

Mr. Marc Lemaitre
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Mr Joost Korte
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Brussels, 8 June 2022

OPEN LETTER TO THE EUROPEAN COMMISSION REGARDING CHILDREN WITH DISABILITIES FROM UKRAINE

Dear Mr. Lemaitre, dear Mr. Korte,

We are writing on behalf of the European Network on Independent Living, Disability Rights International and the Validity Foundation – international organisations advocating for the rights of children and adults with disabilities. **We wish to draw your attention to the alarming situation of children deprived of parental care and those with disabilities, who arrived from Ukraine and are being placed in residential institutions in EU Member States.** Before the war, there were over 100,000 children in institutions in Ukraine and the rights abuses against these children have been widely documented by human rights organisations, including in two reports by Disability Rights International¹.

Therefore, **we would like to express our concern about a Memorandum of Understanding by the Government of Ukraine², which encourages the placement of children from Ukraine in institutions in EU Member States,** in contravention of the European Union's and the Member States' obligations under EU and international law on the rights of the child and the rights of persons with disabilities.

In response to the war in Ukraine and the need to protect children in territories affected by fighting, the Government of Ukraine has drafted a Memorandum of Understanding, to be

¹ See: <https://www.driadvocacy.org/new-report-left-behind-in-the-war-dangers-facing-children-with-disabilities-in-ukraines-orphanages/> and <https://www.driadvocacy.org/wp-content/uploads/No-Way-Home-final.pdf>

² See: <https://www.kmu.gov.ua/en/news/minsocpolitiki-zaproponuvalo-23-krayinam-pidpisati-dvostoronni-memorandumi-shchodo-zahistu-prav-ditej-z-vrazlivih-kategorij?fbclid=IwAR22M4Ci0H7BENjznsbNLUscnD65xumIO6s9QCx-Femud0tzQdbT1t0mg34>

signed with those countries which are receiving child refugees from Ukraine. The Memorandum requests specific measures to be followed by the receiving countries, as follows:

- To keep children arriving from institutions for children together with their carers from the institutions;
- To place children in institutions in the host countries, so they can be kept together.

As a result, some Member States have already signaled the need for the extension of their existing childcare institutions, or the need to build new ones. Considering the resources required for the building of new facilities, their renovation or extension, it is likely that Member States will officially request support from EU funds. According to our latest information, Poland has already submitted such a request to the European Commission.

We wish to bring to your attention that the implementation of the measures requested by the Ukrainian government – i.e. the continued institutionalisation of children in the EU - violates the legal requirements of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the UN Convention on the Rights of the Child (UNCRC) and the EU Charter of Fundamental Rights (EU Charter). Specifically, the EU (having ratified the UNCRPD) and its Member States (having ratified the UNCRPD and the UNCRC) have the following obligations:

- **Article 5 UNCRPD and Article 21 EU Charter** – institutionalisation of children with disabilities constitutes discrimination;
- **Article 19 UNCRPD and Article 23 UNCRC** – any placement of a child outside a family is to be considered as institutionalisation, and is discriminatory. Children with disabilities must be provided with access to family- and community-based care and support. In this case, this should include support to their families³ and access to foster care, where alternative care is required.
- **Article 3 UNCRC** – in accordance with the best interests of the child, and following individualised determinations, only family- and community-based care and support should be provided.

We welcome the provisions of the EU funds regulations of both the 2014-2020 and the 2021-2027 periods, in particular the strong link to the UNCRPD and the EU Charter of Fundamental Rights in the scope of ex-ante conditionalities and enabling conditions. Member States should fulfil the criteria of these conditions (enshrined in the EU regulations), and all EU funded measures should be in line with the provisions of the EU funds regulations. **Thus, the European Commission should provide clear guidance to Member States on how to use EU funds to provide the best services for children from Ukraine, in line with their legal obligations, without discrimination and in accordance with the best interests of the child.**

Measures which should be supported by EU funds include:

A. Support to families and placement of children in foster care

1. Support should be provided to the families of children from institutions, so that they can care for their child at home, in the place where they have sought safety (i.e. as refugees).

