



# Pre-study report on legal determinants for innovative rural mobility solutions

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[WP 2, GoA 4]

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## **Pre-study report on legal determinants for innovative rural mobility solutions**

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# Pre-study report on legal determinants for innovative rural mobility solutions

## Introduction

Demographic change and limited public finances endanger the accessibility of services, goods and social life in remote and rural areas of the Baltic Sea Region (BSR), contributing to an ongoing process of peripheralization. In this context, it becomes increasingly difficult for regional and local authorities to ensure individual “people-to-service” mobility (i.e. enabling inhabitants to reach services and public goods) as public transport options are thinned out and services are concentrated in urban centres which are difficult to reach for villagers. At the same time, services which rely on mobility (e.g. home care, delivery services), i.e. “service-to-people” mobility, are becoming difficult to sustain in sparsely populated regions. Furthermore, there are problematic patterns and structures of mobility that aggravate the situation: Mobility is often sector-specific and purpose-oriented (delivery, welfare, public transport etc.), and there is usually no sound concept for coordination of different mobility options, involving both transport operators and service providers.

MAMBA aims to address these issues by giving both dimensions, people-to-service and service-to-people mobility, a new perspective through improved integration of mobility structures. To this end, different forms of regional and local “Mobility Centres” (MC) will be created in nine regions throughout the BSR that are all affected by demographic change, austerity and other socio-economic challenges. Based on specific mobility needs in these regions, the MCs will integrate existing mobility options by introducing enhanced management capacities in transport administration, providing digital and non-digital information systems for residents, creating platforms for public and private enterprises to pool transport services and facilitating cooperation between public transport actors and service providers. Selected new mobility solutions (e.g. rural Car-sharing, Ride-sharing or Demand responsive transport (DRT) will be initiated by the MCs as pilot actions.

In this legal pre-study IKEM addresses legal enablers and barriers for innovative mobility solutions such as the pilot actions and the establishment of the MCs in MAMBA. In a first chapter IKEM will focus on the legal analysis of the different mobility solutions (A.). The second chapter will be dedicated to the MCs (B.) In the Annex a legal Inventory can be found that collects all national and international regulations regarding innovative mobility solutions (Annex, A.- D.).

## A. Mobility Solutions

One core element of the MAMBA project are the different pilot actions that will be carried out in the participating regions. IKEM and the partners in Work package 2 have categorized these solutions and elaborated definitions for a common understanding within the framework of the project. In a first step, these definitions will be presented (I.) Following the definitory part, IKEM will legally assess the different areas of law relevant to innovative mobility solutions (II. – VII.). In this context, the first step will always be an analysis of the German legal framework. Then the national legal system from the other partner countries will be described and related to innovative mobility solutions. The international analysis is based on questionnaires that were answered by local legal experts from the different regions. IKEM has gathered and structured the provided content.

### I. Definitions

In this first section “Innovative mobility solutions” will be defined in more detail. The analysis in this pre-study will focus on Demand responsive transport (1.), ICT-enabled solutions (2.), Car-Sharing (3.), Ride-Sharing (4.), combined transport solutions (5.) and Service-to-people approaches (6.).

#### 1. Demand responsive Transport (DRT)

Demand responsive transport are public transport services with flexible routing and time table, adjusted according to demand. Travelers make reservations beforehand to optimize routing and traveller frequency (see MAMBA glossary “transport on demand” and “DRT”).

Public transport can be made more flexible in a **spatial and a temporal sense** through demand responsive services. There are different combinations and variations that help tailoring the right mobility offer for the given surroundings. In a **spatial sense** the following modifications of traditional line-based traffic can be offered:

- Only certain stops of a pre-determined route are served depending on a passenger’s demand (Line DRT)
- A pre-determined route is complemented by additional stops deviating from the original route. These stops are only served on demand (Line DRT with deviations)



- A corridor is defined instead of a route. Within the corridor stops are only served on demand (Corridor DRT)
- In a pre-determined area passengers can enter the vehicle wherever they order it, either at certain stops or without restrictions in any desired place (Area DRT, with stops or door to door)

In a **temporal sense** DRT can be offered with or without reference to a pre-determined timetable:

- A timetable contains several possible departure times and the passenger chooses one of them
- The timetable defines the departure time at the first stop and the passenger is informed about the departure time at his stop
- The passenger can freely choose the departure time

DRT is often offered by registered associations<sup>1</sup> founded by citizens in rural areas following a bottom-up approach. Voluntary drivers are assigned in order to lower the costs for providing the mobility service that would otherwise not be profitable. There are different options of how to tailor the mode of transport. In many cases the service operates with minibuses (less than 9 passengers) as line-based transport. But also offering a citizen run taxi service is an option that is often chosen.<sup>2</sup>

## 2. ICT-enabled solutions

Information and communication technologies (ICT) play an important role for innovative mobility solutions. Often smart phones are required in order to have access to ICT enabled mobility offers. DRT, for example, can either be requested by phone call or through ICT by using a software application on a smart phone, tablet or computer. Two main examples for ICT enabled solutions are “e-hailing” and “**Mobility as a service**” (**MaaS**) that offer alternatives to owning a personal vehicle in rural areas.

**MaaS** is about delivering a single integrated mobility service based on dynamic data and consumer-defined travel preferences whereby the combination of physical transport modes such as the buses, trains, taxis, bikes and cars is brought to the user in one single product (an app or other customer

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<sup>1</sup> § 20, 21 BGB.

<sup>2</sup> The definition is drawn from Karl/Mehlert/Werner, Reformbedarf PBefG (Reforming the PBefG), Study of the KCW, 2017, p. 12-14.

interface). Customers buy mobility in a similar way to mobile data and this enables them to travel from A to B via an integrated service and to choose more rationally how to get from A to B. The aim of MaaS is to offer flexible, reliable, well-priced and environmentally sustainable everyday travel, mixing public transport, car sharing, car leasing and road use. MaaS is a new paradigm in mobility, as users will pay for mobility services instead of investing in own vehicles (e.g. Whim, Ubigo) (see MAMBA glossary “Mobility as a service”).

**E-hailing** is a digital matching service that can be used for ride-sharing. A platform is used to source rides from a driver pool. It offers the users a mode of transportation that is analogous to the taxi, but at a lower cost. Ride-sourcing services offer reliable, lower cost (than traditional taxi services), on-demand, and door-to-door transportation that is requested (hailed), tracked, and paid by users through smartphone apps (see MAMBA glossary “E-hailing”).

### 3. Car-Sharing

Car-sharing is a car rental which is more flexible and easy to use than traditional car rental services. Previously approved and subscribed users can rent a car from the fleet ad hoc, if a car is available or on short notice for short term rides (minutes or hours-based). The tariff usually covers all costs, including gasoline and insurance. Reservation, pickup, and return is all self-service. There are two diverse types, free-floating and station-based ones (see MAMBA glossary “car-sharing”).

### 4. Ride-Sharing

Ride-sharing means sharing spare seats in vehicles with travellers going same direction. It can be organized through a matching service (f.e. e-hailing platforms) or informal arrangement between friends (see MAMBA glossary “Ride-sharing”/“Car-pooling”).

### 5. Combined transport solutions

Another option to lower costs for mobility in rural areas is the combination of different modes of transport. There are several ways in which distinct services can be combined. Two of them will be looked at in this study. First, already established mobility offers in the public transport sector for passengers can be used for the transport of goods (**Case 1**). For example, regularly running buses for passengers could carry food from supermarkets or other goods to remote areas. Vice-versa goods

carrying services could start to offer passenger transportation (**Case 2**). Delivery services for E-commerce could offer to take citizens with them on their route.

## 6. Service-to-people approaches

Service-to-people approaches refer to facilitating individual's access to service without increasing his/her mobility (e.g. bringing services to the village (physically or digitally) or optimizing service delivery through increased cooperation between transport and service providers). For this purpose, the provision of services could be **combined with the transport of passengers or goods**. As an example, social service providers could offer a vehicle that brings care to the elderly people and delivers groceries at the same time or offers them a ride to the doctor's on their way back.

## II. Passenger transportation law

Starting with passenger transportation law the above-defined mobility solutions will be legally analysed in the following sections (II. – VII.).

### 1. Germany

#### a. Regulatory framework in Germany

- In Germany passenger transportation law is regulated in the Passenger transportation act<sup>3</sup>
- A **passenger transport permit** is needed, if
  - Persons are being transported
  - for a fee or
  - on a regular basis.
- There are several **exceptions** from this general rule

Passenger transportation law not only regulates the transport of passengers, it also sets rules for construction activities within the public road space. The aim is to ensure public security and order with regard to all issues of public transport. **Transporting people on a regular basis or for a fee** is forbidden unless one obtains the **necessary permit from the competent authority**.<sup>4</sup> A fee in the legal sense is not necessarily a certain amount of money. Every financial advantage obtained by offering the transport can be a “fee”. The transportation provider needs a permit too, if the transport is offered on a regular basis. Regular basis means the intention to repeat the transport according to a certain predetermined schedule.

**No permit is needed**, if the vehicle is a passenger car and if no higher amount is paid for transportation than the costs for the provider are. In this case the transport lacks the commercial character that would require the regulator to establish and monitor specific safety provisions for the

<sup>3</sup> PBefG.

<sup>4</sup> §§ 1 par. 1, 2 par. 1 PBefG.

passengers. A passenger car is defined to be a motorized vehicle that is constructed for the transport of no more than nine passengers (including the driver).<sup>5</sup>

Furthermore, a permit is not needed for patient and pupil transports unless a fee is charged for the service.<sup>6</sup>

Every form of transport needs to comply with one of the following set of criteria. Otherwise no permit can be issued:

- **Line-based traffic** is a traffic connection established between pre-determined starting and end points on a regular basis, which allows passengers to board and disembark at certain stops. It does not require a timetable with specific departure and arrival times nor the establishment of intermediate stops.
- **Occasional traffic** is either transport by taxi or using a rental car or a rental bus. The former means the transportation of passenger to places, determined by the passengers, in cars that are kept ready for service at officially accredited spots. The latter stands for the transportation in cars rented by the passenger for transportation. Destiny and route depend completely on the passengers' wishes and the rental service has to receive the demand for transportation either at the corporate office or at the residence of the owner.

If none of these set of criteria is fulfilled there are **two different types of special permits**:

- A **mode of transport that does not fulfil all requirements** of either line-based or occasional traffic, may be authorized according to the regulations of the mode of transport that it is most similar to.
- A special permit **limited to the period of four years** may also be issued for the purpose of testing new modes of transport

Both types of special permits require that the authorized vehicles do not conflict with the public interest.

<sup>5</sup> § 4 par. 4 No. 1 PBefG.

<sup>6</sup> § 1 No.4 lit. d, e FrStllgV.

Passenger transportation law requires a permit for the transportation of passengers by tram, trolleybus or motor vehicles.<sup>7</sup> Motor vehicles are defined as vehicles powered by engine power.<sup>8</sup> **Motor vehicles can only be lawfully approved as either line-based or occasional traffic.** Therefore, aiming at and fulfilling one of the two modes of transport is coercive for the applying transport provider.

**Line-based traffic** is legally defined as a traffic connection established between pre-determined starting and end points on a regular basis, which allows passengers to board and disembark at certain stops.<sup>9</sup> It does not require a timetable with specific departure and arrival times nor the establishment of intermediate stops. In contrast, **occasional traffic**<sup>10</sup> is defined as either transport by taxi or using a rental car or a rental bus. The former means the transportation of passengers to places, determined by the passengers, in cars that are kept ready for service at officially accredited spots. The latter stands for the transportation in cars rented by the passenger for transportation. The car has to be rented in its entirety and not only single seats. Destiny and route depend completely on the passengers' wishes and the rental service has to receive the demand for transportation either at the corporate office or at the residence of the owner. After the service the car has to return immediately to the corporate office.

For these modes of transport that qualify as either line-based or occasional traffic a permit has to be issued, if all relevant **safety requirements** are additionally met.<sup>11</sup> **Safety and efficiency of the service** have to be assured, the applicants shall **not be unreliable and be technically qualified** for executing the service and the service shall have its place of business within national territory.

For other forms of transport a **special permit** can only be issued under certain conditions.

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<sup>7</sup> § 2 par. 1 PBefG.

<sup>8</sup> § 4 par. 4 PBefG.

<sup>9</sup> § 42 PBefG.

