



Protecting Children. Providing Solutions.

December 2019

Lumos' response to the European Commission's Evaluation of the support to promoting social inclusion, combatting poverty and any discrimination by the European Social Fund

1. 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.

2. 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.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 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

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.

accountability, etc.)”.⁵ 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 suicide.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.

The transition from institutional to family- and institutional care is directly linked to the promotion of social inclusion, combatting poverty and any form of discrimination. Children are frequently placed in institutions because their families are affected by poverty and live in inadequate housing, because their parents need support with parenting, or because they have a disability. Poverty, discrimination and social vulnerability are still significant drivers of children’s institutionalisation in a number of Member States, for example in the Czech Republic.¹¹ However, adequate provision of quality, affordable, and accessible social services within the community can often prevent family separation by supporting families to address the challenges they face and support their social inclusion.¹²

3. Cohesion Policy Regulations 2021-2027

The EU’s landmark decision to introduce ex-ante conditionality 9.1 on social inclusion in the ESIF 2014-2020 regulation requiring the transition to community-based care across Europe has resulted in hundreds of millions of euros being directed towards reforming systems, shifting away from institutions to community-based care, making a positive impact on some of Europe’s most socially excluded citizens.

⁵ 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 3 December 2019].

⁶ See Annex 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 Lumos (2018), *Investing in Children The case for diverting Czech government finances away from institutions towards families and communities*

https://lumos.contentfiles.net/media/documents/document/2018/09/Czech_exec_summary_FINAL.PDF

¹² Ibid

The new proposals for the Common Provisions Regulation 2021-2027 consolidate and further expand the principle behind ex-ante conditionality 9.1, through the introduction of enabling conditions 4.3/4.3.1, which prioritise “the measures for the shift from institutional to community-based care” and directly applies to ESF+.¹³ Moreover, the proposed ESF+ Regulation 2021-2027, states, that the “Member States and the Commission shall also support specific targeted actions (...) within any of the objectives of the ESF+, including the transition from institutional care to family and community-based care.”¹⁴ In addition, Recital 28 suggests that “ESF+ should also promote the transition from institutional care to family and community-based care, in particular for those who face multiple discrimination” and that “ESF+ should not support any action that contributes to segregation or to social exclusion”.¹⁵

4. Promotion of social inclusion, combatting poverty and any discrimination by the European Social Fund (ESF)

4.1. ESF in the current funding period (with focus on 2014-2018)

Under the current funding period, the ESF has been instrumental for the transition from institutional to family and community-based care. Member States have been using the ESF to support the development of the necessary services, including early intervention, family support, foster care, personal assistance, rehabilitation, community-based residential support, independent living schemes and supported employment. Below we have listed concrete examples how the Member States have used ESF for the transition to family- and community-based care, but also examples of how the funds should not be used.

Promising deinstitutionalisation practices

Promising practices supporting the transition from institutional to family- and community-based care, funded by ESF, often used in combination with ERDF, have been developed across several Member States. Many of these projects contribute to the development of services which enable thousands of children to live in families and communities, rather than going to or remaining in institutions. Projects identified include planning for the long-term sustainability of services and using ESF to support the design and implementation of the transition process.

Planning and designing the transition process

In the **Czech Republic** approximately €7.7 million under the Operational Programme Employment, co-funded by the ESF, are allocated to supporting the process of transforming residential services and to support community-based services resulting from the transformation.¹⁶ Furthermore, the Czech

¹³ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument COM/2018/375 final - 2018/0196 (COD)

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. 20

¹⁶ Call 37 “Support for the process of transformation of residential services and support for community-based services created after the transformation”, announced by the Ministry of Labor and Social Affairs, project applications received between 1.11.2015 - 31.12.2015 available: <https://www.esfcr.cz/vyzva-037-opz> and Call 66 “Support for the process of transformation of residential services and support for community-based services created after the transformation”,

Ministry of Labour and Social Affairs is implementing the “Life as any other” ESF programme, which focuses on providing methodological support for deinstitutionalisation. Both the Ministry and civil society report that the programme has helped to create a complex range of methodological materials which can be used to support the deinstitutionalisation of social care.¹⁷

Home and community-based support

In **Slovakia**, the ESF project Support of Home Care Services ran between November 2015 and April 2018, as a continuation of activities developed in 2014–2015. The project was run by the Implementation Agency of the Ministry of Labour, Social Affairs and Family of the Slovak Republic. It received €49.9 million and aimed to increase the availability of home-based care for more care-dependent persons; to sustain and support their independence within familiar community-based settings and prevent their placement into residential care facilities; and to increase sustainable employment in the sector.¹⁸

