



Legal determinants for innovative rural mobility solutions

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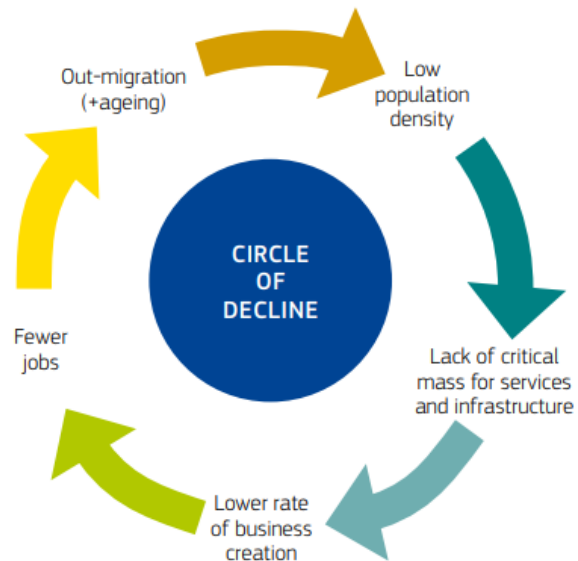
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Introduction

Accessibility to services is crucial for the wellbeing of rural residents and the social and economic resilience of rural communities (ENRD, 2017). Ensuring this accessibility can be challenging, however, as the long distances and low population densities that characterise most rural areas are not conducive to the provision of services or infrastructure. Large distances between communities and households present logistical challenges while the lack of critical mass means that investments are often large relative to the number of people served. The resulting lack of accessibility can have a negative impact on economic activity and quality of life. This, in turn, may lead to the outmigration of the working-age population, intensifying the effect of population ageing and ultimately resulting in economic and social stagnation. Improving mobility and accessibility to services in rural areas is central to breaking this ‘circle of decline’ (OECD, 2010) (see Figure 1).

In the literature, access to transport is emphasised as a vital factor in increasing the competitiveness, sustainability and attractiveness of rural and remote areas by providing access to employment, education, healthcare and leisure activities (Codatu, 2016). **In contrast to urban areas where transport initiatives generally focus on environmental concerns, rural transport initiatives tend to have accessibility as the primary focus (OECD, 2009). As such, a key challenge for rural areas is finding cost-effective ways to increase accessibility and mobility for all residents regardless their socio-economic and health status.**

Figure 1. Circle of declining rural areas. Source: OECD 2010.



Accessibility challenges in rural areas are by no means a new phenomenon. These challenges have been exacerbated in recent years, however, by cuts to public budgets, centralisation of public services and demographic change. Demographic trends such as population ageing have increased the demand for certain services, while at the same time, cuts to public service budgets have made them more difficult to provide. Thus, it is not only a question of meeting the increasing demand for existing services, there is also a need for innovative approaches that address accessibility challenges in new ways (Copus et al., 2016).

The emerging solutions for rural mobility are a combination of both social, digital and institutional innovations and are generally focused on novel and flexible forms of mobility and shifting a paradigm from car ownership to vehicle usage (e.g. car and ride sharing). Innovations are also emerging in the

form of “service-to-people” initiatives. Local people and non-profit organisations are at the forefront of these innovative approaches, often acting as providers of solutions in the absence of state or market alternatives (ENRD, 2017). This study addresses the legal enablers and barriers in the implementation of innovative mobility solutions

Aim and scope

This study is an output of the MAMBA project (Maximising mobility and accessibility of services in rural areas of the Baltic Sea Region), funded by the Interreg BSR Programme 2014-2020. MAMBA project included a consortium of fifteen partners from six countries, and resulted in the implementation of a range of innovative rural mobility solutions in remote regions, towns and villages throughout the Baltic Sea Region. The study was originally published in July 2018 as a “pre-study”, with the aim of supporting the MAMBA project partners to develop and implement innovative rural mobility solutions in rural locations around the Baltic Sea Region. At this time, the study was designed to address the legal challenges that the project partners may come up against. It provided an overview of the relevant legislation in each country in the context of the different solutions the project partners were planning to implement. This revision includes much of the original material along with examples throughout that highlight the ways in which legal issues acted as enablers and/or barriers in the implementation of the rural mobility solutions piloted through the MAMBA project. The revision also integrates new developments in the legal framework were also integrated into the update as well as proposals for changes in legislation to improve rural mobility.

The study is presented in three chapters. In the first chapter, IKEM focusses on the legal analysis of the different mobility solutions (A.). The second chapter is dedicated to examining the mobility centres (MCs) (B.) The third chapter features proposals for changes in legislation to improve rural mobility (C.). The report also includes an Annex, which provides a legal inventory collating all national and international regulations regarding innovative mobility solutions (Annex, A. - F.).