<sup>10</sup> § 46 PBefG.

<sup>11</sup> § 13 PBefG.

A mode of transport that does not fulfil all requirements of either line-based or occasional traffic, may be authorized according to the regulations of the **mode of transport that it is most similar to** and does not conflict with the public interest.<sup>12</sup>

Another option to receive a special permit is for the **testing of new modes of transport** if those modes do not conflict with the public interest.<sup>13</sup> Either new modes of transportation or new transport vehicles can be tested. The purpose of this rule is to promote innovative mobility solutions that need prior testing in order to be economically, socially and technically sustainable. In comparison the aforementioned special permit, the one for testing purposes allows a greater difference to the standard transportation types of German passenger transportation law (Line-based and occasional traffic). The decision to issue the permit is at the discretion of the authorities.

#### *b. Application to Innovative Mobility Solutions*

##### *aa. Demand responsive Transport (DRT)*

#### Legal evaluation and advice

- Generally, DRT services **do not fulfill the legal criteria of neither line-based nor occasional traffic**
- This finding applies to a higher degree, the more flexible the DRT service is tailored
- In order to receive a special permit the service **should be designed as similar as possible to the legally recognized modes of transport** and the applicant should show that the transport offer promotes the public interest
- In Germany the administrative practice of the competent authorities shows that even regular permits are issued for DRT services that rather do not meet the legal approval criteria
- Citizen-organized mobility providers often **struggle to fulfil the strict criteria regarding financial and technical capacities** imposed on them by passenger transportation law
- They should look for **cooperations** with bus companies or local providers of public transport

<sup>12</sup> § 2 Par. 6 PBefG.

<sup>13</sup> § 2 par. 7 PBefG.

Depending on how flexible the DRT solution is tailored it will generate legal problems regarding a passenger transportation permit.

If possible, it is best to avoid the application procedure from the start. For this purpose, the service can at maximum be offered for a cost-covering fee and a vehicle for 9 or less passengers must be used.

If this is not feasible, the issuing of a permit will heavily depend on the legal opinion of the authority competent for the approval procedure. It is questionable, if any DRT solution fulfills the criteria of German passenger transportation law. The Federal Administrative court in Germany ruled that buses on demand do not meet the requirements of line-based traffic<sup>14</sup> as the transport has to take place between pre-determined starting and end points.<sup>15</sup> Every offer that is flexible in the spatial sense risks not to live up to this requirement. Furthermore, it is also doubtful whether DRT can be qualified as transport on a regular basis as required by the legal definition of line-based traffic. As it is an essential part of DRT to depend on the passenger's arbitrary demand, it is hard to imagine how temporal regularity should be guaranteed under the current legal framework.

This means that an approval as line-based traffic is unlikely. The same goes for an approval as a taxi or rental car (occasional traffic). On DRT vehicles are usually not kept ready for service in public, officially accredited spots which is a prerequisite for the approval as a taxi. In contrast to rental cars, on demand vehicles are not rented as a whole by the passengers, if not only single seats.

In most of the cases only a special permit will be issued as an exception from the rule. As the issuing is at the discretion of the competent authority, the applicants have to show that the planned DRT offer furthers the public interest, even if it contravenes some of the regulations of German passenger transportation law. It is also favorable, if the DRT service is tailored as similar as possible to the legally defined line-based or occasional traffic. But the authority's final decision cannot be predicted with certainty.

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<sup>14</sup> § 42 PBefG.

<sup>15</sup> Federal Administrative Court, Judgement on the 12.12.2013, C 30.12.



It is recommendable to be in constant exchange with the relevant authorities prior to and during the approval procedure. In several practice examples in Germany the authorities even issued regular passenger transportation permits instead of special permits, as the following table<sup>16</sup> shows:

<b>Mobility Solution</b>	<b>Mode of transport</b>	<b>Permit according to § ...</b>
<i>ALFA Ostholstein, Schleswig-Holstein</i>	Line DRT	42 (Regular permit)
<i>AST Bargteheide, Schleswig-Holstein</i>	Corridor DRT	42 (Regular permit)
<i>Bürgerbus Fehmarn, Schleswig-Holstein</i>	Summer: line-based traffic Winter: Area DRT	42 (Regular permit)
<i>Moobil + Vechta, Niedersachsen</i>	Corridor DRT	42 (Regular permit)
<i>Bürgerbus Malente, Schleswig-Holstein</i>	Line DRT	Exempted from the permit
<i>Anrufbus Leer, Niedersachsen</i>	Area DRT, door to door	42 (Regular permit)
<i>Anrufbus Ostholstein, Schleswig-Holstein</i>	Area DRT, with stops	2 par. 6 (exceptionally approved similar to a rental car)
<i>AST Bad Bramstedt, Schleswig-Holstein</i>	Area DRT, with stops	42 (Regular permit)
<i>AST Jesteburg, Niedersachsen</i>	Area DRT, with stops	2 par. 6 (exceptionally approved similar to a rental car)
<i>Bürgeranrufbus Fehmarn, Schleswig-Holstein</i>	Area DRT, with stops	42 (Regular permit)
<i>Bürgeranrufbus Niedernwöhren, Niedersachsen</i>	Area DRT, door to door	2 par. 6 (exceptionally approved similar to a rental car)

Table 1: DRT solutions and permits issued in Germany

<sup>16</sup> Extracts taken from: Karl/Mehlert/Werner, Reformbedarf PBefG (Reforming the PBefG), Study of the KCW, 2017, p. 39 – 41.

From this table the conclusion can be drawn that in practice permits are often issued, even if the legal requirements might not be fulfilled in a clear-cut manner.

**Self-organized mobility solutions with voluntary drivers** face the challenge of fulfilling the safety requirements of passenger transportation law.<sup>17</sup> The applicant to a passenger transportation permit has to prove that he is **financially and technically capable** of running the service. For this purpose, he needs a detailed knowledge in law and business management about what is needed to run a transport business successfully. Details about the requirements in Germany can be found in the “Ordinance on the admission to a profession within road passenger transport”.<sup>18</sup> Applying citizens’ organizations often struggle to fulfil the strict criteria. It is therefore advisable to cooperate with an existing bus company engaged in public transport or with the local provider of public transport services.

#### bb. ICT enabled solutions

##### Legal evaluation and advice

- Whether ICT enabled solutions require a passenger transportation permit, **depends on the mode of transport that is offered**
- The **legal or factual provider of the mode of transport** is responsible for applying for the permit
- In certain circumstances this can be the MaaS or e-hailing provider

E.g. if an e-hailing platform offers ride-sharing, the ride-sharing provider needs to make sure that the legal requirements of passenger transportation law are fulfilled. The same goes for a MaaS offer that includes e.g. DRT services. In that case the DRT provider is responsible for obtaining the permit.

In both cases it may also be the e-hailing platform provider or the MaaS provider who are responsible for obtaining the permit, if they are at the same time **legally or factually the providers of the mode of transport** and not only of the enabling ICT platform.<sup>19</sup>

<sup>17</sup> § 13 PBefG.

<sup>18</sup> PBZugV.

<sup>19</sup> Heinze in Heinze/Fehling/Fiedler, Personenbeförderungsrecht, 2014, § 2 no. 9.

German courts have set up this rule and decided that an e-hailing platform provider needs to apply for a passenger transportation permit for a ride-sharing service offered via the platform, if the platform provider is **not a mere intermediary between the drivers and the passengers**. This applies if it is the platform provider and not the driver who is the contracting partner of the passenger and the one who sets the price for the service (see in further detail below, A.II.1.b.dd). The same principles could apply to the relationship between the entity offering MaaS and the provider of DRT being a part of the service. The contracting partner of the passengers is the one responsible for obtaining the passenger transportation permit.

#### cc. Car-Sharing

##### Legal evaluation and advice

- **Car-sharing does not require a passenger transportation permit**
- The Passenger Transportation Act only applies if “**persons are being transported**”<sup>20</sup>
- **Users of car-sharing drive themselves** and are not being transported by a driver

#### dd. Ride-Sharing

##### Legal evaluation and advice

- **Ride sharing does not fulfil the approval criteria of the Passenger Transportation Act**
- If possible, ride-sharing services should be offered with **vehicles for nine or less passengers and for a cost-covering fare** as this design of the service does not require a permit
- A **special permit** can be issued, which is at the discretion of the competent authority
- A special permit should be sought in a cooperative process with the authority

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<sup>20</sup> § 1 par. 1 PBefG.

No passenger transportation permit is needed for informal ride-sharing arrangement between friends or the citizens of a rural town, if the rides are offered for free and not on a regular basis.<sup>21</sup>

Furthermore, any ride-sharing offer is exempted from a permit, if cars are used that are only designed for nine passengers or less and the total fare for all passengers does not exceed the costs generated by the ride for the provider. It is thus advisable to **tailor ride-sharing services that work only with cost-covering fares and small/medium sized vehicles.**

In case that ride-sharing is offered through e-hailing platforms, the **provider of the platform** might have to **apply for a passenger transportation permit.** This applies if the drivers are his employees or if the provider is **not a mere intermediary between the driver and the passenger.** According to the German administrative courts the provider is more than an intermediary, if he is contracting partner of the passenger and not the driver himself. This is indicated by the passenger having to pay the e-hailing provider and not the driver and the provider setting the prices of the service.<sup>22</sup>

The prospects of receiving a permit are similar to those of the DRT services described above (see A.II.1.b.aa). Ride-sharing through e-hailing platforms is a door-to-door on demand offer that raises problems for the approval under the Passenger Transportation Act. The requirements of line-based traffic are not fulfilled as the service has no pre-determined starting and end points and is not subject to a regular schedule, but dependent on the passengers' request. Ride-sharing can neither be qualified as the rental of cars, because the passengers only occupy single seats and the car usually does not return immediately to the corporate office after the completion of the service. It is also no taxi service as the cars are not kept ready at officially accredited spots for taxis.

Therefore, only a special permit can be issued for ride-sharing services. These permits are at the discretion of the competent authorities and decisions are thus not predictable with certainty. Helpful for the applicant is a constant exchange with the authorities and tailoring a service that promotes the public interest. This requires a public demand for the service and the fulfillment of all technical and safety requirements.<sup>23</sup>

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<sup>21</sup> § 1 par. 1 PBefG.

<sup>22</sup> Administrative Court Berlin, Decision on the 26.09.2014, 11 L 353.14; High Administrative Court Hamburg, Decision on the 24.09.2014, 3 Bs 175/14.

<sup>23</sup> e.g. § 13 PBefG.

ee. Combined transport solutions

Legal evaluation and advice

- Regular public transport vehicles can additionally carry goods, if the safety of passengers is guaranteed.
- It is forbidden to use motor vehicles that are designed and equipped for the transportation of goods for the purposes of passenger transportation.

Regarding **Case 1** there are no special requirements imposed on the provider by passenger transportation law. The service needs a permit following the criteria outlined in A.II.1.a. That means that it has to be approved either as line-based or occasional traffic. The additional transporting of goods does not modify the approval procedure for the passenger transportation permit as long as the safety of passengers is guaranteed.<sup>24</sup> This means regarding the transport of goods that dangerous substances and items are excluded from transportation.<sup>25</sup> Dangerous items are inter alia explosives, easily flammable or malodorous substances, or unpacked or unprotected items that could physically harm passengers. If a passenger transportation permit is issued the German legislation exempts the provider from obtaining a goods transportation permit.<sup>26</sup> The fact that this exemption exists also shows that transporting goods in a vehicle designed for passenger transport is not forbidden.

**Case 2** is clearly regulated in Germany. The use of motor vehicles designed and equipped for the transportation of goods must not be used for passenger transportation that needs a permit according to the Passenger Transportation Act.<sup>27</sup> Only in very exceptional circumstances can the competent authority allow the transport of passengers in such vehicles.<sup>28</sup>

<sup>24</sup> § 13 par. 1 no. 1 PBefG.

<sup>25</sup> § 11 par. 2 BBedV, § 15 par. 2 BOKraft.

<sup>26</sup> § 2 par.1 no. 4 GüKG.

<sup>27</sup> § 7 par 1 PBefG.