Foster care

In **Bulgaria**, several ESF projects were launched between 2014 and 2018 supporting the childcare reform - mainly financed by the OP Development of Human Resources. As an example, the project “Accept Me”, which aims at helping to find foster families for Bulgarian children in need and increasing the number of trained foster families, has been receiving ESF funding since 2015.¹⁹

In **Estonia**, since 2017, with the help of ESF, services to support guardianship families and adoptive parents have been developed and offered by different organisations²⁰. In total, €6 million has been allocated under ESF for care reforms. In 2016–2017, the project PRIDE (Parent Resources for Information, Development and Education), financed by the Operational Programme for Cohesion Policy Funding 2014–2020 focused on pre-service training for adoptive and foster families.²¹

Inclusive education

In **Slovakia**, the Ministry of Education launched a call for proposals to provide subsidies for teaching assistants to support inclusive education.²²

In **Greece**, in the absence of a strategy and a plan for deinstitutionalisation reforms, the allocated sources of the ESF have not yet been spent. It has however been used in projects which contributed directly or indirectly to the deinstitutionalisation process such as projects on inclusive education.²³

announced by the Ministry of Labor and Social Affairs, project applications received between 20.3.2017 - 31.5.2017 available: <https://www.esfcr.cz/vyzva-066-opz>

¹⁷ Community Living for Europe: Structural Funds Watch Report 2018:

https://lumos.contentfiles.net/media/documents/document/2018/11/SFW-Digital_-_2018.pdf

¹⁸ <https://www.ia.gov.sk/nppos/en/home/>

¹⁹ https://europa.eu/investeu/projects/foster-families-vulnerable-children_en [accessed 3 December 2019]

²⁰ Operational Programme for Cohesion Policy Funding 2014-2020, measure ‘Improving the quality of alternative care’

²¹ http://www.strukturifondid.ee/sites/default/files/2014-2020_0.pdf

²² Community Living for Europe: Structural Funds Watch Report 2018:

https://lumos.contentfiles.net/media/documents/document/2018/11/SFW-Digital_-_2018.pdf

²³ Ibid

Practices which hamper social inclusion

While we have identified a number of promising practises, it is also important to draw attention to some projects that are not in line with ex-ante conditionality 9.1 on social inclusion in the ESIF 2014-2020 regulation.

Boarding schools for children with disabilities

In **Bulgaria** the ESF project “Support for equal access and personal development” which aims to improve educational boarding schools (EBS) and social pedagogical boarding schools (SPBS) was financed under the Operational Programme Science and Education for Smart Growth. Children with disabilities and children involved with the criminal justice system are placed in EBS and SPBS under the authority of the Ministry for Education. Funded activities of the project include purchasing sports equipment and hiring psychologists and social workers.²⁴ Boarding schools usually lead to separation of children from their families and communities, and their isolation from society. In order to avoid this, ESF should rather be used to adapt mainstreams schools in a way which would enable them to meet the needs of all the children. This would not only contribute to the social inclusion of these vulnerable groups of children but also keep families together.

Reducing the number of residents in institutions instead of investing in the transition

While **Hungary** acknowledged that community-based services must be developed and that such services are preferable to institutions²⁵, all the ESF calls for proposals in 2016 and 2017, financed by the Human Resources Development Operational Programme, aimed at reducing the number of residents in residential institutions, for both children and adults, with more than 50 residents²⁶.

While small-scale high quality, family-like residential units could be a temporary solution for a small number of children in the absence of immediate placement in family care, it is important to ensure that no part of the former institution is used to provide institutional care, for any group of people as the outcomes would remain poor.²⁷

More promising practices and practices that hamper social inclusion can be found in the reports of the initiative Community Living for Europe: Structural Funds Watch.²⁸

²⁴ Operational Programme Science and Education for Smart Growth, Project: “Support for equal access and personal development”, start date: 22.12.2015 - end date: 31.12.2017, The total amount of the project is 17 500 000.00 BGL (€8 750 000.00) of which EU funds are 14 875 999.99 BGL (€7 437 499.995) and National co-financing 2 625 000.01 BGL (€1 312 500.005).

