

# AUTOMATION OF PROCESSES IN PUBLIC ADMINISTRATION IN SELECTED MEMBER STATES OF THE EUROPEAN UNION<sup>1</sup>

## AUTOMATIZÁCIA PROCESOV VO VEREJNEJ SPRÁVE VO VYBRANÝCH ČLENSKÝCH ŠTÁTOCH EURÓPSKEJ ÚNIE

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### ABSTRACT

*The article examines the current legal status of automation of decision-making processes in public administration in eleven Member States of the European Union. Based on the analysis and comparison of the legal basis of fully automated decision-making, the legal regulation of partially automated administrative proceedings, specific institutions serving to protect the rights and legitimate interests of persons affected by automated decisions, and experiences with the implementation of automation into public administration decision-making processes in the countries studied, the author formulates recommendations that the Slovak legislator should adhere to when introducing automation into public administration decision-making processes. In light of the findings and requirements arising from Art. 2 para. 2 of the Constitution of the Slovak Republic and Art. 22 (2) (b) of the GDPR, it is recommended that the Slovak legislator establish the automation of decision-making processes in public administration on an explicit legal basis that takes into account the general limits of the admissibility of automated decision-making, while at the same time enshrining special guarantees of legality. Their purpose should be, in particular, to ensure the transparency and non-discrimination of automated decision-making, the responsibility of a specific public administration body for an automated decision, and its reviewability by a human.*

### ABSTRACT

*Článok skúma aktuálny právny stav automatizácie rozhodovacích procesov vo verejnej správe v jedenástich členských štátoch Európskej únie. Na základe analýzy a komparácie právneho základu plne automatizovaného rozhodovania, právnej úpravy čiastočne automatizovaného administratívneho konania, osobitných inštitúcií slúžiacich na ochranu práv a oprávnených záujmov osôb dotknutých automatizovaným rozhodnutím a skúseností s implementáciou automatizácie do rozhodovacích procesov verejnej správy v skúmaných štátoch autor formuluje odporúčania, ktorých by sa mal slovenský zákonodarca pri zavádzaní automatizácie do rozhodovacích procesov verejnej správy pridržiavať. Vzhľadom na zistenia a požiadavky vyplývajúce z čl. 2 ods. 2 Ústavy Slovenskej republiky a čl. 22 ods. 2 písm. b) GDPR možno slovenskému zákonodarcovi odporučiť, aby automatizáciu rozhodovacích procesov vo verejnej správe založil na explicitnom právnom základe, ktorý zohľadní všeobecné limity prípustnosti automatizovaného rozhodovania, a zároveň zakotvil osobitné záruky zákonnosti. Ich účelom by malo byť najmä zabezpečenie transparentnosti a nediskriminačnosti automatizovaného*

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*rozhodovania, zodpovednosti konkrétneho orgánu verejnej správy za automatizované rozhodnutie a jeho preskúmateľnosti človekom.*

## I. INTRODUCTION

The 2030 Digital Transformation Strategy for Slovakia declares that by 2030 the Slovak Republic will become a modern country with an effective public administration ensuring smart use of the territory and infrastructure. The key to fulfilling this vision is a significant improvement of the use of data and application of methods such as impact assessment, risk analysis, automated evaluation of cases or applications or predictive planning of future public service capacities.<sup>3</sup>

From the perspective of a researcher examining the possibilities of automating decision-making processes in public administration<sup>4</sup> in Slovakia, it is encouraging that the national strategic document envisions the automation of case and application assessments as one of the methods for realizing Slovakia's digital transformation vision by 2030. What is less pleasing, however, is that the fulfillment of this vision has not yet been translated into significant legislative changes since the adoption of the strategy in 2019.

De lege lata, the legal order of the Slovak Republic does not regulate any administrative proceedings in which the process, including the issuance of an individual administrative act, would be fully automated, i.e., conducted without human intervention by a public administration official.<sup>5</sup> In the absence of a legal basis for fully automated decision-making processes, only the automation of part of the administrative procedure is currently permissible in the Slovak Republic,<sup>6</sup> which is also limited by the principle of legality expressed in Art. 2 para. 2 of the Constitution of the Slovak Republic.<sup>7,8</sup> Even when automating only some actions within the administrative procedure, public administration bodies should therefore proceed cautiously and base their automation initiative on a sufficiently clear legal basis.

Despite the legislature's passivity in implementing automated decision-making in administrative proceedings, it should be noted that in some areas of public administration, automated tools, including elements of artificial intelligence, are already being used for other purposes. Examples include algorithms of the Financial Administration of the Slovak Republic, such as the TAXANA chatbot, the eKasa real-time sales and cash receipts recording system, or the AIS-R machine learning algorithm for assessing the risk of VAT fraud. The latter two systems in particular have recently resonated in Slovak legal discourse. In connection with their implementation, which serves to automatically assess the riskiness of entrepreneurs within the framework of financial administration, the Constitutional Court of the Slovak Republic identified their constitutional incompatibility due to the lack of a legal basis, regardless of

<sup>3</sup> Ministry of Investments, Regional Development and Informatization of the Slovak Republic, 2025. MIRRI homepage. Online. Available at: <https://mirri.gov.sk/wp-content/uploads/2019/10/SDT-English-Version-FINAL.pdf>. [cited 2025-08-26]. See p. 26 and p. 31.

<sup>4</sup> By the automation of decision-making processes in public administration, we understand procedures leading to administrative actions, including the issuance of an individual administrative act, where elements of the procedure are either fully or partially carried out without direct human intervention by means of sophisticated computer software, including artificial intelligence (AI) tools. A similar definition is provided by HOFMANN, H. C. H.: Comparative Law of Public Automated Decision-Making. An Outline. In: CERIDAP, 2023, No. 1, p. 1-12.

<sup>5</sup> In the Slovak general regulation on administrative procedure there is no mention of the possibility of automating administrative procedures. See Slovak Administrative Procedure Code (zákon č. 71/1967 Zb. o správnom konaní (správny poriadok) v znení neskorších predpisov).

<sup>6</sup> JAKAB, R.: National Report on Automation in Decision-Making in Public Administration in Slovakia. In: ACTA UNIVERSITATIS CAROLINAE, Vol. 70, 2024, No. 2, pp. 147-157.

<sup>7</sup> Ústava č. 460/1992 Zb. Ústava Slovenskej republiky v znení neskorších predpisov.

<sup>8</sup> According to Art. 2 para. 2 of the Constitution of the Slovak Republic: "State bodies may act only on the basis of the Constitution, within its limits and to the extent and in the manner established by law.".

whether the result of the automated assessment of an individual's riskiness was a decision or inaction of a public administration body.<sup>9</sup>

It seems that, unlike the Slovak Republic, some European Union Member States are technologically and legally one step further in introducing automated decision-making processes in public administration.<sup>10</sup> Based on this preliminary observation, the author of this article poses the following research question: "What is the current legal status of administrative process automation in selected Member States of the European Union?".

In response to this question, the author formulates the following two objectives of the article.

The first objective is to examine the current legal status of process automation in public administration in selected EU Member States, with a focus on the automation of administrative proceedings. Particular emphasis is placed on determining whether the given Member State has, within its legal system:

- a legal basis for issuing fully automated decisions in administrative proceedings;
- provisions for partially automated administrative proceedings;<sup>11</sup>
- specific institutions established to protect the rights and legitimate interests of individuals affected by automated decisions, especially in the context of the requirements arising from Art. 22 (2) (b) GDPR<sup>12</sup><sup>13</sup>.

Additionally, as part of achieving the first objective, the article aims to present examples of process automation in public administration in selected EU Member States, including examples of fully automated administrative proceedings, and to highlight potential legal issues associated with the implementation of such automation.

It is anticipated that achieving this objective will provide an informative source of knowledge for examining the conditions for automating processes in public administration in Slovakia. Identified positive, but particularly negative, experiences from other Member States may also serve as a cautionary guide for the Slovak legislator.

The second objective of the article is, building on this premise, to formulate basic recommendations that the Slovak legislator should follow when introducing automation into public decision-making processes.

<sup>9</sup> Nález ÚS SR z 10. novembra 2021, PL. ÚS 25/2019 (5/2021), point 26, 122, 123, 124 and 147. See also JuLIA, 2025. julia-project homepage. Online. Available at: [https://www.julia-project.eu/sites/default/files/2025-05/Final%20Handbook%20AI%20and%20Public%20Administration\\_%20The%20%28legal%29%20limits%20of%20algorithmic%20governance.docx.pdf](https://www.julia-project.eu/sites/default/files/2025-05/Final%20Handbook%20AI%20and%20Public%20Administration_%20The%20%28legal%29%20limits%20of%20algorithmic%20governance.docx.pdf). [cited 2025-08-26], p. 91.

<sup>10</sup> Artificial Intelligence and Administrative Law. Comparative study on administrative law and use of artificial intelligence and other algorithmic systems in administrative decision-making in the Member States of the Council of Europe. Strasbourg: Council of Europe, 2022, p. 43.

<sup>11</sup> In the article, the term "semi-automated administrative procedure" or "semi-automated administrative decision-making" will be used synonymously with the term "partially automated administrative procedure".

<sup>12</sup> Art. 22 (2) (b) 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) provides for an exception to the prohibition of automated individual decision-making based solely on automated processing of personal data which produces legal effects concerning the data subject or similarly significantly affects him or her, consisting in the existence of a legal basis for the automated decision in EU law and in the national law of an EU Member State, provided that appropriate measures are also laid down to safeguard the rights and freedoms and legitimate interests of the data subject. In general, on the scope of Art. 22 GDPR and the nature of the exceptions arising from para. 2, see MESARČÍK, M.: E-government a umelá inteligencia. In: Andraško, J. a kol. Regulačné výzvy e-governmentu v Slovenskej republike v kontexte práva Európskej únie. Praha: Wolters Kluwer ČR, 2022, pp. 328-330, and in connection with the national law of a Member State, e.g. GREGA, R. – KOVÁČ, P.: The Role of Automated Decision-Making in Modern Administrative Law: Challenges and Data Protection Implications. In: Central European Public Administration Review, 22(2), pp. 83–108.

<sup>13</sup> In the article, the term "specific/special guarantees of legality" or "specific/special safeguards of legality" will be used synonymously with the term "specific institutions established to protect the rights and legitimate interests of individuals affected by automated decisions".