<sup>28</sup> § 7 par. 2 PBefG.

ff. Service-to-people approaches

Legal evaluation and advice

- There are **no requirements** in passenger transportation law that are relevant for **combining service-to-people approaches with the carriage of goods**.
- Service-to-people approaches combined with passenger transportation need a passenger transportation permit, if the charged fare exceeds the costs of the ride
- A regular permit cannot be lawfully issued. Therefore, a special permit is needed which depends on the discretion of the competent authorities
- Consequently, it is advisable to offer such a mobility solution charging only a cost-covering fare

Passenger transportation law is not relevant for combining service-to-people approaches with the carriage of goods as there are no passengers involved in this mobility solution. Hence, passenger transportation law is not applicable.

In case that service-to-people approaches are combined with passenger transport, a passenger transportation permit might be necessary. This depends on the fare that the provider will charge. If the passenger transport is for free or only cost-covering and the vehicle is designed for 9 or less passengers, no permit is needed.<sup>29</sup>

If a fare is charged and it exceeds the costs of the ride, a passenger transportation permit will be required for such a mobility solution. As service-to-people approaches depend on the passengers demand, it will not be possible to offer the passenger transportation service as a line-based traffic. Nor will it be feasible to qualify the mobility solution as a taxi or rental car service as the provider will not keep the vehicles ready for service at officially accredited spots (requirement for taxis) and the driver will not necessarily return to the corporate office after having delivered the service (requirement for a rental car).

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<sup>29</sup> § 1 par. 2 no. 1 PBefG.

It will hence depend on the discretion of the authorities, if a combination of a service-to-people offer with a passenger transportation service will receive a special permit as an exception from the rule (see above A.II.1.a).

### *c. Best practice examples*

#### Description of the case

Mobilfalt is a Car pooling project implemented in the rural Werra-Meißner district, a part of the north Hessian public transport company (NVV). The project offers ride-sharing for different people whose travel routes have the same starting and endpoint. It relies on voluntary drivers that use their own private vehicles for transportation. Mobilfalt only provides information on when, where and by whom the transport service will be offered. The project is part of the regular public transport system and uses the same online booking platform. Drivers can schedule their ride online and publish it via the NVV platform. Service users can then access this information online. If they decide to book a ride with Mobilfalt, a message (SMS) is sent to the driver, telling him that he has a passenger request. The driver then needs to confirm that he is able to offer the ride and if not, Mobilfalt orders a taxi for the user in order to ensure that the ride can be offered as scheduled. The existing bus stop infrastructure is used as meeting points.

#### Legal challenge and solution

It was uncertain whether a passenger transportation permit would be issued for Mobilfalt as the service is neither a clear-cut example of line-based nor occasional traffic. Therefore, Mobilfalt decided to offer the service without profit-making ambition and pays drivers only a financial compensation of EUR 0.30 per kilometer which is a small contribution to the costs of the ride. Such an arrangement does not require a passenger transportation permit as it lacks the commercial character that would oblige the authorities to step in and ensure that certain safety rules are fulfilled.

## 2. Denmark

In Denmark the Executive Order No. 477 of 02.05.2017 on route services makes some means of transport dependent on an official permit. A permit for regular services may only be issued to

applicants who are authorized to carry out commercial passenger transport.<sup>30</sup> This does not apply to the issuance of permissions to traffic companies, Bornholm Municipality and declared island municipalities.<sup>31</sup>

According to Danish passenger transportation law permissions are issued to the following modes of transport:<sup>32</sup>

- Regular route services.
- Special route service performed as a long-distance service
- Special route services with educators between residence and place of education or between educational establishments (school driving).
- Special route services for workers between residence and work (employee labor)
- Special route services to and from ferry and airports.

School driving and employee driving do not require permission, if the passengers are persons with disabilities.

Innovative Mobility solutions generally fulfil one of these sets of criteria. For combining passenger with goods transport, special requirements need to be observed. In contrast, Danish passenger transportation law forbids to transport passengers in vehicles that are designed and equipped for the transportation of goods.

### 3. Finland

In Finland passenger transportation will be regulated by the new Act on Transport Services which comes into force on 01.07.2018. A permit for passenger transport is issued if the following conditions are fulfilled:

- In case of taxi traffic, the driver needs a taxi driving license and price information must be available inside the vehicle.
- For all other forms of public transport: a license for public transport such as a bus license is required and timetables must be made available using technical applications. If an operator

<sup>30</sup> Cf. section 11 in the law of bus driving.

<sup>31</sup> Cf. section 1, subsection 1. 3, of Law on Traffic Companies.

<sup>32</sup> Section 1 in the Executive Order on route services.



wants to take part in public procurement a common ticket and payment system must be established.

Generally, the applicant needs a license which shows that the applicant fulfils certain criteria such as an adequate economic status, good reputation the right competence and skills for performing the service.

In Finland public transport is not restricted to certain modes of transport. Every form of public transport including taxi transport can be offered with a general public transport permit. At least, this will be the case as soon as the provisions of the Public Transport Act, Taxi Transport Act and the Act on Transport of Goods on the Road will be harmonized in the Act on Transport Services (01.07.2018). The aim of this act is to improve market access and functionality.

Authorities treat applications of innovative mobility solutions for passenger transportation permits positively. The overall aim is to promote new service models and to better meet the needs of users. Digitalization of transport systems and services is already taking place in Finland. Many authorities encourage operators to find new and innovative ways to organize transport.

It is, for example, possible to combine the transport of people with the transport of goods and vice-versa.

#### 4. Latvia

##### a. *Regulatory framework in Latvia*

Since 2014 the Latvian public transport system is centralized. The institutions involved in the provision of public transport services are the Ministry of Transport, Public Transportation Board, the Road Transport Administration and the Republic city local governments (9 cities with republican status).

The Ministry of Transport is the State Authority and its main responsibilities are the common transport policy governance, preparing of legislation and observance of laws and regulatory enactments in the public transport sector.

The Public Transport Board is a collegiate institution under institutional supervision of the Ministry of Transport. The Public Transport Board was formed on 1<sup>st</sup> January 2014 and it is composed of 10 members from the Ministry of Transport, the Road Transport Administration and five planning

regions. The Public Transport Board takes the main decisions related to public transport planning and organization on the regional level (bus and rail), including decisions on public transport tariffs and financing of services.

The Road Transport Administration is a public company; its state capital shareholder is the Ministry of Transport. Following the **Law On Public Transport Services the main task of the Road Transport Administration is to** implement the decisions of the Public Transport Board which is an institution that organizes service procurement and concludes public service contracts. The Republic city local governments are independent in decision-making and they are responsible for public transport [buses, trams (Riga, Daugavpils and Liepaja) and trolleybuses (Riga)] in the territory of their municipalities.

Public transport which is covered by public service contracts in Latvia is divided into two levels of governance: regional and municipal. Public transport at the regional level includes regional routes of inter-urban significance, regional routes of local significance and all railway routes. On the municipal level public transport includes routes of city significance – which provide mobility within the administrative boundaries of a city, as well as from such a city to the nearby territories.

The competence of authorities in the field of public transport services, the conditions for operation and organization of public transport services and the main financing principles are governed by **Law On Public Transport Services (hereinafter – Law)**. All national legislation in the field of public transport services is aligned with the principles of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and the Law of public transportation services (in force as of 15 July 2007) (PSO Regulation).

#### *b. Application to Innovative Mobility Solutions*

**DRT** will obtain a passenger transport permit under the following conditions:

Bus services on regional bus routes may be provided upon request of the passengers, if:

- there is only a small passenger flow, meaning that on a certain route there are periodically no occupants in the vehicle;

- the revenue from ticket sales and revenues generated in the transport of persons specified in the fare relief does not exceed 15% of the costs of providing regular public transport services.

The bus trip shall be ensured, if 24 hours prior to the scheduled departure the passenger's request has been received or if previous to that moment a ticket had already been reserved or purchased. The operator shall publicly disclose the arrangements for bus transport on demand, as well as changes thereto, including the requests and prior reservation and ticketing arrangements. The operator shall ensure that a passenger journey can be requested on the phone during business hours, as well as buying a ticket for the bus trip.

**Combining passenger transport with goods transport** is subject to the following regulations:

The public transport vehicle passenger compartment or luggage compartment can carry baggage. Baggage should not be put in places reserved for passengers or in a place where it disturbs other passengers.

In the interior of the vehicle the passenger shall have the right to carry baggage free of charge which is easily portable and whose nature and the packaging allows that it can easily be put in place, and whose size (length, width, height) does not exceed 60 x 40 x 20 cm and weight – 20 kg.

Size and weight of baggage, which exceeds the size and weight of these Regulations shall be transported in the luggage compartment of the public transport vehicle.

## 5. Poland

In Poland, there are nationwide legal regulations on the basis of which you can carry out transport services for people and transport goods. In addition, each public transport provider may introduce additional requirements (regulations) that must be followed in the operation area. This mainly applies to issues related to the quality of services provided.

The distribution of permits depends on the form of the activity performed:

- **Taxi** - the appropriate license must be issued by the local authority in which the services will be provided. In addition, the vehicle should meet the appropriate regulations, including the equipment of the vehicle with the necessary recording devices and cash registers,

- **The transport of persons from 7 to 9 persons, including the driver** - an appropriate license issued by a local authority depending on the location of the company's headquarters. Other facts may be taken into consideration, such as the financial situation of the company, insurance coverage and how the transport vehicle is equipped.
- **The transport over 9 persons (bus)** - appropriate permit issued by a local authority depending on the location of the company's headquarters. Other facts may be taken into consideration, such as the financial situation of the company, insurance coverage and how the transport vehicle is equipped.

In addition, the carrier who would like to provide **bus transport** services should have an additional permit issued by the competent office depending on the route of the line. An exception from this rule is recognized: No permit is required for occasional services.

## 6. Sweden

In Sweden passenger transportation is regulated by the legislation for road transport operators (Yrkestrafiklagen 2012:210). In order to get the admission to the occupation of road transport operator an official permit is required (Yrkestrafiktillstånd).

The legal conditions for this permit are fulfilled, if the applicant proves that his enterprise

- has an effective and stable organizational structure,
- is of good reputation,
- has an appropriate financial standing and
- has the adequate professional competence.

There are no general legal reasons, why innovative mobility solutions should not be able to fulfill these criteria.

Any road operator who has a permit for passenger transport is allowed to transport goods in the same vehicle, as long as the main part of the transport business is still based on transporting passengers.<sup>33</sup> In contrast, it is not allowed to transport passengers in a vehicle designed for the transport of goods.

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<sup>33</sup> § 9 Yrkestrafiklag 2012:210.

### III. Personal legal requirements for the drivers of motor vehicles

#### 1. Germany

##### a. Regulatory framework in Germany

- The drivers of motor vehicles, that are being used on public roads, need a **driving license**
- The category of license is determined by the weight and length as well as the passenger carrying capacity of the vehicle
- The most distinctive criteria in this regard are whether the vehicle weighs more or less than **3.5 tons** and whether it has a carrying capacity for more or less than **8 passengers**

**A driving license is needed for everyone who runs a motor vehicle on public roads.**<sup>34</sup>

The category of driving license is regulated by the **European directive 2006/126/EC**.<sup>35</sup> The decisive criteria for determining the right category are the weight and length of the vehicle as well as the number of passengers that are supposed to be on board of the vehicle. The latter refers to the theoretical capacity of the vehicle and not to the actual number of passengers that are currently on board of the vehicle.

As a general rule **category B** is for vehicles with a weight of **under** or equal to 3.5 tons and a carrying capacity for 8 passengers plus the driver. **Category C** is for vehicles with a weight of **over** 3.5 tons and a carrying capacity for 8 passengers plus the driver. **Category D** is for vehicles with a carrying capacity for more than 8 passengers plus the driver. Every category has several sub-categories that are not further specified here.

- Apart from the driving license the German legal system demands under certain conditions an additional license for the transport of passengers
- The additional license is needed if the mode of transport also requires a passenger transportation permit

<sup>34</sup> § 4 FeV.

<sup>35</sup> § 6 FeV transposes the Directive into German law.

- There are exceptions from this rule further specified in the German “Ordinance on the right to drive”<sup>36</sup>

The additional driving license for passenger transport<sup>37</sup> is not an own category of driving license, but a supplement to the regular driving license. It is required if the mode of transport also has to be approved through a passenger transportation permit.

