



Projektas yra bendrai finansuojamas iš Prieglobsčio, migracijos ir integracijos fondo 2014–2020 metų nacionalinės programos lėšų.



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# EVALUATION OF THE ASYLUM SYSTEM: LITHUANIA *SUMMARY*

Implemented under the Project

„Evaluation of the asylum system“ No. PMIF-1.2.3-K-01-001

*The Project is implemented in the framework of the 2014-2020 National Program of the Asylum, Migration and Integration Fund, specific objective 1 "Common European Asylum System", national objective 2 "Ability of Member States to develop, monitor and evaluate their asylum policies and procedures", step 3 "Evaluation of the Asylum System". The project is financed from the funds of the Asylum, Migration and Integration Fund and the state budget of the Republic of Lithuania.*

Prepared by: researchers of Mykolas Romeris University

Date: 30 December 2022

One of the objectives of the common asylum policy of the European Union (EU) is to ensure fair and efficient asylum procedures. EU law provides for the objective of more fair, efficient and higher-quality decision-making on asylum, as well as the protection of vulnerable persons, in particular unaccompanied minors and victims of torture; common reception conditions for asylum seekers across the EU in line with a decent living in accordance with the EU Charter of Fundamental Rights. The Republic of Lithuania, as an EU Member State, contributes to the implementation of these objectives; therefore, Lithuanian asylum procedures should be fair and efficient, and reception conditions should at least comply with the minimum requirements of EU law. These goals are also supported by legal and policy documents of the Republic of Lithuania.

In order to improve the existing asylum procedures and reception system, it is essential that the State has adequate capacity to develop, monitor and assess its asylum policy and procedures. This study is expected to contribute directly to enhancing this capacity as it will allow making an objective assessment of the current situation, identifying and analysing systemic challenges and proposing the most appropriate solutions.

The purpose of this study is to conduct an *ex post* evaluation of selected components of the asylum system of the Republic of Lithuania, as well as an *ex ante* assessment of the institutional model for reorganisation of the asylum system, and to put forward recommendations to the competent authorities.

The first part of the study presents a scientific assessment of the selected components of the asylum and reception system of the Republic of Lithuania. These components have been identified together with the public authorities concerned as the most relevant in terms of improving the system. Therefore, the study is not a comprehensive assessment of the entire asylum system, but only an evaluation of its most relevant components in the current situation. In particular, these components include an *ex post* evaluation of the implementation of state guaranteed legal aid, the procedure for identification of vulnerable persons, reception conditions for asylum seekers (accommodation, including the procedure for assigning a place of residence, and detention) in terms of effectiveness and compatibility with EU law and the case-law of the Court of Justice of the EU (CJEU), efficiency, the adequacy of conditions and the flexibility of the system. The study has identified and analysed systemic gaps and challenges and puts forward proposals for improving the system, including legislation. The analysis in the second part includes an *ex ante* assessment of the institutional model for reorganisation of the asylum system (reception conditions).

As part of the assessment of the selected components of the asylum and reception system, over 15 expert interviews were conducted with asylum policymakers and practitioners as well as experts, a focus group discussion was held with municipalities. The study took account of the EU Member States' good practices in implementing asylum procedures, the guidelines of the European Union Agency for Asylum (EUAA), as well as scheduled EU legislative initiatives in this area (2020 EU Migration and Asylum Pact). In order to validate the conclusions and recommendations of the study, two discussion rounds with the institutions and organisations concerned were held on 12 and 20 December 2022.

The research was carried out in particularly crucial and challenging times for Lithuania, i.e. in the context of the migration crisis at the border with Belarus and Russia's aggression against Ukraine. These difficult situations directly contributed to significantly increased flows of asylum seekers and refugees. Consequently, it also led to changes in the asylum system, legal regulation, and practices of administrative institutions, as well as the jurisprudence in the course of the assessment. This also resulted in certain limitations because of the need to adjust the subject of the assessment and the scope of the study, and to adapt the research methodology several times. The study covers two periods: until May 2021 and from May 2021 to the end of October 2022. There is no doubt that the functioning of the asylum system is affected by many factors, and that the researchers' opinion may change as they do, so it is presented in a specific context as a basis for further discussion. This study is expected to

assist in improving the asylum procedure and reception system and increase its resilience to future crises.

The study consists of the following parts which are analysed below and include the main conclusions and recommendations:

1. Assessment of the application of state guaranteed legal aid in asylum procedure;
2. Assessment of the procedure for identification of vulnerable asylum seekers in asylum procedure;
3. Assessment of the reception system for asylum seekers (accommodation and detention);
4. *Ex ante* assessment of the institutional model for reorganisation of the asylum system, proposing alternatives for reorganisation.

**The first chapter of the First Part of the study presents an assessment of the application of state guaranteed legal aid in asylum cases.** It should be noted that state guaranteed legal aid systems in virtually all countries and in all areas of law face a variety of problems whose root causes are similar. These include: below-market prices paid by the State, limited number of lawyers providing legal aid, and no need for lawyers to compete on the quality of their services to attract future clients. It seems to be generally agreed that the more lawyers are willing and able to participate, the better the system works. Lawyers then compete on the quality of their services and the system operates smoothly without unnecessary state regulation. Where the number of lawyers is limited or there are some serious constraints for lawyers to participate, the system degrades, in the absence of competition lawyers have no incentive to invest in the quality of their services, and the State carries out unnecessary bureaucratic regulation, thus restricting competition.

The effectiveness and efficiency of the provision of legal aid in asylum cases in Lithuania was assessed against 10 assessment criteria, questions and indicators identified by the researchers, which are related to the adequacy of payment for legal aid, the organisation of legal aid through an independent institution, the availability of choice, the administrative burden, the scope of legal services, their continuity, the availability of primary counselling, qualifications of providers, quality assessment and the complaints mechanism, as well as the modification of contractual relations to reflect changing needs for, or conditions of the provision of, legal aid.