In terms of research methodology, general scientific methods typical of legal science will be used. The dominant method is the text analysis of scientific articles published mainly in the Scopus and Web of Science databases, as well as analytical documents of intergovernmental organizations, especially the Council of Europe, which in recent years have mapped the legal status of automation of decision-making processes in the public administration of EU Member States. The analysis also includes the effective legal regulations of the Member States, especially their administrative procedural rules.

The EU Member States studied include, on the one hand, the countries neighboring Slovakia – the Austria, Czech Republic, Hungary and Poland – due to their geographical and administrative-legal proximity, and, on the other hand, the more technologically advanced countries, given the available EU data comparing the degree of digitalization of public services,<sup>14</sup> such as Estonia, France, Germany, Italy, Latvia, Spain, Sweden. In addition to the analytical method, the method of synthesis of acquired knowledge, the comparative method for identifying differences in legal regulations, as well as the abstraction method, focused on selecting relevant parts of the analyzed literature and legal regulations, is also used. At the conclusion of the research, the generalization method is applied in formulating generalizing recommendations for the Slovak legislator.

## II. CURRENT LEGAL STATUS OF PROCESS AUTOMATION IN PUBLIC ADMINISTRATION IN SELECTED EU MEMBER STATES

### 1. Austria

In Austria, since the 1980s, thanks to the jurisprudential activity of the Austrian Constitutional Court, there has been a settled legal opinion on the impossibility of issuing a fully automated decision according to the general rules of administrative procedure,<sup>15</sup> unless a special law provides otherwise. The reason for this is the requirement that the authority to which an individual administrative act is legally attributable and which is responsible for it is also actually able to exercise decisive influence on the computer-supported process of issuing the act.<sup>16</sup> Based on the above postulate, Austrian courts have established in their practice that while a purely automated decision by a public administration body is inadmissible,<sup>17</sup> Thus, a decision that is issued by automated means, but whose sending is approved by an authorized person, is admissible.<sup>18</sup> Examples of exceptions to the above rule under special laws include fully automated decisions issued by the tax authorities on late tax payments or annual income tax adjustments, as well as decisions of public administration bodies granting study scholarships based on submitted applications without the need for further fact-finding.<sup>19</sup>

In Austrian conditions, the legality and protection of the procedural rights of participants in automated administrative proceedings is fundamentally ensured only by traditional guarantees of legality.<sup>20</sup> The automation of decision-making processes in the field of public administration in Austria is therefore limited mainly by cases requiring the discretion of the public administration body and the need to ensure the fundamental procedural rights of the parties to

<sup>14</sup> See, for example, the eGovernment Benchmark (EC/Capgemini), which annually compares EU member states in 4 areas (User centricity, Transparency, Key enablers, Cross-border services). Available online: <https://www.capgemini.com/wp-content/uploads/2024/07/eGovernment-Report-2024.pdf>. [cited 2025-09-29], p. 16.

<sup>15</sup> At the federal level, the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz (AVG)) regulates these, with the federal states essentially referring to its use even in matters that fall within their state jurisdiction.

<sup>16</sup> VfSlg 11.590/1987.

<sup>17</sup> VwSlg 18.949 A/2014.

<sup>18</sup> VwSlg 19.196 A/2015.

<sup>19</sup> MERLI, F.: Automated Decision-Making Systems in Austrian Administrative Law. In: CERIDAP, 2023, No. 1, pp. 42-43.

<sup>20</sup> Merli, in the absence of specific *ex ante* guarantees of legality in Austria, expresses the need, at least in some areas, to adopt *ex ante* rules for quality control of algorithms used in decision-making processes in public administration. *Ibid.*, p. 48.

the proceedings, such as the right to an oral hearing, the right to state the reasons for the decision, or the right to an effective remedy.<sup>21</sup> However, it is important to note that, for example, the right to an oral hearing or the right to state the reasons for the decision are not absolute rights. For example, automation of administrative proceedings, including full automation of the decision-making process, will therefore be permissible without ordering an oral hearing in proceedings in which the facts will be properly established only from the proposed or acquired supporting documents for the decision before its formal commencement and the party to the proceedings will be fully satisfied<sup>22</sup> or if the decision is unfavorable to him, there is a public interest in restricting this right in a proportionate manner.<sup>23</sup> A similar situation exists with the right to state the reasons for the decision, the restriction of which is permissible if a positive decision is issued to a party to the proceedings. In this context, the Austrian Supreme Administrative Court highlighted<sup>24</sup> that if a statement of reasons for a decision is required, the fact that it was issued by an automated system with insufficient capacity to produce it does not excuse its poor quality. "Black box" AI algorithms are therefore inadmissible under Austrian law in public administration decision-making processes.<sup>25</sup>

## 2. Czech Republic

The legal status of administrative procedure automation in the Czech Republic is currently at a similar level to that in Slovakia. The current wording of the Czech Administrative Procedure Code<sup>26</sup> does not contain any provision that would discuss the automation of administrative proceedings. Moreover, unlike the Slovak general administrative procedure regulation, the Czech regulation contains a provision<sup>27</sup> stipulating that acts of an administrative authority in proceedings are performed by officials authorised under the internal regulations of the public administration authority or by those entrusted by the head of that authority.<sup>28</sup> Such a link between the execution of individual acts of administrative proceedings and a person represents a fundamental limit to the automation of administrative proceedings in Czech conditions.<sup>29</sup>

In the absence of a general legal basis for automated decision-making in public administration, the Czech legal system contains only isolated provisions of special laws that allow the automation of part of the administrative procedure, or certain acts or activities. However, these provisions do not generally apply to the resulting expression of the will of the

<sup>21</sup> On the extent of the need to ensure these guarantees in administrative proceedings, see JANČÁT, L.: *Právo na spravodlivý proces podľa Dohovoru a judikatúry ESĽP v Slovenskej republike*. Vysokoškolská učebnica. Košice: ŠafárikPress, 2024, p. 120., or HAMULÁKOVÁ, Z.: *Právo na spravodlivý proces v kontexte automatizovaných rozhodnutí vo verejnej správe*. In: MASLEN, M: *Elektronizácia a digitalizácia verejnej správy*. Typi Universitatis Tyrnaviensis, Trnava 2024. pp. 8-24.

<sup>22</sup> This applies, for instance, to proceedings initiated on the basis of a tax return or to the aforementioned proceedings concerning the award of a study grant.

<sup>23</sup> These include, for example, cases of administrative punishment of traffic offenses, where the facts are properly established on the basis of photographic or camera recordings of violations of road traffic rules, while proportionality is ensured by the offender's right to file an appeal without substantive justification within a specified period, which results in the cancellation of the decision issued without the opportunity to comment on the matter and the continuation of the proper course of administrative proceedings.

<sup>24</sup> VwSlg 11.728/1985.

<sup>25</sup> MERLI, F.: *Automated Decision-Making Systems in Austrian Administrative Law*. In: CERIDAP, 2023, No. 1, pp. 44-45.

<sup>26</sup> Zákon č. 500/2004 Sb. Zákon správni řád v znení neskorších predpisov.

<sup>27</sup> § 15 para. 2 of the Czech Administrative Code.

<sup>28</sup> In addition, similarly to Slovakia, the Czech Administrative Procedure Code also links the issuance of a decision to the actions of an authorized person who signs its execution. Compare § 69 para. 1 of the Czech Administrative Procedure Code and § 47 para. 5 of the Slovak Administrative Procedure Code.

<sup>29</sup> HANDRLICA, J.: *Automatizace v rozhodování správních orgánu: Fatamorgána, nebo realita budoucnosti?*. In: *Správni právo*, 2024, No. 6-7, p. 421.

public administration executive.<sup>30</sup> For example, Czech public administration authorities may exercise their powers, with the exception of issuing decisions, in a manner based on automated processing of personal data; they may obtain data from public registers or records in an automated manner; in proceedings for obtaining the qualification to perform certain health professions, they may deliver decisions via an automated system of communication with the addressee of the public administration; in matters of pension insurance, authorized officials may draw up a decision using automated means in the international alphabet with a pre-printed stamp, name, surname and function of the employee responsible for issuing the decision; and in matters of state social support, a similar regime operates, which, however, only concerns notifications and other documents, not the decision itself.<sup>31</sup>

At this point, it should be noted that the prospect of changing the status quo is on the horizon in the Czech Republic. The Czech legislature is currently discussing a bill in its third reading, which would, among other things, enshrine an explicit legal basis for fully automated decision-making directly into the Czech Administrative Procedure Code.<sup>32</sup> The proposed provision of Section 15a should allow for the performance of any act of administrative procedure automatically, without the participation of an official, unless this is contrary to the nature of the matter under consideration, the protection of the rights of the persons concerned or the protection of the public interest.

The draft law stipulates that the limit to the possibility of performing an automated action will always be the need to apply proper reasoning or the case of deciding on a remedy. The amendment further assumes that if the requirements of an act include the signature of an official - which also applies to a decision - this requirement is either not required in the case of automation, or in the case of an electronic form of written documentation, the integrity and origin of the data is ensured. If additional data about an official should also be part of an automated action, only the information that the action was performed in an automated manner without the participation of an official should be provided.

De lege lata, as well as de lege ferenda, there are no special institutions in the Czech legal system aimed at contributing to the protection of the rights and freedoms of data subjects in connection with the automation of administrative proceedings. Their protection is, or should be, ensured in Czech conditions by traditional guarantees of legality also applied in administrative proceedings conducted by an official.

### 3. Estonia

Surprisingly, although Estonia is known for its successful implementation of digital solutions in both the private<sup>33</sup> and public sectors,<sup>34</sup> the automation of decision-making processes in public administration has not yet become one of these success stories.<sup>35</sup> The Estonian e-

<sup>30</sup> STAŠA, J.: Očekávaní a obavy spojené s automatizácií správniho rozhodování.. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. p. 130.

<sup>31</sup> For individual examples and their legal basis in the Czech legal system, see *Ibid.*, pp. 130-131.

<sup>32</sup> This is part of the eighth parliamentary bill amending Act amending Act No. 128/2000 Coll., on Municipalities (the Municipal Establishment), as amended, and certain other acts in connection with the support of inter-municipal cooperation (Zákon, ktorým se mení zákon č. 128/2000 Sb., o obcích (obecní zřízení), v znení neskorších predpisov, a ďalšie zákony v súvislosti s podporou spolupráce obcí).. Print of the Chamber of Deputies of the Parliament of the Czech Republic no. 845/0, 9th election period. The text of the proposal is on pp. 12 and 13, the explanatory report on pp. 36-41 of the cited press. For the status of the legislative proceedings, see: <https://www.psp.cz/sqw/historie.sqw?o=9&T=845>.