The additional license is dispensable, if the driver is in possession of a category D1 or D driving license and if the vehicle is not a taxi or rental car.<sup>38</sup> If it is a rental car, the license is not required if the driver has a category D or D1 license and if the corporate office is located in a community with less than 50,000 inhabitants.<sup>39</sup>

#### *b. Application to Innovative Mobility solutions*

Innovative Mobility solutions are often run with smaller, motorized vehicles for 8 or less passengers. If this is the case, drivers will only need a **category B driving license** unless the vehicle is exceptionally heavy (more than 3.5 tons requiring a Category C license).

Whether an **additional driving license for passenger transport** is required, depends on different variables. If the mobility solution itself does not require a passenger permit (see B.I.1), the driver does not need the additional license. In case that a passenger transportation permit was necessary and issued by the competent authority, the category of the approved mode of transport plays an important role. If the mobility solution was approved as a taxi (anywhere) or a rental car (in bigger towns with more than 50,000 inhabitants) an additional driving license for passenger transport will always be necessary. If it was approved as line-based traffic or similar to line-based traffic<sup>40</sup>, the carrying capacity is decisive. If the vehicle carries 8 or less passengers an additional license is required, if it carries more, the driver has to have a category D or D1 driving license and is thus exempt from the

<sup>36</sup> FeV.

<sup>37</sup> Required by § 48 par. 1 FeV.

<sup>38</sup> § 48 par. 2 No. 4 FeV.

<sup>39</sup> § 48 par. 2 No. 4 FeV.

<sup>40</sup> According to § 2 par. 6 PBefG.

additional driving license for passenger transport.<sup>41</sup> The same goes for rental cars in smaller towns with less than 50,000 inhabitants.

The **mobility provider has to make sure that these requirements are fulfilled by drivers**. This will be easier if there is an employment relationship between the provider and the drivers. The provider can make his agreement to the employment contract dependent on the driver being in possession or obtaining the right category of driving license and (if necessary) the additional driving license for passenger transport.

In the case of **Car-sharing**, which is characterized by private persons steering the vehicles themselves, the provider needs to ensure that all drivers of the vehicles only get access to them if they have the right license. This can be achieved by an adequate registration system that requires a proof of being in possession of the necessary licenses upon registration for the service.

Furthermore, if the service relies on **voluntary drivers** adequate ways have to be found to guarantee that the drivers have the right license. This might also be achieved by establishing a registration system for drivers (see B.I.3) that obliges them to show a proof of the right license(s).

### *c. Best practice examples*

Mobilfalt (see above B.I.3.a) established a mandatory driving license and a passport check for registered voluntary drivers at the beginning of the project. The applicants had to hand in their documentation personally to the authorities. At later stages, the personal passport registration was suspended, because it turned out to be one of the main barriers for new drivers to register for the service. The driving license check was kept, but now it is sufficient if the applying drivers send a copy to the authorities.

## **2. Denmark**

Denmark has transposed the European directive 2006/126/EC into national law via the Executive Order no. 815 of 21.06.2017 on driving licenses. Accordingly, driving licenses can be issued in the following categories:

- Category AM - Large moped.

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<sup>41</sup> § 48 par. 2 No. 4 FeV.

- Category A<sub>1</sub> - Small motorcycle.
- Category A<sub>2</sub> - Medium motorcycle.
- Category A - Big motorcycle.
- Category B - Regular car.
- Category C<sub>1</sub> - Small truck.
- Category C - Large truck.
- Category D<sub>1</sub> - Small bus.
- Category D - Large bus.
- Category E - Large trailer:
  - Category B with large trailer (category B / E).
  - Category C<sub>1</sub> with a large trailer (category C<sub>1</sub> / E).
  - Category C with large trailer (category C / E).
  - Category D<sub>1</sub> with large trailer (category D<sub>1</sub> / E).
  - Category D with large trailer (category D / E).

Furthermore, there is an additional commercial driving license for commercial passenger transport. It is mandatory for drivers of motor vehicles when driving

- with persons without any connection with the person, business or association that carries out the carriage,
- for remuneration, or
- constitutes the primary purpose of the driving person, company or association.

### 3. Finland

Finland has transposed the European directive 2006/126/EC into national law. Therefore, the same categories of driving licenses apply.

Which license is necessary for the innovative mobility solution adopted, depends on the vehicle that is used. For example, truck drivers need to have a legitimated license for practicing the profession. An additional license for passenger transport is not needed, but the driver needs to pass health- and criminal history checks. Additionally, the drivers need to qualify in a test organized by TRAFI (Finnish Transport Safety Agency).



#### 4. Latvia

Latvia has transposed the European directive 2006/126/EC into national law and thus the same categories of driving licenses are in place.

The drivers in the Latvian pilots need a category D driving license for motor vehicles which are designed and intended for more than eight passengers, in addition to the driver. Furthermore, they need a license of the category for road tractors with trailer having a gross vehicle mass not exceeding 750 kilograms.

In addition to that, a special license is necessary for the carriage of passengers by bus. The carriage of passengers by bus may only be performed when the driver has the professional competence certificate.

#### 5. Poland

Poland transposed the European directive 2006/126/EC into national law through the relevant Act of 5 January 2011 on drivers. Accordingly, the above-described categories of driving licenses are valid.

For the pilots in Poland a category D driving license, entitling to drive a bus, will be necessary.

#### 6. Sweden

Sweden has also transposed the European directive 2006/126/EC into national law. For the pilots in Sweden category C and D licenses are required for the drivers.

An additional driving license for passenger transportation is not needed, but there is an age limitation in place. Persons aged under 21 years are not allowed to transport passengers in motor vehicles.<sup>42</sup>

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<sup>42</sup> Lag 2007:1157 om yrkesförarkompetens.

#### IV. Finance law<sup>43</sup>

##### 1. Germany

###### a. Regulatory framework in Germany

- Financing of innovative mobility solutions depends heavily on their legal recognition as “public transport”

The financing of public transport has two main sources: the revenue generated by fares paid by the passengers and public funds established by law. The latter are, in many cases, only accessible to innovative mobility solutions, if they legally qualify as “public transport”.

In German law the legal term public transport is defined in the Passenger Transportation Act. It states that public transport is the carriage of persons in line-based traffic using trams, trolleybuses and motor vehicles, which are predominantly intended to meet the demand for transportation in urban, suburban or regional transport. In case of doubt, this is the case if the total travel distance does not exceed 50 kilometers or the total travel time one hour.<sup>44</sup> Furthermore, public transport is also the traffic with taxis or rental cars, which replaces, supplements or condenses the aforementioned types of line-based traffic.<sup>45</sup>

This means that only line-based traffic approved according to passenger transportation law is a clear-cut case of “public transport” in the legal sense.

- Public transport generates costs for the provision of the service and for the financing of investments
- The financing of these costs needs to be ensured by relying on different financial sources

The costs for providing public transport can be classified as, on the one hand, **costs for the provision of the service** and, on the other hand, the **costs for financing investments**.

As already mentioned, the financing of these costs consists of various elements.

<sup>43</sup> This section was drafted with reference to BMVI-Online-Publication, Integrierte Mobilitätskonzepte zur Einbindung unterschiedlicher Mobilitätsformen in ländlichen Räumen, 2016, p. 78.

<sup>44</sup> § 8 par. 1 PBefG.

<sup>45</sup> § 8 par. 2 PBefG.

Public transport services are partly financed by fares paid by the passengers as well as compensatory payments by the state for offering cheaper tickets to pupils or free transport to heavily disabled people. Some local authorities also subsidize certain mobility offers or compensate financial losses in their capacity as owners of public transport companies. Furthermore, municipal companies can cooperate in a “multi-utility company” and generate tax benefits by offsetting gains and losses of different sectors. In addition, tax benefits, specifically tailored for public transport offers, can support the financing of the services.

Costs for financing investments are largely financed by public funds. Public transport companies can receive subsidies under the Municipal Transport Financing Act<sup>46</sup> for vehicle procurement and infrastructure measures.

The following are the financing instruments in Germany in more detail:

#### **Costs for the provision of the service**

- **Fares** (Fares only cover a 42 to 45 percent of the overall costs incurring from public transport in Germany)
- **Public compensations for cheaper tickets for pupils** (A company offering line-based traffic, will be compensated for offering cheaper tickets to pupils.<sup>47</sup> Every federal state in Germany can amend this provision and entitle other modes of transport apart from line-based traffic to receive such a compensation. In most of the federal states the compensation is only paid to transport offers in line-based traffic, e.g. in Schleswig-Holstein<sup>48</sup>)
- **Public compensation for free transportation of heavily disabled persons** (Heavily disabled persons have to be transported for free in line-based traffic.<sup>49</sup> The financial losses are compensated by the state.<sup>50</sup> A compensation, in contrast, is not foreseen for occasional traffic (rental cars, or taxis).

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<sup>46</sup> GVFG.

<sup>47</sup> § 45a PBefG.

<sup>48</sup> § 7 ÖPNVG SH.

<sup>49</sup> § 228 SGB IX.

<sup>50</sup> § 231 SGB XI.

- **Operating grants** (Local authorities pay operating grants on a contractual basis. This is, in particular, the case, if additional services are politically desired that exceed the obligatory public mobility offer [e.g. night bus lines]).
- **Grants for cooperation-related financial losses**<sup>51</sup> (More and more transport companies are organizing and integrating themselves into transport networks. This may lead to financial shortfalls. Whereas the passenger would have to buy several single tickets, if there was no transport network, she or he can buy one overall ticket within the transport network through a common tariff. This ticket is cheaper than the sum of single tickets from different companies that the passenger would otherwise be obliged to buy. The shortfalls resulting from the difference in price are sometimes compensated by the municipalities and federal states in Germany. This happens on a voluntary basis.)
- **Tax benefits by establishing a municipal “multi-utility company”** (Financing can be optimized by choosing a “multi-utility” company structure. The company integrates several divisions of a municipal enterprise (e.g. public transport, energy supply, water supply). Tax benefits can be achieved by offsetting the profits of financially lucrative sectors (e.g. energy) with losses from loss-making sectors (e.g. public transport).
- **Tax reductions specifically tailored for public transport offers** (The public sector indirectly subsidizes public transport through tax incentives. The carriage of persons in trains, trolleybuses and motor vehicles used in line-based traffic as well as the transportation by taxis (but not in rental cars) is subject to a reduced VAT rate of 7% instead of 19%.<sup>52</sup> In addition, buses and motor vehicles with eight or nine seats are exempted from the motor vehicle tax, if the vehicle is used more than 50% in line-based traffic.<sup>53</sup>)

### Costs for financing investments

- **Financial support by the federal government for municipalities** (The federal government’s financial support of the municipalities in investing in a better public transport is regulated in the Municipal Transport Financing Act. The eligible projects for funding include the

<sup>51</sup> German: „Verbundbedingte Belastungen“.

<sup>52</sup> § 12 par. 2 No. 10 UStG.

<sup>53</sup> § 3 No. 6 KraftStG.

procurement of buses as long as they are designed for more than 9 persons (including the driver) and required in order to maintain or improve line-based traffic in the region.<sup>54</sup>)

The following summarizing table shows which funding options for public transport are only available to line-based traffic:

<i>Financing option for public transport</i>	<b>Accessible to line-based traffic</b>	<b>Accessible to occasional traffic</b>
<i>Fares</i>	YES	YES
<i>Public compensations for cheaper tickets for pupils</i>	YES	Depends on the federal state level regulations. In most cases there is no compensation for occasional traffic
<i>Public compensation for free transportation of heavily disabled persons</i>	YES	NO
<i>Operating grants</i>	YES	YES
<i>Grants for cooperation-related financial losses</i>	YES	YES
<i>Tax benefits by establishing a municipal "multi-utility company"</i>	YES	YES
<i>Tax reductions specifically tailored for public transport offers</i>	YES	NO (only taxis in certain cases, see above)
<i>Financial support by the federal government for municipalities</i>	YES	NO

Table 2: Funding options for public transport

The table shows that only few public sector payments are accessible to occasional traffic offers. Public compensation payments, financial support by the federal government and tax reductions tailored for public transport are confined to line-based traffic.

<sup>54</sup> § 2 par. 1 No. 6 p. 1 GVFG.

*b. Application to Innovative Mobility solutions*

The analysis shows that only the mobility solutions that qualify as line-based traffic on the basis of a regular passenger transportation permit, have a sound financial basis thanks to their entitlement to all public funds for public transport.

In the section on passenger transportation law the prospects of each type of innovative mobility solution to receive a passenger transportation permit were examined (A.II.1.b).

