

THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA

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Abstract

The article provides an overview of the regulation and use of automated decision-making systems by the government in Latvia when adopting binding administrative decisions for private individuals. Automated decision-making in this context is defined as a process where an automated information system generates an administrative decision solely using data collected from information systems without human intervention. The article examines the reasons why automated decision-making in Latvia is permitted only in cases specified by law and why, even in those cases, the actual implementation of automated decision-making is lagging.

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1. Introduction

In general, humans should not be governed by machines. Although legal provisions can be understood as algorithms, it is well known that in most cases a much more complex approach is required to achieve justice when the law is applied. However, there are instances where legal provisions are clear and straightforward, and all relevant facts have already been collected in information systems, thus allowing for the automatic generation of a decision issued by the government, which creates legal consequences for an individual. Therefore, in some, if not many instances, the use of automated decision-making systems is justified by considerations of effectiveness.

In this article, automated decision-making is understood as a process in which an automated information system generates an administrative decision solely using data collected from information systems without human intervention. The aim of the article is to provide an insight into the legal provisions and practices in Latvia regarding the use of automated decision-making systems by the government when drafting individual administrative decisions for private persons.

This article is the first comprehensive outline of the use of automated decision-making systems concerning the Latvian legal system. Until now, there have been very few contributions in Latvia regarding the general considerations of automated decision-making systems, including the use of artificial intelligence in government decisions. In 2020, the Cabinet of Ministers approved a policy statement “On the Development of Artificial Intelligence Solutions”¹, which outlined the existing practices of the use of artificial intelligence systems in government operations. The statement contained information that artificial intelligence has been used in developing chatbots for government institution websites, analysing data gathered by speed cameras in the Future Intelligent Transport Systems project, to some degree for automated checks by the State Revenue Service when comparing data submitted in tax declarations, as well as several internal government operations not involving decision-making towards private persons. The most notable academic contribution has been provided by Irena Barkane in her book “The Role of Human Rights in the Age of Artificial

¹ Informatīvais ziņojums *Par mākslīgā interneta risinājumu attīstību*, <<https://likumi.lv/ta/id/342405-par-maksliga-intelekta-risinajumu-attistibu>>, accessed 13 September 2024.

Intelligence: Privacy, Data Protection and Regulation for Preventing Mass Surveillance”². The book contains a subchapter explaining the concept of automated decision-making and the General Data Protection Regulation³, as well as the [then-draft] Artificial Intelligence Act⁴ on this matter. Although the book does not examine the legal regulation and practice of Latvia, it concludes that “human oversight is a vital requirement for the facial recognition and other AI surveillance technologies and must be ensured in all cases. However, this requirement is not clear. It could be incorrectly implemented as a simple validation of all system results, making it fully automated”⁵.

This article outlines the regulation and use of automated decision-making systems by the government in three steps. First, the article provides an explanation of the general legal framework for making administrative decisions in Latvia, thereby helping to understand the historical and legal background of the current legal solutions regarding automated decision-making. Secondly, specific legal provisions regarding the use of automated decision-making systems and practices concerning their application are explained. The data regarding the practical use of automated decision-making have been gathered through interviews with officials responsible for their implementation. The legal framework is examined based on the legal provisions in force as of September 2024. Lastly, general remarks on the future use of automated decision-making systems are offered.

² I. Barkāne, *Cilvēktiesību nozīme mākslīgā intelekta laikmetā. Privātums, datu aizsardzība un regulējums masveida novērošanas novēršanai* (2023).

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L 119/1.

⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L, 2024/1689.

⁵ Barkāne, cit. at 2, 286.

2. General Legal Framework for Making Administrative Decisions

Individual binding decisions adopted by the government and addressed to a private person are regulated by two main laws: the Administrative Procedure Law⁶ and the Law on Administrative Liability⁷.

The Administrative Procedure Law was adopted in 2001 and provides a universal legal framework for the adoption of administrative acts. The concept of an administrative act in Latvia is derived from the German *Verwaltungsakt*⁸ and is defined in Article 1, Part 3 of the Law: “An administrative act is an externally directed legal act issued by an institution in the field of public law with regard to an individually indicated person or individually indicated persons establishing, altering, determining or terminating specific legal relations or determining an actual situation”. Therefore, the concept of an administrative act is very broad in respect of the diversity of subject matter, form, and scope of discretionary powers of the authority. An administrative act is traditionally and primarily understood as a written decision of an authority granting or denying rights or conferring duties to a private person. However, administrative acts can also be orders given orally by a police officer or binding regulations issued by technical devices. It has been an undisputed conclusion that traffic lights are a type of so-called general administrative act⁹ and thus perhaps the first automated decision in Latvian administrative procedure law.