Based on the analysis, the following major gaps in the effectiveness of provision of legal aid in the Lithuanian asylum system and related challenges have been identified:

1. A significant difference between the price paid by the State to lawyers for state guaranteed legal aid and the market price charged by lawyers can lead to low-quality services or even to imitation legal aid.
2. The Migration Department, the contracting authority for legal services, cannot objectively have an interest in quality services, but only an economic interest in a lower price, as lawyers are hired to carry out legal actions against the department itself.
3. Asylum seekers have no choice of lawyer, which further undermines trust in state-appointed lawyers.
4. The complex procurement system imposes significant additional time costs on lawyers and does not guarantee the quality of service provision, but reporting itself is relatively simple.
5. The scope of services provided by a non-public lawyer to a client is much broader than that provided by a state-appointed lawyer, which reduces the quality of legal aid provided to asylum seekers and undermines trust in state-appointed lawyers.
6. The continuity of representation at different instances is ensured, unless the group of lawyers that won the public procurement changes and takes over cases brought by the former group of lawyers.
7. Primary legal aid is not provided, and the unavailability of accurate and timely primary legal counselling is likely to lead to dissatisfaction with the Lithuanian asylum system, inappropriate decisions by foreigners in their cases, and errors in asylum procedures.

8. The possibility to provide state guaranteed legal aid in the area of asylum is not currently linked to qualifications obtained through special training in asylum law before starting, or at least after having started, to provide legal services.
9. Despite the notoriously low quality of legal services provided by state-appointed lawyers to asylum seekers, there are no known negative contractual sanctions imposed by the Migration Department on lawyers who have provided poor quality legal aid to asylum seekers.

The quality of the work of state-appointed lawyers has deteriorated markedly as a result of significant changes in the legal and actual situation in mid-2021, but the contract on legal aid has not changed much.

The gaps in legal aid provision identified and analysed in the study are proposed to be addressed through the implementation of the recommendations aimed at improving the system of state guaranteed legal aid for asylum seekers in order to increase the effectiveness of legal aid:

1) The system of state guaranteed legal aid for asylum seekers should not be based on the lowest price and a single group of lawyers providing legal aid. It is recommended that a reasonable basket of payment (price) be set which the State can afford to pay for legal aid in this domain and that efforts be made to attract more lawyers who are competent in this domain and who are willing to provide legal services at a price set by the State. It is recommended that the price should be differentiated according to the complexity of the legal service, i.e. a distinction should be made between cases and related legal services requiring more and fewer hours of work, e.g. there could be different prices according to the instance of the asylum case for cases requiring more than 10 hours of work, more than 20 hours of work and more than 30 hours of work. If asylum seekers do not have information to search for a lawyer entirely on their own, it would be advisable to allow asylum seekers, with a “basket” provided by the State, to contact any lawyer who agrees to work at the price offered by the State, has undergone some training in asylum law for this purpose and is part of the legal aid system for asylum cases (for further details on this proposed system, see the text below).

2) It is recommended to allow the client to choose a lawyer and the lawyer to accept the client’s choice via an electronic application, which would, without additional red tape, provide the basis for the payment of the State’s “basket” (price) to the lawyer who has undertaken to provide a particular service in the asylum case. It is also appropriate to develop a consultation system of primary legal aid provided by independent legal professionals. It would be cost-effective to hire such legal professionals not from among advocates, but from among legal professionals in non-governmental organisations working in the area of asylum and charging lower fees for legal assistance than lawyers.

3) It is proposed to administer the system of state guaranteed legal aid for asylum seekers through an independent institution, by developing a model for the provision of legal aid in the area of asylum that would not be linked to a narrow group of lawyers selected through public procurement, which does not ensure the quality of services and the necessary qualifications for the effective provision of specialised legal aid, and to test this model on a pilot basis for 2-3 years, and then, on the basis of its assessment, to improve and implement it. The model could consist of the following components:

- a) Certification of advocates in the area of asylum. Advocates and their assistants wishing to provide services in this specialised area should undergo a training programme of a certain duration, which would provide them with competences to provide services in the area of asylum and to ensure the quality of their services.
- b) Administrating entity. One of the ways to administer such a system could be to empower the State Guaranteed Legal Aid Service that is responsible for the administration of state guaranteed legal aid in other areas of law. However, it must be borne in mind that the current administration of state guaranteed legal aid in specific areas through the State Guaranteed Legal Aid Service faces major challenges. Accordingly, it is proposed to administer this system through the Lithuanian Bar Association, especially as the mandatory certification of advocates would be advisable through their self-governing association, as external organisations cannot impose specific

requirements on advocates as members of the liberal profession. Moreover, the Lithuanian Bar Association has quality assurance and disciplinary mechanisms.

- c) Electronic application. An electronic application would allow a request for legal aid to be made by telephone and for the first available advocate to accept such a request without any further formalities. This application could be developed as a stand-alone application or as part of a system currently used by, for example, the Lithuanian Bar Association, i.e. as one of its modules.

Accordingly, the proposed system improvements would address the problems (effectiveness gaps) identified in the study in the following manner:

- The system itself would not be focused on the lowest price at which at least one advocate agrees to work, but on the qualifications of legal aid providers and a reasonable price which the State can afford to pay, and a larger number of competent advocates would be interested in working at that price. Under the recommended system model, there would be no additional public procurement-related costs and, if the system is administered via an electronic application, documentation of legal aid would entail the least administrative burden, also allowing for transparent and rapid accounting for, and reporting on, the volume of legal aid. Under this system, the “basket” would depend on the volume of work in hours, thus the client and the lawyer could determine the scope of services and the lawyer could be paid for the hours necessary for the legal service. The recommended system would help avoid the problem of changing lawyers related to a change in public contracts.
- State guaranteed primary counselling introduced under the recommended system would serve as a preventive measure against the automatic submission of complaints even without any basis for doing so, and would increase the quality of legal aid. The system would seek to expand the list of additionally trained/certified advocates who would agree to work at the price set by the State for the service. This system would ensure more flexibility in changing the description and price of services, by allowing for re-negotiation with a larger list of lawyers, instead of a single group of lawyers that has won the public procurement. Transferring the administration of legal aid to an independent institution would also help avoid conflicts of interest.
- The risk to the quality of legal aid would be reduced, as more advocates would participate in the system and be subject to qualification requirements, while the administering authority would be able to demand high quality contractual services, as it would be impartial in seeking to ensure the highest quality, and it would be easier (i.e. without a public tendering procedure) to replace an underperforming advocate with another one from the list.

