

Subject: FW: Flash report: meeting Jourova Cabinet (Daniel Braun) and Lumos 3.3.2015 - de-institutionalisation/trafficking

From: Sent: Tuesday, March 03, 2015 5:13 PM

To:

Subject: Flash report: meeting Jourova Cabinet (Daniel Braun) and Lumos 3.3.2015 - de-institutionalisation/trafficking

- The Andriukaitas Cabinet (SANTE) was represented at the meeting. Monika Ladmanova was also present.
- Lumos was represented by two advocacy managers from the London Office, [REDACTED] of their Brussels Office
- Lumos has been lobbying many cabinets on this topic (and the briefing for this meeting was accordingly prepared in coordination with DG HOME.ATC, NEAR, EMPL, REGIO and DEVCO).
- D Braun congratulated Lumos for their work and recognised the value of EU funds in the context of transition to community-based care, without which this type of investment would typically not happen
- Lumos wished to underline the links between trafficking and children in institutions. D Braun stated that COM is aware of the links and the forthcoming HOME.ATC study on children as a high risk group vulnerable to trafficking will cover this aspect also.
- Lumos wished to see what more could be done with regard to implementation of ESIF on de-institutionalisation. D Braun recalled that the Charter of Fundamental Rights applies to ESIF and set out the roles and responsibilities, including those of the national management authorities. **Given the shared management provisions, COM, as always, would welcome feedback from Lumos and other NGOs on implementation on the ground to feed into EU monitoring.** He also mentioned the training that had taken place in Member States and the commitment of ESIF staff on this issue to date.
- With regard to child protection more generally, D Braun said this is a major priority for the Commissioner. Lumos' presence would be welcome at the Forum on the rights of the child and COM would see if an initiative in this area is needed later in the year.
- Lumos said there is an issue in **Greece currently with the detention of unaccompanied children together with adults.** Lumos, given its funding structure, has some emergency funding that can be brought to bear to send experts into countries to address emergency situations such as this and offered their help.
- D Braun said they had recently met with Smile of the Child on some of the issues in Greece
- Lumos is now going global, and has set up a US office in Washington. They will focus on Latin America and Haiti (giving some examples of what happened in Haiti, where funding was used to build orphanages and children then had to be recruited for orphanages, and there were some adoptions of children who were not orphans, etc), working with the US government also. They said they are also in discussions with DG DEVCO.
- Lumos is involved in a Global Partnership on Children with Disabilities, where there's a task force on child protection and they have just joined the coalition for the call for a UN global study on children deprived of their liberty (aiming to ensure that the focus also covers children in institutional care, which was the intention in this initiative launched by Defence for Children International in any event)
- [REDACTED] said every effort is made at COM level to focus on implementation of relevant standards such as the UN Guidelines for the alternative care of children, looking at the care and protection standards that should be in place rather than the buildings.

Member of Cabinet Daniel Braun
Meeting with EU office of LUMOS [REDACTED] on de-institutionalisation
in Brussels (BERL 12/164)
3 March 2015 at 15:00

- **Subject: De-Institutionalisation and trafficking/correct use of EU Structural and Investment Funds**

STEERING BRIEF

- Lumos have done a lot of good work in the area of de-institutionalisation, (meaning transition from institutions to family- and community-based care), and have sought to increase the capacity of national authorities to run adequate child protection systems.
- Lumos are in the process of conducting an intensive lobbying campaign with several Commissioners to try to have the European Structural and Investment Funds financing priorities mainstreamed in other financial programmes and want to ask you how this can be done.
- Lumos want to highlight the risks for children in institutions to fall prey to trafficking, and to ask that the connection is made in all relevant instruments and adequate measures put in place.
- Lumos want to ask you what mechanisms can be put into place to ensure full transparency and correct monitoring of the way ESI funds are spent and that the spending is fully in line with the provisions of the European charter of Fundamental Rights and Regulation 1303/2013.
- Note that MEP Mairéad McGuinness wrote to VP Timmermans along these lines on 19.1.2015, with Commissioner Jourová in copy.

