation in Tallinn in October 2017<sup>21</sup>. This conference will provide an excellent opportunity to ensure that deinstitutionalisation remains high on the EU political agenda. We hope that it will produce strong recommendations, and lead to the development of a European Commission Communication/Strategy on Deinstitutionalisation, covering both EU internal and external action, that could ultimately contribute to improving the situation of children living in institutions both outside and inside of the EU.

To support the aims of the Estonian presidency of the Council of the EU, Lumos proposes the following further recommendations:

### **Inclusive and sustainable Europe**

Lumos welcomes the decision of the Estonian government to use its Presidency of the EU Council to work towards an “inclusive and sustainable Europe”<sup>22</sup>.

In order to build a fully inclusive Europe, it is important to ensure that all children have access to quality, inclusive education while being fully able to participate in all aspects of family and community life. The UN Convention on the Rights of Persons with Disabilities (CRPD), to which the EU and Estonia are

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<sup>20</sup> “The European Union Affairs Committee of the Riigikogu (Parliament of Estonia) supported the Government’s priorities for the Estonian Presidency,” Press Release 06/03/2017, <https://www.eesistumine.ee/en/news/european-union-affairs-committee-riigikogu-parliament-estonia-supported-governments-priorities> [accessed 31/03/2017]

<sup>21</sup> European Union (2017) “Deinstitutionalisation – Ensuring a life in dignity for all,” news article 03/02/2017 at <https://ec.europa.eu/esf/transnationality/content/deinstitutionalisation-ensuring-life-dignity-all> [accessed 31/03/2017]

<sup>22</sup> “The European Union Affairs Committee of the Riigikogu (Parliament of Estonia) supported the Government’s priorities for the Estonian Presidency,” Press Release 06/03/2017, <https://www.eesistumine.ee/en/news/european-union-affairs-committee-riigikogu-parliament-estonia-supported-governments-priorities> [accessed 31/03/2017]



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signatories<sup>23</sup>, states that governments "shall ensure an inclusive education system at all levels and lifelong learning" (Art 24).<sup>24</sup> Nevertheless, across Europe and around the 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. For children to thrive and flourish, they need to be raised in their families and included fully in their communities.

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>25</sup>

**Lumos calls** on the Estonian Presidency to initiate an action towards the promotion of an inclusive Europe through ensuring equal access to quality education for all children.

### **The EU's role in protecting children in Europe and around the world**

The ongoing migrant crisis in the EU is likely to remain high on the agenda of the EU Council during the Estonian Presidency. Children are particularly vulnerable in this crisis, and are at high risk of abuse, trafficking and institutionalisation. While children arriving on European soil should have their rights protected in the same way as any European children, the reality in this crisis has been very different. 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 institutions before they have been registered by authorities, making them easy prey for traffickers. Given that many of these children are particularly vulnerable, having experienced the trauma of war, Lumos notes an 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, prioritising family-based care.

**Lumos calls** on the Estonian 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.

There is a strong connection between trafficking and institutionalisation of children. Institutionalised children are at high risk of becoming victims of trafficking and often when child victims are recovered

<sup>23</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>24</sup> Ibid, Art. 24

<sup>25</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].



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from traffickers they are placed (back) in institutions by the responsible authorities. This creates a vicious circle for trafficked children and additional risks to their peers in institutions.

Furthermore, our research in Haiti has identified a worrying trend of orphanages which are themselves trafficking children. Orphanage “entrepreneurs” recruit children by misleading parents about the care to be provided or even paying them to give their children away, and use the children to solicit donations from well-meaning donors. Little of the funding received is spent on care for the children, who are in turn placed at risk of serious abuse and neglect<sup>26</sup>.

**Lumos calls** on the Estonian 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.

### **Achieving policy coherence for development**

As previously mentioned, the ex-ante conditionality on social inclusion in the Regulation 1303/2013 on the ESIF (9: 9.1.), with its investment priority on the “transition from institutional to community based services,” prohibits the use of these funds for the maintenance, renovation or construction of residential institutions. Now that this ex-ante conditionality is in place, it is crucial to make sure that it is effectively implemented.