The only innovative mobility solution that has **full access to public funding** is a **combination of already established mobility offers in line-based traffic that are simultaneously used for the transport of goods** (Case 1, see A.II.1.b. ee). These solutions will most likely obtain a regular permit for line-based traffic and are hence eligible for all public funds financing public transport.

Most other solutions (**DRT, Ride-sharing, service-to-people approaches combined with passenger transport**) depend on special permits as they do not fulfill neither the criteria of line-based nor occasional traffic (see A.II.1.b. aa, dd, ff). If they are permitted as a mode of transport which is most similar to line-based traffic<sup>55</sup>, they would qualify for all above-mentioned public funds available to line-based traffic. But the question whether an innovative mobility solution resembles line-based or occasional traffic is subject to an assessment by the authorities that is hard to predict. The competent body takes all similarities and differences of the mobility solution to line-based traffic into account and decides whether the regulations concerning line-based traffic shall apply to the innovative mobility solution.<sup>56</sup> If DRT, ride-sharing or service-to-people approaches qualify as line-based traffic can consequently only be decided on a case by case basis. This heavily compromises the financial planning when establishing these mobility solutions. In order to have access to public funding the solutions should be tailored the most similar to line-based traffic as possible.

**Car-sharing**, on the other hand, is without any access to public funding for public transport as it does not even fall under the scope of the Passenger Transportation Act (see above, A.II.1.b. cc). The provider of car-sharing does not offer a service with which “persons are being transported”<sup>57</sup>. The users of car-sharing are themselves the drivers of the vehicles and are thus not “being transported”.

<sup>55</sup> § 2 par. 6 PBefG, § 42 PBefG.

<sup>56</sup> Federal Administrative Court, Judgement on the 27.8.2015 – 3 C 14/14.

<sup>57</sup> § 1 par. 1 PBefG.

The same goes for **Service to-people-approaches that are combined with goods transport**, because in this solution there is no passenger transportation taking place from the start.

## 2. Denmark

The operation of the public transport is financed partly by public grants and partly from ticket revenues. The price on the public traffic is also kept calm by using tariff ceiling.

The collective traffic is annually subsidized by

- state contractual payments for ferry and rail services and
- regional and municipal grant to the transport companies.

Tax benefits for public transport can be awarded on an individual basis. The individuals can get a driving allowance in form of tax deduction if they have more than 24 km to and from work (over 12 km each way) and as long employer does not pay the transport. For pupils there is free transportation when traveling by bus and train. For persons that companion disabled persons on travels by train transportation is also free of charge. Discounts are offered to some categories of youth, elderly and retired persons, and to persons that companion disabled persons on travels by metro and bus. For these discounts transport operators are compensated for by the state.

The above-mentioned **financing options are only available for public service traffic**. There is a difference between public service traffic and public traffic:

- **Public service traffic** covers traffic, which a private company (the carrier) would not assume in its own commercial interest or at least not to the same extent and not to the same conditions. In other words, the public service traffic cannot be operated commercially.
- **Public traffic** covers all forms of interconnection:
  - the transportation that planned or operated by public authorities, which receive public support and
  - the transportation that do not fall within the competence of public authorities, and which do not receive public support.

### 3. Finland

First of all, market-driven transport services are predominant in Finland, but currently transport services are often publicly supported. In accordance with EU regulation on public transport services, the authorities can support transport services in areas where these would not have been established under market conditions. This refers to publicly supported transport services, run by government bodies or municipalities.

There are tax reductions of 10 % for public transport services compared to regular services. Transport operators offer discounts for pupils, elderly and disabled and are therefore compensated by the state.

Transport services that are eligible for public financing have to be chosen in a tendering process. This goes also for innovative mobility solutions. Comparison criteria for selecting the most economically advantageous offer comprises the following requirements that apply to the service, including the quality of the tendered service, the quality of the fleet, accessibilities, service integration, price, the volume of supply, passenger prices, environmental friendliness and compliance with environmental requirements.

### 4. Latvia

Public transport services in Latvia provide a social function and are **financed by the State or municipal budget**. If the contract does not provide a price or special financing conditions, compensation shall be paid in accordance with the conditions specified by the Cabinet of Ministers. Initially, the legislation provided that the carrier's losses related to public transport service contract shall be reimbursed in full amount. In accordance with the conditions of national law, a provider of public transport services shall be administratively and economically independent in determining the tariff for a service. The provider of public transport services shall determine the tariff for a service in accordance with the methodology for the calculation of tariffs for public transport services approved by the Cabinet of Ministers.

In granting the right to provide a public transport service, the ordering party is entitled to determine the tariff for a service, fully assuming the financial obligations for the covering of losses. In fact, tariffs have been decided by authorities, but the ticketing system is operated by the operators.



The Disability Law article 12, paragraph one, clause 7 stipulates that **persons with disability groups I or II, persons up to 18 years of age with disabilities and the person accompanying a person with disability** are entitled to make free use of all types of public transportation, except for air transport, taxis and carriage of passengers by inland waters. These groups receive fare reliefs. The Latvian state compensates the public transport operators for transporting these groups free of charge.

### 5. Poland

Public transport, which is organized by the State and Voivodships, Poviats and Communes, is financed from the public money of these organizers. Private carriers who provide public transport services bear their own costs. Depending on the transport they provide, they sometimes receive subsidies from the state budget for monthly school tickets (about 50% of the ticket)

Public transport is covered by a lower VAT tax of 8%, otherwise there are no other tax allowances.

For selected groups, such as students or the disabled, there are additional discounts which are covered by the State budget and transferred directly to public and private carriers. Subsidies from the State budget for concessionary tickets are not covered by public transport (the City has to finance the granted concession itself).

Depending on the selected route of the communication line, pilot activities under the project may be covered by subsidies from the State budget for concessionary tickets, for example by carrying out transport in non-urban transport, in which tickets are eligible for selected groups (defined by law).

### 6. Sweden

The financing of innovative mobility solutions depends on who runs the business, but normally it is financed through a combination of public financing and incomes from ticket sales. Skånetrafiken that runs the transport services in the Trelleborg region finances the traffic with 40% from ticket sales and the rest is public money.

It is also possible for other, non-public actors, to apply for the running of a transport service. They will have to provide for their own financing, one such example are the "Flygbussarna", i.e. airport coaches, which are fully financed via ticket sales or private funding.

Public transport services run under the same tax legislation as other businesses and have the same VAT rules as other transport companies.

During the summer in 2018-2020 schoolchildren between 13-17 will be able to travel for free on public transports, subsidized by governmental funding.

## V. Procurement law

### 1. Germany

#### a. Regulatory framework in Germany

- The procurement of public transport services in the EU is regulated by Regulation (EC) No 1370/2007
- It aims at providing numerous, safe and high quality public transport offers
- Public transport is defined as public passenger transport services of general economic interest that are provided to the public on a non-discriminatory and continuous basis
- The competent authorities can award compensation or exclusive rights to third party operators for the discharge of public service obligations
- For this purpose, public service contracts are awarded on basis of a competitive tendering process

The regulatory framework in Germany is characterized by Regulation (EC) No 1370/2007,<sup>58</sup> which is directly applicable in all EU member states. Its main objective is to guarantee safe, efficient and high quality passenger transport services through regulated competition.<sup>59</sup> Therefore, it defines how competent authorities may act in the field of public passenger transport to guarantee the provision of services of general interest which are among other things more numerous, safer, of a higher quality or provided at lower cost than those that market forces alone would have allowed.<sup>60</sup>

The authorities may compensate public service operators for costs incurred or grant exclusive rights in return for the discharge of public service obligations.<sup>61</sup> A “Public service obligation” means a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial

<sup>58</sup> Regulation (EC) No 1370/2007 of the European parliament and of the Council of 23 October 2007 on Public Passenger Transport Services by Rail and by Road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

<sup>59</sup> Recital 4 of Regulation (EC) No 1370/2007.

<sup>60</sup> Art. 1 par. 1 Regulation (EC) No 1370/2007.

<sup>61</sup> Art. 1 par. 1 Regulation (EC) No 1370/2007.

interests, would not assume or would not assume to the same extent or under the same conditions without reward.<sup>62</sup> This excludes services that can be provided by an operator only considering its own commercial interest from the scope of the Regulation (EC) No 1370/2007. Therefore, public passenger transport services (Public transport) - as defined in the Regulation - have to be of general economic interest and be provided to the public on a non-discriminatory and continuous basis.<sup>63</sup>

The authorities can award public service contracts to third party operators. Public service contracts mean a legally binding acts confirming the agreement between a competent authority and a public service operator to entrust to that public service operator the management and operation of public passenger transport services subject to public service obligations.<sup>64</sup> Only within a public service contract can the authorities grant exclusive rights or compensations in return for the discharge of public service obligations.<sup>65</sup>

Public service contracts have to be awarded to the operator on the basis of a competitive tendering procedure following this Regulation (Art. 5 par. 3 Regulation (EC) No 1370/2007). This applies to all public service contracts except for the ones for public passenger transport services by bus or tram.<sup>66</sup> These are subject to the general procurement rules following the Directives 2004/17/EC and 2004/18/EC. In contrast, the Directive 1370/2007 applies to service concessions contracts for public transport services by bus or tram. A service concessions contract is characterized by the transfer of an operating risk to the third party operator in exploiting the services economically encompassing demand or supply risk or both. In contrast, in case of a public service contract the risk stays with the public authority.<sup>67</sup>

The tendering procedure shall be open to all operators, shall be fair and shall observe the principles of transparency and non-discrimination.<sup>68</sup>

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<sup>62</sup> Art. 2 par. 1 lit. e Regulation (EC) No 1370/2007.

<sup>63</sup> Art. 2 par. 1 lit. a Regulation (EC) No 1370/2007.

<sup>64</sup> Art. 2 par. 1 lit. i Regulation (EC) No 1370/2007.

<sup>65</sup> Art. 3 par. 1 Regulation (EC) No 1370/2007.

<sup>66</sup> Art. 5 par. 1 Regulation (EC) No 1370/2007.

<sup>67</sup> ECJ, Ruling 13. 10. 2005 - C-458/03, „Parking Brixen“, NZBau 2005, 644, 647.

<sup>68</sup> Art. 5 par. 3 Regulation (EC) No 1370/2007.

No competitive tendering procedure is necessary, if the average annual value of the public service contract is estimated to be less than EUR 1.000.000 or if the service concerns the annual provision of less than 300.000 kilometres of public passenger transport services.<sup>69</sup> In this case the public service contract can be awarded directly to the chosen operator.

#### *b. Application to Innovative Mobility solutions*

The competent authorities can only award public service contracts to those operators of innovative mobility solutions that qualify as Public transport in the sense of the Regulation (EC) No 1370/2007. This means, first of all, that the solutions have to be of **general economic interest**. Generally, all economic activities that ensure the provision of the necessary infrastructure and public services are considered to be of general economic interest.<sup>70</sup> All innovative mobility solutions in MAMBA fulfill this criterion as they are intended to meet the basic mobility needs of citizens in rural areas that have to be served by the state, if private actors are not providing them. Due to the lack of greater numbers of passengers in these regions in most cases the public sector has to provide these services as no private actor will offer them considering his or her own commercial interest.<sup>71</sup>

Furthermore, innovative mobility solutions have to offer the **transport** of persons on a **non-discriminatory** and **continuous basis** in order to be qualified as “public transport”.

**DRT solutions** fulfill these criteria and can be awarded through a public service contract following the procedure outlined in Regulation (EC) No 1370/2007. The vehicles transport persons and the service is usually open to everyone who demands it. It is also offered continuously during pre-determined time slots.

If **ICT enabled solutions** fulfill the criteria really depends on how they are specifically tailored. E-hailing platforms only **transport people**, if the platform provider also provides the rides and is not only offering an information tool for passengers. In the latter case, the entity transporting people would only be the individual driving the vehicle. Providing the rides may mean that the drivers are the

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<sup>69</sup> Art. 5 par. 3 Regulation (EC) No 1370/2007.

<sup>70</sup> Jung, in Calliess/Ruffert, EUV/AEUV, 2016, Art. 106 AEUV no. 36.

