



Decision to introduce automated decision making: First residence permits of students

Decision

The Finnish Immigration Service will introduce automated decision making for first residence permits of students.

Granting a residence permit based on studies is regulated by the act on the conditions of entry and residence of third-country nationals for the purposes of research, studies, internship, or volunteering (Laki kolmansien maiden kansalaisten maahantulon ja oleskelun edellytyksistä tutkimuksen, opiskelun, työharjoittelun ja vapaaehtoistoiminnan perusteella 719/2018; hereinafter 'Researcher and Student Act')

Applications are only subject to the automated decision making if the customer applies for a residence permit for studies leading to a degree or for student exchange within the meaning of Directive (EU) 2016/801, and if the residence permit can be granted according to the application, and the matter does not require more extensive holistic deliberation.

The automated decision making will be introduced on 19 October 2023. Applications that become pending after the above date may also be decided on automatically.

Applicable provisions and requirements for the introduction

The Finnish Immigration Service has assessed the requirements for introducing automated decision making with this Decision.

The lawfulness of personal data processing and respecting data subjects' rights are accounted for in the introduction of automated decision making as are the requirements laid down in legislation for automated decision making, its introduction, and the processes to be complied with.

In addition, the requirements for the processing of and deciding on students' first residence permits laid down in the Administrative Procedure Act (434/2003) and legislation on foreign nationals are complied with.

Processing of personal data

The Finnish Immigration Service processes personal data in accordance with section 1, subsection 1, paragraph 1 of the act on the processing of personal data in the field of immigration administration (Laki henkilötietojen käsittelystä

maahanmuuttohallinnossa 615/2020). Data is processed in connection with processing cases related to the entry into, departure from and residence in Finland of foreign nationals, and the related decision making and supervision.

The processing is based on Article 6(1)(c) of the General Data Protection Regulation (EU) 2016/679 (hereinafter 'GDPR'), meaning the processing is necessary for compliance with a legal obligation.

Requirements for automated decision making under the Administrative Procedure Act

The requirements for automated decision making are laid down in the Administrative Procedure Act (434/2003). According to section 53e of said Act, authorities may automatically decide on cases that do not include complex factors requiring a case-specific deliberation. Cases can also be automatically decided on if an official or other party processing the case has reviewed the factors of the case that require case-specific deliberation. Automated decision making must be based on processing rules that the authority has created based on applicable laws and prior assessment.

Automated decision making at the Finnish Immigration Service is based on norms and rules. Authorities must carry out a prior assessment on which matters can be subjected to automated decision making, and identify the factors that are often repeated in the cases processed by the authority ('case types'), which the authority deems should always be decided on according to the same rule. The Finnish Immigration Service carried out a prior assessment on which of the applications subject to this Decision can be justly decided on automatically.

The Finnish Immigration Service identified the student residence permit applications of students who are arriving to study in a university degree programme and applications of exchange students as the case types mentioned above. Applications based on which a residence permit can be granted that do not need a more extensive holistic deliberation are subjected to the automated decision making.

The Finnish Immigration Service has created processing rules for cases decided on automatically. The processing rules contain the rules based on which the fulfilment of the requirements for granting a residence permit and deciding on a case are assessed. The processing rules also contain the rules based on which applications are referred to officials for closer review. In this case, the official assesses and resolves any factors requiring case-specific deliberation, and the official may, on their discretion, return the case back to automated decision making. For example, if the applicant has been heard pursuant to section 64 of the Aliens Act (301/2004), the application is referred to an official for reviewing the content of the hearing.

In addition, the processing rules include thresholds that have been defined for the case types based on which cases are always referred to an official. The thresholds are based on either a need for a more extensive holistic deliberation or technical register entries that require action from an official.

The automated decision making is limited to applications that are submitted through the Finnish Immigration Service's online service by applicants not currently residing in Finland. The automated decision making is also limited to cases in which the applicant has not yet started their studies when the decision on the application is issued. In addition, the automated decision making is limited to applications of customers who have not yet applied for a D visa in connection with a residence permit application, and whose family members do not have pending residence permit applications at the same time. The automated decision making is also limited to applications from applicants that are not participants of the EU mobility programme during the period for which they are applying the residence permit.

When the processing rules were created, the Finnish Immigration Service took account of the fact that applications cannot be decided on automatically before the residence permit applicant has personally proven their identity or before the required checks have been run on official registers. These tasks always require action from an official.

