

Lumos' position on the Regulation of the European Parliament and of the Council laying down the legal framework of the European Solidarity Corps (Procedure 2012/0266 (COD))

1. About Lumos

Lumos is an international NGO¹, 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; 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.

This document contains Lumos' position on the Proposal for a Regulation of the European Parliament and of the Council laying down the legal framework of the European Solidarity Corps and amending Regulations (EU) No 1288/2013, (EU) No 1293/2013, (EU) No 1303/2013, (EU) No 1305/2013, (EU) No 1306/2013 and Decision No 1313/2013/EU (COM(2017)262).

2. 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

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.⁴ Research consistently demonstrates that more than 80 per cent of children in institutions are not 'orphans',⁵ but are placed there due to reasons such as poverty,

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 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]

⁵ Csáky, C. (2009) Keeping children out of harmful institutions: why we should be investing in family-based care, *Save the Children*, p. vii

disability, marginalisation, a lack of family support services in the community and as a result of trafficking.

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.⁶ Babies in particular fail to develop normally without one-to-one interaction, and research demonstrates the severe impact of institutionalisation on early brain development.⁷ Children who are removed from institutions after the age of six months often face severe developmental impairment, including mental and physical developmental delays.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

Many young people leaving institutions continue to face significant challenges. Globally, they have been identified as one of the most vulnerable and socially excluded groups¹⁰. All too often, when a young person leaves an institution they have limited support structures, experience negative outcomes and are often ill-prepared to contribute to the socio-economic wellbeing of the society.

3. What is a children's institution?

There are numerous definitions of what the term 'institution'¹¹ 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.)".¹² Additional characteristics include an organised routine, impersonal structures and a low care-giver to child ratio.¹³

4. Ceasing EU funding for institutional care

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

⁶ 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)

⁷ Judge, S (2003). *Developmental recovery and deficit in children adopted from Eastern European orphanages*. *Child Psychiatry Hum Dev*, 34(1). <http://link.springer.com/article/10.1023/A:1025302025694> [accessed 26th Jan 2017].

⁸ Ibid.

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

¹⁰ Tanur, C. (2012) 'Project Lungisela: Supporting Young People Leaving State Care in South Africa', *Child Care in Practice* 18(4): 325-340.

¹¹ 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.

¹² 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].

¹³ See Annexe 1 for more information on the characteristics of a children's institution

on the European Structural and Investment Funds¹⁴. The Investment priorities under this ex-ante conditionality include “...the transition from institutional to community-based services”. In effect, with the adoption of the Regulation, states are prohibited to use European Structural and Investment Funds for the maintenance or renovation of existing and the construction of new large residential institutional settings.

5. Lumos’ response to the Proposal for a Regulation laying down the legal framework of the European Solidarity Corps

Lumos welcomes the recently launched European Solidarity Corps and its objectives to strengthen the foundations for solidarity across Europe and to “create opportunities for young people across the European Union to make a meaningful contribution to society, show solidarity and develop their skills.”¹⁵

The proposed Regulation to establish the legal framework of the European Solidarity Corps provides an ideal opportunity to ensure that the initiative enables volunteers to engage in meaningful solidarity experiences, while also making sure that the activities undertaken are beneficial for society.

- **Lumos recommends that placements in orphanages and other institutions are excluded** and that this is **referenced in a list of excluded activities** for the European Solidarity Corps. To ensure that this measure is implemented, the list of excluded activities should be referred to and included in the Regulation itself, as well as the relevant accompanying Staff Working Documents.
- **Lumos welcomes** the provisions made in Staff Working Document 168 regarding online child safeguarding and child protection training to be provided for volunteers, stipulating that “participation for individuals in any activities where the individual will have direct contact with children... will be subject, where appropriate, to background checks with a view to ensure child safeguarding.” However, as child protection is such a crucial concern in volunteer placements, **Lumos recommends that the above measures should also be mentioned in the Regulation itself** so that the importance of this obligation is made clear.
- **Lumos calls** for **young people leaving institutions and alternative care to be included in the definition of “disadvantaged young people” that will benefit from extra support**, to ensure that they have equitable access to the scheme.