An important type of classification of administrative acts with regard to automated decision-making is whether the legal provisions provide discretionary powers in determining the legal consequences of the administrative act. In this regard, there are so-called mandatory administrative acts, administrative acts of free issue, free content, and optional administrative acts (Article 65 of the Administrative Procedure Law). In the case of a mandatory administrative act, an authority has no discretion; according to the

⁶ Administratīvā procesa likums 2001.

⁷ Administratīvās atbildības likums 2018.

⁸ J. Briede & E. Danovskis, *Administrative Law in Latvia*, in I. Deviatnikovaitė (ed.), *Comparative Administrative Law. Perspectives from Central and Eastern Europe* (2024) 68–95.

⁹ J. Briede, *Administratīvais akts* (2003), 118; J. Briede, E. Danovskis, A. Kovaļevska, *Administratīvā procesa tiesības. Mācību grāmata* (2023) 64.

legal provisions and circumstances of the case, only one definite outcome of the case can be correct. With respect to mandatory administrative acts, it can be argued that they are the most likely to be made by algorithms.

The Administrative Procedure Law neither provides for nor prohibits the use of automated decision-making systems in determining administrative acts. Generally, administrative acts are issued by “an institution”, broadly defined as “a legal entity, a unit, or an official thereof on which specific State authority powers have been conferred in the field of State administration by a legal act or contract governed by public law” (Article 1, Part 1 of the Administrative Procedure Law). Hence, the author of an administrative act can be either an official or any institutional unit competent to issue the administrative act in question.

The Administrative Procedure Law also does not require a written administrative act to be signed by an official. The requirement that any legal document should be signed is prescribed by the Law on Legal Force of Documents¹⁰. Since 2016, this law has been modified, stating that for a document to have legal force, “the signature (except in cases laid down in the Law)” should be included in the law. There are only a few cases where the law provides exceptions, and some of these will be examined in the next chapter. Therefore, to use completely automated decision-making for written administrative acts, the law must explicitly provide an exception from the signature rule.

Another part of government decisions binding on individuals includes decisions on administrative fines, which are regulated by the Law on Administrative Liability. Generally, decisions in administrative offences are taken by officials who are obliged to secure the relevant evidence, organise a hearing, and evaluate the legally relevant circumstances to determine whether and to what extent a person should be fined for the committed offence. However, there are only two categories of administrative fines where automated decision-making has been explicitly outlined in the law: 1) administrative fines in traffic, if an offence has been recorded by technical means without stopping the vehicle (speed cameras and similar technical devices) (Article 162 of the Law on Administrative Liability), and 2) administrative fines for failure to comply with the term for submitting tax and informative

¹⁰ The Law on Legal Force of Documents 2010.

declarations or failure to submit the relevant declarations (Article 164 of the Law on Administrative Liability). Article 162 stipulates that, in such instances, the fine is applied to the vehicle owner, and the minimum amount of the fine prescribed in the relevant provision must be applied. Article 162, Part 3 of the Law states that “a decision to apply a penalty for an offence recorded by technical means without stopping a vehicle shall be valid without signature”. Article 164 of the Law provides that “administrative offences may be recorded and decisions may be taken in the information systems of the State Revenue Service regarding the application of a penalty concerning the failure to comply with the term for the submission of tax and informative declarations or the failure to submit the relevant declarations”.

While automated decision-making has been used in traffic cases since 2013, when a similar regulation to Article 162 of the Law on Administrative Liability was adopted in the Road Traffic Law¹¹, the legal provision allowing the use of information systems in State Revenue Service cases has not been implemented due to a lack of IT solutions.

In cases of administrative offences, the use of automated decision-making is permitted only in the aforementioned types of cases and not as a general rule. This approach is justified because, typically in administrative offence cases, human (official) intervention is a natural prerequisite for reaching a just decision. Most legal provisions that delineate the limits of fines grant authorities discretionary powers. Although several institutions have adopted internal guidelines prescribing rather detailed algorithms for determining fines, the evaluation of the interplay of various circumstances in a case can be effectively conducted only by a human. At present, no artificial intelligence systems are used to make decisions that involve discretionary powers. Article 9 of the Law on the Processing of Personal Data in Criminal Proceedings and Administrative Offence Proceedings¹² prescribes a general prohibition on the use of automated individual decision-making: “A competent authority is prohibited from making decisions that are based solely on automated processing, including profiling, if they produce an adverse legal effect on a data subject or significantly affect them, except in cases where such decision-

¹¹ Amendments of the Road Traffic Law 2013.

¹² On Processing of Personal Data in the Criminal Proceedings and Administrative Offence Proceedings 2019.

making is provided for in external law or regulation which includes safeguards for the rights of the data subject.” This provision has been transposed from Article 11 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purpose of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, repealing Council Framework Decision 2008/977/JHA¹³. The laws currently permitting automated data processing are those mentioned in this chapter.