<sup>33</sup> Applications such as Skype, Wise, and Bolt have Estonian roots.

<sup>34</sup> More than 80 AI projects have been implemented in public administration in Estonia. Among them, for example, the State Medicines Agency's system modeling the risk of price agreements on medicines; the Estonian Tax Administration's system evaluating the risk of fraud when applying for a VAT refund, or the system used by the Unemployment Insurance Fund to assess the likelihood of an unemployed person returning to work.

<sup>35</sup> PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: CERIDAP, 2023, No. 1, p. 54.

governance is not primarily based on the use of automated systems in decision-making processes, including the use of artificial intelligence, but on the effective use of information and communication technologies.<sup>36</sup> The topicality of this statement is not changed by the ambition of the Estonian legislator in 2022 to enshrine provisions on automated administrative proceedings in the Estonian Administrative Procedure Code (Haldusmenetlus seadus (HMS)), as a general regulation on administrative proceedings, since the amendment to the law in question had not been approved at the time of writing this article.<sup>37</sup>

De lege lata, the automation of administrative procedures in the HMS is not regulated. In contrast, in some specific decision-making processes in the field of public administration, the Estonian legislator has established the possibility of issuing administrative decisions in an automated manner, including the possibility of issuing fully automated decisions. These include, for example, the exhaustively defined decisions set out in the Taxation Act (Maksukordaluse seadus (MKS)),<sup>38</sup> Environmental Fees Act (Keskkonnatasude seadus (KeTS))<sup>39</sup> or the Unemployment Insurance Act (Töötuskindlustuse seadus (TKindlS)).<sup>40</sup> However, the automation of these specific procedures is not permissible if the exercise of the administrative authority's discretion is necessary.<sup>41</sup>

Given the absence of comprehensive regulation of automation of decision-making processes in public administration, it is not surprising that specific legality guarantees applicable to the issuance of automated decisions cannot be identified in the Estonian legal order. In automated administrative procedures, Estonians must therefore rely on traditional guarantees of legality that also apply in procedures involving the human factor.

De lege ferenda, if the aforementioned HMS amendment enters into force, the legal basis for fully automated decision-making will be established. According to the draft law, the possibility of issuing an administrative decision without human intervention should be fundamentally permissible if:

- the authority to issue a fully automated decision interfering with the rights of an individual is provided for in a special regulation;
- automation is in the interest of the party to the proceedings, the public and in accordance with the principle of procedural economy;
- there is no need to interpret legally vague concepts and exercise discretion when making decisions;
- the facts are properly established;
- the decision-making process is predictable and understandable for the party to the proceedings, and
- the rights and interests of third parties will not be affected by automation.

An interesting aspect of the proposal is the exception to the general clause, according to which it is not possible to issue an automated decision when interpreting a legally undefined concept or exercising discretionary power. Such an exception should be permissible if the content of a legally undefined concept or the scope of discretionary power is precisely defined by an internal act of the administrative body, which is publicly accessible, and at the same time

<sup>36</sup> METCALF, K.-N. – KERIKMÄE, T.: Machines are taking over – Are we ready?: Law and Artificial Intelligence. In: Singapore Academy of Law Journal, 2021, Vol. 33, p. 27.

<sup>37</sup> For the status of the legislative proceedings regarding the proposed amendment to the law in question, see: <https://eelnoud.valitsus.ee/main#7POy5VDM>. [cited 2025-09-26]. The proposal is also available at the above link.

<sup>38</sup> See § 46<sup>2</sup> MKS.

<sup>39</sup> See § 33<sup>6</sup> KeTS.

<sup>40</sup> See § 23 para. 4 TKindlS.

<sup>41</sup> PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: CERIDAP, 2023, No. 1, p. 55.

the algorithm used is transparently published. This exception creates space for the implementation of more sophisticated automated systems, however, the proposal explicitly excludes the use of a self-learning algorithm that could autonomously change its parameters, as well as an algorithm whose general parameters and operating logic are not explained in the administrative regulation<sup>42, 43</sup>.

In addition to establishing the legal basis for the automation of administrative procedures per se, if the HMS amendment is adopted, developments can also be expected in the area of special guarantees of legality. The draft law emphasizes, with certain exceptions, the need to guarantee the participant in the proceedings the right to express his/her opinion on the matter, the right to communicate with the public administration body, and the right to justification of the decision. In line with the principle of transparency, the proposal also establishes an obligation to publish all internal administrative acts and algorithms used in automated administrative procedures, so that the data subject can foresee the content of a possible automated decision in his or her case.

To protect human dignity, the proposal also provides for the right of an individual who does not consider it appropriate to submit to algorithmic decision-making to contact the competent authority, which is obliged to establish a mechanism for collecting and analyzing the objections raised. An individual should always have the possibility to challenge an automated administrative decision in administrative proceedings or under judicial review on the grounds that the competent authority did not take into account all the relevant circumstances of the case. Finally, the addressee of an automated decision should be explicitly informed that the decision was made using an algorithm.<sup>44</sup>

#### 4. France

The French legislation on automated administrative procedures is considered proactive and innovative, not only due to the existence of a legal basis for fully automated and semi-automated decision-making, but also due to the precise implementation of Art. 22 GDPR and the related incorporation of specific legality guarantees.<sup>45</sup>

The legal framework for automated administrative procedures in French conditions is currently formed by Article 47 of the Law on Information Technology, Data Files and Civil Liberties (Law No. 78-17),<sup>46</sup> which has the nature of an implementing law to the GDPR, and the relevant provisions of the Code of Relations between the Public and the Administrative Authority (CRPA),<sup>47</sup> which constitutes a general regulation on administrative procedure. Article 47 of Law No. 78-17 essentially states that the issuance of any individual administrative act is admissible by automated means if the specific guarantees of legality set out in the article in question are ensured, with the exception of a fully automated decision deciding on an

<sup>42</sup> It is about the so-called "black box" algorithms. See more NEŠPOR, J.: *Automated Administrative Decision-Making: What is the Black Box Hiding?*. In: ACTA UNIVERSITATIS CAROLINAE, Vol. 70, 2024, No. 2, pp. 147-157.

<sup>43</sup> For an analysis of the HMS amendment, see PILVING, I.: *Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective*. In: CERIDAP, 2023, No. 1, pp. 59-65.

<sup>44</sup> Ibid., p. 60, pp. 63-64.

<sup>45</sup> MALGIERI, G.: *Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation*. In: Computer Law & Security Review, 2019, No. 5, p. 13. Although Malgieri's article is based on an analysis of the original Article 10 of Law No. 78-17, we believe that the conclusions reached by the author are also applicable to the effective Article 47 of Law No. 78-17, since it is essentially the identical provision replacing the aforementioned Art. 10.

<sup>46</sup> Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.

<sup>47</sup> Code des relations entre le public et l'administration (CRPA).

administrative appeal.<sup>48</sup> The specific guarantees of lawfulness that must be ensured regardless of whether the decision is fully automated or semi-automated are:

- the automated decision is not based on special categories of personal data;<sup>49</sup>
- the automated decision was issued in accordance with Chapter I, Title I, Book IV of the CRPA, i.e. in accordance with the administrative procedure regulated by law;
- the automated decision complies with Article L311-3-1 of the CRPA, according to which a decision based on algorithmic processing shall include an explicit notification informing the person concerned;<sup>50</sup>
- the public administration body shall notify the data subject, at his/her request, in an intelligible manner, of the rules defining the processing of data by automated means and the main characteristics of its implementation, provided that it does not disclose secrets protected by law;<sup>51</sup>
- the public administration body, as the data controller, ensures control of algorithmic processing and its development in order to be able to explain to the person concerned in detail and in a comprehensible manner how the processing was carried out in their individual case.

In particular, the last two guarantees regarding so-called algorithmic accountability and transparency were emphasized by the French Constitutional Council in its decision,<sup>52</sup> in which it assessed the conformity of Article 47 of Law No. 78-17 with the Constitution. The Constitutional Council confirmed that the transparency requirements arising from the aforementioned article are in accordance with the Constitution, while also stating that automated decision-making based on machine learning systems without any human control is not permissible, as human control is essential in the design and development of algorithms.<sup>53</sup>

The aforementioned guarantees, together with the conclusions of the French constitutional body, have in practice created an obstacle to the creation of fully automated decision-making procedures. In French conditions, therefore, partially automated administrative procedures prevail. An example is the Parcoursup algorithm, designed to collect and manage the preferences of university applicants, which contributes to the evaluation of their academic records.<sup>54</sup>

<sup>48</sup> Administrative appeals ("recours administratif") in French administrative law refer to an action brought before the administrative courts. This distinguishes it from a regular remedy in administrative proceedings *per se*, which is usually a prerequisite for litigation, even in Slovak conditions.

<sup>49</sup> See point I. Cl. 6 of Law No. 78-17. This is so-called sensitive personal data according to Art. 9 (1) GDPR, such as data revealing racial or ethnic origin, political opinions, religious beliefs, data concerning health and sexual orientation, etc.

<sup>50</sup> According to Art. L311-3-1-1 CRPA such explicit notification must include the purpose of the algorithmic processing of data, indicate the right to obtain information on the rules defining this processing and the main characteristics of its implementation, as well as the procedures for exercising this right, indicate the right to communication and, where appropriate, to submit a request to the Commission for access to administrative documents, as defined in this part of the law.

<sup>51</sup> According to Art. L311-3-1-2 CRPA the scope of the notification obligation includes information on the degree and manner of contribution of algorithmic processing to the decision-making process; processed data and their sources; processing parameters and the significance of their application to the situation of the data subject; operations performed by the processing.

<sup>52</sup> See Conseil Constitutionnel, Décision n ° 2018-765 DC du 12 juin 2018.

<sup>53</sup> MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: Computer Law & Security Review, 2019, No. 5, p. 15.

<sup>54</sup> STEPANOV, A. Easy to learn, hard to master: the challenge of intelligible AI in French administration. In: The Digital Constitutionalist [online]. [cited 2025-09-27]. Available at: <https://digi-con.org/easy-to-learn-hard-to-master-the-challenge-of-intelligible-ai-in-french-administration>.