**The second chapter of the First Part of the study presents an assessment of the procedure for identification of vulnerable asylum seekers in the course of the asylum procedure.** It should be noted that EU legislation contains provisions to ensure that the special needs of applicants who are recognised as particularly vulnerable in asylum procedures are covered. The purpose of these provisions is to provide vulnerable asylum seekers with the necessary support to allow them to properly benefit from their rights and comply with the obligations in asylum procedures on an equal basis with other applicants. These provisions must be applied and interpreted in conjunction with the provisions of the EU Charter of Fundamental Rights, which is part of EU primary law. In order to investigate and assess the advantages and disadvantages of the procedure for identification of vulnerable asylum seekers in asylum procedure in Lithuania, the study has identified seven assessment criteria relating to the effectiveness of this identification procedure and enabling the determination of effectiveness gaps in the identification procedure, three of which are general and the others are specific, concerning specifically unaccompanied minors. The general assessment criteria are related to the existence and effective operation of a mechanism for identification and assessment of special reception needs, including the distribution of responsibilities for the identification and assessment of needs, the recording of the assessment, the allocation of resources, communication

between different institutions and the expertise of specialists. The existence of a referral mechanism through which a person is referred to relevant institutions so as to ensure that the identified special needs are covered, was also assessed. The specific assessment criteria applicable to the system in case of unaccompanied minors are related to early risk identification and risks to the child's well-being, a mechanism for mitigating the identified risks, as well as the selection and change of accommodation based on the results of the special needs assessment.

The study established that the entities involved in the assessment of vulnerability of asylum seekers face the following main gaps in legal regulation and challenges:

1. There is no single list of categories of vulnerable persons under different procedures applied for identifying vulnerability, and some categories of vulnerable persons recognised under EU law are not recognised in Lithuania (e.g. LGBTI+ persons, except for the local regulation at the Refugee Reception Centre (RRC));
2. There are no guidelines/methodology for vulnerability assessment/identification developed and applied, especially when vulnerability is not obvious, the process is often limited to visual vulnerability identification;
3. In the absence of a uniform vulnerability assessment system containing information on individual vulnerabilities and special procedural and reception needs, effective communication between institutions responsible for reception conditions and the decision-making authority is not ensured;
4. In the absence of a uniform vulnerability identification procedure (currently three different vulnerability identification procedures are applied), different documents are filled in, thus resulting in duplication, and information on individual vulnerabilities is not automatically available in one place in an electronic format; in some places of temporary accommodation there is no vulnerability identification procedure at all;
5. There is no clear referral mechanism for services, and there is a lack of competent professionals to assess some vulnerabilities;
6. Clear risk assessment mechanism for unaccompanied minors is lacking, no system of effective preventive measures has been established, leaving the issue of the disappearance of unaccompanied minors unresolved; no mechanism for preventive measures' implementation has been established.

Based on these findings, the following suggestions for improving the procedure are proposed:

- 1) Approve a uniform vulnerability identification procedure applicable in all accommodation facilities, including the regulation of the vulnerability identification procedure in places of alternative accommodation (other than the State Border Guard Service (SBGS) and RRC facilities). The application of a single procedure in all facilities would ensure collection of homogeneous information, which would then be accessible to all institutions concerned, lead to a more uniform practice of vulnerability identification and ensure a more efficient functioning of the procedures, faster identification of needs and referral for appropriate services.
- 2) Ensure that uniform information on individual vulnerabilities/special needs is made available and accessible to the institutions and organisations concerned.
- 3) Provide for a referral mechanism and a referral duty on the part of institutions and develop partnerships with social partners.
- 4) It is appropriate to develop and adopt methodological guidelines on vulnerability identification, especially when it comes to "hidden vulnerabilities".
- 5) It is appropriate to provide for a risk assessment mechanism covering all potential risks to the security and well-being of unaccompanied minors and to ensure that a risk assessment is carried out within one week of the unaccompanied minor's arrival at the RRC. It is appropriate to provide for a risk mitigation mechanism that would also include a system of preventive measures.

Children of foreigners must be provided with the same protection as children of citizens, including in times of crisis, especially given that in such cases foreign children in Lithuania do not have access to specialised legal aid, and guardians or procedures to ensure that their interests are defended.

**The third chapter of the First Part of the study analyses the reception system for asylum seekers, focusing on their accommodation and the related reception conditions, as well as the procedure for assigning a place of residence.** In particular, the general aspects of the system were addressed, covering reception policy, the institutional structure and management issues. Then, accommodation arrangements were assessed in terms of effectiveness, efficiency (in terms of costs) and flexibility, with a particular focus on the challenges presented by the migration crisis in 2021 and the measures undertaken, for which no effective prior arrangements were made. An assessment of the compliance of reception conditions (accommodation) with EU legislation was carried out in order to identify key challenges and gaps before and after 2021. Given that new EU legislative initiatives in this area place a strong emphasis on border (admission to the territory) procedures, and given that the requirements for the reception of asylum seekers have not been fully implemented at the Lithuanian border, the assessment also focused on reception conditions in border procedures. Compliance was assessed with regard to the requirements of EU Reception Conditions Directive 2013/33/EU and in the light of the case-law of the CJEU, as well as good practices of foreign countries in this domain.