<sup>71</sup> Diemon-Wies, Die Vergabe von Busdienstleistungen im ÖPNV nach der VO (EG) 1370/2007, VergabeR 2014, 305, 306.

employees of the e-hailing platform provider or that the contracts of the passengers are concluded with the platform provider and not with the drivers. Whether the service is offered on a **non-discriminatory** basis depends on the complexity of a registration procedure that might be necessary before using the service. In some cases, e-hailing platforms can be used desktop based, in others only if the users own a smart phone and install the corresponding software application. The more complicated and technically advanced the registration process is, the more likely it is, that the service cannot be qualified as non-discriminatory. Especially elderly people in rural regions might have difficulties of accessing the service if the technical barriers are too high. The requirement that the service is offered on a continuous basis should be fulfilled by regular e-hailing platforms as they usually operate every (working-)day during specific time slots.

**Car-sharing** does not qualify as Public transport according to Regulation (EC) No 1370/2007. Persons are not being “transported” as they have to drive themselves and the service is only accessible to people with a driving license and hence discriminatory.

**Ride-sharing services** usually **transport** people, unless there is a clear institutional distinction between the platform provider that only shares practical information about the rides and the (private) drivers of the vehicles. In this case only the drivers would transport the passengers. Ride-sharing is **non-discriminatory**, if it is offered through a publicly accessible platform (digital or analogous) and if the registration procedure for the service is not overly complex (see above, ICT enabled solutions). In contrast, it is discriminatory if offered on a private basis amongst friends or within a certain group of people to which the general public has no access (associations, companies, etc.). For a **continuous** offer the service needs to run in certain pre-determined time slots on a regular basis.

**Combined transport solutions** fulfill the three criteria, if regular offers in public transport are used for goods transport at the same time (**Case 1**) as this does not change their legal status as public transport services.

When **combining Service-to-people approaches with passenger transport** the application of Regulation (EC) No 1370/2007 is uncertain. The service offers the transport of persons, but if the offer is non-discriminatory and continuous depends highly on how the service is organized. If it is only the receivers of the service who have access to transportation after the service has been delivered, it

would not be non-discriminatory as the general public is excluded from the transport. It would also lack the continuous character, if it is only available for passenger transporting purposes at times when the original service is provided. Then the passenger transport is not offered continuously, because it depends on the irregular demand of the original service.

Consequently, the combination of service-to-people approaches with passenger transport would have to be organized in a way that makes it at all times or during pre-determined timeslots accessible for the general public in order to qualify as public transport in the sense of Regulation (EC) No 1370/2007.

When **combining Service-to-people approaches with goods transport** Regulation (EC) No 1370/2007 is not applicable as no persons are being transported.

## 2. Other countries

The same considerations apply to the situation in the other participating countries as Regulation (EC) No 1370/2007 is directly applicable in all EU member states.

## VI. Insurance law

### 1. Germany

#### a. Regulatory framework in Germany

- The **holder** of a motor vehicle is, by law, obliged to have a **vehicle liability insurance**
- The liability insurance co-insures the owner, the driver and the passengers against personal injuries, material damages and other pecuniary losses
- An **automobile collision insurance** is recommended for motor vehicles, but not prescribed by law. It covers damages caused to the vehicle
- There are no special insurance laws for innovative mobility solutions in Germany

There are no special insurance laws for innovative mobility solutions in Germany. The normal insurance laws apply.

In order to use a vehicle on public roads, it is compulsory for the holder to have a **vehicle liability insurance**.<sup>72</sup> The holder is the person who pays the bills and has the power of disposal over the vehicle, but is not necessarily the owner or the driver.<sup>73</sup> Only the holder and not the actual users of the vehicle are legally obliged to have a liability insurance. Co- insured are the owner, the driver and the passengers. The liability insurance is used to cover the damages which were caused by the vehicle. It covers personal injuries, material damages and other pecuniary losses.

The damaged party can raise a direct claim against the liability insurer.<sup>74</sup> This also holds for claims based on product liability. Therefore, the liability insurer has regress claims against the manufacturer, in case that the damage was caused by a technical failure of the vehicle.

Another insurance that is recommended, but not prescribed by law, is the **automobile collision insurance**. It covers all damages that are caused to the vehicle. But in certain cases, the insurer will not pay for damages or only for a certain part of them. The insurer shall not be obligated to effect

<sup>72</sup> § 1 PflVG.

<sup>73</sup> See Lampe in Erbs/Kohlhaas, Strafrechtliche Nebengesetze, 2017, § 1 PflVG, no. 2.

<sup>74</sup> § 115 VVG.



payment if the policyholder intentionally causes the insured event.<sup>75</sup> Furthermore, if the policyholder causes the insured event by gross negligence, the insurer shall be entitled to reduce the benefits payable commensurate with the severity of the fault of the policyholder.

If goods are being transported a **goods transport insurance** might also be an option to consider. This is especially the case, if the transport is run by a business in the sense of German commercial law, as the transport person is liable for all damages caused to the good in the period from receiving the good until its delivery.<sup>76</sup> This risk could be covered by the insurance. A business in this sense is a planned activity, which is pursued for a longer period of time, on an independent basis and with the aim of generating financial profits.<sup>77</sup>

#### *b. Application to Innovative Mobility solutions*

As **all innovate mobility solutions** defined above (see A.I.1.-6.) will involve the usage of motor vehicles in public road space, a **vehicle liability insurance is compulsory** for all of them. This insurance needs to be purchased by the holder of the vehicles. The **holder** in most of the cases here, is not the driver, but the **mobility provider** being responsible for and disposing over the vehicles.

An **exception** might be **ride-sharing enabled through an E-hailing platform**. If the e-hailing platform just connects private drivers, who use their own vehicles, with passengers, it is the **private drivers that need to obtain the vehicle liability insurance**. But if the drivers are employees of the platform provider and the cars are also owned by the platform provider, it is up to the provider to guarantee coverage with a liability insurance.

Special care needs to be taken, when offering **car-sharing**. Insurance contracts often require car sharing users to follow certain procedures when renting the car or after an accident happened in order for insurance coverage to take effect.<sup>78</sup> Car-sharing providers should thus liaise at an early stage with the insurance company and determine whether the procedures that are in place are sufficient for the requirements of the insurer.

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<sup>75</sup> § 81 VVG.

<sup>76</sup> § 425 HGB.

<sup>77</sup> Thume in Münchener Kommentar zum HGB, 2014, § 407 no. 127.

<sup>78</sup> Schulze, Juristische Herausforderungen beim Car-Sharing, Betriebsberater 2013, 195, 198.

The same applies to the recommended, but not obligatory **automobile collision insurance**.

A **goods transport insurance** is relevant for all innovative mobility solutions, planning to involve the transportation of goods. This is the case when combining passenger transport or service-to-people approaches with goods transport (A.I.5. and 6.).

## 2. Denmark

In Denmark all owners or users of a motor vehicle must provide a liability insurance for the vehicle, according to the Road Traffic Act no. 38 of 01.05.2017 and that applies for innovative mobility solutions as well.

The insurance obligation according to the Road Traffic Act is the responsibility of the owner or the user, who is permanently in possession of the vehicle, unless it is self-propelled vehicles. The insurance obligation for self-propelled vehicles, which is covered by test arrangements, is the license holder's responsibility.

It would be reasonable to acquire an additional insurance policy such as a **goods transport insurance** for the mobility solution in case that the pilot action involves the transport of equipment, containers and trailers.

## 3. Finland

The responsible person for obtaining the necessary insurance coverage is the owner of the vehicle.

## 4. Latvia

In Latvia there are no insurance policies that are required by law when implementing innovative mobility solutions. The responsible person for obtaining any insurance policies is the owner.

## 5. Poland

Every vehicle allowed on the public road must have a compulsory insurance against civil liability, for example in the event of a collision with another vehicle. All other insurance is voluntary. The owner of the vehicle is the person liable for having a liability insurance

## 6. Sweden

In Sweden the same insurance policies are prescribed by law for innovative mobility solutions as for public transportation where the owner of the business is responsible for safety of passengers and

goods from pick-up till delivery. The responsible person for obtaining the insurance is the owner of the vehicle. The mandatory insurance, Trafikförsäkringen, also covers an automobile collision insurance and a goods transport insurance.

## VII. Data protection law

### 1. Germany

#### a. Regulatory framework in Germany

- Since 25<sup>th</sup> May 2018, the **General Data Protection Regulation (GDPR)** is the central EU regulation on data protection.
- In legal contexts, **personal data** refers to information relating to an identified or identifiable natural person.
- Processing of personal data is lawful if, for example, the data subject has given **consent** to the processing, or if processing is necessary for the performance of a task carried out in the **public interest**.

On the **European level** data protection law was harmonized by the GDPR which came into force on May 25<sup>th</sup> 2018. The regulation is directly applicable in all EU member states and the national legislators will have to adapt national law to its requirements.

As the pilots within the MAMBA project are mainly taking place after this date, the European regulatory framework will only be analyzed with reference to the GDPR.

The scope of the GDPR is extensive: the regulation applies to the processing of personal data wholly or partly by automated means.<sup>79</sup>

‘**Processing**’ means “any operation or set of operations which is performed on personal data or on sets of personal data [...] such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.”<sup>80</sup> In short, the GDPR covers every handling of personal data.

‘**Personal data**’ means „any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular

<sup>79</sup> Art. 2 par. 1 GDPR.

<sup>80</sup> Art. 4 No. 2 GDPR.

by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”<sup>81</sup> Whether a person is identifiable or not depends on the surrounding circumstances, especially the amount of time and money needed for identification as well as the available technology.

Data is only then to be considered of non-personal character, if it has been anonymized in a technically reliable manner. The attribution of specific data to the driver, owner, passengers or other persons must be made technically impossible, e. g. through randomization or generalization. Pseudonymization however does not result in non-personal data, because pseudonymized data can still be attributed to a specific data subject with the use of additional information.

The processing of personal data needs a lawful basis.<sup>82</sup> Of great practical relevance is the following legal justification: the data subject has given **consent**<sup>83</sup> to the processing of his or her personal data for one or more specific purposes.<sup>84</sup>

Further lawful bases for processing are:<sup>85</sup>

- processing is **necessary for the performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- processing is **necessary for compliance with a legal obligation** to which the controller is subject;
- processing is **necessary in order to protect the vital interests of the data subject** or of another natural person;
- processing is **necessary for the performance of a task carried out in the public interest** or in the exercise of official authority vested in the controller;

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<sup>81</sup> Art. 4 No. 1 GDPR.

<sup>82</sup> Art. 6 par. 1 GDPR.

<sup>83</sup> Consent is defined in Art. 4 No. 11 GDPR.

<sup>84</sup> Art. 6 par. 1 lit. a) GDPR.

<sup>85</sup> Art. 6 par. 1 lit. b) – f) GDPR.

- processing is necessary for the **purposes of the legitimate interests pursued by the controller or by a third party**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

- Key principles of the GDPR are **purpose limitation** and **data minimization**.
- The **territorial scope** is defined by the place of performance.

Furthermore, the personal data must be processed **lawfully, fairly** and in a **transparent** manner in relation to the data subject.<sup>86</sup> Another important principle of the GDPR is ‘**purpose limitation**’.<sup>87</sup> The purpose limitation principle states that personal data shall be collected for **specified, explicit and legitimate purposes** and not be further processed in a way that is incompatible with those purposes. Generally, in order to process data for another incompatible purpose either the data subject’s consent is needed or another justificatory reason recognized by the GDPR<sup>88</sup>.

The principle of **data minimization** requires the processing of personal data to be adequate, relevant and limited to what is **necessary** in relation to the purposes for which they are processed.<sup>89</sup> In addition to the principle of data minimization, the GDPR limits the storage period for personal data to the period that is necessary to fulfil the intended purposes (‘**storage limitation**’).<sup>90</sup> The limitation is backed by the right to erasure personal data (‘**right to be forgotten**’).<sup>91</sup>

The GDPR also states the **prohibition of coupling**: the performance of a contract may not be conditional on the data subject’s consent to the processing of personal data that is not necessary for the performance of that contract.<sup>92</sup>

<sup>86</sup> Art. 5 par. 1 lit. a) GDPR.

<sup>87</sup> Art. 5 par. 1 lit. b) GDPR.

<sup>88</sup> See Art. 6 par. 1 lit. b) – f) GDPR.

<sup>89</sup> Art. 5 par. 1 lit. c) GDPR.

<sup>90</sup> Art. 5 par. 1 lit. e

<sup>91</sup> Art. 17 GDPR.

<sup>92</sup> Art. 7 par. 4 GDPR.