## 5. Germany

As Schneider and Enderlein state in their article,<sup>55</sup> In Germany, the application of advanced automated decision-making systems is limited and German public administration uses algorithms dominantly to support human decision-making. This applies despite the fact that the Federal Administrative Procedure Act (Verwaltungsverfahrensgesetz (VwVfG)), the Fiscal Code (Abgabenordnung (AO)), the Social Code Book X (Sozialgesetzbuch X (SGB X)),<sup>56</sup> as well as the administrative procedural regulations of the individual federal states, in addition to provisions regulating semi-automated administrative proceedings, also contain provisions regulating the fully automated decision-making process.<sup>57</sup>

Legal norms regulating the specific course of partially automated administrative proceedings have been part of German administrative procedural law for several decades. The regulation of semi-automated administrative proceedings focuses primarily on regulating exceptions to the traditional course of a given administrative proceeding. The exceptions in question remove some of the formal requirements for proceedings and decisions,<sup>58</sup> allow for the order of an oral hearing to be waived,<sup>59</sup> whether they simplify the requirements for justifying a decision.<sup>60</sup> The result is a legal possibility for the final decision to be issued by an automated system while maintaining the investigation of the facts of the case by public administration employees. The aforementioned semi-automated decision-making processes are used in Germany mainly in generic mass proceedings in the areas of taxes and social security. In conclusion, it is appropriate to point out that German administrative procedural norms do not regulate such semi-automated administrative proceedings in which the final decision is issued by a human, but with the assistance of automated systems, including artificial intelligence systems.<sup>61</sup> This represents a significant regulatory gap allowing the decision on the deployment of supporting automated systems to be left to the discretion of the competent authority, which is limited only by the general principles of administrative law.<sup>62</sup>

In contrast to semi-automated administrative procedures, the possibility for German public administration bodies to issue individual administrative acts without human intervention was enshrined in the aforementioned procedural codes relatively recently, in 2017.<sup>63</sup> German public authorities are currently authorized to issue fully automated decisions on the legal basis of § 35a VwVfG in administrative matters; § 155 para. 4 first sentence of the AO in tax and social security matters § 31a first sentence of SGB X. Although the provisions in question pursue the same purpose, namely to enable fully automated decision-making, the different legislative expression of the provisions in question creates three different regulatory approaches causing

<sup>55</sup> SCHNEIDER, J.-P. – ENDERLEIN, F.: *Automated Decision-Making Systems in German Administrative Law*. In: CERIDAP, 2023, No. 1, p. 96.

<sup>56</sup> On the trichotomy of German administrative procedural law, see SCHOCH, F., *Einleitung*, In SCHOCH, F. – SCHNEIDER, J.-P. *Verwaltungsverfahrensgesetz*, C.H. Beck, Munich, 2022, pp. 290–294.

<sup>57</sup> SCHNEIDER, J.-P. – ENDERLEIN, F.: *Automated Decision-Making Systems in German Administrative Law*. In: CERIDAP, 2023, No. 1, pp. 97–98.

<sup>58</sup> See § 37 (5) VwVfG, § 119 (3), (2) AO, § 33 (5) (1) SGB X).

<sup>59</sup> See § 28 (2) (No. 4) VwVfG, § 91 (2) (No. 4) AO.

<sup>60</sup> See § 39 (2) (No. 3) VwVfG, § 121 (2) (No. 3) AO, § 35 (2) (No. 3) SGB X.

<sup>61</sup> On the problems of human decision-making based on decision proposals created by an automated system, see HAITSMAN, L. – BRINK, B.: *From Human Intervention to Human Involvement: A Critical Examination of the Role of Humans in (Semi-)Automated Administrative Decision-Making*. In: *Digital Government: Research and Practice*, 2025, Vol. 6, No. 3, Article 33, p. 17.

<sup>62</sup> SCHNEIDER, J.-P. – ENDERLEIN, F.: *Automated Decision-Making Systems in German Administrative Law*. In: CERIDAP, 2023, No. 1, p. 103.

<sup>63</sup> However, according to several German courts, the lack of an explicit legal basis for issuing fully automated decisions was not an obstacle to their lawful issuance even before the 2017 amendment to the German Administrative Procedure Codes. The previous legal basis for issuing "normal" individual administrative acts did not explicitly take into account the need for human intervention. However, according to the German courts, their legality was conditioned by their "attribution" to a public authority. *Ibid.*, pp. 106–107.

inconsistency in the procedural concept of fully automated decision-making in German administrative law.<sup>64</sup> From a comparison of § 35a VwVfG, § 155 para. 4 first sentence AO, § 31a first sentence SGB X it follows that the most restrictive concept of fully automated decision-making is enshrined in the provisions of § 35a VwVfG. The provision in question conditions the possibility of issuing a fully automated decision on the existence of a separate legal basis in the *lex specialis*, which will authorize its issuance in a fully automated manner.<sup>65</sup> and at the same time assumes that the competent administrative authority has no discretion in a given administrative proceeding. In contrast to Section 35a VwVfG, the provision of Section 155 para. 4 AO and Section 31a SGB X do not make the possibility of issuing a fully automated decision conditional on the existence of a specific statutory authorisation. For the full automation of decision-making in tax matters, the need to exercise administrative discretion does not, in principle, constitute an obstacle. In the case of social matters, however, an individual administrative act may be issued by purely automatic means only provided that there is no reason for employees of the public administration body to deal with the specifics of the matter. The above implies that a fully automated decision is inadmissible not only in the case of the exercise of discretionary power by an administrative authority, but also in other cases where discretion cannot be exercised, but the matter in question is legally or factually complex.<sup>66</sup>

Speaking of special guarantees of legality, it can be highlighted at the conclusion of this subchapter that in 2017 the German legislator incorporated into individual procedural codes so-called guarantees for a thorough investigation of individual cases. Although the legislative solution and scope of protection vary depending on the given procedural code,<sup>67</sup> The safeguards in question have a common objective, namely to ensure that exceptional circumstances are taken into account in the administrative procedure, even if the administrative authority is otherwise entitled to issue an automated decision. To achieve this objective, the procedural codes provide that<sup>68</sup> the authority must take into account factual circumstances alleged by the party concerned which are relevant to the specific case and which would not have been identified in an automated procedure.<sup>69</sup> Despite the enshrining of the aforementioned guarantees, even in Germany, the fulfillment of all the requirements of Art. 22 (2) (b) GDPR, which should ensure the protection of the rights of the data subject when processing personal data when issuing an automated decision.<sup>70</sup>

## 6. Hungary

In the Hungarian legal system, fully automated administrative procedures have been regulated since 2017, and from 2023 onwards they will be fundamentally built on a two-track legal basis. At present, the legal basis is provided both in Section 40 of the General Administrative Procedure Act (Act CL)<sup>71</sup> and in Section 21 of the Act on the Digital State and

<sup>64</sup> SCHNEIDER, J.-P. – ENDERLEIN, F.: *Automated Decision-Making Systems in German Administrative Law*. In: CERIDAP, 2023, No. 1, p. 100.

<sup>65</sup> Such a legal basis is, for example, Section 3a of the Federal Travel Expenses Act (BRKG), on the basis of which it is possible to issue a decision on the reimbursement of travel expenses for federal civil servants, judges and soldiers in a fully automated manner. For further examples, see SCHNEIDER, J.-P. – ENDERLEIN, F.: *Automated Decision-Making Systems in German Administrative Law*. In: CERIDAP, 2023, No. 1, p. 100.

<sup>66</sup> *Ibid.*, p. 102.

<sup>67</sup> While according to the VwVfG and SGB X, these guarantees apply to both fully automated and semi-automated administrative procedures, according to the AO they only apply to fully automated ones.

<sup>68</sup> See Section 24 (1) third sentence VwVfG and Section 31a second sentence SGB X and the corresponding provisions of Section 150 (7) AO and Section 155 (4) third sentence AO.

<sup>69</sup> SCHNEIDER, J.-P. – ENDERLEIN, F.: *Automated Decision-Making Systems in German Administrative Law*. In: CERIDAP, 2023, No. 1, p. 103.

<sup>70</sup> *Ibid.*, pp. 105-106.

<sup>71</sup> 2016. évi CL. törvény az általános közigazgatási rendtartásról.

Certain Rules for the Provision of Digital Services (Act CIII)<sup>72</sup>. For the initiation of proceedings on individual legal grounds, the prerequisites defined in the above provisions must be met, with the main differentiating prerequisite being whether the proceedings, which can be initiated at the request of a party to the proceedings, were initiated by electronic means or otherwise.<sup>73</sup> Furthermore, in the Hungarian legal order, a legal basis can be identified for automated administrative proceedings, which are initiated *ex officio* under specific regulations.<sup>74</sup>

Based on the provisions of Section 21 Act CIII, which has the character of *lex specialis* in relation to Section 40 Act CL, a fully automated decision may be issued if the proceedings initiated at the request of a party to the proceedings were initiated electronically; the decision does not require the application of proper reasoning; the data necessary for assessing the case is in the possession of the public administration body<sup>75</sup> available in a manner suitable for automated processing or obtains it by automatically receiving information in a format suitable for automated processing and issuing an automated decision does not preclude a special regulation. An additional requirement from the subsidiary applicable provision of Section 40 (a) Act CL is that there is no other participant with conflicting interests in the administrative proceedings. In addition, the legal basis for semi-automated administrative proceedings can also be derived from the provisions of Section 21, since Section 3 authorizes a public administration body to make any other decision or notification necessary for administration without human intervention, even if the procedure is not carried out through semi-automated decision-making.<sup>76</sup>

On the other hand, under Section 40 of the CL Act, fully automated decision-making is permissible even if the administrative procedure was initiated otherwise than on the basis of a proposal delivered by electronic means, a special law or government regulation allows this; the authority has all the data necessary for the decision at its disposal at the time of submission of the proposal; the decision does not require the discretion of the public administration authority and there is no other participant with conflicting interests. The provision of Section 40 envisages, at the stage of the commencement of proceedings, the existence of a possible form of human interaction when receiving the motion to commence proceedings. Such interaction allows the employee of the public administration body to assess whether the proposal can be processed in an automated manner, in an abbreviated procedure or in a "classic" administrative procedure. The choice of further procedure thus primarily depends on the complexity of the case and the period available to resolve the matter.<sup>77</sup>

In Hungarian conditions, the above-mentioned legal foundations are primarily used to build fully automated decision-making on the entry or change of reliable data recorded in public registers of public administration, or the issuance of any certificate about them. The fully

<sup>72</sup> 2023. évi CIII. törvény a digitális államról és a digitális szolgáltatások nyújtásának egyes szabályairól.