The assessment of the general aspects demonstrates that the State's policy and objectives in the area of reception conditions have not been clearly defined, and that the Migration Policy Guidelines have set only very general objectives, namely ensuring that conditions for the reception and accommodation of asylum seekers comply with the legal requirements; enhancing the flexibility of the mechanism for the reception and accommodation of asylum seekers and the ability to adapt to variable asylum flows; and in particular taking care of accommodation conditions for persons with special needs. Moreover, in the absence of significant migration flows, the institutional-organisational set-up for asylum in the Republic of Lithuania was mobilised from different authorities, while coordination between them was sufficient at that time to achieve the abovementioned objectives. Until 2021, the accommodation capacity could easily absorb arriving asylum seekers (~500 persons per year), but in 2021, when Lithuania was faced with significantly increased flows of asylum seekers due to the migration crisis at the Belarusian border, the migration flows exceeded its reception capacity and preparedness (both in terms of infrastructure and human resources). During the crisis, the accommodation capacity was expanded to ~3500 persons. It should be noted, however, that there is no consensus on the data collection standard when collecting data on persons who have benefited from the reception conditions mechanism.

The analysis of various sources (strategic documents, institutional performance reports, etc.) and the results of the empirical study has identified the following challenges in the management of the system of reception conditions:

1. Until 2021, the organisational set-up for the provision of reception conditions for asylum seekers, consisting of different authorities, was not required to function as a uniform system with clearly defined strategic objectives. After 2021, a systematic approach and a cooperation network with the characteristics of a system have emerged in addressing the crisis situation caused by significantly increased migration flows. The crisis has brought about changes in the migration situation in Lithuania; consequently, the pre-crisis legal framework for migration policy no longer reflects the current situation and needs to be reviewed.

2. The emergency (crisis) situation in the area of accommodation of asylum seekers was caused by a number of factors that had not been previously foreseen and assessed, and, accordingly, the threat had not been adequately assessed; therefore, the emergency preparedness plan(s) in place did not respond to the situation, meaning that a crisis of this magnitude had not been prepared for and the necessary resources had not been planned.

3. The pre-crisis organisational set-up for the accommodation of asylum seekers was not effective in addressing the challenges posed by the crisis, but in order to manage the crisis, the accommodation set-up has been improved and its effectiveness has increased.

4. In the context of the emergency, efforts were made to contain the consequences of the crisis, leading to a combination of various accommodation solutions (housing units, tent camps, operating centres in municipalities, etc.), which have subsequently proved to have different levels of efficiency.

Accommodating and concentrating asylum seekers in a single location using temporary infrastructure is considered to be less efficient than investing in public sector facilities by adapting them and accommodating refugees in smaller concentrations (up to 80-100 persons), but in the case of major migration flows (e.g. 4000 persons), and in order to contain the consequences of the crisis more quickly, there is a need to combine solutions with different levels of efficiency. To address these challenges, the following proposals are put forward:

- 1) In light of the experiences acquired during the management of the migration crisis and the changing situation of asylum seekers, the Migration Policy Guidelines should be revised, formulating the State's approach and intentions in this public policy area, and outlining specific objectives whose progress could be measured and monitored in the future.
- 2) When developing migration emergency preparedness plans, which contribute to achieving migration policy objectives in times of crisis, a wider range of stakeholders (public sector organisations (representatives of the Ministry of the Interior (MOI), the Ministry of Social Security and Labour (MSSL), the Migration Department (MD), the Foreigners' Registration Centre (FRC), SBGS, RRC and municipalities where migrants and asylum seekers are to be hosted), NGOs, etc.) involved in migration management processes should be included in planning, where possible. The development of plans should involve all stakeholders who should subsequently participate in their implementation.
- 3) Emergency preparedness plans should pay due attention to communication and cooperation between stakeholders, i.e. developing emergency response and recovery (normalisation) plans (with clear roles and responsibilities of each party) together with stakeholders, inter-communication plans (which can be integrated into operational plans); training/exercises should be organised.

Summarising the implementation of reception standards in relation to accommodation **in terms of effectiveness**, i.e. in terms of implementing the objective of the system of reception conditions "to ensure that conditions for the reception and accommodation of asylum seekers comply with the legal requirements", it can be stated that the implementation of this objective is not always effectively ensured. The following challenges can be highlighted:

1. the selected new accommodation locations during the crisis did not always ensure the access and availability of services;
2. there is no clear system of criteria for assigning a place of residence, and although the criteria for accommodation are clearly regulated in some locations, they are fragmented, leaving a wide discretion to some institutions to decide on a specific place of residence; decisions on a place of residence are not individualised and reasoned; the choice is often based on the availability of accommodation places rather than on the needs of the individual concerned;
3. failure to take into account special needs and/or differences among residents, etc. can lead to conflicts and other security problems; risk assessment and management in relation to unaccompanied minors is not always ensured;
4. during the 2021 crisis, restrictions on the means of communication may have had a negative impact on asylum procedures;
5. the provision of clothing and footwear to asylum seekers placed in accommodation is not always up to standard in practice (personal dignity is not ensured, and gaps are often filled only by the efforts of NGOs);



6. not all regulation and/or practice of imposing disciplinary penalties or withdrawing allowances is in line with the CJEU requirements for reduction or withdrawal of material reception conditions;
7. although most requirements set out in the standards are laid down in legislation, their practical implementation is not ensured, especially with regard to accommodation at the border and in places of temporary accommodation in times of crisis. Some standards implemented in a regular situation could no longer be properly implemented during the crisis, which shows that the system was not prepared for crisis situations. It should be pointed out in particular that:  
(a) until 2021, there were no reception conditions available at border stations, whereas now reception conditions are provided; not all accommodation places meet minimum living space requirements; some standards only refer to availability, but are not mandatory; (b) common areas or catering and recreational facilities, and compliance with sanitary requirements were not everywhere sufficient or adequate during the crisis, especially in places of temporary accommodation; different catering conditions was a source of disturbances among the population; (c) as regards the provision of health care, translation problems were encountered in the provision of health care services, especially in medical facilities, there is insufficient capacity to cover health needs other than emergency care at the border, and municipal funding has not covered all health care needs; (d) although the right to information and counselling is established in the legislation in line with the standard requirements, they are not always implemented in practice, especially in temporary accommodation centres in times of crisis.