The GDPR applies to ‘controllers’ and ‘processors’ who are responsible for compliance. The ‘**controller**’ determines the purposes and means of the processing of personal data.<sup>93</sup> Therefore, the controller holds the decision-making power regarding the processing. Whereas the ‘**processor**’ processes personal data on behalf of the controller.<sup>94</sup> The involvement of the processor is based on the controller’s decision.

The protection of the GDPR applies to natural persons with specific protection for children.<sup>95</sup> Regarding the **territorial scope**, the GDPR is applicable if personal data is processed in the **context of the activities of an establishment** in the EU. It is also applicable if personal data of **data subjects who are in the EU** is processed, regardless of the location of the processor.<sup>96</sup> Consequently, the place of performance is decisive for the scope of application.

#### *b. Application to Innovative Mobility solutions*

Given that all of MAMBA’s project activities take place within the EU, the GDPR is territorially applicable and the potential users are protected by its rules. Therefore, the fundamental question regarding the application of data protection law to Innovative Mobility solutions is, whether personal data is processed on a lawful basis.

##### *aa. Processing of personal data*

Due to the broad definition of ‘processing’ in the GDPR, one can assume that once personal data is recorded, some way of processing – as defined by the GDPR – will take place.

It is decisive, whether the kind of data generated in the process of providing the mobility solution qualifies as personal data. As stated above, personal data is any information relating to an identified or identifiable natural person.<sup>97</sup>

Concerning **demand responsive transport**, it is possible to provide the service without processing personal data. To offer a flexible time table, the operator just needs to know about the requested departure times, which are not related to an identifiable natural person. In contrast providing a Door-

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<sup>93</sup> Art. 4 No. 7 GDPR.

<sup>94</sup> Art. 4 No. 8 GDPR.

<sup>95</sup> E.g. Art. 6 par. 1 lit. f) GDPR.

<sup>96</sup> Art. 3 GDPR.

<sup>97</sup> Art. 4 No. 1 GDPR.

to-door-service requires the destination's address. A person's address is considered personal data, relating to an identifiable person. This issue does not occur, if the service is operated along pre-defined stations or stops. On the other hand, processing the address would probably be legally justified, because the processing is necessary for the performance of the transportation contract.<sup>98</sup> Otherwise, it would not be possible for the operator to pick the passenger up.

The same applies to any processing of account information during the payment process for tickets.

As soon as any kind of app-based system is used to operate the DRT service that obliges users to create a personal account, the processing of personal data is inevitable. Therefore, **ICT enabled solutions** will in most cases require the processing of personal data. Neither MaaS nor e-Hailing could operate without identifying their customers and - in doing so - process personal data. **MaaS** requires to identify customers across different services. It is unlikely that anonymization (e.g. through a random unrelated customer number) is possible, given the need for billing the services. Any way of pseudonymizing the user through a customer number that is only theoretically connectable to the data subject is still reckoned personal data in the legal sense of the GDPR.

Like MaaS, **e-Hailing** services usually rely on some kind of user account, not only for billing but also for providing the service by smartphone app. Only in the (unlikely) case of technically disconnecting the personal information from the mechanism used to matching drivers and passengers, no personal data is processed. Typical characteristics like rating the service (as well as the passenger) also depend on the identification through the smartphone app.

The need for a user account usually also exists for **Car-sharing**. Especially considering the eminent liability issues involved in the provision of Car-sharing, it is even more important to identify the specific user with great certainty. On the other hand, it is theoretically possible to offer Car-sharing without or with very little processing of personal data, e.g. by handing over the car's keys personally, paying cash and only requesting the driver's personal information, if liability questions arise. But when looking at the current business models for Car-sharing on the market that are nearly all account-based, this option may seem far-fetched.

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<sup>98</sup> Art. 6 par. 1 lit. b GDPR.



Regarding **Ridesharing** and **combined transport solutions** the question is similar: As long as these services are provided without any form of registration – comparable to conventional public transportation and its ticket machines – no personal data is processed. This should be the case, if passengers can spontaneously choose to board a vehicle offering ridesharing. If, in contrast, the service is offered by app or users need an account to order the service, certain personal data is processed, such as name, phone number or the location of the data subject.

#### bb. Lawful basis for processing

As soon as personal data is processed within the scope of the GDPR, a **lawful basis** is needed.<sup>99</sup> The specific legal justification depends on the design of the mobility offer. Therefore, the following assessments are limited to general considerations and need to be adapted depending on the actual design.

In some cases, the processing of personal data will be necessary for the **performance of a contract** to which the data subject is party.<sup>100</sup> For example, demand responsive transport, which offers a Door-to-door-service, needs the user's address to provide a stop at the requested place. Likewise, a user's banking information is needed to process a payment for a mobility service.

Furthermore, the GDPR allows the processing of personal data, if it is **necessary for the purposes of the legitimate interests** pursued by the controller or by a third party.<sup>101</sup> In this case the data subject's interest must not override the interests of the controller. For this reason, a careful **consideration of interests** is required and the results depend largely on the specificities of the situation. In addition to that, the scope of the regulation is very broad and therefore a wide range of interests is acknowledged and have to be considered on a case by case basis. A legitimate interest could e.g. be of legal, economic, ideational or other nature – in short, any lawful interest has to be taken into account.

If no other legal justification is pertinent, the data subject has to give his or her **consent**. The provider can obtain the consent when concluding the transportation contract. In doing so, the purpose of the processing needs to be explained (purpose limitation) and also the prohibition of coupling has to be observed. Therefore, it is not allowed to make performance of the contract dependent on the data

<sup>99</sup> Art. 6 par. 1 GDPR.

<sup>100</sup> Art. 6 par. 1 lit. b) GDPR.

<sup>101</sup> Art. 6 par. 1 lit. f) GDPR.

subject's consent. Another requirement for the data subject's consent is that he or she takes an informed decision.<sup>102</sup>

Finally, any innovative mobility solution should mind the **right to erasure** and for this reason provide appropriate mechanisms. Requirements like **Privacy by Design**<sup>103</sup> and **Privacy by Default**<sup>104</sup> should already be considered during the development of any innovative pilot project.

## 2. Denmark

In Denmark there are no area-specific data protection rules for transportation services. The regular rules of the Data Protection Regulation, pursuant to Regulation (EU) 2016/679 of 27 April 2016 apply to transportation services.

Applying the GDPR to Innovative Mobility solutions will only be an issue in relation to the operators' event notifications, which will include handling of personal data.

## 3. Finland

In Finland Customer registration is the main issue that raises Data protection concerns. In Finland there is some customized data legislation for the specific customer groups (e.g. disabled people).

As innovative mobility service providers are usually micro enterprises that are not necessarily familiar with data protection laws, the compliance to these rules could be a major challenge for innovative mobility solutions.

## 4. Latvia

In Latvia one major data protection law issue is expected to be the personal data of passengers entitled to claim fare reliefs such as pupils or heavily disabled persons. These persons need to be identified in order to obtain the fare reliefs. It is thus necessary to process their personal data.

The necessary data shall be provided free of charge, by the State Medical Commission for the Assessment of Health Condition and Working Ability, State Inspectorate for Protection of Children's Rights, the Society Integration Foundation and the Office of Citizenship and Migration Affairs. During

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<sup>102</sup> Art. 4 Nr. 11 GDPR.

<sup>103</sup> Art. 25 Par. 1 GDPR.

<sup>104</sup> Art. 25 Par. 2 GDPR.

the processing special care needs to be taken that the requirements of the GDPR are being observed. The manager of the information system and of the processing of personal data is the Road Transport Administration. It will have to make sure that all personal data is deleted from the system as soon as it is not needed anymore to determine who is entitled to obtain the fare reliefs.

### 5. Poland and Sweden

In Poland and Sweden the national legislation corresponds to the GDPR and no specific challenges different from the other countries are expected.

## B. Mobility Centers

From a legal-institutional perspective there are two main issues that need to be addressed before being able to implement a Mobility Center (MC). First, one has to clarify the design and functions of an MC. This has been done by WP 2.3. A short overview of the findings will be presented here (I.) Secondly, one has to ask to what extent municipalities and non-commercial associations can get lawfully involved in commercial activities when offering services through a MC, because many partners in the MAMBA project are either municipalities or non-commercial associations (II.).

### I. Characteristics of a Mobility Center

Mobility centers (MCs) are at the very core of the MAMBA project. They are expected to integrate existing mobility options by introducing enhanced management capacities in transport administration, providing digital and non-digital information systems for residents, creating platforms for public and private enterprises to pool transport services and facilitating cooperation between public transport actors and service providers.

In WP 2.3 the University of Applied Sciences from Kiel has elaborated a definition and three basic types of MCs that are used for the legal analysis in the following.

According to the pre-study in WP 2.3 mobility centers are

*"interconnected facilities and/or service providers which offer information and services around personal mobility, combining all available transport modes."<sup>105</sup>*

This definition is met by three basic types of MCs that have been identified in WP 2.3:

- The **„Traditional“ Mobility Center** is a central physical facility / hotline which offers access to a variety of transport modes to people.
- The **„Advanced“ Mobility Center** is a virtual facility / app which offers access to a variety of transport modes to people

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<sup>105</sup> Franke, Pre-study of mobility centre models, 2018, p. 3.

- The „Local“ **Mobility Center** (or „Mobility Hub“) is a physical location which offers access to a variety of transport modes to people

The characteristics and modes of functioning of these types are further developed in the pre-study elaborated in WP 2.3.

## II. Legal-institutional aspects: Running a Mobility Center as a non-commercial association or a municipality

Mobility centers can be run by non-commercial associations or by municipalities that establish municipal companies. In both cases a question arises: are these actors allowed to pursue commercial activities and, if yes, to what extent? If offering mobility through an MC is an economic activity, this question needs to find an answer before being able to implement MCs on a sound legal basis. In the following these questions will be answered with reference to the national legal frameworks participating in the MAMBA project (1. – 6.).

### 1. Germany

#### a. Non-commercial association

- Non-commercial associations should offer services through a Mobility Center only at a cost-covering price or tailor the MC in a way that it clearly serves the association’s non-commercial main goals
- Otherwise they run the risk of losing their non-commercial character and can be deleted from the register of associations

German civil law distinguishes between commercial and non-commercial associations.<sup>106</sup> **Non-commercial associations can be deleted from the register of associations, if they lose their non-commercial character.**<sup>107</sup> This could be a potential risk for project partners such as the Diaconie from Schleswig-Holstein, Germany, when establishing a MC and running it for profit.

<sup>106</sup> §§ 21 and 22 of the German civil code (BGB)

<sup>107</sup> § 395 FamFG.

According to the German Supreme court an association loses its non-commercial character, if it develops its own entrepreneurial activities according to a management plan, on a permanent basis and directed outwards, i.e. going beyond the internal area of the association, which aim at economic advantages either for the association itself or for its members. But an association can still be a non-commercial association, if it develops **entrepreneurial activities for the achievement of its non-commercial goals**, provided that these are **assigned and subordinated to the non-commercial main purpose** and are aids to its achievement (so-called secondary purpose privilege).<sup>108</sup>

The services of the MCs should thus be offered for free or only at a cost-covering price in order to prevent a deletion from the register of associations. Another option would be to use the commercial activities for achieving the main non-commercial goals of the association. The Diaconie, for example, should offer the delivery of groceries only as a part of the help for elderly people, who are not able to go shopping themselves due to their physical handicaps. A delivery to other persons would probably cast doubt on the non-commercial character of the Diaconie.

#### *b. Municipal companies*

- The economic activity of municipalities is limited to a certain scope of cases defined by law
- The law prescribes that the establishment of an MC, being such an economic activity, has to be justified by a public purpose, should be reasonable in financial terms and should not unduly interfere in the private market
- The enhancement of mobility and accessibility in rural areas is a public purpose and could not be offered economically by a private actor
- This means in practical terms for the municipalities, that they have to focus on the resource efficiency of the MC. The amount of resources invested in it should be in a reasonable relationship to the capacities of the municipality

In Germany municipalities are only allowed to carry out commercial activities if certain requirements, stemming from constitutional law, are fulfilled.

<sup>108</sup> See BGH, Decision on the 16.05.2017, II ZB 7/16, NJW 2017, 1943, 1944.

A commercial activity means, in this context, any activity of the municipality on the market which could also be carried out by a private third party with the intention of making a profit, such as in particular the production, offering or distribution of goods or services.<sup>109</sup>

When offering mobility through an MC these requirements are fulfilled. The MC could be run by a private company and selling tickets is usually done with profit-making ambition.

