



hope and homes
for children



Position paper on the European Commission proposal for the Instrument for Pre-Accession III in the 2021-2027 Multiannual Financial Framework

October 2018

SUMMARY

We welcome the European Commission's (EC) legislative proposal of 14 June 2018 for a regulation establishing the Instrument for Pre-Accession III (IPA III)¹, notably the strong references to fundamental rights, the European Pillar of Social Rights and the 2030 Sustainable Development Goals Agenda. However, in our considered view, the proposed regulation does not adequately reflect the EC's commitments to implement the Convention on the Rights of Persons with Disabilities (CRPD), including to foster the transition from institutional to family and community-based care through targeted investments. It also fails to ensure consistency and coherence with the European Union's (EU) internal and external policies and funding instruments. We make the following recommendations to the European Parliament, the Council of the European Union and the European Commission:

1. IPA III should place the best interest of the child at the heart of all its investments, and explicitly reference the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).
2. IPA III should prioritise the prevention of institutionalisation and separation of children from their families.
3. IPA III should explicitly support the transition from institutional to family and community-based care for all children, including children with disabilities, and accessibility for persons, including children with disabilities.
4. IPA III should explicitly prohibit any form of investment in institutions.
5. IPA III should ensure that civil society organisations, including children, persons with disabilities, older people and their representative organisations, are involved meaningfully in all stages of the design, programming and implementation of the IPA III.
6. IPA III should be allocated and used in line with national, regional and/or strategic policy frameworks following the EU internal policy and legislation, namely Regulation 1303/2013 on common provisions for European Structural and Investment Funds.

¹ European Commission (2018) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Instrument for Pre-accession Assistance (IPA III), COM(2018) 465 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A465%3AFIN>

INTRODUCTION

Globally, an estimated eight million children live in institutions because they are poor, have a disability, or belong to a marginalised group.² More than 80 percent of them are not orphans.³ The candidate countries for EU membership are not exempt from this issue. In fact, according to UNICEF estimates, the number of children in institutional care across Europe and Central Asia region remains the one of the highest rates of prevalence in the world.⁴

Whilst most institutions for children are established with good intentions, over 80 years of research from across the world proves that children in institutions, including children with disabilities, who are deprived of loving parental care, can suffer lifelong physical and psychological harm.⁵ Babies in particular fail to develop as they should without one-to-one interaction and research demonstrates the severe impact of institutionalisation on early brain development.⁶ Children with intellectual disabilities remain disproportionately vulnerable to being institutionalised⁷.

The European Union (EU) has recognised the harm that institutionalisation causes to all children and has already played a crucial role in championing the issue of children in institutional care. In its Recommendation “Investing in children: breaking the cycle of disadvantage” the European Commission (EC) encourages EU Member States “to stop the expansion of institutional care settings for children without parental care and promote quality, community-based care and foster care within family settings instead where children’s voice is given due consideration”.⁸ More concretely, in the 2014-2020 programming, the European Structural and Investment Funds supported Member States to transition from institutional to community-based care by introducing an ex-ante conditionality on social inclusion (9: 9.1.) with a dedicated investment priority in Regulation 1303/2013.⁹

On 14 June 2018, the EC published its legislative proposal for a regulation establishing the Instrument for Pre-Accession III (IPA III).¹⁰ The IPA III proposal is part of a set of new proposed instruments for EU external action under the new Multiannual Financial Framework 2021-2027. IPA III constitutes a key financial lever to support candidate countries for EU membership, as they begin the process of alignment with EU rules, standards, policies and practices. In addition, in accordance with Article 21 of the Treaty of the European Union, the IPA III should create better synergies, complementarities and consistency between internal and external policies and funding, which is also reflected in the preamble of the draft regulation for IPA III.

OUR SHARED POSITION ON THE PROPOSED INSTRUMENT FOR PRE-ACCESSION III

We welcome the European Commission’s draft proposal for the IPA III, notably the strong references to fundamental rights, the European Pillar of Social Rights and the 2030 Sustainable Development Goals (SDGs) Agenda. We acknowledge in particular that the thematic priorities for assistance

2 Pinheiro, P.S. (2006). World Report on Violence against Children. United Nations Secretary General’s Study on Violence against Children.

3 Csaky, C. (2009). Keeping Children Out of Harmful Institutions: Why We Should Be Investing in Family-Based Care. London, UK: Save the Children

4 UNICEF (2010) At Home or in a Home?: Formal Care and Adoption of Children in Eastern Europe and Central Asia

5 Berens, A.E. & Nelson, C.A. (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 30 August 2017]

6 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 26 Jan 2017].