The following recommendations are therefore put forward:

- 1) The choice of accommodation for asylum seekers should take into account the availability of services and access to it, in cases where it is not possible to find the necessary specialists locally, mobile support teams (e.g. to address health needs) should be used on a temporary basis, which has proven to be a good practice.
- 2) As a decision regarding accommodation determines the individual's situation and access to the rights of the asylum seeker, it is proposed to include the requirement to individualise decisions on assigning a place of residence in the Law on the Legal Status of Foreigners (Aliens' Law), and to establish in the Procedure for Examining Asylum Applications specific criteria to be taken into account when adopting such decisions, as well as to establish criteria for institutions responsible for deciding on accommodation before the asylum application is submitted.
- 3) In order to ensure the security of the residents in accommodation places, it is necessary to take into account the individual's specific needs, which would enable an assessment of potential protection risks; to establish a risk assessment mechanism for unaccompanied minors and to prepare risk mitigation and response plans in the centres. Ensure regulation in crisis situations that would provide for the application of restrictions on the means of communication only under certain conditions, while not excluding the possibility of communication in general.
- 4) In the case of increasing numbers of asylum seekers (in crisis situations), it is appropriate to ensure profiling of asylum seekers according to their individual situation and special needs, and to explicitly regulate restrictions on the freedom of movement, avoiding unnecessary restrictions (e.g. for families, vulnerable persons). The absence or partial application of restrictions would increase the self-sufficiency of persons placed in accommodation and ensure the prevention of conflicts over living conditions.
- 5) Seek to ensure the provision of meals in such a way (where appropriate) that would promote self-sufficiency and respect dignity. This type of catering organisation would also reduce the potential for conflicts over material conditions and the distinctions made. Centralised catering should only be organised in certain cases and on a temporary basis, where, in the case of a large number of persons, this type of catering ensures most optimal use of financial resources. The provision of clothing and footwear should be carried out in a dignified manner (e.g. by

giving choice), taking advantage of good practices already established in some places of temporary accommodation (e.g. Jieznas centre). Align the practice of sanctions for reducing or withdrawing reception conditions with the case-law of the CJEU. Adequate provision of information to asylum seekers helps to avoid or reduce the potential for conflicts, so efforts should be made to implement existing standards in practice.

- 6) The practice of mobile support teams going to the centres to address health care needs, which has proven to be successful in the health care area, could be further developed and used in crisis situations, where it is not possible to find the necessary specialists locally, or where services are needed at the border, where health care infrastructure is not the same as in accommodation centres. The issue of interpreters could be addressed through technological solutions, taking into account the practice of other countries.
- 7) Provide high quality computer rooms in the accommodation centres, which could be used for remote meetings, interviews, legal counselling, contacts of residents with their relatives, remote interpretation services, possibly psychological services, various employment activities, internet searches, printing, scanning and transmission of documents, etc. This would save funds for various other services, as many problems could be solved remotely if persons placed in accommodation had access to quality facilities.<sup>8</sup> The various shortcomings identified during the migration crisis relating to conditions incompatible with personal dignity, security conditions in places of temporary accommodation require to establish common standards for all accommodation places through the adoption of standard regulations and internal procedures/rules for such centres. Accordingly, experience has shown that the situation was much better in the centres with such procedures and expertise (RRC, Pabradė FRC).

**In terms of the efficiency** of accommodation arrangements for asylum seekers, it was determined that:

1. The emergency (crisis) situation in the area of accommodation of asylum seekers was caused by a number of factors that had not been previously foreseen and assessed, and, accordingly, the overall objectives of the accommodation system for asylum seekers in times of crisis and the corresponding performance measurement indicators had not been formulated in advance; therefore, the overall efficiency of the process was not monitored and assessed.
2. Based on the expert interviews, it can be stated that accommodating and concentrating asylum seekers in a single location using temporary infrastructure is considered to be less efficient than investing in public sector facilities by adapting them and accommodating refugees in smaller concentrations (up to 80-100 persons) (such smaller centres are particularly efficient in receiving more vulnerable persons).
3. It should be noted that in the case of major flows of asylum seekers (as at the peak of the crisis), without data as to how long these flows will remain intensive and in the absence of sufficient accommodation infrastructure, it is not possible to adopt only highly cost-efficient decisions, as the main purpose is to manage the crisis and to ensure accommodation of asylum seekers, which calls for a combination of solutions with different levels of efficiency.

To increase the efficiency of the system of reception conditions, the following actions are proposed:

- 1) Estimate the average cost for the State of maintaining one asylum seeker in the accommodation centre, including all services (food, facility administration, heating, electricity, staff remuneration, etc.) and pocket money. It is suggested that the State should encourage asylum seekers to reside independently (where appropriate) by paying asylum seekers, for example, 80% of the calculated maintenance amount so that they could reside independently at the place of residence of their choice. This would both generate cost savings to the State and take the burden off the accommodation system for asylum seekers. At present,

the right to reside independently exists, but in reality only for those who have own financial resources, whereas the State could deal with the provision of reception conditions even more efficiently.

- 2) Implement a uniform monitoring system for the accommodation of asylum seekers, which would include continuous assessment of efficiency to allow monitoring the share of resources per person providing accommodation.

The assessment of the measures undertaken **in terms of the flexibility** of the accommodation system for asylum seekers has identified the following key challenges:

1. Lack of accommodation and suitable facilities. Reserve facilities and modular housing units can only be seen as a temporary solution, which is very expensive and not adapted to the cold season (e.g. Medininkai), and overcrowding was found in some cases (e.g. Kybartai centre). Unclear decision regarding the accommodation of asylum seekers who have been detained during the crisis after their release from detention.
2. The nature of funding for ensuring flexibility. Flexibility measures have so far been financed through project funds, without any budgetary contribution. Also, the methodology for financing persons, as provided in the Procedure for Accommodation of Asylum Seekers (Government Resolution No 171), is unfavourable in the case of larger families (with a monthly allowance of EUR 103.00 for the fourth and every other person, when the family consists of more than three persons) (the allocated amount was insufficient for warm clothes, children's school supplies, etc.).
3. Administration of the system of reception conditions – the absence of an institution dealing exclusively with reception conditions as its direct activity.
4. Communication with communities is fragmented and inconsistent, which leads to significant resistance to the accommodation of migrants, including asylum seekers. Where this received positive media coverage, there was no significant resistance.