A. Mobility Solutions

One core element of the MAMBA project is the different pilot actions in the participating regions. IKEM and the partners in Work Package 2 have categorised these solutions, and have elaborated definitions which enable a common understanding within the framework of the project. In a first step, these definitions will be presented (I.) Following the definitional section, IKEM then offers a legal assessment of the different areas of law relevant to innovative mobility solutions (II. –VII.). In this context, the first step each time will be an analysis of the German legal framework, since it is one of the most complex. Basic principles which can also be applied to other countries will be explained here, to avoid repetition later on. Following this, the national legal system from other partner countries will be described and related to innovative mobility solutions. The international analysis is based on

questionnaires which were answered by local legal experts from the different regions. IKEM has gathered and structured the content provided.

I. Definitions

In this first section “Innovative mobility solutions” will be defined in more detail. The analysis in this 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 services are public transport services with flexible routing, and a timetable adjusted according to demand. Travellers make reservations beforehand to optimise routing and traveller frequency (see the MAMBA glossary on “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 to tailor the right mobility offer to the given context. In a **spatial sense**, options include the following modifications of traditional line-based traffic:

- Serving only certain stops on a pre-determined route, depending upon passenger demand (Line DRT).
- Complementing a pre-determined route with additional stops which vary from the original route. These stops are only served on demand (Line DRT with deviations).
- Defining a corridor instead of a route. Within the corridor, stops are only served on demand (Corridor DRT).
- In a pre-determined area, passengers entering the vehicle wherever they order it – either at certain stops, or without restriction 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 or her stop.
- The passenger can freely choose the departure time.

DRT is often offered by registered associations¹ founded by citizens in rural areas, following a bottom-up approach. Voluntary drivers are assigned in order to reduce the cost of providing a mobility service that would otherwise not be profitable. There are different options concerning how to tailor the mode of transport. In many cases, the service operates with minibuses (fewer than nine passengers) as line-based transport. But offering a citizen-run taxi service is another option that many choose.²

2. ICT-enabled solutions

Information and communication technologies (ICT) play an important role in innovative mobility solutions. Smartphones are often required in order to have access to ICT-enabled mobility services. DRT, for example, can either be requested by phone or online, using a software application on a smartphone, tablet or computer. Two main examples of ICT enabled solutions are “**e-hailing**” and “**Mobility as a service**” (**MaaS**), both of which 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. It ensures that a combination of physical transport modes (such as buses, trains, taxis, bikes and cars) are brought to the user by a single product – an app or other customer 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 that mixes public transport and car travel (e.g. car sharing, car rental). MaaS is a new paradigm for mobility, because users pay for mobility services instead of investing in vehicles (e.g. Whim, Ubigo; see also the MAMBA glossary on “Mobility as a service”).

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

¹ § 20, 21 BGB.

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

3. Car sharing

Car sharing is a car rental system which is more flexible and easier to use than traditional car rental services. Approved and subscribed users can rent a car from the fleet ad-hoc, if one is available or on short notice for short term rides (minute or hour-based). The tariff usually covers all costs, including petrol and insurance. Reservation, pickup, and return is all self-service. There are two different types of service: free-floating and station-based ones (see MAMBA glossary on “car sharing”).

4. Ride sharing

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

5. Combined transport solutions

Another option to reduce costs for mobility in rural areas is to combine modes of transport. There are several ways of doing this. Two of them are examined in this study. First, existing mobility provision for passengers in the public transport sector can also be used for the transport of goods (**case 1**). For example, buses running regularly for passengers could carry food or other goods from supermarkets to remote areas. Vice-versa, services for carrying goods could start to offer passenger transport as well (**case 2**). Delivery services for e-commerce could also offer to take citizens with them on their route.

6. Service-to-people approaches

Service-to-people approaches refers to a way of facilitating an individual’s access to a service without increasing their mobility (e.g. bringing services to the village – physically or digitally – or optimising 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 elderly people and delivers groceries at the same time, or which offers them a ride to the doctor on their way back.

II. Passenger transportation law

The mobility solutions defined above are legally analysed in the following sections (II. – VII.), starting with passenger transportation law.

1. Germany

a. Regulatory framework in Germany

- In Germany passenger transport is regulated by the **Passenger Transportation Act**.³
- A **passenger transport permit** is needed, if
 - People are being transported
 - for a fee or
 - on a commercial basis.
- There are several **exceptions** to this general rule.