Contact point: [REDACTED] **DG JUST.C1,**
[REDACTED]

Director: Paul Nemitz
(DG HOME.ATC, REGIO, EMPL, NEAR, DEVCO consulted)

SPEAKING POINTS

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- Congratulate Lumos on their extensive efforts to improve child protection and achieve de-institutionalisation in Europe and beyond.
- Acknowledge the ground-breaking work done under Commissioner Spidla and the 2009 report of the expert group.
- Recognise the huge impact of the use of European Structural and Investment Funds to promote de-institutionalisation as a lever and catalyst for change, especially in countries where institutionalisation was the norm
- Assure Lumos of the EU's commitment to promotion of the protection of the rights of the child and of persons with disabilities, and the importance of these two conventions in the context of de-institutionalisation (bearing in mind that the EU is a party to the UN Convention on the rights of persons with disabilities which is therefore an integral part of EU law; and considering that other groups are also concerned (the elderly, persons with mental illness or disorders, etc.)
- The Commission is aware of the fact that children in institutions may be at higher risk of trafficking; in its 2013 study on missing children in EU27, it reported on the worrying situation of children going missing from care. It is clear that children who are vulnerable, and in an easily identifiable location, are easier prey for traffickers than other groups. The forthcoming study on children as a high risk group for trafficking will cover this aspect, also looking at resilience factors.
- The European Structural and Investment Funds are shared management funds. Management is the primary responsibility of the Member States.

- Training for Member State management authorities, organised by geographical desks in DG REGIO and EMPL and European Expert Group experts, has taken place in 10 Member States: BG, RO, PL, HU, CZ, SK, SI, LV, LT and EE (and in some countries more than once) on the topic of de-institutionalisation. The Commission welcomes the Guidance on how to ensure transition to community-based services and the Toolkit on the use of ESI Funds for DI¹ prepared by the European Expert Group. In particular the coordinating role of Lumos and its financial support was crucial in this work.
- DG REGIO and DG EMPL have issued guidance for desk officers on *"transition from institutional to community-based care (de-institutionalisation)"*² that sets out in two pages the main principles and instruments for supporting deinstitutionalisation. Many DG REGIO and EMPL desk officers have proactively followed the de-institutionalisation discussions over the last few years in the context of the negotiation of the 2014-2020 programmes. However, the Commission's role is not to directly monitor each and every project, and de-institutionalisation is only one theme among many supported by EU funds. The Commission is aware of the standards that need to be adhered to and the potential risks involved, and the impact on persons in vulnerable situations.
- The Charter of Fundamental Rights is binding upon the EU in all its actions and upon the Member States when they implement EU law. When disbursing ESI funds, the Member States have to take the principle of non-discrimination on the basis of, among others, disability, into account, as stipulated in Article 21 of the Charter.

¹ <http://deinstitutionalisationguide.eu/>

² http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_deinstitutionalisation.pdf

- All Commission funding departments welcome feedback on usage of the funds and in this particular instance feedback from civil society experts on how the funds are being used on the grounds would be most welcome, to feed into monitoring.
- The EU also prioritises integrated child protection systems aligned with international standards such as the **UN Guidelines for the alternative care of children** in the context of **enlargement**, where it has been consistently raised over the last few years and one of the main areas of focus during two rights of the child peer reviews held in 2014.
- The forthcoming communication on integrated child protection systems seeks to emphasise the value and remit of well-functioning child protection systems, including prevention, and to clarify where Member States can draw on and contribute to EU actions.

DEFENSIVE POINTS

Q: The EU should do more to support transition to community- and family-based care

A: The EU is firmly committed to the process of de-institutionalisation or transition to community- and family-based care and uses all the instruments at its disposal to ensure progress.