7 Mulheir, Georgette. “Deinstitutionalisation—A human rights priority for children with disabilities.” The Equal Rights Review 9 (2012): 117-137.

8 Commission Recommendation of 20 February 2013 Investing in Children: Breaking the Cycle of Disadvantage. OJ L 59, 2 March 2013. http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf [accessed 8 Aug 2016], p.9

9 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

10 European Commission Proposal for a Regulation of the European Parliament and of the Council establishing the Instrument for Pre-accession Assistance (IPA III), COM(2018) 465 final

envisage investments to strengthen access to and quality of education (annex 2g) and promoting social protection and inclusion and combating poverty (annex 2i).

However, the proposed regulation does not adequately reflect the EC's commitment to foster the transition from institutional to family and community-based care through targeted investments. It also fails to ensure consistency and coherence with EU internal and external policies and funding instruments, as well as the EU's obligations under the Convention on the Rights of Persons with Disabilities (CRPD).

It is essential that the IPA III foresees investments in pre-accession countries that ensure that all children are prevented from ever being placed in an institution, regardless of their gender, race, ethnic, social origin, disability, age or sexual orientation. These investments should include: the modernisation of national child protections systems by developing family and community-based care models and the reintegration of children into families and community-based care.

We make the following recommendations to the European Parliament, the Council of the European Union and the European Commission:

Recommendation 1: IPA III should place the best interest of the child at the heart of all its investments, and explicitly reference the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).

According to the draft, IPA III regulations issued by the European Commission, the political priorities of the fund should be shaped around: "the rule of law, fundamental rights and governance; socio-economic development; Union policies and acquis".¹¹ This constitutes a crucial part of aligning with Union policy and values. The references to the European Pillar of Social Rights (recital 7) and the 2030 Sustainable Development Goals (SDGs) Agenda (Recitals 13 and 14, article 6) are particularly important references. However, the IPA III fails to explicitly prioritise the most vulnerable groups, which includes all children, including children with disabilities.

A child's right to family life has been recognised in a number of EU policy and legal instruments. The EU and Member States have committed to place the child's best interests as the primary consideration in all actions related to children, whether taken by public authorities or private institutions. Following the Committee on the Rights of the Children, the child's best interests "is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention [on the Rights of the Child] and the holistic development of the child"¹². Various EU policies and legal frameworks have been established to ensure all children, including children with disabilities, can exercise their right to live with their family and in the community, unless this goes against their best interests, such as: the EU Charter of Fundamental Rights, the European Disability Strategy 2010-2020 and the EU Agenda for the Rights of the Child and the European Pillar of Social Rights.

The right to a family is also established in international law in both the UN Convention on the Rights of the Child¹³ (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD)¹⁴, as well as policy guidance from the UN treaty bodies in the form of General Comments and the

¹¹ Regulation of the European Parliament and the Council, establishing the Instrument for Pre-accession Assistance (IPA III), Brussels, 14.6.2018, COM(2018) 465 final, p.3-4

¹² United Nations Committee on the Rights of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, para 4

¹³ United Nations (1989) UN Convention on the Rights of the Child (Adopted 20 November 1989, entered into force 2 September 1990) Vol.1577, Art. 9

¹⁴ Ibid, Art. 23

Guidelines for the Alternative Care of Children.¹⁵ Furthermore, by acceding to the CRPD, the EU and its Member States have committed to ensuring that all its citizens have the right to live independently. In General Comment 5 of the Committee on the Rights of Persons with Disabilities, it is clearly stated that in order to realise the provisions of Article 19, “independent living and being included in the community refer to life settings outside residential institutions of all kinds”, as part of progressive realisation of human rights.

Recommendation 2: IPA III should prioritise the prevention of institutionalisation and separation of children from their families

IPA III envisages assistance to modernise social protection systems, promote inclusion and combat poverty (annex 2i). There should however be an explicit reference to the prevention of institutionalisation of children, including children with disabilities.

Prevention is an integral part of the process of transitioning from institutional to family and community-based care. Most children, including children with disabilities, can stay with their families, if the right support is provided, and it is their right to do so. In a minority of cases, children with very complex needs may require specialist services that cannot be provided in a family setting and therefore an alternate family-like setting can be an appropriate alternative. Access to family and community-based services (e.g counselling and financial support services, day care, personal assistance etc.), inclusive education, quality health care and rehabilitation services (e.g. community based inclusive development services to enhance independence), combined with flexible working schemes are just some of the concrete actions that can be taken to prevent unnecessary entry of children into the care system¹⁶.