Passenger transportation law not only regulates the transport of passengers, it also sets the rules for construction activities within public road space (for trams). The aim of the law is to ensure public security and order with regard to all issues related to public transport. **Transporting people commercially on a regular basis, or for a fee**, is forbidden unless the operator obtains the **necessary permit from the competent authority**.⁴ A fee, in the legal sense, is not necessarily a certain amount of money. Every financial advantage obtained by offering the transport can be considered a “fee”. The transport provider also needs a permit if the transport is offered commercially on a regular basis. “Regular basis” means the intention to repeat the service 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 the transport than the cost of providing the service. In this case, the transport lacks the commercial character that

³ PBefG.

⁴ §§ 1 par. 1, 2 par. 1 PBefG.

would require the legislator to establish and monitor specific safety provisions for the passengers. A passenger car is defined as a motorised vehicle built to transport of no more than nine passengers (including the driver).⁵

Furthermore, a permit is not needed for patient and pupil transport unless a fee is charged for the service.⁶

Every form of transport needs to comply with one of the following set of criteria. Otherwise a permit cannot be issued:

- **Line-based traffic** is a traffic connection established between pre-determined starting and finishing 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 passengers to destinations of their choosing in cars that are parked ready for service at officially accredited spots. Requests for its service can be received during a journey (ride hailing) or at the residence of the owner. The latter means travelling in vehicles rented by the passenger for purposes of transportation. Destination and route are entirely up to the passengers, and the rental service has to receive the request for its service either at a corporate office or at the residence of the owner.

If none of these set of criteria is fulfilled, then 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 authorised according to the regulations of the mode of transport to which it is most similar.
- A special permit **limited to a period of four years** may also be issued for the purposes of testing new modes of transport.

Both types of special permit require that the authorised vehicles do not conflict with public interest.

⁵ § 4 par. 4 No. 1 PBefG.

⁶ § 1 No.4 lit. d, e FrStllgV.

Passenger transportation law requires a permit for the conveying passengers by tram, trolleybus or motor vehicle.⁷ Motor vehicles are defined as vehicles powered by engines.⁸ **Motor vehicles can only be approved by the authorities as either line-based or occasional traffic.** Therefore, anyone starting a new service should determine which applies to them and try to align their business model with as many of the legal criteria as possible. This will make it much easier to get a licence.

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.⁹ It does not require a timetable with specific departure and arrival times, nor the establishment of intermediate stops. In contrast, **occasional traffic**¹⁰ is defined either as transport by taxi, or the use of a rental car or a rental bus. The former means the transportation of passengers to destinations of their choice in cars kept ready for service at officially accredited spots. The latter means transport in cars rented by the passenger for that purpose. The whole car has to be rented, not just a seat in it. Destination and route are entirely up to the passenger, and the rental service has to receive the request for its services either at a corporate office or at the residence of the owner. After the service, the car has to return immediately to the corporate office.

For modes of transport that qualify as either line-based or occasional traffic, a permit will only be issued if all other relevant **safety requirements** are also met.¹¹ **The safety and efficiency of the service** both have to be assured, the applicants must **not be unreliable and must be technically qualified** to provide the service, and the service must have its business address in the same country.

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

⁷ § 2 par. 1 PBefG.

⁸ § 4 par. 4 PBefG.

⁹ § 42 PBefG.

¹⁰ § 46 PBefG.

¹¹ § 13 PBefG.

A mode of transport that does not fulfil all requirements of either line-based or occasional traffic may nevertheless be authorised according to the regulations governing the **mode of transport to which it is most similar**, provided that it does not conflict with the public interest.¹²

Another option for receiving a special permit is for the **testing of new modes of transport**, provided these do not conflict with the public interest.¹³ Either new modes of transport or new vehicles can be tested. The purpose of this rule is to promote innovative mobility solutions that require testing in advance in order to be economically, socially and technically sustainable. In comparison to the special permits mentioned previously, the one for testing purposes allows for a greater difference from the standard transport types specified in 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 fulfil the legal criteria for line-based or occasional traffic**.
- The more the DRT service is tailored, the less likely it is to fulfil those criteria
- In order to receive a special permit, the service **should be designed in a way that corresponds as closely as possible to the legally recognised modes of transport**, and the applicant must show that the service provided is in the public interest.
- In practice, the German authorities do at times issue permits for DRT services that do not meet the criteria for legal approval (e.g. permits for bus lines with so-called “virtual bus stops”).
- Citizen-organised mobility providers often **struggle to fulfil the strict criteria regarding financial and technical capacity** imposed on them by passenger transportation law. To address this, it is advised that they seek to **cooperate** with bus companies or local providers of public transport.

¹² § 2 Par. 6 PBefG.

¹³ § 2 par. 7 PBefG.

The degree of flexibility of the DRT solution may lead to legal problems when applying for a passenger transport permit.