Therefore, with a view to ensuring the flexibility of the accommodation system, the following actions are proposed:

- 1) For the purpose of strengthening the accommodation network in municipalities, search for financial mechanisms to encourage municipalities to take stock of existing unused or underused premises (e.g. recently closed schools, etc.) and to adapt them for temporary accommodation of asylum seekers, and, in the absence of accommodation needs, to use those premises for the needs of the local community. The aim should be to conclude agreements with municipalities for the creation of 8-10 such places (capable of housing 80-100 persons each).
- 2) Develop cooperation with organisations that already provide accommodation and similar public services (e.g. hostels, orphanages, etc.) and draw up lists of possible accommodation places for asylum seekers with the capacity of 80-150 persons each; the aim should be at least 4 such places. It is recommended that the institutions responsible for the emergency management of flows of asylum seekers develop plans to ensure the flexibility of the accommodation system, with scenarios based on the number of asylum seekers and the vulnerability of these persons.
- 3) In order to better respond to the needs of vulnerable groups of asylum seekers (e.g. families with young children, single parents with children, victims of violence, etc.), develop cooperation with organisations having suitable accommodation infrastructure and human resources (example of good practice – Jieznas). For the purpose of creating a more favourable environment for integration into society and promoting an individual approach to assistance, develop accommodation environments for small groups (up to 80-100 persons). Accordingly, it is recommended to create a network of possible accommodation places for asylum seekers with inventorized capacities allowing, where necessary (after having used available

accommodation capacities in regular places such as RRC, FRC, etc.), to distribute asylum seekers to places of the created network.

- 4) On the issue of funding, taking into account the inflation and its trends in Lithuania, as well as experiences in crisis management, and in order to ensure sustainable funding: (a) review funding mechanisms for accommodation, not just relying on project funds, but also providing for a reserve of budgetary funds; (b) recalculate the monthly amount per person, especially for families and for each additional person.
- 5) As regards the administration of the system of reception conditions, assign this task to a specific institution and consolidate functions related to the implementation of reception conditions and the necessary interinstitutional cooperation in order to ensure the quality of reception conditions.
- 6) With regard to communication with communities, it is appropriate for the institutions responsible for the accommodation of asylum seekers to draw up plans for public communication and for communication and cooperation with local communities and local NGOs. The purpose of those plans is to increase positive perception of the local population towards migrants to be accommodated and to reduce resistance. When developing public communication plans, it is appropriate to cooperate with national and local media, offering public information messages and other relevant information. When developing plans for cooperation and communication with local communities, it is appropriate to take stock of existing good practices and to pay due attention to face-to-face communication, meetings with the local population and the coordination of their interests with the accommodation of arriving asylum seekers.

**The fourth chapter of the First Part of the study has also assessed the regulation and practice of detention of asylum seekers before and after May 2021.** Based on the analysis, the following conclusions can be drawn:

1. The case law of the Supreme Administrative Court of Lithuania (SACL) has been developed up to now to the extent that detention is either directly referred to as “detention” (regardless of the name used by public authorities), or the question as to whether it should be referred to as “detention” is not addressed directly, but a foreigner’s accommodation without the right to leave the territory of the accommodation facility is already subject to the same safeguards and standards of protection against detention as would apply in the event of detention.
2. In the light of the legal standards in EU law and the SACL case law, it can be noted that the amendment to the Aliens’ Law of 13 July 2021 introduced in its Article 113(4)(1<sup>1</sup>) a ground for detention of an asylum seeker which is contrary to EU law, and the amendment of 23 December 2021 moved this ground from Article 113(4)(1<sup>1</sup>) to Article 140<sup>17</sup>(1)(2). Furthermore, the amendment to the Aliens’ Law of 13 July 2021 also introduced in its Article 5 a procedure for further detention up to six months, and the amendment of 23 December 2021 moved this procedure to Article 140<sup>8</sup>, although such detention of asylum seekers did not comply with the requirements of EU law.
3. As legal practitioners in this field pointed out in the interviews, an individual’s financial capacity to reside without being held in detention is in any case taken into account in the case law, and having finances is one of the reasons for the court to grant a foreigner an alternative to detention. However, the Aliens’ Law does not provide for the ground that an alternative to detention should ensure financially not only that the foreigner will have means of subsistence, but also that, in the event of a violation of the alternative to detention, the State would be reimbursed for the public administrative costs incurred due to the breach of the migration procedures by the foreigner. Hence, according to legal practitioners, such a situation leads to certain resistance on the part of public authorities to alternatives to detention.

4. It should be noted that both Directive 2013/33/EU (applicable to asylum seekers) and Directive 2008/115/EU (applicable to third-country returnees) are aimed at applying less coercive alternatives to detention rather than detention, as detention is only used as a measure of last resort in all cases, whatever the status of the foreigner. It is therefore not justified that the legislator decided to apply in respect of asylum seekers and former asylum seekers, but not in respect of other foreigners, an alternative to detention, i.e. accommodation at the centre without restriction on the freedom of movement, which is particularly necessary and can often replace detention.
5. The Aliens' Law does not provide for the measures referred to in Articles 7 and 9 of Directive 2008/115/EU, which impose minimal restrictions on a person's liberty (such as notification of the place of residence or regular reporting to the migration authority) or which are chosen by a foreigner voluntarily (e.g. accommodation at the centre without restriction on the freedom of movement where the foreigner is not capable of supporting himself) and which could be exempted from the maximum 18-month time limit altogether.