Recommendation 3: IPA III should explicitly support the transition from institutional to family- and community-based care for all children, including children with disabilities, and accessibility for persons, including children with disabilities.

The IPA III proposal stipulates that “the enlargement process extends the internal policies of the EU to the enlargement partners. It contributes to, among other things; job creation, skills development, education and social inclusion and poverty reduction”.¹⁷ Children in alternative care are an important component of EU policy, and have been recognised as a particularly vulnerable group by the EC in its recommendation “Investing in children: breaking the cycle of disadvantage”.¹⁸ The Recommendation encourages EU Member States “to stop the expansion of institutional care settings for children without parental care and promote quality, community-based care and foster care within family settings instead where children’s voice is given due consideration”.¹⁹

The European Pillar of Social Rights further states that “everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services”²⁰. The European Disability Strategy 2010–2020 also commits to “promote the transition from institutional to community-based care”²¹. In the Council Conclusions of June 6th, 2011 on “The European pact of

15 UN Guidelines for the Alternative Care of Children, 24 February 2010, UN General Assembly, A/RES/64/142

16 Cantwell, N., Davidson, J., Elsley, S., Milligan, I., Quinn, N. (2012). Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'. UK: Centre for Excellence for Looked After Children in Scotland

17 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, establishing the Instrument for Pre-accession Assistance (IPA III), Brussels, 14.6.2018, COM(2018) 465 final, p3/4

18 Commission Recommendation of 20 February 2013 Investing in Children: Breaking the Cycle of Disadvantage. OJ L 59, 2 March 2013. http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf [accessed 8 Aug 2016].

19 Ibid, p.9

20 European Commission: The European Social Pillar in 20 Principles

https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights/european-pillar-social-rights-20-principles_en.

21 European Commission (2010), European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe, COM(2010) 636 final, Brussels, 15 November 2010, p. 6.

mental health and well-being: results and future action" the Council invites Member States and the Commission to promote, where possible and relevant, community-based and socially inclusive care models to mental health. Furthermore, Article 19 CRPD, obliges the EU and the Member States, to recognise the equal right of all persons with disabilities to live independently and be included in the community, with the freedom to choose and control their lives. In this respect, the Committee on the Rights of Person with Disability urges in General comment 5 State Parties to "develop a concrete action plan for independent living for persons with disabilities within the community".²² In fact, the Committee states that "the lack of deinstitutionalisation strategies and plans is one of the remaining barriers to the implementation of the right to live independently in the community".²³ It is therefore essential to ensure countries have in place a deinstitutionalisation strategy.

Accessibility is a core principle which underpins a full and successful deinstitutionalisation process. Article 9 of the CRPD advocates that in order to enable persons with disabilities to live independently on an equal basis with others, Governments must ensure equal access to physical environments, transportation, information and communications technologies and systems and to all other services and facilities. Therefore, it is crucial that funds are utilised to ensure inclusive and fully accessible communities which enable all children, including children with disabilities to engage in their environments on an equal basis with all others.

In the 2014-2020 programming period, the European Structural and Investment Funds supported Member States to transition from institutional to community -based care by introducing an ex-ante conditionality on social inclusion (9: 9.1.) with a dedicated investment priority in Regulation 1303/2013.²⁴ In its proposals for the European Social Fund Plus (ESF+) in the 2021-2027 programming period, the European Commission has strengthened its commitment in promoting the transition from institutional to community-based care.

The economic argument for deinstitutionalisation reforms – the case of Czech Republic

The Czech Republic has made considerable progress over the past decade to improve alternatives to institutionalisation for children. However, large numbers of children continue to be admitted to harmful institutions. A 2018 report on Czech Republic demonstrates that far greater numbers of children and families could be supported with high-quality, cost-effective alternatives to institutionalisation, using the resources that are currently tied up in institutions. Following the analysis of financial data from 2017, approximately 2,684 million CZK (€103 million) is spent annually on running baby institutions and children's institutions, which together house around 5,000 children. The report argues that the same funds could instead be used to enable over 100,000 children to live with families in the community.²⁵

Advancing deinstitutionalisation through the use of IPA II funds – the case of Bosnia Herzegovina

The EU has already played an important role in the process of deinstitutionalisation in Bosnia Herzegovina. In 2014, €1.5 million was granted under IPA 2014/037-662. 8/Bosnia and Herzegovina/ to support transformation of care institutions over the period 2014-2017. Two new services have been developed using IPA II: an emergency reception centre and a day centre for children at risk. With support of IPA II, four institutions are now being closed and 98 professionals

²² United Nations Committee on the Rights of Persons with Disabilities, General comment No. 5 (2017) on living independently and being included in the community, CRPD/C/18/1, 29 August 2017

²³ Ibid, para. 15 (e).