<sup>73</sup> CSATLÓS, E.: Hungarian administrative processes in the digital age: An attempt at a comprehensive examination. In: *Intersections. East European Journal of Society and Politics*, 2024, Vol. 10, No. 1, p. 197. Although Csatlós' article is based on an analysis of the repealed § 11 of the Act on the General Rules of Electronic Administration and Trust Services (2015. évi CCXXII. törvény az elektronikus ügyintézés és a bizalí szállás általános szegáláiról), we believe that the conclusions reached by the author are also applicable to the current § 21 of Act CIII, since it is essentially an identical provision replacing the aforementioned § 11.

<sup>74</sup> For example, Section 21 para. 4 of the Road Transport Act (1988. évi I. TÖRVÉNY a közúti közlekedésről), which authorizes the competent public administration body to issue a fully automated decision in proceedings on traffic offences in accordance with the conditions laid down by government regulation.

<sup>75</sup> Designated in law as a body obliged to provide a digital service.

<sup>76</sup> CSATLÓS, E. – MEZEI, P.: The Law of the Algorithmic State in Hungary. In: *Italian Journal of Public Law*. 2025, Vol. 17, No. 2, p. 635.

<sup>77</sup> A fully automated decision in the case of a proposal submitted in person is considered in Hungary, especially in the case of so-called registration acts, which can be carried out at a general local government body that also functions as a single point of contact. See more CSATLÓS, E.: Hungarian administrative processes in the digital age: An attempt at a comprehensive examination. In: *Intersections. East European Journal of Society and Politics*, 2024, Vol. 10, No. 1, p. 198.

automated procedure also applies to decision-making in the field of social affairs, such as decisions on granting maternity benefits or travel reimbursements related to the provision of specific health services outside the place of permanent residence, or decisions in the field of administrative punishment, namely decisions on imposing fines for traffic offenses that are documented by a special camera system, on the legal basis of the aforementioned Act I.<sup>78</sup>

From the perspective of special guarantees of legality, it is possible to identify in the aforementioned Section 21 of Act CIII the obligation of a public administration body to notify a party to the proceedings of the fact that a decision in his case was issued in an automated manner. A similar obligation, however, is absent in the Act CL as a general regulation on administrative procedure. Another specific institute that can be considered an *ex ante* guarantee of legality is the request for a full hearing of the proposal, regulated in Section 42 of the Act CL. Its essence lies in the right of the party to the proceedings to initiate a regular administrative proceeding within five days of the notification of the decision issued in a fully automated procedure.

However, this right to re-hear a case in administrative proceedings can only be exercised by a party to the proceedings if an appeal cannot be filed against a fully automated decision. The aforementioned guarantee is a reflection of the general requirement arising from Section 6 of the Act on the Right to Informational Self-Determination and Freedom of Information (Act CXII)<sup>79</sup>, which is a Hungarian provision implementing the requirements of Art. 22 GDPR in terms of automated administrative procedures. In addition to it, in our opinion, it is also necessary to comply with other general requirements arising from the provision in question, although they are no longer explicitly reflected in Act CL or Act CIII. The reason is that the material scope of Section 6 covers all individual legal acts that are based solely on automated data processing. Other guarantees that must be met in fully automated decision-making in Hungarian administrative proceedings include compliance with the requirement of equal treatment; the need for the public administration body to inform the data subject, in particular the party to the proceedings, at his request, of the method and criteria used in the decision-making mechanism; and the requirement that the decision not be made using sensitive data, unless otherwise provided by law or a binding EU legal act.<sup>80</sup> Otherwise, we believe that decisions issued using automated means should be subject to the same guarantees of legality as in regular administrative proceedings.

## 7. Italy

Italian law does not currently regulate automated decision-making in the field of public administration. The only provision that can be indirectly linked to the automation of administrative proceedings is Article 3-bis of the Italian General Administrative Procedure Code,<sup>81</sup> which has the character of a principle. Article 3-bis essentially states that, in order to achieve greater efficiency in their activities, public administration bodies should use IT and telematic tools in internal relations, between public administration bodies themselves, as well as between them and public administration addressees. Although the aforementioned provision raises controversy about the sufficient legal basis for any automation of administrative proceedings, according to Galetta, accepting the Italian doctrine of "organizational autonomy" of public administration, which allows public administration bodies to independently decide on

<sup>78</sup> Ibid., pp. 200-201.

<sup>79</sup> 2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról.

<sup>80</sup> For an analysis of Section 6 of Act CXII, see more in MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: Computer Law & Security Review, 2019, No. 5, p. 16.

<sup>81</sup> LEGGE 7 agosto 1990, n. 241 Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi.

their internal activities within the limits of the law, this conclusion can be reached at least for semi-automated administrative proceedings.<sup>82</sup> However, fully automated decision-making in the field of public administration will not stand on the aforementioned legal basis.<sup>83</sup>

Despite the unclear legal basis, Italian public administrations in practice use IT tools that automate a certain phase of the administrative procedure.<sup>84</sup> One can even identify a case of a fully automated decision-making process that used an expert system algorithm to place or transfer teachers. However, the experience with the use of this system in Italy was not optimal, which led to an extensive lawsuit that ended up in the Italian Supreme Administrative Court.<sup>85</sup> On the one hand, he believed that the use of an automated system *per se* was lawful, but on the other hand, he identified as a problem the lack of transparency of such proceedings, which was related to the insufficient justification of the decision, the inaccessibility of the source code, and the effective possibility of challenging such an automatically issued decision.<sup>86</sup>

It follows from the above-mentioned decision of the Italian Supreme Administrative Court that in an automated administrative procedure the same guarantees of legality must be observed as in a procedure in which automated means are not used. In addition to the principle of legality and the requirements arising from it, it is important that automated administrative procedures also respect other related guarantees, in particular the principle of transparency and accountability of public administration.<sup>87</sup> Italian procedural law does not contain any specific procedural institutes that would serve as specific guarantees of legality created for the purposes of automated decision-making processes in the field of public administration.

## 8. Latvia

The Latvian general regulation on administrative procedure, which is the Administrative Procedure Act (Administratīvā procesa likums 2001 (APL)), is indifferent in relation to the regulation of administrative proceedings conducted by automated means. Given the absence of an explicit legal basis and the requirement arising from Section 4 of the Law on the Legal Effects of Documents (Dokumentu juridisksā spēka likums 2010) which stipulates that every official document, including a decision, must be signed by an authorised official except in cases provided for by a special law, legal doctrine tends to conclude that full automation of administrative proceedings in Latvia is permissible, provided that a special law eliminates the need to sign official documents, including individual administrative acts, in a given administrative proceeding. At the same time, as long as the signature on the official document is secured, partial automation of the administrative process should be permissible even if a special law does not provide for this exception. Even an administrative decision generated

<sup>82</sup> Galetta states that on the aforementioned legal basis, the automation of actions associated with the initiation of administrative proceedings is acceptable, i.e. activities associated with submitting proposals for the initiation of proceedings or preliminary investigation, on the basis of which a public administration body may initiate proceedings *ex officio*. Furthermore, the use of machine learning systems to process the data that public administration needs to decide whether and how to implement a certain policy or service, to identify the existence of a predetermined recipient of the measure to be taken. Also, the use of algorithms or machine learning systems to properly determine the state of affairs. Finally, activities related to the notification of decisions, or further communication after the decision has been issued with the addressee of the public administration, could also be subject to automation.

<sup>83</sup> GALETTA, D.-U. – PINOTTI, G.: Automation and Algorithmic Decision-Making Systems in the Italian Public Administration. In: CERIDAP, 2023, No. 1, pp. 14-15.

<sup>84</sup> For example, in relation to the initiation of proceedings at the request of a party, when submitting the proposal, the party's identity is automatically verified through the public digital identity system (SPID - Sistema Pubblicodi Identità Digitale). For further examples, see *Ibid.*, pp. 16-18.

<sup>85</sup> See Cons. St., Sec. VI, 8 April 2019, n. 2270, point 8.1 and 8.2.

<sup>86</sup> *Ibid.*, p. 19.

<sup>87</sup> *Ibid.*, p. 20.

entirely by an automated system should be acceptable as long as such a "draft" decision is signed by an authorized person.<sup>88</sup>

An example of a special law that eliminates the need to sign selected administrative decisions is, in particular, the Administrative Liability Act (Administratīvās atbildības likums 2018 (AAL)), which regulates special proceedings for administrative offences in Latvian conditions. Effective from 1 January 2025, this law also explicitly regulates the basic rules for automated decision-making<sup>89</sup> and the specific legality safeguards that must apply to automated decision-making under AAL. According to Section 303 para. 2 AAL states that under this Act, automated decision-making is permissible only in the case expressly provided for in this Act. The AAL currently regulates two cases where fully automated decision-making is permissible and where the need to sign an individual administrative act is also excluded. This involves deciding on the imposition of a fine on a vehicle owner for violating selected road traffic rules that were recorded by technical means<sup>90</sup> and the decision-making of the Latvian tax authority in relation to administrative offences for failure to comply with the deadline for filing a tax, information or public declaration or annual report or failure to submit such a declaration or annual report.<sup>91</sup> In addition, full automation finds its application in Latvian conditions also in the tax area, for example, when sending payment notices on the amount of real estate tax, which are considered an administrative decision.<sup>92</sup>

As mentioned above, special safeguards of legality are regulated in the Latvian legal order essentially only on a sectoral basis within the AAL. In other procedures where its automation is permissible, it is necessary to comply with the traditional guarantees inherent in administrative procedures conducted by employees of public administration bodies. Special safeguards that have been relatively recently enshrined in the AAL include the right to explanation, specific features of the automated decision, the right to review the automated decision and the right to have an unlawful automated decision revoked.<sup>93</sup>

The Latvian legislator has included in the scope of the right to explanation the right of the data subject to obtain meaningful and comprehensive information about the data used in making an automated decision, the automated system and the impact of its use on this decision, as well as about the persons involved in making this decision and creating the automated decision-making system. This information must be attached to the decision. In addition, its scope also includes the right of the data subject to request an oral or written explanation of the decision from the public administration body responsible for issuing the automated decision.<sup>94</sup>

The specific requirements of an automated decision according to AAL include information that the decision was issued by automated means; information falling within the scope of the right to explanation and the identification of the public administration body responsible for the issued decision. The automated decision must also be certified by a qualified electronic seal in accordance with a special regulation.<sup>95</sup>

<sup>88</sup> DANOVSKIS, E.: THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 655 and p. 658.