In the light of the challenges identified, the following recommendations are proposed:

- 1) Consideration should be given to amending the Aliens' Law in accordance with the established standards for defining detention so that actual detention in all provisions of the Aliens' Law (i.e. Articles 5, 115, 140<sup>8</sup> and 140<sup>19</sup>) is directly referred to as detention (instead of accommodation without the right to leave the territory of the accommodation facility), at the same time providing guarantees applicable to asylum seekers during detention. It is appropriate to repeal Article 140<sup>17</sup>(1)(2) of the Aliens' Law as contrary to EU law.
- 2) It is appropriate to amend the Aliens' Law to provide (e.g. Article 116(5) of the law) that in cases where asylum seekers are detained by administrative decisions: (a) the decisions shall be communicated to the foreigners and the decisions shall be motivated; (b) the foreigners shall have access to a state-guaranteed lawyer to have such decisions reviewed by the court; and (c) the time limit for the judicial review must be as short as possible and within that time limit the court should decide on the substance as to whether or not to detain the foreigner, rather than refer the matter back to the administrative institution for reconsideration.
- 3) It would be appropriate to ensure that the practice of the Migration Department and SBGS (both when taking administrative decisions on detention/non-detention and when drawing up motions to the court concerning detention/non-detention of foreigners) complies with the standards of EU law, in particular: (a) detention should be imposed after an individual examination, once it has been ascertained that no less coercive alternatives to detention are possible (in particular, less coercive alternatives to detention should be sought for vulnerable asylum seekers); (b) asylum seekers shall be kept in detention for the shortest period of time and only as long as necessary for performing certain procedural acts (e.g. establishing identity); (c) in the case of delays in the asylum procedure that cannot be attributed to the asylum seeker (e.g. due to procedural errors), detention shall be reviewed in order to ensure the implementation of the principle of good administration; and (d) detention shall also be reviewed in the event of changes in the situation of the asylum seeker (e.g. after the identity has been established or the health condition has deteriorated). It is proposed to provide in the Aliens' Law that the maximum 3-month time limit for reviewing detention as provided for in Article 114(6) would also apply to the alternative to detention, namely accommodation at the centre with the right of movement only within the territory of the accommodation facility.
- 4) Although the deposit is not mandatory under Directive 2013/33/EU, but just one of possible alternatives to detention; for practical reasons, its introduction would be appropriate. It is proposed to supplement Articles 115 and 140<sup>19</sup> of the Aliens' Law by providing for a deposit as an alternative to detention.

- 5) It is proposed to repeal Articles 115(5) and 140<sup>19</sup>(2) of the Aliens' Law, which provides that accommodation at the centre without restriction on the freedom of movement, as an alternative to detention, may only be provided to asylum seekers or former asylum seekers.
- 6) It is proposed to provide in the Aliens' Law (e.g. Article 112) that measures, which impose minimal restrictions on a person's liberty (such as notification of the place of residence or regular reporting to the migration authority) or which are chosen by a foreigner voluntarily (e.g. accommodation at the centre without restriction on the freedom of movement when the foreigner is not capable of supporting himself) should be treated not as alternatives to detention, which are subject to the maximum 18-month time limit, but rather as migration control measures, which can be applied without the maximum 18-month time limit in respect of foreigners who have no legal residence status in the Republic of Lithuania, but there is also no ground for their detention.

**The Second Part of the study presents** an *ex ante* assessment of the institutional model for reorganisation of the asylum system (reception conditions), proposing alternatives for reorganisation. This part looks at the current (2021-2022) reception system, its institutional model and emergency preparedness, as well as identifies major gaps and possible solutions. The assessment also includes an analysis of the experiences of the selected foreign countries in reforming reception systems during an emergency, an analysis of four alternatives of reorganisation of the reception system, an assessment of the advantages and disadvantages (risks) of the alternatives and insights into the efficiency of the alternatives in terms of costs and time. The implementation of this activity was based on cooperation with the inter-institutional working group set up at the Ministry of the Interior of the Republic of Lithuania, tasked with drafting proposals for system reorganisation, and taking into consideration its activities and needs.

It should be noted that European Union countries have faced increased numbers of asylum seekers in the past, and in recent years they have sought to accelerate the examination of asylum applications and to ensure adequate reception conditions for asylum seekers. In the aftermath of the 2015-2016 crisis in Europe, a number of EU Member States have started to set up one-stop-shop institutions and/or mechanisms (i.e. different institutions are brought together under one roof, for example, in Belgium), while other countries have worked to strengthen the existing institutions (for example, in Sweden). This experience of foreign countries was assessed as part of the study and informed proposals to address similar challenges in Lithuania. The study has already pointed out that there is no single coordinating institution in the system of reception conditions to ensure that uniform reception standards are applied in various accommodation places and that there are often overlapping responsibilities of the institutions involved in this area. However, the need for reforming the system of reception conditions is mainly linked to the fact that in summer 2021, when Lithuania was faced with increased numbers of asylum seekers, the Lithuanian authorities struggled to cope, even operating at maximum capacity, with the increased number of applications and the reception of asylum seekers, namely their accommodation, catering, health care, employment, social assistance, psychological assistance, organisation of special needs, security, identification of vulnerable persons, organisation of education, etc. The analysis of the situation and solutions to increased flows of asylum seekers leads to the conclusion that many of the issues would be easier to address with a single institution managing the accommodation system. Within the budgetary and administrative framework of a single institution, financial, human or infrastructure resources could be directed most efficiently towards identifying and addressing the most pressing needs.

The analysis of the current Lithuanian experience in the area of the reception of asylum seekers has revealed that accommodation problems have been most efficiently dealt with in those facilities that already have such experience and competence to properly administer various issues that arise in relation to accommodation (i.e. the Foreigners' Registration Centre and the Refugee Reception Centre). On the other hand, accommodation problems are more likely to arise and more difficult to address in non-standard accommodation places (e.g. at border posts, in premises, which have not been

used for some time or which are not suitable or adapted for accommodation), or in the absence of rules for the proper administration of the accommodation of foreigners.