The Finnish Immigration Service does not use algorithms based on artificial intelligence in automated decision making; instead, the processing is based on rules. Automatically made decisions are based on the requirements for granting residence permits defined in legislation and for which processing rules can be programmed in the Finnish Immigration Service's case management system for immigration affairs.

Section 53f of the Administrative Procedure Act lays down a requirement to provide a legal remedy. According to the requirement, decisions related to a natural person can be automatically made only if the natural person in question is provided with the means to request a review of the decision, and the authority that issued the decision or another authority who is a joint controller of the issuing authority must process the request for review. However, this is not required if the automatically decided case pertains to a request from the party concerned that does not relate to any other party concerned.

Pursuant to this Decision, the Finnish Immigration Service automatically decides on applications based on which a residence permit can be granted to the applicant and that do not fall outside the scope of automated decision making according to what is outlined in this document above. Applications for a student residence permit always apply to only one party concerned and therefore the decisions can be issued without providing the means to request for a review.

Section 53g of Administrative Procedure Act lays down the requirement to inform on automatic decision making. All automatically made decisions issued based on this Decision will include the information that the case was decided on automatically in accordance with section 53e of Administrative Procedure Act. Automatically made decisions also include the website address of the Finnish Immigration Service, where this Decision on the introduction of automated decision making is available.

Requirements for the introduction and use of automated decision making laid down in the Act on Information Management in Public Administration

Chapter 6 a of the Act on Information Management in Public Administration (906/2019, hereinafter 'Information Management Act') lays down the requirements for the documentation, quality assurance, quality control and introduction of automated decision making and describes how the authorities' liability on the automated decision making is distributed.

According to section 28 of the Information Management Act, authorities must document the division of the duties of the persons who are responsible for the fulfilment of the responsibilities related to the introduction and use of automated decision making. In addition, authorities must ensure that the processing rules are documented in a manner that enables proving their compliance. The processing rules must indicate how non-discrimination of the rules is ensured, how the cases are examined appropriately and to a sufficient extent, and how the decisions are justified or why they can be left unjustified. The authority must ensure that for at least five years after a decision is issued, it can be determined what processing rules were used to automatically decide on the case and at what stages a natural person has contributed to the processing of the case.

The Finnish Immigration Service has issued separate orders that document the persons responsible for the fulfilment of the responsibilities.

The Finnish Immigration Service has created extensive processing rules for the automated decision making. The Finnish Immigration Service's processing rules meet the requirements laid down in the Information Management Act. The processing rules were designed to be such that the requirements for good governance are met and fundamental rights are respected in the automated decision making. The processing rules specify how residence permit applications are processed and decided on. The processing rules specify the actions performed by officials on applications when verifying some matter requires deliberation from an official, and the conditions for returning an application to automated decision making.

The processing rules enable proving that the introduction of the automated decision making meets all the requirements discussed in this Decision.

In addition, the Finnish Immigration Service has ensured that for at least five years after a decision is issued, it can be determined what processing rules were used to automatically decide on the case and at what stages an official has contributed to the processing of the case.

According to section 28b of the Information Management Act, authorities must ensure that the implemented system for automated decision making complies with its documentation before the automated decision making is introduced. In addition, authorities must ensure that the language of the automatically generated documents provided to parties concerned is proper.

Before its introduction, the Finnish Immigration Service has verified that the processing rules work and that the system developed for the automated decision making is compliant with its documentation. A separate report was

drafted on the testing of the processing rules and the results of the testing. In connection with the testing, it was ensured that the language of the documents produced in connection with the automated decision making, such as the decision document itself, is proper.

According to section 28c of the Information Management Act, authorities must monitor the quality of automatically made decisions and the accuracy of their content.

The Finnish Immigration Service has documented the procedures for implementing quality control after the introduction of automated decision making. Quality control will be carried out according to the plan by manually reviewing randomly selected applications. In addition, the Finnish Immigration Service has documented the procedures for the handling and control of possible incidents.

Requirements laid down in legislation on foreign nationals

According to section 27 of the Researcher and Student Act, the Finnish Immigration Service grants the student resident permit if the requirements for granting the permit are met. According to section 3 of the Researcher and Student Act, the provisions of the Aliens Act are applied to entering and departing Finland, and residing and working in Finland, unless otherwise provided for in the Researcher and Student Act.