BACKGROUND INFORMATION

1. EU COHESION POLICY 2014-2020

In the context of the EU 2020 strategy, the flagship initiative “European Platform against Poverty”, as defined in the 2010 Communication, includes recognising the fundamental rights of people experiencing poverty and social exclusion, enabling them to live in dignity and take an active part in society.

Persons with a disability are among the groups at particular risk for whose circumstances the EU and Member States need to define and implement measures. The EU and a large majority of Member States³ are party to the United Nations Convention on the rights of persons with disabilities which aims to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. One of these is their right to live independently and be fully included in the community with choices equal to others. For this purpose States parties must provide access to a range of community support services, including personal assistance, and to prevent isolation or segregation from the community. Community services and facilities for the general population must be available on an equal basis to persons with disabilities and must be responsive to the needs of persons with disabilities.

Measures for the shift from residential (institutional) to community-based care should be included as part of the national strategy for poverty reduction, the thematic ex-ante conditionality of the Common Provision Regulations of the next programming period 2014-2020. The general ex-ante conditionality on disability (“the existence of a mechanism which ensures effective implementation and application of the UN Convention on the rights of persons with disabilities”) reinforces the requirement to mainstream the rights of persons with disabilities in line with the UN Convention in structural and investment fund-supported measures⁴.

- http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_deinstitutionalisation.pdf

For the programming period 2014-2020 at least 23% of total funding for structural funds will have to be devoted to the European Social Fund. In each country, at least 20% of those will have to be allocated for social inclusion.

- Under this priority, many Member States will have the possibility to support a wide range of measures.
 - They can for instance support measures to retrain staff especially when there is a shift in the approach;
 - They can improve the status of social services or create quality assurance mechanisms;
 - But they can also fund preventive measures (such as intensive family counselling).

³ All 28 Member States have signed the Convention and 25 of them have ratified it, while the remaining three (Finland, Ireland and the Netherlands) are progressing towards ratification.

⁴ As at April 2013, both of these provisions are currently under discussion in the trilogue procedure.

Other instruments

- Under the former **PROGRESS** programme, the Commission supported a number of social innovation projects which aimed to find new ways of supporting young children leaving care, through for instance mentoring.
- Under the follower to this programme, the European Programme for Employment and Social Innovation, we are also supporting a Joint Action on Desinstitutionalisation, led by the European Social Network. Lumos is also part of it.
- Under the **Rights, equality and citizenship programme**, DG JUSTICE has prioritised capacity-building for professionals working in residential/alternative care on rights of the child. In 2014, under **DAPHNE**, it also prioritised actions to combat bullying in alternative care (call closes early March).

Enlargement countries

- It is important to mention that the deinstitutionalisation represents a serious problem in the enlargement countries too. This has been underlined by the European Commission in the Progress Reports. The Enlargement Strategy and Main Challenges 2013-2014 mentions that more needs to be implemented children's rights in the enlargement countries.
- DG EMPL was in charge of the implementation of IPA I component IV (Human Resources Development) during 2007-2013. As a candidate country, Croatia had a project that supported the deinstitutionalisation process: "Support to the Social Welfare Sector in the Process of Further Deinstitutionalisation of Social Services".
- EC financial support to this process should continue through future IPA II (2014-2020) that is managed by DG NEAR.

DG EMPL started launching the Employment and Social Reform Programmes within the candidate countries. During this process, DG EMPL, together with the countries, will detect the main challenges and assist the countries in the implementation of the reforms. The deinstitutionalisation, being one of the challenges, will be tackled through this reform. The ESRP process will be linked to the IPA II funding.

2. BACKGROUND ON TRAFFICKING

The guiding legal framework includes the Anti-Trafficking Directive of 2011. The EU Strategy towards the Eradication of Trafficking in Human Beings was adopted in 2012. This updated the 2005 EU Action Plan on best practices, standards and procedures for combating and preventing trafficking in human beings. The strategy is a set of concrete and practical measures to be implemented over the next five years. These include prevention, protection, support of the victims and prosecution of the traffickers as well as the establishment of national law enforcement units specialised in human trafficking and the creation of joint European investigation teams to prosecute cross-border trafficking cases. This Strategy also indicated scope for developing further guidance on integrated child protection systems.