Recommendation 1: Create a list of activities to be excluded in the European Solidarity Corps scheme and ensure that placements to support family (re)unification and protect children are prioritised and placements in orphanages and other institutions are excluded

The proposal for a Regulation mentions the importance of providing “solidarity activities which are of high quality” (p. 3) and that “contribute to addressing unmet societal needs” (p. 2). The activities to which the young people will contribute must be carefully selected and appropriate, should be in line

¹⁴ Regulation (EU) 1303/2013, Article 9: 9.1

¹⁵ European Commission (2017) *Proposal for a Regulation of the European Parliament and of the Council laying down the legal framework of the European Solidarity Corps and amending Regulations (EU) No 1288/2013, (EU) No 1293/2013, (EU) No 1303/2013, (EU) No 1305/2013, (EU) No 1306/2013 and Decision No 1313/2013/EU*. COM/2017/0262 final, p.2 (Hereafter “the Regulation” or “the proposed Regulation”)

with EU values and legislation, and should contribute to the development of sustainable and inclusive societies, based on respect for fundamental human rights.

The explanatory text accompanying the proposed Regulation also asserts that it is fully in line with Article 24 of the EU Charter on Human Rights, which states that “Children shall have the right to such protection and care as is necessary for their well-being,” and that “In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.”¹⁶

As outlined above, institutions represent a clear breach of children’s rights and pose a serious risk for their development, wellbeing and protection. The EU has recognised the harm caused by institutions and has demonstrated its commitment to facilitating the process of transition from institutions to family- and community-based care across the EU through the Regulation 1303/2013 on the ESIF. In order for the EU to be coherent in its policy and action, the same principle should be applied to all existing and future programmes, tools and initiatives.

Furthermore, evidence gathered over recent years shows that orphanage volunteering is in fact exacerbating the problems linked to institutionalisation of children globally. The failure to properly vet and train volunteers has in many cases led to serious child protection issues, sexual and other forms of abuse.¹⁷ Even where this is not the case, a constant turnover of different adults in the life of children in institutions results in attachment disorders.¹⁸ The demand for volunteer placements in orphanages in turn creates a demand for children to be placed in institutions which can lead to children being trafficked to fill institutions.¹⁹

The European Solidarity Corps provides an opportunity for raising awareness among young people about human rights, social inclusion and how to best achieve them in practice. However, encouraging young people to volunteer in institutions would effectively validate this harmful practice and normalise it in the eyes of the volunteers.

The proposed Regulation contains measures for a “quality label” as a pre-condition for all participating organisations, to “ensure compliance... with the principles and requirements of the European Solidarity Corps Charter, as regards their rights and responsibilities” (Preamble, recital 5). A quality label is certainly a step towards ensuring that placements are safe and appropriate for all involved. However, certain types of activity, if they could cause harm to vulnerable persons and especially children, should clearly be excluded altogether. Volunteer placements in institutions for children, for the reasons outlined above, are just such an activity.

¹⁶ European Union, (2012). *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02

¹⁷ Van Doore, K, Martin, F & McKeon, A (2016) *Expert Paper: International Volunteering and Child Sexual Abuse*, Better Care Network; Better Volunteering Better Care (2014) *Collected Viewpoints on International Volunteering in Residential Care Centres*

¹⁸ Better Care Network (2016) Orphanage Volunteering – Why to say no. <http://bettercarenetwork.org/sites/default/files/Orphanage%20Volunteering%20-%20Why%20to%20say%20no.pdf> [accessed 5 July 2017]. See also Lumos (2016) *Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children* https://wearelumos.org/sites/default/files/Haiti%20Trafficking%20Report_ENG_WEB_NOV16.pdf [accessed 31/03/17]

¹⁹ Punaks, M & Feit, K (2014) *The Paradox of Orphanage Volunteering: Combatting Child Trafficking Through Ethical Voluntourism*, Next Generation Nepal

The proposal of establishing a **list of excluded activities** for the European Solidarity Corps was already discussed at the Strategic Dialogue Meeting with Civil Society Organisations in March 2017.²⁰ Lumos believes that **such a measure, listing working in institutions among the excluded activities, is essential to protect vulnerable children living in institutions from further harm.**

Lumos recommends that a list of excluded activities for the European Solidarity Corps be created, and that placements in orphanages and other institutions should be included in it. To ensure that this measure is implemented, mention of this list of excluded activities should be included in the Regulation itself, as well as the relevant accompanying Staff Working Documents.