³ Families may take different and diverse forms and may include a broad array of relationships, including married and unmarried parents, single parents, same-sex parents, adoptive families, kinship care, kafalah, sibling care, extended family, and substitute families or foster care.

Such support includes early intervention, rehabilitation, personal assistance services, financial support, childcare, access to health care and other mainstream services (inclusive education, housing, transport etc.);

2. All children, who cannot be cared for by their families should be placed with families, including kinship and foster care, regardless of their citizenship, with necessary accommodations linked to their disability, identity, language and culture. Particular attention should be paid to the most vulnerable children (such as children with disabilities, children under the age of 6, unaccompanied children, and children from ethnic minority communities);
3. Children coming from residential institutions should receive targeted support, including the following:
 - a. Individual needs assessment;
 - b. Specialised training for carers/guardians (so they can become foster parents or carers in the community);
 - c. Rehabilitation services and personal assistance to ensure the conditions for independent living for children with disabilities;
 - d. Immediately increasing the capacity of foster care, including recruitment of new foster parents (see above), provision of housing and social benefits, training, etc.

B. Reinforcing foster care networks

1. Increase the number of foster parents, including by recruiting new foster parents (including Ukrainian citizens);
2. Introduce simplified procedures to become foster parents, through the modification of the relevant regulatory provision (social-, healthcare law, etc). This should include adequate financial assistance associated with a child's needs and disabilities, salary increases of foster parents, and should not undermine the quality of foster care;
3. Support Ukrainian carers from institutional care to become certified foster parents for children, or to provide individualised services in the community;
4. Support foster parents with relevant services such as housing, social benefits (transport, meal vouchers, clothing, etc.), language training, equipment for children with disabilities, etc.

C. Access to mainstream and non-segregated services

1. Any investments in institutions for children, through the building of new facilities or the renovation or extension of existing ones, must be strictly prohibited.
2. All children coming from Ukraine should have equal access to mainstream and non-segregated services (education, social and health, housing), regardless of their support needs. This should include some targeted interventions:
 - Mentoring and personal assistance for children with disabilities in mainstream and non-segregated education facilities;
 - Translation, interpretation, alternative and augmentative communication support should be made available to ensure access to all relevant services, alongside the provision of reasonable accommodations;
 - Supporting transport services, including public transport, school bus;
 - Training of service providers in education, social and health care; and

- Extending the physical (through infrastructure investments) and human capacity (through recruiting and training the staff, etc.) of public services in host countries.

All actions mentioned above can be supported by EU funds, both by the European Social Fund + (ESF) and the European Regional Development Fund (ERDF). **In the case of EU funds support, the following requirements should be taken into account:**

- Measures supported with EU funds must be in line with the requirements of the UNCRPD, the UNCRPD and the EU Charter of Fundamental Rights.
- If EU funds are still available in the scope of the 2014-2020 programmes, Member States should use these funds in an urgent manner, taking into account that the deadline for the eligibility of these funds is very close. Member States might also request flexible use of funds, even if actions are not included explicitly in the programmes (to support the recruitment of foster parents, for example).
- As regards the 2021-2027 programmes, Member States, in close cooperation with the European Commission, should include all of the above actions in the Operational Programmes before they are adopted.

The European Commission has an important role to play in ensuring that the rights of children coming from Ukraine are protected in the European Union. Making sure that EU funds do not hinder, rather support, the rights of the child to grow up in a family is fundamental to this process. We therefore ask the European Commission to take into consideration our recommendations and to strictly prohibit any investments of EU funds into institutions for children in the Member States.

Thank you for your consideration and we stand at your disposal for any further questions, with a view to ensuring the best outcomes for children from Ukraine.

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 Disability Rights International - DRI

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 Co-Executive Director (Advocacy)
 Validity Foundation – Mental Disability Advocacy Centre

Copy to:

1. Ursula Von Der Leyen, President, European Commission
2. Elisa Ferreira, Commissioner, Regional and Urban Policy
3. Nicolas Schmit, Commissioner, Employment, Social Affairs and Inclusion
4. Katarina Ivankovic Knezevic, Director for Social Inclusion, DG Employment, Social Affairs and Inclusion