In 2014 the Commission also launched a **study on children as a high risk group for trafficking**. The study aims to develop the knowledge and increase understanding on children as a particularly vulnerable group that is at greater risk of being trafficked into the EU, within

the EU and within a Member State. The results of this study are expected to be published in the first half of 2015. The study looks at risks and resilience factors, and DG Home hopes to have a first report available around Easter. Three hundred stakeholders were contacted, around 160 at national level and 137 at local level. The contractors talked to practitioners (police, border guards, judiciary, health professionals, child protection service professionals, migration and asylum organisations, ombudspersons, and women's rights organisations) who work with children and two focus groups were set up with children in Hungary and Croatia. Among other things, the report will address personal risks, socio-economic risks, and structural risks. Interestingly, some risk factors can also be seen as resilience factors. Particular risk factors can include a history of psycho/sexual abuse, legal and migration status, **and presence in institutional care**. The report analyses each factor and substantiates it with case-law. The forms of exploitation are then also connected to risk factors. The report will show that there is a tendency for younger ages of victims, and that boys are increasingly in demand by those soliciting. Next to this, also the overall attitude/regulation of prostitution can relate to the prevalence of THB as this may make it easier for traffickers to operate. There is also an increasing use of the internet, especially through social media where children are targeted. Traffickers also exploit the emotional needs of children ("loverboys"). The report will not elaborate much on illegal adoption, since there is not enough material available. The report will address gender factors (relation between forms, e.g. forced marriages – child marriage is a new form particularly targeting girls), and multigenerational tendencies (e.g. children born to mothers who have a background of exploitation can be prone to exploitation), and the existence of peer-groups as risk and resilience factors. What can we do to prevent THB further? There is a need for further-interagency cooperation at national level. The findings/recommendations of this study will be a big part of this.

On 18 October 2014, to mark the 8th EU Anti-trafficking Day, the Commission presented the midterm report on the implementation of the EU Strategy towards the eradication of trafficking in human beings 2012-2016, as well as the **Second Eurostat Working Paper on statistics on trafficking in human beings**. It, amongst others, details that between 2010 and 2012, 30 146 victims of trafficking were registered. Of these victims it was detailed that 16% were children (under the age of 18), and that more than 1000 children have been trafficked for the purpose of sexual exploitation. It also demonstrated that 65% of the victims hold EU citizenship. It also detailed that the top five nationalities of EU victims are BG, RO, NL, HU and CZ citizens.

3. BACKGROUND INFORMATION ON LUMOS:

- Lumos was a founding member of the European Expert Group on the Transition from Institutional to Community Based Care (EEG), which was set up by former European Commissioner for Employment, Social Affairs and Equal Opportunities, Vladimír Špidla in 2009. www.wearelumos.org.
- Globally, the UN estimates that 8 million children currently live in residential institutions. Contrary to common perceptions, around 90% of these are children are not orphans but were separated from their families because of poverty, disability, a lack of access to services, or discrimination. This is in violation of several international human rights instruments.

- Sixty years of research demonstrates the harm caused by institutionalisation. In spite of best intentions, institutions do not protect children; instead they leave children more vulnerable to violence, abuse and neglect. In addition, institutions do not provide effective education, health or other services to children. This results in poor outcomes for children with dramatically reduced life chances. Conversely this failure to thrive impacts on a society's ability to meet its own goals for development and growth. Later on in life, research suggests that these children are 10 times more likely than their peers to be involved in prostitution; 40 times more likely to have a criminal record; and 500 times more likely to commit suicide. Lumos factsheet: How institutions are harmful to children. Lumos says that as well as institutionalisation being a risk factor for trafficking, when identified, victims of trafficking may be placed (back) in institutions. This creates a vicious circle, effectively penalising the child for its victimisation and does not provide working solutions.