<sup>89</sup> In Art. 303 para. 1 AAL also defines the essence of automated decision-making under this Act, according to which it is a decision-making without the involvement of the person conducting the administrative offence proceedings or another person with decision-making authority, solely on the basis of automated data processing.

<sup>90</sup> Art. 162 para. 3 AAL.

<sup>91</sup> Art. 164 AAL.

<sup>92</sup> See Art. 6 para. 1 of the Real Estate Tax Act (Par nekustamā turtas nodokli 1997). For further examples, see DANOVSKIS, E.: THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, pp. 659-660.

<sup>93</sup> Art. 304 to Article 307 of the AAL.

<sup>94</sup> Art. 304 AAL.

<sup>95</sup> Art. 305 AAL.

Finally, the essence of the right to have an automated decision reviewed and the right to have an unlawful automated decision annulled is to ensure the individual's right to challenge an automated decision by lodging an appeal within one month of its notification, or to guarantee the possibility of its annulment *ex officio* in cases where such an appeal has not been submitted. At the same time, the AAL formulates a prohibition on a fully automated system deciding again on an appeal against an automated decision.<sup>96</sup>

## 9. Poland

In 2021, Section 14 para. 1b was incorporated into the Polish Code of Administrative Procedure (Kodeks postępowania administracyjnego (KPA)),<sup>97</sup> sparking a debate among Polish legal scholars regarding the establishment of a legal basis for the automation of administrative proceedings, including the possibility of issuing fully automated administrative decisions.

It follows from the wording of Section 14 para. 1b that Polish public administration bodies may resolve matters using automatically generated documents bearing the qualified electronic seal of that body, while regulations requiring the signature of an employee of the public administration body do not apply to automatically generated documents. It appears that Polish legal doctrine, as well as administrative practice, has settled on the conclusion since the entry into force of the provision in question that, although the linguistic interpretation of the provision in question would allow for full automation of the decision-making process, a systematic and teleological interpretation must prevail, according to which only partial automation of acts within the administrative procedure is permissible until the moment of issuing the final decision.<sup>98</sup> The reason is primarily the need to ensure compliance with the principle of legality, the fundamental principles of administrative procedure, the procedural rights of the parties to the proceedings, and the requirements of Art. 22 GDPR, which could not be fulfilled in the absence of specific legal safeguards systematically linked to Section 14 para. 1b KPA.<sup>99</sup>

Semi-automated administrative proceedings, including the use of AI systems, find their application in Polish conditions mainly in proceedings before employment offices and organizational units related to social and family security, where algorithms play an increasingly supporting role for officials in issuing individual administrative acts. Another example is the Agency for Restructuring and Modernisation of Agriculture, which is using AI in the disbursement of EU funds, when it uses data collected by satellites to verify what and where farmers applying for EU funds are growing in its state of affairs.<sup>100</sup>

We have not identified any specific guarantees of legality associated with the implementation of automated means in the decision-making process in public administration in Polish procedural law.

<sup>96</sup> Art. 306 to Article 307 of the AAL.

<sup>97</sup> Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego.

<sup>98</sup> It is even acceptable to create a draft decision by an automated system, but a specific employee of the public administration body that formally issues it must always assume the final responsibility for its content. See JAKUBEK-LALIK, J.: The Challenges of AI in Administrative Law and the Need for Specific Legal Remedies: Analysis of Polish Regulations and Practice. In: Central European Public Administration Review, 2024, Vol. 22, No. 2, pp. 152-155.

<sup>99</sup> See more WILBRANDT-GOTOWICZ, M.: The dilemmas of automated decision making in administrative proceedings – comments in the context of § 14 1b of the Administrative Procedure Code. In: STUDY OF PRAWNICZE KUL, 2023, Vol. 95, No. 3, pp. 152-155., or SIBIGA, G.: Zasada wykorzystania pism generowanych automatycznie do załatwienia indywidualnej sprawy administracyjnej (art. 14 § 1b KPA) Podstawa prawnia czy zasada kierunkowa dla automatycznego podejmowania decyzji? (Dodatek specjalny do MOP 6/2023). In: Monitor Prawniczy, 2023, No 6, pp. 7-16.

<sup>100</sup> JAKUBEK-LALIK, J.: The Challenges of AI in Administrative Law and the Need for Specific Legal Remedies: Analysis of Polish Regulations and Practice. In: Central European Public Administration Review, 2024, Vol. 22, No. 2, p. 121.

## 10. Spain

Spanish administrative procedural regulations have provided for the standardization of the electronic form of administrative proceedings, including the automation of decision-making processes, since 2007. After the entry into force of new procedural regulations in 2016, the current legal framework for automated decision-making in the field of public administration is formed by the Act on Joint Administrative Procedure of Public Administration (LPAC)<sup>101</sup> and the Act on the Legal Regime of the Public Sector (LRJSP).<sup>102</sup> The key provisions in this regard are Art. 41 and Art. 42 LRJSP. While the subject of Article 42 is the authorization of a public administration body to choose one of the variants of the electronic signature system when performing an automated administrative act, Article 41 discusses its essence.

According to Art. 41 para. 1, automated administrative action is understood to be any decision or action carried out entirely by electronic means by a public administration within the framework of an administrative procedure, and in which a public employee has not been directly involved. Under Spanish law, the relevant provision is regarded as the legal basis for both partially and fully automated administrative proceedings, including the possibility of employing AI systems in the decision-making process.<sup>103</sup>

Article 41 para. 2 LRJSP represents *ex ante* guarantee of legality created in connection with the automation of administrative proceedings. The provision in question primarily obliges public authorities to designate, before implementing automation into the decision-making process in the area of public administration, a competent authority to define specifications, programming, maintenance, supervision and quality control, and, where appropriate, auditing of the information system and its source code. Simply put, it is the obligation of public authorities to ensure that an automated system is used under human control.<sup>104</sup> Secondly, paragraph 2 requires the determination of the public authority that should be considered responsible for the automated administrative act, for the purposes of appeal. The obligation to designate the authority responsible for the automated decision appears to be particularly significant because it excludes the possibility of an automated administrative action being considered "autonomous", as it will always be attributable to a specific public administration authority. Automated administrative procedures are therefore, in Spanish conditions, equated with "normal" administrative procedures consisting in the issuance of individual administrative acts by a human being, with the same guarantees having to be respected in both cases.<sup>105</sup>

Other guarantees of legality worth highlighting include the obligation of the competent public authority to establish the use of an automated system in a specific administrative procedure by a normative legal act or an individual legal act, or the explicit enshrining of the requirement that public authorities, when implementing automated systems in decision-making processes, use algorithms that will function responsibly, transparently and non-discriminatory whenever technically possible.<sup>106</sup> However, despite its benefits, criticism is also emerging among Spanish legal scholars regarding the latter guarantee. This is primarily because the standards enshrining this requirement are rather recommendatory in nature and, moreover, the term "if technically possible" creates a regulatory gap in which the requirement of

<sup>101</sup> Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas.

<sup>102</sup> Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público.

<sup>103</sup> CASADO, E. G.: Automated Decision-Making Systems in Spanish Administrative Law. In: CERIDAP, 2023, No. 1, pp. 25-27.

<sup>104</sup> However, Casado is critical of the fact that although the provision assumes professional human monitoring, legal control over its monitoring is absent. *Ibid.*, p. 29.

<sup>105</sup> *Ibid.*, pp. 28-29.

<sup>106</sup> See Art. 23 of the Law on Equal Treatment and Non-Discrimination (Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación).

accountability, transparency and non-discrimination may not apply to automated decision-making processes using AI, the functioning of whose algorithms is inexplicable.<sup>107</sup>

## 11. Sweden

Automation of decision-making processes in public administration has a relatively long tradition in Sweden, dating back to the 1970s. During this period, the Swedish Transport Administration began to use automated systems in its decision-making activities, and later also the Student Finance Board, the Tax Authority, and the Social Security Administration. At present, automated administrative proceedings in Sweden are widespread at both the national and local levels, in line with the Swedish legislator's long-term vision of being "the best in the world" in harnessing the benefits of digitalization, including its use whenever possible in interactions between public administration and its addressees.<sup>108</sup>

Despite the aforementioned tradition of issuing decisions by automated means in the field of public administration, Swedish administrative procedural law until 2017 did not contain any explicit mention of the possibility of issuing individual administrative acts by automated means. The reason for this was the legislative idea that the norms in the Swedish Administrative Procedure Act (Förvaltningslag 2017:900 (FL)) should be "technologically neutral", i.e. the principles and rules contained therein should apply to administrative proceedings, including decisions of an administrative authority, regardless of whether the procedure is carried out by a person or a machine. The ratio legis of such an idea lies in the effort to ensure the rigidity of administrative procedural law and thus the legal certainty of individuals, as it is based on the premise that special procedural provisions governing automated administrative proceedings would have to be adapted more often to technological progress. Although, according to Reichel, decisions issued in automated administrative procedures have withstood the review of their legality in a number of court proceedings even without an explicit legal basis, the Swedish legislator nonetheless incorporated this possibility into Section 28 of the Administrative Procedure Act (FL) in 2017.<sup>109</sup>

According to Section 28, first sentence, of the FL, a decision can be made by an officer on their own or by several jointly or be made automatically. The explicit legal basis for both fully and semi-automated decision-making in Section 28 of the Administrative Procedure Act (FL) is thus expressed merely through a concise reference to the possibility of issuing a decision automatically. The subject of Section 28 of the FL, as well as any other provision, is not the prerequisites or legal consequences of issuing a decision by automated means. With the increasing number of administrative proceedings with the potential to use automation in issuing decisions, the aim of declaring this possibility was only to remove any doubt about this alternative without the need to adopt separate legal bases in specific laws. Despite the stated intention of the legislator, Reichel states that the explicit incorporation of this legal basis has also brought with it certain legal problems, which are primarily associated with complying with all the requirements of Art. 22 2 letter b) GDPR and with the paradoxical impracticality of some "technologically neutral" provisions that should also be used in automated administrative proceedings.<sup>110</sup>

<sup>107</sup> CASADO, E. G.: Automated Decision-Making Systems in Spanish Administrative Law. In: CERIDAP, 2023, No. 1, pp. 27, 30-31.

<sup>108</sup> REICHEL, J.: Regulating Automation of Swedish Public Administration. In: CERIDAP, 2023, No. 1, pp. 77-78.