²⁴ 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

²⁵ Lumos (2018) Investing in Children – The case for diverting Czech government finances away from institutions <https://www.wearelumos.org/resources/investing-children-czech-2018/> [accessed 17 October 2018]

have increased their capacity during this transformation (e.g. trainings included Emergency Reception, or Family Support or Day Centre for Children at Risk of Separation). Services developed through IPA II are now funded by the national budget and have contributed to the strengthening of country's child protection system.²⁶

Recommendation 4: IPA III should explicitly prohibit any form of investment in institutions.

Inappropriate investments through the use of EU funds can contribute to the multiple harmful effects of institutions for children, it also delays the process of transitioning from institutional to family and community-based care. Furthermore, since the volume of EU funds cannot cover all investments needed, it is essential that they are used to focus on the most important aspects, namely to prevent institutionalisation, support the reintegration of children in their families, and develop family and community-based services (see recommendations 2 and 3). In fact, experience from past funding periods has shown that investments in residential institutions have a detrimental effect on the transition from institutional to family- and community-based care as they disincentivise the closure of institutions and slow the development of alternative service²⁷.

In General Comment 5, the Committee on the Rights of Persons with Disabilities recommends that “States Parties should ensure that public or private funds are not spent on maintaining, renovating, establishing, building existing and new institutions in any form of institutionalisation”. Furthermore, states parties must ensure that private institutions are not established in the guise of “community living”²⁸. While there are worrying trends to the contrary, the European Commission notably committed in its first State Party Report to the UN Committee on the Rights of Persons with Disabilities in 2014 that “the ERDF [European Regional Development Fund] should as a basic principle not be used for building new residential institutions or the renovation and modernisation of existing ones”²⁹. It is essential that the same rules are incorporated into IPA III.

Recommendation 5: IPA III should ensure that civil society organisations, including children, persons with disabilities, children, older people and their representative organisations, are involved meaningfully in all stages of the design, programming and implementation of the IPA III.

We welcome that the IPA III foresees, under the thematic priorities for assistance (Annex II), that the fund can support “strengthening the capacities of civil society organisations and social partners' organisations”. However, it is essential that IPA III ensures the involvement of civil society organisations, including children, persons with disabilities, children, older people and their representative organisations, in all stages of the IPA III. This weakness was already raised by various stakeholders in the Instrument for pre-accession II³⁰.

The Partnership Principle, a similar to that established in the Regulation (EU) No 1303/2013, and proposed Common Provisions Regulation for European Regional Development Fund and the European Social Fund Plus the 2021-2027 programming period (COM(2018) 375 final), should be introduced in the IPA III regulation. This Partnership Principle should foresee the meaningful

26 Opening Doors for Europe's Children (2017) Factsheet for Bosnia and Herzegovina <http://www.openingdoors.eu/wp-content/uploads/2018/02/country-fiche-BiH-2017.pdf>

27 European Coalition for Community Living (2010). Wasted Time, Wasted Money, Wasted Lives ... A Wasted Opportunity? – A Focus Report on how the current use of Structural Funds perpetuates the social exclusion of disabled people in Central and Eastern Europe by failing to support the transition from institutional care to community-based services, p. 28 <http://community-living.info/wp-content/uploads/2014/02/ECCL-StructuralFundsReport-final-WEB.pdf>

28 United Nations Committee on the Rights of Persons with Disabilities (2017) General comment No. 5 (2017) on living independently and being included in the community

29 European Commission (2014), Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union, SWD(2014) 182 final, Brussels,

5 June 2014, para. 98 <http://ec.europa.eu/social/BlobServlet?docId=14086&langId=en>
http://ec.europa.eu/justice/discrimination/files/swd_2014_182_en.pdf

30 European Commission (2017) Staff Working Document Evaluation of the Instrument for Pre-accession Assistance (IPA II) Accompanying the document Report from the Commission to the European Parliament and the Council Mid-term Review Report on the External Financing Instruments, SWD(2017) 463 final, <https://eur-lex.europa.eu/legal-content/SL/TXT/?uri=SWD%3A2017%3A463%3AFIN>

participation of civil society during the design, implementation and associated monitoring processes of programmes. The Partnership Principle is key to ensure that EU funds are being allocated and used in the best interest of people.