LUMOS has been funded and is chaired by J.K. Rowling, author of the Harry Potter saga. She has supported a number of charitable causes over the years, including One Parent Families (now Gingerbread), Maggie's Centres for Cancer Care Centres, Médecins Sans Frontières and Comic Relief. For nine years she was Patron of Multiple Sclerosis Society Scotland. In 2005, after seeing an article in the Sunday Times about children being kept in caged beds in institutions, J.K. Rowling felt compelled to address this terrible problem. As a result she founded the charity that became Lumos. She said, "I looked at that photograph of the boy in his cage bed and felt he has absolutely no voice. This touched me as nothing else has because I can think of nobody more powerless than a child, perhaps with a mental or a physical disability, locked away from their family. It was a very shocking realisation to me and that's where the whole thing started".

4. STANDARDS IN THE AREA OF DE-INSTITUTIONALISATION

International standards

1. UN Convention on the rights of the child (notably Article 3.3)
<http://www2.ohchr.org/english/law/pdf/crc.pdf>
2. UN Convention on the rights of persons with disabilities (Article 19 in particular)
<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

Alternative care:

UN Guidelines for the alternative care of children: <http://www.refworld.org/docid/4c3acd162.html> ;
the Handbook for implementing the UN Guidelines (Cantwell et al (2012)
<http://www.alternativecareguidelines.org/Portals/46/Moving-forward/Moving-forward-implementing-the-guidelines-ENG.pdf> ;
Council of Europe guide: Securing Children's Rights: Guide for Professionals in alternative care (2013):
http://www.coe.int/t/dg3/children/ChildrenInCare/ChildrenInCare_en.asp .

Other relevant reference documents and standards:

Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=614&furtherNews=yes>

COM (2011)615 final of 6.10.2011 (Commission 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, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006).

www.ec.europa.eu/esf/BlobServlet?docId=233&langId=en

European declaration on the health of children and young people with intellectual disabilities and their families (signed by WHO, Unicef and RO Min for Health, 26.11.2010

WHO Declaration Better health, better lives: children and young people with intellectual disabilities and their families.

Quality4Children Standards for out-of-home childcare in Europe (and see also the toolkit)
http://www.quality4children.info/navigation/cms.id,31,nodeid,31_language.en.html
(There's also a comparison by Nigel Cantwell of Q4C and the UN Guidelines)

Council of Europe recommendation on children living in residential institutions (2005) and follow-up:
http://www.coe.int/t/dg3/familypolicy/enfance/resinstitutions_en.asp

Book for children and young people in care: discover your rights!
[http://www.coe.int/t/dg3/children/childrenincare/C&YP%20IN%20CARE-ANGLAIS\(web\).pdf](http://www.coe.int/t/dg3/children/childrenincare/C&YP%20IN%20CARE-ANGLAIS(web).pdf)

SOS Children's villages: Quality care counts
<http://www.sos-childrensvillages.org/About-us/Library/Pages/Quality-Care-Counts.aspx>

SOS Children's villages: ageing out of care (report, background reading)
<http://www.sos-childrensvillages.org/About-us/Library/Pages/Ageing-out-of-care-international-analysis.aspx>

The SOS Children's villages *I matter* campaign (youth empowerment/participation project)
<http://www.sos-childrensvillages.org/About-us/Library/Pages/Facts-and-figures-that-matter-copy.aspx>

Mairéad McGuinness to VP Timmermans 19.1.2015



Letter from Mairead
McGuinness MEP.pdf



Member of the European Parliament

Frans Timmermans,
First Vice-President, Better Regulation, Inter-Institutional Relations, the Rule of Law and
the Charter of Fundamental Rights,
European Commission,
Rue de la Loi 200,
1049 Brussels.

19.01.2015

Dear First Vice-President,

I would like to draw your attention to a serious problem which is threatening the lives of millions of children in Europe and the world – institutionalisation.