The automatic decision making for student residence permit applications is based on processing rules created by the Finnish Immigration Service that are in compliance with the Researcher and Student Act and the Aliens Act. The processing rules were created to be such that the automatic decision making will always result in a decision that is compliant with these Acts.

Data protection legislation

The GDPR requires national legislation for deciding individual cases automatically. According to Article 22 of the GDPR, data subjects have the right to not be subject to a decision based solely on automated processing. However, the prohibition on automated decision making is not applied if it is authorised by EU or Member State legislation to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests.

The Finnish legislation on automated decision making in public administration entered into force on 1 May 2023, and the Finnish Immigration Service complies with this legislation in its introduction of automated decision making. The legal basis for the legislation on automated decision making is laid down in chapter 8b of the Administrative Procedure Act and chapter 6a of the Information Management Act. The legislation establishes safeguards for automated decision making. The provisions of the Administrative Procedure Act authorise authorities to make decisions automatically within the limits set in the chapter.

Right to obtain human intervention

In the GDPR, one of the safeguards required for automated decision making is that data subjects have the right to obtain human intervention in the data processing.

The request for review referred to in section 53f of the Administrative Procedure Act is deemed to meet the GDPR's requirement for a sufficient safeguard as it meets the discussed requirements. If no provisions on the right to request review exist, the requirement to provide a legal remedy can be met by any legal remedy equal to the right to request review laid down in an act. According to section 53f, subsection 2 of the Administrative Procedure Act, the requirement to provide a legal remedy is not applied if the automated decision making is used to approve a request from the party concerned that does not relate to any other party concerned. If the request from the party concerned is approved in the required manner, the party concerned no longer has a need to obtain human intervention as a safeguard under data protection legislation (HE 145/2022, s. 154).

No provisions exist on requests for review in matters under the purview of the Finnish Immigration Service. The safeguard required by the GDPR is implemented by automatically deciding cases where a student is applying for a first residence permit and the residence permit can be granted based on the application.

Information on automated decision making and prior information

The GDPR and Finland's national legislation include provisions that require that data subjects are informed when a decision they are subject to is made or may be made automatically. The obligation to inform and the procedures related to it are laid down in Articles 12 to 14 of the GDPR. If an automated decision is issued in a case, section 53g of the Administrative Procedure Act requires that the decision includes the information that the case was subject to automated decision making and the information about where the decision to introduce automated decision making required by section 28d of the Information Management Act is available.

In connection with introducing automated decision making, the Finnish Immigration Services has ensured that the residence permit applicant is informed of the automated decision making before becoming subject to it, as required by the GDPR. The residence permit applicant will be provided the required information on the possibility that their application will be decided automatically both via the online service and the Finnish Immigration Service's website.

When the applicant starts filling out the form for applying for a student residence permit in the Finnish Immigration Service's online service Enter Finland, the applicant is informed that their case may be subject to automated decision making. The information provided does not directly state that the applicant's application will be subject to automated decision making, because at that stage of the application process, it cannot be reliably determined yet. The applicant for the student residence permit is

informed that more information is available on the Finnish Immigration Service's website.

The Finnish Immigration Service informs applicants of the automated decision making, the principles of the automated decision making, and other matters relevant to customers' rights on its webpage at www.migri.fi/automaattinen-paatos. The page will be launched on 19 October 2023. This Decision to introduce automated decision making will also be available on the page. The page serves as a contact point for the authorities, and it includes more detailed information on communication channels for requesting more information and making information requests.

In addition, the decisions issued automatically will include the information that the decision was made automatically and information about where the Decision to introduce automated decision making required by section 28d of the Information Management Act is available.

Documents on which this Decision is based

This Decision is based on documents with which the Finnish Immigration Service has fulfilled the requirements for the introduction of automated decision making laid down in the Information Management Act.

- Order on the division of the duties of the persons responsible for the fulfilment of the responsibilities laid down in the Act on Information Management in Public Administration (MIG-2325811 and MIG-2325847)
- General description of the processing rules (MIG-2325974) and the processing rules
- Quality assurance results of 25 September 2023
- Quality control plan of 25 August 2023 and its appendices

Retention

In accordance with section 28d of the Information Management Act, this Decision to introduce automated decision making is retained for at least five years from the start of the following year in which the automated decision making is decommissioned.

More information

More information on the automated decision making can be requested by email at migri@migri.fi.



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The document has been electronically signed in the case management system. Finnish Immigration Service 18 October 2023 at 10:57. The authenticity of the signature can be verified by the Registry.