<sup>109</sup> Ibid., pp. 80-81, 86.

<sup>110</sup> These include, for example, provisions on the formal requirements of a decision, which require that the decision will include the identification of the employee of the public administration body, regardless of whether the decision in question was issued by a human or automated means. Similarly, it appears to be a problem to comply with the requirement of sufficient justification of a decision in legally and factually complex cases if the decision is justified by an automated system.

As indicated, Swedish administrative procedural law does not contain specific guarantees of legality created in the image of automated decision-making processes. The "technology-neutral" approach to regulating administrative proceedings thus relies on the typical guarantees of legality used in the anthropocentric model of decision-making, even in automated decision-making. The main limits to the automation of decision-making processes by public administration bodies in Sweden are the requirements for sufficient reasoning of decisions, proper establishment of the facts of the case, and the principle of procedural economy, which must operate within the boundaries of the principle of legality.<sup>111</sup>

### **III. RECOMMENDATIONS FOR THE SLOVAK LEGISLATOR: WHAT AND WHOM TO BE INSPIRED BY WHEN AUTOMATING ADMINISTRATIVE PROCEDURES?**

#### **1. Summary of key findings**

It follows from the previous chapter that the legal basis for the possibility of issuing fully automated decisions in administrative proceedings is, as of the date of writing, enshrined in eight of the eleven Member States surveyed.<sup>112</sup> At the same time, it was identified that the approach to establishing a legal basis is heterogeneous across the Member States. Differences are particularly evident in terms of the scope of its substantive applicability and its systematic embedding within the legal order.

Regarding the scope of substantive applicability, two groups of Member States can be distinguished: those with a general legal basis and those with a sectoral legal basis.

The first group, consisting of France, Germany, Hungary, Spain and Sweden,<sup>113</sup> has a general legal basis enshrined in its legal system, i.e. one whose scope covers essentially all administrative law matters. In other words, if the conditions and prerequisites set out in the general legal basis are met, the issuance of a fully automated decision is permissible regardless of the type of administrative procedure. Within this first group, a distinction can be made between Member States that regulate the specific conditions and requirements for issuing fully automated decisions within the general legal basis,<sup>114</sup> and those that do not explicitly regulate such conditions.<sup>115</sup>

The second group, comprising Austria, Estonia, and Latvia, has a sectoral legal basis, meaning that its applicability is limited to a specific set of administrative law matters or to certain proceedings regulated by a special law. Sectoral legal bases authorize public administration bodies to issue fully automated decisions primarily in proceedings concerning tax matters, social security, student grant allocations, and, exceptionally, administrative punishment.

Regarding the systematic embedding of the legal basis for fully automated administrative decision-making within a Member State's legal order, in the case of a general legal basis, it is either incorporated into the Member State's general administrative procedure regulation or in a data protection law implementing the requirements of Art. 22 (2) (b) GDPR in conjunction with

<sup>111</sup> REICHEL, J.: Regulating Automation of Swedish Public Administration. In: CERIDAP, 2023, No. 1, p. 84.

<sup>112</sup> In another Member State under review, namely the Czech Republic, the draft legal basis for fully automated decision-making is in the legislative process.

<sup>113</sup> Furthermore, in the case of Estonia, the draft legal basis for fully automated decision-making is in the legislative process.

<sup>114</sup> This is the case of France, Germany and Hungary. For instance, in France, the possibility of issuing any automated administrative decision is always conditional upon the provision of special safeguards of legality, with fully automated decision-making being impermissible in the context of administrative appeals. In Germany and Hungary, it involves a combination of several conditions, with a key limitation in both countries being that fully automated decisions are restricted in proceedings requiring the exercise of administrative discretion. At the same time, the general legal bases in these countries stipulate that, for fully automated decision-making to be possible in a given administrative proceeding, there must either be an explicit authorization in a *lex specialis* or no provision excluding this possibility.

<sup>115</sup> This is the case of Spain and Sweden.

the general administrative procedure regulation.<sup>116</sup> As already mentioned, in the case of a sectoral legal basis, it is enshrined in a separate law for each administrative procedure or set of administrative procedures.

When it comes to semi-automated decision-making, it can be generalized that Member States adopt a more lenient approach regarding the need for an explicit legal basis. In each Member State, the principle of legality presumes the existence of a legal basis, but this legal basis can be either explicit<sup>117</sup> or implicit<sup>118</sup>.

In the case of France, Hungary, Spain, or Sweden, the explicit legal basis for fully automated decision-making is also the legal basis for semi-automated administrative proceedings. Another example of explicit regulation of partially automated administrative proceedings is Germany, which, within its administrative procedure codes, expressly regulates the possibility of preparing an administrative decision in an automated manner, while human intervention is still expected during fact-finding. In the Czech Republic and Estonia, certain parts of administrative proceedings or specific acts within such proceedings can be carried out automatically, usually on a special legal basis regulating the given administrative proceeding.

On the other hand, in Austria, Italy, Latvia, and Poland, the legality of automating part of the decision-making process or a specific act within administrative proceedings can be demonstrated on the basis of an implicit legal foundation, while maintaining the obligation that an authorized person issues the administrative decision. In Italy, this legal basis is implicitly derived from a principle expressed in the general administrative procedure regulation, whereas in Austria, Latvia, and Poland, it results from a systematic interpretation of constitutional and administrative procedural norms.

Finally, the examined Member States can be divided into those that rely on traditional safeguards of legality applicable to proceedings conducted by public administration employees, extending these safeguards to automated decision-making,<sup>119</sup> and those that have created explicit special legal safeguards for this purpose within their legal systems.

Among the examined Member States with explicit special safeguards of legality are France, Germany, Hungary, Latvia, and Spain. Although the scope and nature of these safeguards differ, their purpose can be categorized.

The first category includes safeguards aimed at ensuring transparency and non-discrimination in automated decision-making. To this end, Member States have established both substantive obligations for public authorities responsible for creating or managing automated systems – requiring that the system be under human supervision and operate responsibly, transparently, and non-discriminately – and procedural obligations for public authorities to inform affected persons about the issuance of an administrative decision through automated means, including the duty to clearly explain how the algorithm contributed to the decision and its characteristics. The leitmotif of these safeguards is to strengthen the right of parties to a properly reasoned decision and the associated right to review it. Additionally, a special safeguard aimed at promoting non-discriminatory decision-making and protecting

<sup>116</sup> This is the case of France.

<sup>117</sup> This legal basis explicitly allows an administrative decision to be issued using automated means or explicitly authorizes a public administration body to carry out part of an administrative procedure or some action of an administrative procedure in an automated manner.

<sup>118</sup> This is a legal basis where the possibility of automating a part of an administrative procedure or a specific act is derived from the principle on which the administrative procedure is built or other procedural rules relating in particular to the issuance and requisites of the decision.

<sup>119</sup> Traditional guarantees of legality that correlate with the automation of administrative proceedings include, in particular, the right to be heard, the right to reasons for the decision, the principle of material truth, the principle of transparency and the right to an effective remedy.

personal data involves the prohibition of issuing decisions based on “sensitive” categories of personal data.

The second category encompasses safeguards intended to ensure the accountability of the public administration official for an individual administrative act issued by automated means. The main objective here is to guarantee that fully automated decisions can always be attributed to a specific public authority responsible for them, both for the purpose of remedies and in the event of liability for damages caused in the exercise of public authority.

The third category consists of safeguards designed to guarantee human review of automated decisions. This guarantee is ensured either through the right of participants to request that their case be handled in an “anthropocentric” procedure given particular circumstances or, at minimum, through the right of participants to challenge an automated decision via a remedy decided by an authorized human official.

## 2. Recommendations for the Slovak legislator per se

The research findings suggest that, across the examined Member States, there is a prevailing trend toward establishing an explicit and general legal basis for both fully and semi-automated decision-making in public administration. In view of the principle of legality enshrined in Art. 2 para. 2 of the Constitution of the Slovak Republic, it is strongly recommended that the Slovak legislator, prior to implementing any automated system in the public decision-making process, first establish a legal basis for its use founded on these attributes.

Such a legal basis should, following the example of the majority of Member States, be reflected in the provisions of the Slovak general administrative procedure regulation, currently Administrative Procedure Code,<sup>120</sup> or in other codified procedural regulations for which the subsidiary application of the Administrative Procedure Code is excluded.<sup>121</sup> Following the French model, its establishment could alternatively be considered in conjunction with Personal Data Protection Act,<sup>122</sup> provided that the Slovak legislator simultaneously undertakes a more comprehensive regulation of special safeguards of legality for automated administrative decision-making within this Act. One should also consider the more ambitious option of adopting a completely new general administrative procedure regulation, which would comprehensively govern both anthropocentric administrative proceedings and automated administrative proceedings, including special safeguards of legality and the interrelations between these two types of proceedings.

We further contend that, at least during the initial phase of implementing automated systems, the establishment of a legal basis for automated decision-making should be accompanied by the codification of general limits on its permissibility. Following the example of Germany and Hungary, such a recommended limit could be either a requirement for the existence of a *lex specialis* authorizing automated decision-making in a given proceeding, or, at minimum, the requirement for a *lex specialis* explicitly excluding such decision-making. This limit would, during the initial implementation phase, enable the legislator to selectively deploy automated systems in administrative proceedings where their use is appropriate given the nature of the matter, and to exclude them in contexts where they would be inappropriate. Consideration should also be given to establishing a categorical limit prohibiting fully automated decision-

<sup>120</sup> Zákon č. 71/1967 Zb. o správnom konaní (správny poriadok) v znení neskorších predpisov.

<sup>121</sup> These are mainly Tax Code (zákon č. 563/2009 Z. z. o správe daní (daňový poriadok) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov) and Act on Social Insurance (zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov).

<sup>122</sup> Zákon č. 18/2018 Z. z. o ochrane osobných údajov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

making in cases requiring the exercise of administrative discretion.<sup>123</sup> While such a limit may constrain the implementation of more sophisticated AI systems based on machine learning, it would substantially reduce the risk of violating the rights and legitimate interests of participants arising from insufficient system transparency and the absence of real oversight by the responsible authority, which would be unable to explain the system's operation or justify the outcome of an automated assessment.<sup>124</sup>

Finally, we consider it essential that the legislator address the requirements of Art. 22 (2) (b) GDPR by explicitly codifying special safeguards of legality. As previously noted, their systematic incorporation could be achieved either within the existing Administrative Procedure Code and other procedural regulations for which its subsidiary application is excluded, in conjunction with the Personal Data Protection Act, or within the framework of a new general administrative procedure regulation. *De lege ferenda*, it is recommended that the codification of special safeguards of legality cover at least the basic categories identified in the preceding subchapter. In other words, any future legal framework should not lack substantive and procedural guarantees aimed at ensuring the transparency and non-discrimination of automated decision-making, the accountability of the specific public authority for the automated decision, and the capacity for human review of automated decisions.