There are eight million children currently living in institutions around the world. More than 90% of them have living parents. The reasons for being separated from their families are often related to poverty, discrimination, disability or the lack of community-based services, which support vulnerable families.

Living in an institution is harmful for children for a number of reasons. The lack of individual love, care and attention means they do not thrive and the emotional and psychological harm can last a lifetime. There is also evidence that institutional care, especially in early life, is detrimental to all areas of child development and that it predisposes children to intellectual, behavioural and social problems later in life. It indicates that in children under three, institutionalisation is likely to negatively impact brain functioning during the most critical period of brain development, leaving long-lasting effects on a child's social and emotional behaviour. It is no wonder that later on in life these children are 10 times more likely than their peers to be involved in prostitution or to be trafficked; 40 times more likely to have a criminal record; and 500 times more likely to commit suicide.

It is essential that the new Commission work for enhancing social justice in the EU and not only the economic sustainability.

In the past, European Structural Funds have been used to renovate existing institutions and build new ones, prolonging this outdated and harmful practice. However last year Regulation 1303/2013 introduced for the first time ex-ante conditionalities which are key criteria that must be applied to all funding one of which focuses on social inclusion (9: 9.1.). The Investment priorities under this ex-ante conditionality include "**...the transition from institutional to community-based services.**"

The adoption of the Regulation was a significant step forward to ensure all children within the EU will be able to grow up in a family setting or in community-based care. However other EU funds invested outside of the Union, such as the European Development Fund (EDF), the Development Cooperation Instrument (DCI, Instrument for Pre-accession Assistance (IPA) and European Neighbourhood Instrument (ENI) can still be spent on institutional care, perpetuating the problem of institutionalisation of children.

You will be aware that the European Ombudsman has opened an own-initiative inquiry into the respect of fundamental rights in the EU's Cohesion Policy, focusing on how the European Commission ensures that EU funding is used in ways to comply with the EU Charter on Fundamental Rights. Living in a family environment is indeed a key fundamental right of children.

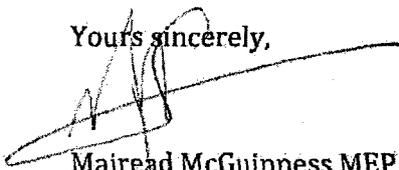
Therefore I urge you to make sure that the ex-ante conditionality on the transition from institutional to community based care is implemented immediately in all EU Member States and that a reliable and sufficient monitoring mechanism is put in place.

Furthermore I urge you to engage the entire European Commission to work horizontally to ensure the necessary steps are taken to guarantee EU funds spent outside the Union are never used to support institutions, but only to support the transition from institutionalised care towards community-based care and poverty reduction mechanisms which help keep children in their families.

Finally, the Commission can set an example and influence other major funders and donors, such as the World Bank and bilateral government donors, to jointly plan and implement change for children, ending institutionalisation, reinvesting funds in early childhood development, inclusive education and child protection services.

I look forward to working with you to achieving these objectives, which are crucial for the wellbeing of children in Europe and worldwide.

Yours sincerely,



Mairead McGuinness MEP
Vice-President of the European Parliament

CC:

Valdis Dombrovskis, Vice-President for Euro & Social Dialogue

Jyrki Katainen, Vice-President for Jobs, Growth, Investment and Competitiveness

Johannes Hahn, Commissioner for European Neighbourhood Policy & Enlargement Negotiations

Neven Mimica, Commissioner for International Cooperation & Development

Vytenis Andriukaitis, Commissioner for Health & Food Safety

Dimitris Avramopoulos, Commissioner for Migration & Home Affairs

**Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour
Mobility**

Christos Stylianides, Commissioner for Humanitarian Aid & Crisis Management

Věra Jourová, Commissioner for Justice, Consumers and Gender Equality

Tibor Navracsics, Commissioner for Education, Culture, Youth and Citizenship

Corina Crețu, Commissioner for Regional Policy