**Lumos calls** on the Estonian 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.

It is also important to work towards ensuring that children’s rights are protected and promoted outside of the EU. The EU Guidelines on the Promotion and Protection of the Rights of the Child<sup>27</sup> demonstrate the EU’s commitment to protecting and promoting children’s rights and supporting family and community-based care not only in Europe but globally. In line with these Guidelines, and in the interest of achieving Policy Coherence for Development<sup>28</sup> and assuring that the EU meets its international human rights commitments, the criteria applied to internal funds regarding deinstitutionalisation should be applied to all the European Union funding sources, 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 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.

<sup>26</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 31/03/17]

<sup>27</sup> European Union (2017) *Guidelines on the Promotion and Protection of the Rights of the Child* [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf)

<sup>28</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 20 Mar 2017].



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

**Lumos calls** on the Estonian Presidency to call for a similar mechanism to the ex-ante conditionality on social inclusion with an investment priority on the transition from institutions to family and community based care to be introduced for all 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.

### **Post-Cotonou framework**

The incoming Presidency Trio of Estonia, Bulgaria and Austria will play a very important role in the negotiation of a future agreement governing relations between the EU and the countries of Africa, the Caribbean and the Pacific (ACP) after the Cotonou Agreement expires in 2020, as these negotiations are expected to be formally entered by early 2018. The framework replacing the Cotonou agreement 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 Estonian 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 institutions to family and community-based care and other related child protection objectives.

**Lumos calls** on the Estonian Presidency to ensure that the framework contains an explicit reference to the transition from institutional to family and community based care as a priority, in line with existing EU legislation, namely the Regulation 1303/2013 on the European Structural and Investment Funds (ESIF).

**Lumos calls** on the Estonian 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 institutions and children with disabilities.

For more information, please read [Lumos' Response to the EC Communication on future ACP – EU relations](#)<sup>29</sup>

### **European Consensus on Development**

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<sup>29</sup>Lumos (2017) "Response to the EC Communication on future ACP – EU relations"  
<https://wearelumos.org/sites/default/files/2016%2012%2029%20Lumos%20response%20to%20EC%20Com%20on%20postCotonou%20pdf.pdf> [accessed 26 Apr 2017].



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Lumos hopes that the increased focus on child rights in the Maltese Presidency's draft of the new European Consensus on Development (issued on 24 March 2017) will be present in the final text of the Consensus and that the Estonian Presidency will continue to ensure that *all* children are addressed in the implementation documents, including children in institutions.

**Lumos calls** on the Estonian Presidency to ensure that any document linked to the implementation of the European Consensus on Development:

- addresses children in institutions and those at risk of being separated from their families when referring to “those who are in disadvantaged, vulnerable and marginalised situations”
- recommends the transition from institutions to family and community-based care for children and the right to family, when addressing “children’s needs, rights and aspirations”
- recommends the development of methods that allow for governments globally to collect data on the development of children living outside of households and/or without family care. In addition, acknowledges that disaggregating data, not only by age, disability, gender, but also care status, is needed for governments to gain a comprehensive understanding of the situation of children living outside family care and their development.

For more information, please read [Lumos' Response to the Presidency Draft of the European Consensus on Development \(issued on 24 March 2017\)](#).<sup>30</sup>

### **Sustainable Development Goals (SDGs), data and ensuring no child is left behind**

Lumos welcomes the Estonian Presidency's recognition of the importance of effective collection and use of data, in choosing to focus on “digital Europe and free movement of data” as one of the four pillars of its programme. Effective and inclusive collection and use of data is of great importance to the 2030 Agenda for Sustainable Development, and to its core principle to “leave no-one behind”.<sup>31</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>32</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.

<sup>30</sup> Lumos (2017) “Response to the Presidency Draft of the European Consensus on Development” <https://wearelumos.org/sites/default/files/17%2004%2010%20EU%20Consensus%20on%20Development%20response.pdf> [accessed 26 Apr 2017].

<sup>31</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>32</sup> Ibid, paragraph 25



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

Over 250 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>33</sup>

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<sup>33</sup> ALL CHILDREN COUNT BUT NOT ALL CHILDREN ARE COUNTED: An open letter to the UN and its Member States – Over 250 signatories.  
<https://wearelumos.org/sites/default/files/All%20children%20count%20but%20not%20all%20children%20are%20counted.pdf> [accessed 26 Oct 2016].