Below we provide specific proposals for where such a list could be included in the Regulation and accompanying Staff Working Document 168.²¹ Proposals for amendments to the existing text are **bold, underlined and highlighted**.

In the Regulation

Preamble, Recital 15

A quality label should be put in place to ensure participating organisations' compliance with the principles and requirements of the European Solidarity Corps Charter. **A list of excluded activities should also be established, prohibiting actions that are potentially harmful to volunteers and society.**

Preamble, Recital 25

Any entity willing to participate in the European Solidarity Corps, whether funded by the European Solidarity Corps budget, by another Union programme or by a different funding source, should receive a quality label provided that the appropriate conditions are fulfilled, **and that the activity concerned does not fall under the list of excluded activities.** The process that leads to the attribution of a quality label should be carried out on a continuous basis by the implementing structures of the European Solidarity Corps. The attributed quality label should be reassessed periodically and could be revoked if, in the context of the checks to be performed, the conditions that led to its attribution were found to be no longer fulfilled.

Article 8: Quality and support measures

This Action shall support: ...

(e) **the establishment of a list of excluded activities, to ensure that no actions that would cause harm to the beneficiaries or society are undertaken.**

Article 13: Participating organisations

²⁰ As noted in the Report on the Strategic Dialogue Meeting with Civil Society Organisations, 7 March 2017, Brussels, "European Solidarity Corps," disseminated by DG EMPL of the European Commission

²¹ European Commission (2017) COMMISSION STAFF WORKING DOCUMENT 168: CONCEPT NOTE - MAIN ACTIONS IMPLEMENTING THE EUROPEAN SOLIDARITY CORPS. Accompanying the document "Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down the legal framework of the European Solidarity Corps..." SWD(2017) 168.(Hereafter European Commission (2017) Staff Working Document 168)

1. The European Solidarity Corps shall be open to the participation of public or private entities, or international organisations, provided that they have received a European Solidarity Corps quality label **and that the activity concerned does not fall under the list of excluded activities.**

In Staff Working Document 168, “CONCEPT NOTE - MAIN ACTIONS IMPLEMENTING THE EUROPEAN SOLIDARITY CORPS”

Who can apply?

Any public or private - profit or no-profit - body willing to participate in the European Solidarity Corps and established in a participating country may apply to obtain a European Solidarity Corps Quality Label, **unless the activity concerned falls under the “List of Excluded Activities” (see below).**

A section should then be added at the end of the fiche, entitled: “List of Excluded Activities”

This list should include the entry: **“Any activities taking place in residential institutions for children”**

Recommendation 2: Child Protection

Placing volunteers in any setting where they work directly or indirectly with children (even when not institutions) raises potential child protection issues which need to be considered and prevented well in advance of the placement. Volunteers must not have direct contact with children unless they have completed adequate child protection training and vetting procedures, and should not have direct contact with children unless they have relevant qualifications and skills. Volunteer and other placements require on-going supervision, to ensure that child protection policies are being effectively implemented. This is essential for the initiative to be in line with Article 24 of the European Charter of Fundamental Rights: in all actions concerning children, their best interests must come first and they must be protected from harm.

Lumos welcomes the following provisions in Staff Working Document 168 that provide for child protection and safeguarding concerns:

- Under section “3. Who can participate” for each type of activity, the stipulation that “participation for individuals in any activities where the individual will have direct contact with children in the context of the European Solidarity Corps will be subject, where appropriate, to background checks with a view to ensure child safeguarding.”²²
- The plan, under the section “QUALITY AND SUPPORT MEASURES” for each type of activity, to provide online child safeguarding and child protection training for volunteers.²³

As child protection is such a crucial concern in volunteer placements, **Lumos recommends** that the above measures are mentioned in the Regulation itself so that the importance of this obligation is made clear.