#### IV. CONCLUSION

The comparative analysis of legal regulations on the automation of decision-making processes in public administration in selected Member States indicates that the legal basis for partial automation of administrative proceedings exists to some degree in every Member State, while most of them also possess a legal basis allowing for fully automated decision-making. These legal frameworks, however, exhibit considerable heterogeneity, particularly with respect to the scope of substantive applicability, the existence of general limits on the permissibility of automated decision-making, and the systematic embedding within the legal order of the respective Member State.

In contrast to the legal basis for the automation of administrative proceedings, special safeguards of legality are generally absent, as only five of the examined Member States were found to have explicitly codified them. Among those Member States that have adopted such safeguards, there is notable diversity in their regulation, both in terms of scope and the nature of the safeguards provided. To a certain extent, generalizable trends can be identified, with safeguards primarily aimed at ensuring the transparency and non-discrimination of automated decision-making, the accountability of the specific public authority responsible for the automated decision, and the capacity for human review of such decisions.

In light of these findings, and taking into account the requirements arising from Art. 2 para. 2 of the Constitution of the Slovak Republic and Art. 22 (2) (b) GDPR, is recommended that the Slovak legislator, prior to implementing any automated system in the public decision-making process, establish an explicit legal basis for its use, accompanied by general limits on the permissibility of automated decision-making. Simultaneously, special safeguards of legality

<sup>123</sup> On administrative discretion and automated decision-making, see COVILLA, J. C.: Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, 2025, Vol. 16, Special Issue 1, pp. 36-50.

<sup>124</sup> On the risks of introducing more sophisticated AI systems into decision-making processes in public administration, see SHEEHY, B. – FUI-NG Y.: The Challenges of AI-Decision-Making in Government and Administrative Law: A Proposal for Regulatory Design. In: Indiana Law Review, 2024, Vol. 57, No. 3., pp. 665-698., RANERUP, A. – HENRIKSEN, H.: Digital Discretion: Unpacking Human and Technological Agency in Automated Decision Making in Sweden's Social Services. In: Social Science Computer Review, 2022, Vol. 40, No. 2, pp. 445-461. or van BEKKUM M. – BORGESIUS FZ: Digital welfare fraud detection and the Dutch SyRI judgment. In: European Journal of Social Security, 2021, Vol. 23, No. 4, pp. 323–340.

should be codified, with the primary objectives of ensuring transparency and non-discrimination in automated decision-making, accountability of the specific public authority for the automated decision, and the ability for human review of that decision.

While it is, in our view, essential that further scholarly and professional discussion takes place regarding the specific content of the legal basis, its systematic embedding in the legal order, the scope and nature of general limits on the permissibility of automated decision-making, as well as the special safeguards of legality, the recommendations provided – drawn from the legal practices of other Member States – should serve as a fundamental legal starting point for the lawful implementation of administrative process automation in the Slovak Republic, ensuring at the same time that the rights and legitimate interests of individuals are respected.

## KEYWORDS

Automation, administrative proceedings, decision-making. ADM, comparative study, EU Member States

## KLÚČOVÉ SLOVÁ

Automatizácia, správne konanie, rozhodovanie, ADM, komparatívna štúdia, členské štáty EÚ

## BIBLIOGRAPHY

1. ANDRAŠKO, J. a kol. Regulačné výzvy e-governmentu v Slovenskej republike v kontexte práva Európskej únie. Praha: Wolters Kluwer ČR, 2022, p. 380.
2. CASADO, E. G.: Automated Decision-Making Systems in Spanish Administrative Law. In: CERIDAP, 2023, No. 1, pp. 24-40. DOI: 10.13130/2723-9195/2023-1-119
3. COVILLA, J. C.: Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, 2025, Vol. 16, Special Issue 1, pp. 36-50. DOI: 10.1017/err.2024.76
4. CSATLÓS, E.: Hungarian administrative processes in the digital age: An attempt at a comprehensive examination. In: Intersections. East European Journal of Society and Politics, 2024, Vol. 10, No. 1, pp. 189-209. DOI: 10.17356/ieejsp.v10i1.1250
5. CSATLÓS, E – MEZEI, P.: The Law of the Algorithmic State in Hungary. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 621-650. DOI: 10.2139/ssrn.4976513
6. DANOVSKIS, E.: THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 655 and pp. 651-662.
7. GALETTA, D.-U. – PINOTTI, G.: Automation and Algorithmic Decision-Making Systems in the Italian Public Administration. In: CERIDAP, 2023, No. 1, pp. 13-23. DOI: 10.13130/2723-9195/2023-1-7
8. GREGA, R. – KOVÁČ, P.: The Role of Automated Decision-Making in Modern Administrative Law: Challenges and Data Protection Implications. In: Central European Public Administration Review, 22(2), pp. 83–108. DOI: 10.17573/cepar.2024.2.04
9. HAITSMA, L. – BRINK, B.: From Human Intervention to Human Involvement: A Critical Examination of the Role of Humans in (Semi-)Automated Administrative Decision-Making. In: Digital Government: Research and Practice, 2025, Vol. 6, No. 3, Article 33, pp. 1-17. DOI: 10.1145/3716173
10. HAMULÁKOVÁ, Z.: Právo na spravodlivý proces v kontexte automatizovaných rozhodnutí vo verejnej správe. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. p. 8-24.

11. HANDRLICA, J.: Automatizace v rozhodování správních orgánu: Fatamorgána, nebo realita budoucnosti?. In: *Správni právo*, 2024, No. 6-7, p. 421-424. DOI: 10.13140/RG.2.2.14537.76643
12. HOFMANN, H. C. H.: Comparative Law of Public Automated Decision-Making. An Outline. In: *CERIDAP*, 2023, No. 1, s. 1-12. DOI: 10.13130/2723-9195/2023-1-3
13. JAKAB, R.: National Report on Automation in Decision-Making in Public Administration in Slovakia. In: *ACTA UNIVERSITATIS CAROLINAE*, Vol. 70, 2024, No. 2, 147-157. DOI: 10.14712/23366478.2024.28
14. JAKUBEK-LALIK, J.: The Challenges of AI in Administrative Law and the Need for Specific Legal Remedies: Analysis of Polish Regulations and Practice. In: *Central European Public Administration Review*, 2024, Vol. 22, No. 2, pp. 109-127. DOI: 10.17573/cepar.2024.2.05
15. JANČÁT, L.: *Právo na spravodlivý proces podľa Dohovoru a judikatúry ESLP v Slovenskej republike*. Vysokoškolská učebnica. Košice: ŠafárikPress, 2024, p. 120. DOI: 10.33542/psp-0360-9
16. MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: *Computer Law & Security Review*, 2019, No. 5, p. 1-26. DOI: 10.1016/j.clsr.2019.05.002
17. MERLI, F.: Automated Decision-Making Systems in Austrian Administrative Law. In: *CERIDAP*, 2023, No. 1, pp. 42-43. DOI: 10.13130/2723-9195/2023-1-19
18. METCALF, K.-N. – KERIKMÄE, T.: Machines are taking over – Are we ready?: Law and Artificial Intelligence. In: *Singapore Academy of Law Journal*, 2021, Vol. 33, p. 24-49.
19. NEŠPOR, J.: Automated Administrative Decision-Making: What is the Black Box Hiding?. In: *ACTA UNIVERSITATIS CAROLINAE*, Vol. 70, 2024, No. 2, pp. 69-83. DOI: 10.14712/23366478.2024.23
20. PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: *CERIDAP*, 2023, No. 1, pp. 51-74. DOI: 10.13130/2723-9195/2023-1-105
21. RANERUP, A. – HENRIKSEN, H.: Digital Discretion: Unpacking Human and Technological Agency in Automated Decision Making in Sweden's Social Services. In: *Social Science Computer Review*, 2022, Vol. 40, No. 2, 445-461. DOI: 10.1177/0894439320980434
22. REICHEL, J.: Regulating Automation of Swedish Public Administration. In: *CERIDAP*, 2023, No. 1, pp. 77-78. DOI: 10.13130/2723-9195/2023-1-112
23. SHEEHY, B. – FUI-NG Y.: The Challenges of AI-Decision-Making in Government and Administrative Law: A Proposal for Regulatory Design. In: *Indiana Law Review*, 2024, Vol. 57, No. 3., p. 665-698. DOI: 10.18060/28360
24. SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: *CERIDAP*, 2023, No. 1, pp. 95-115. DOI: 10.13130/2723-9195/2023-1-102
25. SCHOCH, F., Einleitung, In SCHOCH, F. – SCHNEIDER, J.-P. *Verwaltungsverfahrensgesetz*, C.H. Beck, Munich, 2022, pp. 290–294.
26. SIBIGA, G.: Zasada wykorzystania pism generowanych automatycznie do załatwienia indywidualnej sprawy administracyjnej (art. 14 § 1b KPA) Podstawa prawa czy zasada kierunkowa dla automatycznego podejmowania decyzji? (Dodatek specjalny do MOP 6/2023). In: *Monitor Prawniczy*, 2023, No 6, pp. 7-16.

27. STAŠA, J.: Očekávaní a obavy spojené s automatizací správního rozhodování.. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. p. 127-140.
28. STEPANOV, A. Easy to learn, hard to master: the challenge of intelligible AI in French administration. In: The Digital Constitutional [online]. [cit. 2025-09-27]. Available at: <https://digi-con.org/easy-to-learn-hard-to-master-the-challenge-of-intelligible-ai-in-french-administration>.
29. van BEKKUM M. – BORGESIUS FZ: Digital welfare fraud detection and the Dutch SyRI judgment. In: European Journal of Social Security, 2021, Vol. 23, No. 4, pp. 323–340. DOI: 10.1177/13882627211031257
30. WILBRANDT-GOTOWICZ, M.: The dilemmas of automated decision making in administrative proceedings – comments in the context of § 14 1b of the Administrative Procedure Code. In: STUDY OF PRAWNICZE KUL, 2023, Vol. 95, No. 3, pp. 141–158. DOI: 10.31743/sp.14504

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