²⁵ National Disability Programme between 2015 and 2018 (no: 1653/2015. (IX. 14.), available in Hungarian at http://njt.hu/cgi_bin/njt_doc.cgi?docid=177684.298372

²⁶ 1. Paragraph 7 (5) Long-term concept on deinstitutionalisation for the term 2017-2036 (1023/2017) and call for

²⁷ 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, p.110

²⁸ Community Living for Europe: Structural Funds Watch report 2017: “Opening up Communities, Closing down Institutions: Harnessing the European Structural and Investment Funds”

https://eustructuralfundswatchdotcom.files.wordpress.com/2017/11/cle-sfw_opening-up-communities-november-2017_final.pdf

Community Living for Europe: Structural Funds Watch report 2018: “Inclusion for all: achievements and challenges in using EU funds to support community living”

https://lumos.contentfiles.net/media/documents/document/2018/11/SFW-Digital_-_2018.pdf

4.2. Lumos' recommendations for ESF+ 2021-2027

Based on the experiences of the current funding period, Lumos would like to make the following key recommendations to the European Union for the completion and implementation of the ESF+ 2021-2027 funding period.

Recommendation 1: Ensure that all ESF+ investments support social inclusion

It is essential that the European Commission makes sure that ESF+ is not used for the maintenance of institutional care in the next funding period but instead support only projects which contribute to the transition from institutional to family- and community-based care. This includes, for example, investments in prevention and early-intervention services, support for vulnerable parents, training of social care workers and foster families, services offering support to those preparing to leave care and live independently and campaigns to change attitudes towards marginalised groups. As already mentioned, investments in inclusive education not only provide for social inclusion of vulnerable groups of children but also support family care - through replacing specialised boarding school with access to and support for participating in mainstream education, families can be kept together, and this type of institutionalisation of children can put an end to.²⁹

Lumos therefore recommends that the European Commission should ensure that ESF+ is not used for the maintenance of institutional care. Instead the ESF+ funding should be used only for projects which contribute to social inclusion of the target groups, including transition from institutional to family- and community-based care.

Recommendation 2: Ensure effective monitoring of the implementation of enabling conditions 4.3/4.3.1

The introduction of enabling conditions 4.3/4.3.1 in the proposal for the new funding Regulation, with an investment priority on “the measures for the shift from institutional to community-based care”, foresees the monitoring of their implementation throughout the process and not just at the beginning and the end of the process. This is a clear improvement compared to the ex-ante conditionality 9.1 on social inclusion in the current ESIF Regulation. However, in order to ensure that enabling conditions 4.3/4.3.1 are implemented and avoid misuse of the funds by the Member States, clear results-oriented indicators should be further developed, and specific, both qualitative and quantitative, indicators on children in residential institutions and the transition from institutional to family- and community-based care should be set up.

Lumos therefore recommends that effective monitoring of the implementation of enabling conditions 4.3/4.3.1 is secured. This should include: indicators to track the transition process, with relevant measures of success that include a focus on improvements in quality of life and outcomes for beneficiaries, not only the number of people included in programmes. Tracking of the transition

²⁹ More can be found in Lumos (2018): Supporting the transition to family and community-based care in the next MFF 2021-2027: Guidance note for the implementation of enabling conditions 4.3/4.3.1 in draft Cohesion Policy Regulations https://lumos.contentfiles.net/media/documents/document/2019/07/Guidance_note_for_the_implementation_of_enabling_conditions_4.3-4.3.1.pdf

process should be transparent, for example by making use not only of the annual reports produced by the Member States, on achievements and challenges which include updates on the number of people in institutions and the outcomes of those who have transitioned to family and community services but also the shadow reports, produced by the civil society.

Recommendation 3: Encourages Member States to use ESF+ for the implementation of their national deinstitutionalisation strategies and action plans

The proposed thematic enabling condition 4.3 on a national strategic policy framework for social inclusion and poverty reduction, which includes “measures for the shift from institutional to community-based care,” is a major step forward as it applies to all Member States and not only to those with “identified needs”. This is a positive development, as institutional care so far has been perceived wrongly to be confined to Eastern and Central European countries, but in fact it is a pan-European problem with many children growing up in institutions also in such countries as France, Belgium or Germany.¹² Moreover, the specific objective for the enabling condition 4.3.1 applicable to the ESF on “Promoting active inclusion including with a view to promoting equal opportunities and active participation, and improving employability” also complements this as the provision of family- and community based care contributes to parents of severely disabled children being employed while keeping their children.³⁰ It is therefore crucial that in the next funding period 2021-2027 all Member States develop their national deinstitutionalisation strategies and action plans³¹ as well as, if required, reform their legislative and policy frameworks to ensure that the transition is carried out in a coordinated, systemic, transparent and sustainable way.

Lumos therefore recommends that the European Commission should encourage all Member States to use ESF+ and other complementary funds such as ERDF for the implementation of national deinstitutionalisation strategies and action plans. These strategies and action plans should be in line with the UNCRC, the UNCRPD and the UN Guidelines for the alternative care of children.