²² European Commission (2017) Staff Working Document 168 pp. 4, 6, 8

²³ European Commission (2017) Staff Working Document 168 pp. 4, 6, 8

The need for ongoing monitoring and supervision of volunteers on placements should also be addressed in order to ensure that the children’s safety is guaranteed.

Below we provide specific proposals for amendments to the Regulation. Proposals for amendments to the existing text are **bold, underlined and highlighted**.

In the Regulation

Preamble, Recital 15

“Particular attention should be paid to ensuring the quality of the placements and other opportunities offered under the European Solidarity Corps, in particular by offering training, language support, insurance, administrative and post-placement support to participants as well as the validation of the knowledge, skills and competences acquired through their European Solidarity Corps experience.”

New paragraph:

a) Where volunteers will have direct contact with children, they must complete child protection training and vetting procedures, and should have relevant qualifications and skills. During their placement, they should also be subject of on-going supervision to ensure that child protection policies are being effectively implemented.

Article 8: Quality and support measures

This Action shall support:

(a) measures aimed at ensuring the quality of solidarity placements, including training, language support, **child protection and safeguarding training and background checks where relevant**, administrative support for participants and participating organisations, insurance, post-placement support as well as the development of a certificate that identifies and documents the knowledge, skills and competences acquired during the placement;

Recommendation 3: Inclusion of all young people

Many young people leaving institutions and alternative care have not had the same educational and social opportunities as those that have grown up in families or family-like care. They also lack the continued family support that other young people benefit from after they have reached the age of eighteen. Nonetheless, with the right kind of support, they can make a valuable contribution to the European Solidarity Corps.

It is essential that young people leaving alternative care, especially those leaving institutions, are included in this group and provided with extra support.

Lumos welcomes the commitments made in the Regulation to put in place “special measures... to promote social inclusion [and] the participation of disadvantaged young people” (Preamble, Recital 24).

Lumos calls for young people leaving institutions and alternative care to be included in the definition of “disadvantaged young people” that will benefit from extra support, to ensure that they have equitable access to the scheme.

Below we provide specific proposals for amendments to the Regulation. Proposals for amendments to the existing text are **bold, underlined and highlighted**.

In the Regulation

Article 2, Paragraph 3:

“disadvantaged young people” means individuals who need additional support because of disability, educational difficulties, economic obstacles, cultural differences, health problems, social obstacles, geographical obstacles, **institutionalisation;**)

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Annexe 1: What is a children's institution?

A clear distinction is needed between an institution and high quality residential care. However, an institution would include at least one (often more) of the following key factors that research evidence shows result in harm to children, including:

- The child is arbitrarily separated from their parents (and often their siblings) and raised by personnel who are paid to care for them and who usually work shifts
- Large numbers of unrelated children live together in the same building or compound
- The child does not have the opportunity to form a healthy emotional attachment to one or two primary care givers
- The setting is isolated from the broader community and is distinctly identifiable as being outside the broader community (by the use of high walls or fences, barbed wire, guards on the gate, provision of school on site, inter alia)
- Contact with the birth and extended family are not actively encouraged or supported and are at times discouraged
- Care is generally impersonal and the needs of the organisation come before the individual needs of the child
- This often leads to a range of neglectful behaviours on the part of personnel (eg. children are not fed sufficiently, babies are left in soiled nappies for long periods) and the use of restrictive or dangerous measures to control children's behaviour (such as severe physical punishment, tying up children or the use of psychotropic drugs, inter alia).

Institutions for children include, but are not restricted to:

- Orphanages
- Any residential settings for babies and very young children
- Residential special schools
- Large children's homes
- Centres for unaccompanied migrant/refugee children
- Social care homes (adults and children with disabilities housed together)
- Secure units
- Psychiatric wards
- Paediatric wards (long stay)
- Prisons.