Establishing the partnership principle through the involvement of civil society in ESIF planning - the case of Romania

In aiming to realise the goals set out in the partnership principle, the Romanian government established in the current round of EU funds (ESIF), Monitoring Committees for the implementation of ERDF and ESF funds, and according to the methodology and functioning of the Committees, at least 40% of the members are representatives of civil society, academia and social partners of the Government. A National NGO representing children in Romania found that “methodology guarantees the involvement of civil society in all stages of ESIF planning: consultations on producing the applicant’s guide, on producing the criteria for assessing the application, on producing the Annual Implementation Report, on monitoring the performance scorecard and on identifying possible aspects that can be problematic”.³¹

Recommendation 6: IPA III should be allocated and used in line with national, regional and/or strategic policy frameworks following the EU internal policy and legislation, namely Regulation 1303/2013 on common provisions for European Structural and Investment Funds.

In order to achieve policy coherence and ensure efficient and result-orientated investments, IPA III should be allocated and used in line with strategic policy frameworks that include actions related to deinstitutionalisation reform. Furthermore, the approach should follow the mechanisms introduced in the internal EU funding instruments, thereby aligning accession countries with EU rules and procedures.

In their use of European Structural and Investment Funds in the 2014-2020 programming period, Member States had to fulfil “ex-ante conditionalities” (ExAC) which ensured the disbursement of investments in line with strategic policy frameworks. In a staff working document, the EC concluded that “ExAC brought added value for the EU, Member States and regions, and for citizens and businesses operating in the EU” and that, “they ensured a direct link between the investments co-financed by the ESI Funds and EU level policies”. Furthermore, the document states that, “had it not been for ExAC, these changes and reforms might not have happened in some Member States or might have happened at a much slower pace”.³² For example, in order to access funds under the objective of, “Promoting social inclusion, combating poverty and any discrimination,” Member States had to adopt national strategies for poverty reduction with measures for deinstitutionalisation, where they may not have done so had the ex-ante conditionality not existed.

In the 2021-2027 draft regulations, the Commission have proposed to continue the approach through “enabling conditions”. Given the added value of this mechanism in achieving policy coherence, the nature of IPA III to support pre-accession countries to align with EU rules and procedures, IPA III should mirror the approach taken under the European Regional Development Fund (ERDF) and European Social Fund Plus (ESF+) by ensuring the link between investments and relevant policy frameworks. This includes the use and implementation of performance indicators, which are disaggregated inter alia, by disability, in order to track where and how funding is spent.

31 Crowther N., Quinn, G. & Hillen-Moore, A. (2017) Opening up communities, closing down institutions: Harnessing the European Structural and Investment Funds. Community Living Europe: Structural Funds Watch. https://eustructuralfundswatchdotcom.files.wordpress.com/2017/11/cle-sfw_opening-up-communities-november-2017_final.pdf

32 European Commission (2017) Commission Staff Working Document: The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds, 3 March 2017, SWD(2017) 127, p.19

The added value of ex-ante conditionalities - The case of Croatia

According to a study conducted for the European Commission's Directorate-General for Regional and Urban policy, the Croatian ERDF Competitiveness and Cohesion Programme observed some positive contributions of the ex-ante conditionalities which "not only ensure the implementation of key activities, but also enable the administration to pass on clear messages to policy makers in terms of levels of activity and minimum resources that must be guaranteed".³³

CONCLUDING REMARKS

Having recognised in its internal policies and actions the harm that institutionalisation causes to children and promoted that no further investment goes to harmful institutional settings within its borders, the EU should continue to be a leader globally.³⁴

We call on the European Parliament, the Council of the European Union and the European Commission to introduce the necessary amendments in the IPA III to reflect the recommendations. The ad-hoc coalition of civil society organisations remains open to continue the dialogue with all relevant stakeholders for further reflections.

Signatories

European Disability Forum, Hope and Homes for Children, Inclusion Europe, Lumos, UNICEF



Endorsed by:

ChildPact, European Association of Service Providers for Persons with Disabilities (EASPD), Inclusion International



³³ European Commission (2017) "Use of new provisions on simplification during the early implementation phase of ESIF" http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/new_prov_simplification_esif_en.pdf p.72

³⁴ Hope and Homes for Children and Lumos (2017) "Putting Child Protection and Family Care at the Heart of EU External Action" http://www.hopeandhomes.org/wp-content/uploads/2016/12/Joint_paper_Lumos_Hope_Homes_-_EU_External_Action_-_V2-1-1.pdf