An important development regarding automated decision-making in administrative offence procedure are draft amendments to the Law on Administrative Liability submitted to the Parliament by the Cabinet of Ministers¹⁴. The draft law provides a new chapter, “Automated decision-making”, and introduces five new articles on automated decision-making. The law explicitly states that automated decision-making in administrative offence cases is allowed only when provided for by this law. No new instances of automated decision-making are provided, but the abovementioned Articles 162 and 162 have been amended with a direct sentence that in these cases automated decision-making is to be allowed. The draft law states that automated decision-making is a process when a decision is based solely upon automated data processing without the involvement of an official. The draft law prohibits the use of machine learning systems (artificial intelligence) in administrative offence cases, entitles an addressee of a decision to require additional justifications for the decision, and provides a longer time period for an appeal (one month rather than 20 days) and requires automatically adopted decisions to contain a direct notification that it has been drafted using an automated decision-making system. It is expected that the draft law will be adopted in 2024.

¹³ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

¹⁴ Amendments to the Law on Administrative Liability (draft), at <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/8EC3E3BDDEA355FFC2258B2E0021701F?OpenDocument>, last accessed 9 October 2024.

3. Specific Legal Regulation and Practices of Automated Decision-Making in Latvia

As noted in the previous section, the necessity for specific legislative approval for automated decision-making arises from the requirement that a written decision must be signed by an official. There are no rules prohibiting the use of automated systems, provided an administrative decision is checked and signed by an official. Instances when the use of automated systems is permitted are rare, and in some cases, the legal provisions allowing the use of automated systems are not applied in practice.

The most notable provision allowing for the use of automated systems is Article 6, Part 1(3) of the Law on Immovable Property Tax¹⁵: “The signature of an official of the tax administration shall not be required on a payment notice if it has been prepared electronically. In such case, it must bear the remark: ‘The payment notice has been prepared electronically and is valid without signature’.” The option to prepare administrative acts – payment notices for immovable property tax – was introduced into the law in 2009¹⁶. The legal provision does not mandate the use of automated systems to prepare payment notices; initially, only a few local municipalities employed this option (as immovable property tax is administered by local municipalities). However, gradually, all local municipalities have adopted automated systems for preparing payment notices. Although there are no external normative provisions outlining the process of preparing payment notices, the process is, in practice, completely automated in most cases – data are gathered from various information systems, and necessary algorithms are deployed to prepare the payment notice. Recipients of the payment notice are entitled to contest a decision in the local municipality, and any errors are corrected by officials. The systems are regularly checked, and post-control audits are performed routinely¹⁷. The use of automated systems for immovable property tax has been successful due to the mandatory nature of the administrative act (i.e., there is no discretionary power) and the availability of all necessary data from various information systems to generate a correct decision.

¹⁵ Law on Immovable Property Tax 1997.

¹⁶ Amendments of the Law on Immovable Property Tax 2009.

¹⁷ For instance, Riga City Municipality has adopted internal guidelines on the procedure by which the Data Department performs data registration and update follow-up.

General entitlement to use automated decision-making is granted to the State Revenue Service. In 2019, the Law on the State Revenue Service¹⁸ was amended¹⁹ with Article 4(2), which provides the following: “1. In order to facilitate the detection and prevention of tax evasion and customs offences, the State Revenue Service may, in conformity with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter the Data Regulation) and other laws and regulations, make a decision within the information systems in the framework of administrative proceedings within an institution, including data profiling of natural persons for the purpose of making such decisions, with an indication that the decision has been made within the information systems. A natural person may contest such a decision to the Director General of the State Revenue Service and appeal it to a court in accordance with the procedures laid down in this Law or the Law on Taxes and Fees. 2. Upon making the decision referred to in Paragraph one of this Article, the State Revenue Service shall ensure personal data protection measures corresponding to the Data Regulation and other relevant laws and regulations. Information on the procedures for exercising the rights of data subjects specified in the Data Regulation and other relevant laws and regulations related to the decision referred to in Paragraph one of this Article shall be published on the website of the State Revenue Service”. This provision was initiated by the State Revenue Service, and the explanation accompanying the proposal contained information that the “State Revenue Service, when examining the annual income tax declarations of natural persons, provides an automated refund of personal income tax overpayments in the event of a favourable decision, if no verification of justified expenditure documents for the taxation year is required. Thus, the State Revenue Service is already currently ensuring the issuance of a favourable administrative act within the information systems of the State Revenue Service as a result of profiling the data of natural persons”²⁰.

¹⁸ Law on the State Revenue Service 1993.

¹⁹ Amendments of the Law on the State Revenue Service 2019.