Recommendation 4: Ensure the implementation of the Partnership Principle and meaningful participation of civil society and service users in the work of the Monitoring Committees of the Operational Programmes

The European Code of Conduct on Partnership calls for close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation. However, evidence shows that civil society organisations with experience and expertise in the transition from institutional to family and community-based care are not uniformly involved in the

³⁰ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument COM/2018/375 final - 2018/0196 (COD)

³¹ Research of the initiative Community Living for Europe: Structural Funds Watch shows that so far eight have specific transition strategies in place which are in the process of implementation.

See: Community Living for Europe: Structural Funds Watch Report 2018:

https://lumos.contentfiles.net/media/documents/document/2018/11/SFW-Digital_-_2018.pdf

Monitoring Committees of the Operational Programmes and Partnership Agreements for the next funding period.³²

Lumos therefore recommends that the European Commission calls on the Member States to ensure full implementation of the Partnership Principle. This means involving civil society organisations and service users in a transparent, structured and meaningful way in the preparation of the Partnership Agreements and in all stages of the programming cycle, including via participation in the Monitoring Committees of the Operational Programmes.

Lumos recommends that the European Commission encourages the Member States to use their Technical Assistance budget for building the capacity of civil society in order to have the understanding and the skills required for meaningful participation in the programming cycle (Article 17 ECCP) as well as for supporting their involvement (for example to cover travel costs or compensate for salary loss). This will enable a broader and more representative range of civil society, such as smaller NGOs with limited capacity, to participate in the discussions.

Lumos recommends that the European Commission continues and develops further ESF Transnational Cooperation and the operation of the ESF Thematic Networks in the funding period 2021-2027 as a platform on which Managing Authorities from more Member States, regional and local authorities, cross-Unit Commission representatives and civil society exchange experiences with the ESF Plus Regulation and ECCP implementation.

Recommendation 5: Ensure that ESF+ measures are based on needs analysis and data

Undertaking a thorough needs analysis and service mapping is essential in order to ensure that projects are underpinned by a clear understanding of the needs and rights ESF+ will be responding to. Strengthening this component in the operations planning would help the European Commission to better understand and assess the appropriateness and relevance of proposed measures in Member States.

Also, the development of methods that allow for governments to collect data on children living outside households and/or family care, disaggregated by age, disability and gender, but also care status, is crucial to gain a comprehensive understanding of the situation and the needs of these particularly vulnerable children. Children living outside households tend to be left out of national data collection mechanisms, so unless a concerted effort is made to include them in the statistics, there is a risk of them not being taken into account in policy making and operation planning.

Lumos therefore recommends that the provision of ESF+ should be based on a thorough needs analysis of the beneficiaries. Also, the collection of data should be strengthened and should include all children living outside households.

³² Ibid

Recommendation 6: Ensure that ESF+ is allocated for training and technical support

European Commission Desk Officers and staff of the Managing Authorities as well as in the regional and local authorities in the Member States would benefit from regular training and expert advice on the transition from institutional to family- and community-based care, which can be provided by existing expert coalitions, such as the European Expert Group on the Transition from Institutional to Community-based Care, and service users, including children, and the organisations representing them.

Lumos therefore recommends that ESF+ should be allocated for training and technical support on the transition from institutional to family and community-based care for both European Commission staff and national, regional and local administration.

Recommendation 7: ESF+ directed towards migrant, separated and unaccompanied children should only be spent on the provision of family- and community-based care

Evidence demonstrates that unaccompanied migrant and refugee children are likely to have suffered abuse and trauma on their journey to, and stay within Europe and that their needs are not adequately met.³³ Placing them in institutions puts them at serious risk of being trafficked and/or becoming victims of violence, self-harm and suicide.³⁴ Family- and community-based care has the potential to better meet unaccompanied migrant and refugee children's needs, to help them recover from the traumatic experience and integrate into the community as well as to help young people settle, thrive and explore life within and beyond their placement. Unaccompanied migrant and refugee children should be treated as children first, with rights protected by the UNCRC. The rights and care standards applied to children in migration should be the same as the response to all European children who live outside families.

Lumos therefore recommends that ESF+ should be used for strengthening the existing child protection systems instead of creating parallel ones, so that migrant and refugee children can enjoy the same protection and services as all other children in the Member States. Specifically, in the case of unaccompanied or separated children, the provision of quality family and community-based care should be prioritised.

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³³ UNHCR (October 2016) This is Who We Are: A study of the profile, experiences, and reasons for flight of unaccompanied or separated children from Afghanistan seeking asylum in Sweden in 2015, p. 33 <https://data2.unhcr.org/en/documents/download/52081>

³⁴ Save the Children (17 October 2017) Keeping Children at the Centre- Time for EU Solidarity in protecting migrant and childrens' rights, p 14.