In most cases municipalities establish companies that pursue these tasks.

In Schleswig-Holstein and Niedersachsen, the participating federal states in MAMBA from Germany, the establishment of such a company is only allowed, if a **public purpose justifies the establishment of the company**, if the **costs for the company are in an appropriate relationship to the capacities of the municipality** and if the **public purpose cannot be fulfilled better and more economically by a private third party**.<sup>110</sup>

The companies can be established under private or public law. If they are established under private law the municipalities have to abide to certain standards established by law such as limiting the financial liability of the municipality to a certain amount (§ 137 NKomVG). These requirements have to be included in the articles of association.

All the above-mentioned requirements have to be taken into account when establishing an MC and choosing a municipal company to run it. The MC as an economic activity will probably be justified by a public purpose, namely the enhancement of mobility and accessibility in rural regions affected by demographic change. This is a purpose that all the inhabitants benefit from and hence a public purpose. The MC should be tailored reasonably when it comes to the spending of public resources and the capacities of the municipality should be borne in mind. It is also probable that private third parties could not offer the service of the MC better or more economically as rural areas are characterized by a low demand of mobility correlating with low profit-generating expectancies for private actors.

<sup>109</sup> Kläß in BeckOK Kommunalrecht Niedersachsen, 2018, NKomVG § 136 No. 18.

<sup>110</sup> § 136 NKomVG, § 101 GemO SH.

## 2. Denmark

If MCs are run by non-commercial associations or municipalities certain legal requirements need to be observed.

In Denmark associations can be registered in the Central Business Register (CVR register) that provides access to information about all Danish businesses and companies. If the association is to receive grants from a public authority, it must register in the CVR register.

A **non-commercial organization or association** can lose its non-commercial character, if it does not aim to work for the benefit of the general public, but generates financial profits for a person or group of people. A non-commercial association has to pursue a purpose, for example, support research, social development, environmental protection, nature conservation or a sustainable future.

Therefore, MCs should not generate financial profits for a person or group of people or a company.

In the case of a **municipality-run MC** the general assumption has to be taken into account that a municipality cannot legitimately drive or provide direct support to trade, craft, industry or financial business unless there is special legislative authority for such activities. Economic activities are only permitted under the following conditions:

- municipal interest in the activity,
- general eligibility,
- prohibition of support for individuals and individual companies,
- the activity must be beneficial to all or a deliberately defined circle,
- not for the benefit of anyone other than the citizens of the municipality.

When establishing an MC these conditions are most likely to be fulfilled.

## 3. Finland

In Finland there are non-commercial associations that are registered in a registry of associations. These associations lose their status if their activity is not in small scale or it is considered as a major economical activity with continuous nature.

Therefore, **MC activities by non-commercial associations** must be kept in small scale, economically low value and with no major profits for the owners.



**MC activities by municipalities** are also subject to certain legal requirements. Municipalities cannot provide services that deform market competition. After the ongoing reform of the regions in Finland, it is not possible for the newly formed regions to acquire services provided by municipalities directly. Municipalities are only entitled to provide services for the new regions through their own sub-corporations.

Innovative mobility solutions and MCs have, thus, to be organized by these sub-corporations. Furthermore, it is mandatory for municipalities to provide information about the offered mobility services to the Finnish Transport Safety Agency (TRAFI) so that all (private) service providers have the possibility to provide their solutions.

#### 4. Latvia

In Latvia **non-commercial associations** are registered in the Association of Latvian Passenger Carriers. These non-commercial associations lose their non-commercial character, if they start to perform commercial activities.

Also, for the **MC activities of municipalities** there are certain legal boundaries.

In accordance with the law on local governments, municipalities shall only execute certain functions. Among these figures the organization of public transport. This means that the establishment of a municipality-run MC lies within the competence of municipalities in Latvia.

#### 5. Poland

According to the law in Poland, non-governmental organizations are:

- Organizations that are not public finance sector entities within the meaning of the relevant Public Finance Act.
- Not working to make a profit.

Municipalities and poviats can only carry out tasks permitted by law.

The activity of communes may be limited only to public services in the scope of meeting the collective needs of their residents. This applies, for example, to public transport, running hospitals, and maintaining infrastructure.

The establishment of a MC by the Powiat Bielski is, thus, in the line with national regulations as it will serve to understand the transport needs of the inhabitants of the area. An additional advantage will be an innovative form of learning about transport needs through the created MC and carrying out innovative forms of transport such as DRT.

The activity of the MC will be based on a task permitted by Polish law that can be implemented by the Powiat Bielski.

## 6. Sweden

In Sweden registered non-commercial organisations can run businesses, but cannot make a profit that they distribute outside of the business/organization. If an association chooses to become a company and changes its registration with the tax office the status changes.

If the established MC generates profits a change of status might become necessary.

## Conclusion/Summary

The analysis has shown that there are good prospects of establishing innovative mobility solutions and MCs on a sound legal basis in the countries participating in the MAMBA project.

**Passenger transportation law** only represents a major barrier in Germany with its strict approval regime whereas the other countries are characterized by a more liberal approach to the issuing of passenger transportation permits. In Germany the legal framework must be adapted to new modes of transport like the actions planned in MAMBA.

In most countries the drivers of the vehicles used in the pilot actions will need a **category D driving license**. In Finland and Latvia additional professional qualifications of the drivers need to be proven to the authorities.

The **financing** of the pilot actions can rely on private and public sources. In this context, it is a great advantage if the pilot actions qualify legally as public transport as this makes public funding options easier accessible.

**Insurance coverage** for the pilot actions should also be guaranteed. In Germany it is the holder of the vehicle that needs to obtain a vehicle liability insurance. In most other countries it is the owner who is responsible for any insurance policies.

**Data protection law** will also play an important role in the process of establishing the pilot actions. It will be important to tailor booking or registration systems in a way that ensures that all users give their consent to any processing of personal data.

When **establishing an MC** as a non-commercial association or a municipality the partners should in general terms refrain from offering a profit-generating service as this may raise additional legal challenges.

## Annex

### A. Relevant regulations for Innovative Mobility Solutions in Germany

<b>Title (English)</b>	<b>Title (German)</b>	<b>Abbreviation</b>
<i>Ordinance on the general conditions for passenger transportation with trams and buses as well as line-based traffic with motor vehicles</i>	Verordnung über die Allgemeinen Beförderungsbedingungen für den Straßenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen	<b>BBedV</b>
<i>Civil Code</i>	Bürgerliches Gesetzbuch	<b>BGB</b>
<i>Ordinance on the operation of motor vehicle companies in passenger transport</i>	Verordnung über den Betrieb von Kraftfahrunternehmen im Personenverkehr	<b>BOKraft</b>
<i>DIRECTIVE 2006/126/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 December 2006 on driving licences</i>	Richtlinie 2006/126/EG des Europäischen Parlaments und des Rates vom 20. Dezember 2006 über den Führerschein (Neufassung)	<b>European directive 2006/126/EC</b>
<i>Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction</i>	Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit	<b>FamFG</b>
<i>Ordinance on the right to drive</i>	Verordnung über die Zulassung von Personen zum Straßenverkehr	<b>FeV</b>
<i>Ordinance on the exemption of specific forms of transport from the norms of the Passenger Transportation Act.</i>	Verordnung über die Befreiung bestimmter Beförderungsfälle von den Vorschriften des Personenbeförderungsgesetzes	<b>FrStllgV</b>
<i>General Data Protection Regulation</i>	Datenschutz-Grundverordnung	<b>GDPR</b>
<i>Community Regulations for Schleswig-Holstein</i>	Gemeindeordnung für Schleswig-Holstein	<b>GemO SH</b>
<i>Municipal Transport Financing Act</i>	Gemeindeverkehrsfinanzierungsgesetz	<b>GVFG</b>

<i>Act on the Transportation of goods with motor vehicles</i>	Güterkraftverkehrsgesetz	<b>GüKG</b>
<i>Commercial Code</i>	Handelsgesetzbuch	<b>HGB</b>
<i>Motor Vehicle Tax Act</i>	Kraftfahrzeugsteuergesetz	<b>KraftStG</b>
<i>Municipal Constitutional Law of Lower Saxony</i>	Niedersächsisches Kommunalverfassungsgesetz	<b>NKomVG</b>
<i>Act on local public transport in Schleswig-Holstein</i>	Gesetz über den öffentlichen Personennahverkehr in Schleswig-Holstein	<b>ÖPNVG SH</b>
<i>Passenger Transportation Act.</i>	Personenbeförderungsgesetz	<b>PBefG</b>
<i>Ordinance on the admission to a profession within road passenger transport</i>	Berufszugangsverordnung für den Straßenpersonenverkehr	<b>PBZugV</b>
<i>Compulsory Insurance Law</i>	Pflichtversicherungsgesetz	<b>PfIVG</b>
<i>Regulation (EC) No 1370/2007 of the European parliament and of the Council of 23 October 2007 on Public Passenger Transport Services by Rail and by Road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70</i>	VERORDNUNG (EG) Nr. 1370/2007 DES EUROPÄISCHEN PARLAMENTS UND DES RATES vom 23. Oktober 2007 über öffentliche Personenverkehrsdienste auf Schiene und Straße und zur Aufhebung der Verordnungen (EWG) Nr. 1191/69 und (EWG) Nr. 1107/70 des Rates	<b>Regulation 1370/2007</b>
<i>Social Security Code IX</i>	Neuntes Sozialgesetzbuch	<b>SGB IX</b>
<i>Value Added Tax Act</i>	Umsatzsteuergesetz	<b>UStG</b>
<i>Insurance Contract Act</i>	Versicherungsvertragsgesetz	<b>VVG</b>

Table 3: Legal inventory for Germany

## B. Relevant regulations for Innovative Mobility Solutions in Denmark

<b>Title (English)</b>	<b>Title (Danish)</b>	<b>Abbreviation</b>
<i>Law no. 323 of 20.03.2015 on traffic companies</i>	Lovbekendtgørelse nr. 323 af 20.03.2015 om trafikselskaber	
<i>Executive Order no. 477 of 02.05.2017 on route services</i>	Bekendtgørelse nr. 477 af 02.05.2017 om rutekørsel	
<i>Law no. 1050 of 12.11.2012 on bus driving</i>	Lovbekendtgørelse nr. 1050 af 12.11.2012 om buskørsel	
<i>Executive Order no. 815 of 21.06.2017 on driving licenses</i>	Bekendtgørelse nr. 815 af 21.06.2017 om kørekort	

Table 4: Legal inventory for Denmark

## C. Relevant regulations for Innovative Mobility Solutions in Finland

<b>Title (English)</b>	<b>Title (Finnish)</b>	<b>Abbreviation</b>
<i>General Vehicle law</i>	Ajoneuvolaki	
<i>Regulation for Unobstructed taxi transport</i>	Esteettömän taksiliikenteen	
<i>Public Transport Act</i>	Joukkoliikennelaki -> 30.6.2018	<b>JLL</b>
<i>Regulation for School Transport</i>	Koulukuljetusasetus	
<i>The Act on Transport Services</i>	Laki Liikenteen palveluista 1.7.2018 ->	<b>LPL</b>
<i>Regulation (EC) No 1370/2007 of the European Parliament and of the EY Council on public passenger transport services by rail and by road</i>	Palvelusopimusasetus 1370/2007	<b>PSA</b>
<i>Service for disabled persons law</i>	Vammaispalvelulaki	

Table 5: Legal inventory for Finland

## D. Relevant regulations for Innovative Mobility Solutions in Sweden

<b>Title (English)</b>	<b>Title (Swedish)</b>	<b>Abbreviation</b>
<i>Legislation for road transport operators</i>	Yrkestrafiklagen (2012:210)	
<i>Ordinance for road transport operators</i>	Yrkestrafikförordningen (2012:237)	
<i>REGULATION (EC) No 1071/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator</i>	Europaparlamentets och rådets förordning (EG) nr 1071/2009 om gemensamma regler bekräftande de villkor som ska uppfyllas av personer som bedriver yrkesmässig trafik	
<i>Driving license regulation</i>	Körkortslagen (1998:488)	
<i>Qualifications of professional drivers regulation</i>	Lag (2007:1157) om yrkesförarkompetens	

Table 6: Legal inventory for Sweden

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