It should also be noted that the assessed system of reception conditions and accommodation is oriented towards institutional accommodation (i.e. providing housing, full maintenance, etc.), while other alternatives for the accommodation of asylum seekers are underdeveloped. However, alternative accommodation, where foreigners themselves can reside on their own and provide for themselves, either on their own or with partial support from the State, would take some of the strain off the accommodation system. It is understandable that the public interest is to prevent large flows of foreigners from moving freely within the territory of Lithuania during an emergency situation or the state of emergency, but consideration could be given to applying the restrictions on the freedom of movement of asylum seekers to a certain area of the State instead, as allowed by Article 7 of the EU Reception Conditions Directive.

The purpose of the proposed reform of the reception system is to create an effective accommodation system and to eliminate functions that are not typical for institutions or overlapping functions. In the light of the situation at the Lithuanian border and the new needs identified during the emergency (and later – the state of emergency), the study developed four alternatives that would allow strengthening the institutional response as well as managing the current situation more efficiently and preparing for future crises:

- 1) Zero alternative, i.e. “do nothing”, as any of the other alternatives could only be justified as optimal if their implementation is expected to bring savings (or additional added value);
- 2) Reorganisation of the Rukla Refugee Reception Centre by assigning reception functions. The current functions of the RRC cover only a small part of the functions necessary to manage the current situation, so reorganisation should include additional functions for the RRC, e.g. the transfer of asylum seekers to the RRC, which is currently the responsibility of the SBGS, a municipal or district territorial police authority or the FRC. The MSSL would remain the founder and stakeholder of the RRC, as the social character of the functions is maintained. Under this alternative model, the FRC would still be involved in the initial phase of the asylum procedure in cooperation with the RRC, but the further accommodation system would be coordinated by the RRC. Such operational model would be consistent with the proposals for pre-screening procedure set out in the EU Migration and Asylum Pact, which includes identification, security and health checks and could be carried out by the FRC.
- 3) Creation (designation) of an umbrella organisation to coordinate functions of different institutions under one roof. The designation of an umbrella organisation would aim to ensure that different institutions already in place and operational would work in the most integrated manner and achieve the most comparable result to the activities carried out by a single institution (but this would be achieved by designating a single coordinating institution and ensuring that activities of the existing institutions are as integrated as possible, instead of setting up, or reorganising the system into, a single institution). The operation of the institutions under one roof (one-stop shop) would simplify the administrative process, streamline procedures and eliminate overlap, as well as allow several actions to be carried out simultaneously. This alternative would reflect the latest practice of EU Member States in ensuring more efficient asylum procedures and responding to crisis situations. In some EU countries, in order to simplify and speed up the examination of asylum applications and the provision of adequate living conditions for asylum seekers, an umbrella organisation is designated, with several institutions working under one roof (for example, Fedasil in Belgium). The setting-up of such an institution successfully implements the one-stop-shop principle and makes procedures faster and more effective.
- 4) Creation of a separate agency and transfer of the reception system to it. The new institution would become a centre of excellence in addressing the problems of the asylum system in Lithuania. It could combine different functions currently carried out by various institutions

and optimise them. The new institution would have no previous experience or expertise, but its creation would not be bound by any previous institutional practice either, which would lead to a wide variety of creative combinations of functions, which could be unlike any standard or characteristic combinations of any of the institutions in the current system. The relevant foreign experience to justify the alternative would be the Central Agency for the Reception of Asylum Seekers in the Netherlands.

The study report provides brief preliminary descriptions of each alternative, indicating how the alternative would work, how functions would be redistributed, what would be relations with other institutions, subordination, etc. It also presents brief arguments on the advantages of the alternative and the likely risks or disadvantages. To the extent possible at this stage, it also presents preliminary reform components necessary for the implementation of each alternative. At a later stage, a cost-benefit analysis of the alternatives may be carried out, which requires additional data that were not available to the researchers at the time of this assessment. The advantages and disadvantages of each of the alternatives are set out below:

<b>Alternative</b>	<b>Advantages</b>	<b>Disadvantages (risks)</b>
<b>Zero alternative (do nothing)</b>	Settled practice and experience in inter-institutional cooperation; Institutional competence and specialists; lower costs than setting up new institutions, which will require investment.	Lack of coordination (different subordination of institutions operating in the area of reception conditions); inter-institutional competition (different sources of financing); inflexibility (overlap; underutilisation of staff potential).
<b>Reorganisation of the Rukla Refugee Reception Centre by assigning reception functions</b>	Competence (accumulated expertise); separation of functions not typical for SBGS; optimisation of similar functions; more flexible form of operation (reorganisation may lead to a change in the form of legal entity that could provide more flexibility in work organisation).	Duration (reorganisation, legislative amendments take time); insufficient financing (in the absence of financing, the expansion of the RRC's functions would undermine its operation); lack of human resources (expansion will require additional staff, and recruitment may take 3 to 6 months).
<b>Creation (designation) of an umbrella organisation to coordinate functions of different institutions under one roof</b>	No need to set up a new organisation, it would be enough to bring bodies together for joint work in a short period of time; preservation of competences; better coordination, faster procedures; flexibility; staff retention (staff would be seconded to the centre).	Lack of financing; lack of inter-institutional involvement (if institutions do not delegate experts or provide the necessary data in time).
<b>Creation of a separate agency and transfer of the reception system to it</b>	Review and optimisation of functions; better coordination, faster procedures; application of uniform standards; flexibility; could be the second phase of the other alternatives, to be implemented gradually and ensuring further consolidation.	Setting up a new institution takes a year or more, additional time will be required for staff qualifications; lack of political support; need for additional financing; most expensive and time-intensive option.

For each of the alternatives, the study identifies categories of the necessary costs, which include financial resources for technological aspects, human resources (staff costs), legal aspects, communication/marketing costs, as well as time costs.