²⁰ Letter of the State Revenue Service to the Parliamentary Committee of 17 October 2019, at

At the time of writing, a new draft Law on the State Revenue Service has been submitted to Parliament by the Cabinet of Ministers. This draft contains a similar provision regarding decision-making in information systems²¹. However, during the coordination procedure prior to its submission to the Cabinet of Ministers, the Data State Inspectorate raised objections with the following arguments: “In this specific case, for a broadly interpretable purpose – to promote the detection and prevention of tax evasion and violations of customs regulations, which could encompass any activity performed by the State Revenue Service – it is expected that decisions will be made in information systems, including profiling the data of natural persons for this purpose. Firstly, it is unclear what is meant by ‘decision-making in information systems’ and ‘personal data profiling’. Secondly, in accordance with Article 22 of the General Data Protection Regulation (Regulation (EU) 2016/679), there is a general prohibition on making decisions regarding a data subject based solely on automated processing, including profiling, except where permitted by law and where appropriate measures are in place to protect the rights of data subjects”²². Despite these objections, the provision was retained in the draft law submitted to Parliament. However, in practice, the use of automated decision-making systems based on the existing Article 4.2 of the Law on the State Revenue Service is limited to the aforementioned favourable decisions.

As mentioned in the previous section, Article 164 of the Law on Administrative Liability also entitles the State Revenue Service to use information systems to generate decisions regarding fines for failure to comply with the deadline for submitting tax and informative declarations or failing to submit the relevant declarations. However, in practice, this provision is not utilised because the information system has not yet been developed.

<https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/47AFBD74B8B353A6C2258496003BC7C8?OpenDocument>, accessed 8 September 2024.

²¹ Article 13 of the Draft Law on the State Revenue Service, at <https://titania.saeima.lv/LIVS14/saeimalivs14.nsf/0/C2587C3886AE5143C2258B3C00376F15?OpenDocument>, accessed 8 September 2024.

²² Opinion of the Data State Inspectorate of 15 May 2024, at <https://tapportals.mk.gov.lv/reviews/resolutions/ad556596-c2db-43ad-bc41-9be3e1aac183>, accessed 8 September 2024.

As noted in section 1 of this article, the use of automated decision-making systems in road traffic offences (excessive speed) has been permitted by law since 2013. Offences are detected by speed cameras, which identify the vehicle's number plate and automatically gather information about the vehicle's owner to prepare a decision on a fine. The legal provisions stipulate that no discretion is allowed, and a fixed fine, based on the extent of the speed limit violation, is imposed if the offence has been detected by a speed camera. Although the process of generating decisions is automated, in practice, the decisions are manually checked by a human, as the automated systems still produce defective decisions due to misreading the licence plate number or various other factors. For instance, in good weather and daylight, the computer reads data from speed cameras (licence plate numbers) more accurately than in fog or rain. Therefore, when no post-control is exercised by an official after an offence has been captured by a speed camera in bad weather, it is more likely that a decision will be incorrect, leading to more appeals being submitted to superior officers and courts. It is thus more efficient to ensure that the original decision is correct than to manage the appeals process.

As evidenced by current practices in Latvia, the deployment of automated decision-making systems is rather limited. There are two primary reasons for this restricted usage: legal and practical challenges. Legally, the implementation of automated decision-making systems in rendering written decisions must be explicitly sanctioned by law, in accordance with the Law on the Legal Force of Documents and EU data protection regulations. Nonetheless, even in instances where legal provisions permit the use of such systems, practical challenges – mainly the lack of adequate information technology systems – often hinder their actual application.

4. Conclusions Regarding Future Use of Automated Decision-Making Systems

Whenever all the necessary data for making a decision with no discretionary input are available or can be gathered by a machine, the use of automated decision-making systems appears to be a rational approach to reducing the human workload. Although, in the Latvian legal framework, wholly automated decisions must be explicitly authorised by law, the use of information technology

systems to collect or process data is already common practice. The ambiguity surrounding the use of automated decision-making systems lies in the extent of the human oversight required. For instance, a decision by the State Social Security Agency or the State Revenue Service may be partially prepared and signed by an official yet rely significantly on machine-processed data, including inputs from artificial intelligence. Thus, the distinction between a fully automated decision and one signed by an official but largely generated by a machine can become blurred.

What remains crucial is the availability of legal remedies – such as the right to appeal to a higher authority or court – and the thorough review of the decision, which is inherently a human responsibility. At present, it is anticipated that the use of automated decision-making systems in Latvia will be confined to situations where the legal provisions allow no discretionary judgement, and the prerequisites for legal consequences do not involve value assessments, such as general clauses like ‘good virtues’ or ‘public interests’. Instead, these situations depend solely on data collected within information systems. Given that even existing legal provisions permitting the use of automated decision-making systems cannot be fully enacted due to a shortfall in information technology solutions, broader use of these technologies seems currently unfeasible.

It is also crucial to conduct evaluations on an ad hoc basis whenever a new automated decision-making system is introduced. This ensures that all risks of injustice are mitigated and procedural fairness is upheld.