If possible, it is best to avoid the need to apply from the outset. For this to be the case, the fee charged for the service must at maximum cover the costs and use a vehicle for nine or fewer passengers. But even with this model, providers are advised to inform the local authorities about the new service in order to prevent potential legal problems later on.

If this is not feasible, the issuing of a permit will depend heavily upon the legal opinion of the authority responsible for the approval procedure. It is questionable whether any DRT solution fulfils the criteria in German passenger transportation law. The Federal Administrative Court has ruled that buses on demand do not meet the requirements of line-based traffic,¹⁴ since the transport has to be between pre-determined starting and end points.¹⁵ Every service that is flexible in the spatial sense risks not to living up to this requirement. Moreover, it is also doubtful whether DRT can qualify as transport on a regular basis, as required by the legal definition of line-based traffic. As the ability to respond to passenger demand is the very definition of DRT, it is difficult to imagine how a regular service could be guaranteed under the current legal framework.

This means that approval as line-based traffic is unlikely. The same applies to approval as a taxi or rental car (occasional traffic). Vehicles for DRT are usually not parked and ready for service in officially accredited spots, which is a prerequisite for approval as a taxi. In contrast to rental cars, passengers do not have to rent the whole on-demand vehicle, only single seats.

In most of cases a special permit will only be issued as an exception to the rule. As issuing permits is at the discretion of the competent authority, applicants need to show that their planned DRT service is in the public interest, even if it also contravenes some of the regulations of German passenger transport law. It is also a good idea to tailor the DRT service as closely as possible to that of legally defined line-based or occasional traffic. However, it is not possible to predict the authority's decision with any degree of certainty in such cases.

¹⁴ § 42 PBefG.

¹⁵ Federal Administrative Court, Judgement on the 12.12.2013, C 30.12.

The applicants is advised to keep up a constant dialogue with the relevant authorities prior to, and during, the approval procedure. In practice, there are several examples in Germany where the authorities have issued regular passenger transport permits instead of special permits, as Table 1¹⁶ shows.

Mobility Solution	Mode of transport	Permit according to § ...
<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.

¹⁶ 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-organised mobility solutions involving voluntary drivers also face the challenge of fulfilling the safety requirements stipulated by passenger transport law.¹⁷ Applicants for passenger transport permits have to prove that they are **financially and technically capable** of running the service. For this purpose, they need detailed knowledge of the law and the business management skills needed to run a successful transport business. Details about the requirements in Germany can be found in the “Ordinance on the admission to a profession within road passenger transport”.¹⁸ Civic organisations applying for a permit 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 transport permit **depends upon the mode of transport provided.**
- 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.

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

¹⁷ § 13 PBefG.

¹⁸ PBZugV.

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

German courts have established this rule and have decided that an e-hailing platform provider needs to apply for a passenger transport permit for ride-sharing services offered via the platform, if the platform provider is **not merely an intermediary between the drivers and the passengers**. This applies if it is the platform provider and not the driver who is the passengers' contracting partner, 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 as part of the service. The passengers' contracting partner is responsible for obtaining the passenger transport permit.

cc. Car sharing

Legal evaluation and advice

- **Car sharing does not require a passenger transport permit.**
- The Passenger Transport Act only applies if **"persons are being transported."**²⁰
- **Users of car-sharing services 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 in the Passenger Transport Act.**
- If possible, ride-sharing services should be offered with **vehicles for nine or less passengers and for a fare that covers costs**, as this form of service does not require a permit.
- **Special permits** may be issued at the discretion of the competent authority.

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

²⁰ § 1 par. 1 PBefG.

- Applicants for special permits are advised to work with the competent authority on their application.

No passenger transport permit is needed for informal ride-sharing arrangements between friends or the citizens of a rural town, if the rides are offered free of charge and not on a regular basis.²¹

Ride-sharing services are also exempted from permits if the cars used are only designed for nine passengers or fewer and the total fare for all passengers does not exceed the cost to the provider. It is therefore advisable to **tailor ride-sharing services that work only with cost-covering fares and small/medium sized vehicles.**

In cases where ride sharing is offered through e-hailing platforms, the **provider of the platform** might have to **apply for a passenger transport permit**. This applies when the drivers are employed by the platform, or if the provider is **not merely an intermediary between the driver and the passenger**. According to the German administrative courts, the provider is more than an intermediary if he is the passengers' contracting partner, and not the driver himself. This is indicated by the passenger having to pay the e-hailing provider, and not the driver, and by the provider setting the prices of the service.²²

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 service that raises problems for approval under the Passenger Transport Act. The requirements of line-based traffic are not fulfilled, since the service has no pre-determined starting and finishing points, and since it is not subject to a regular schedule, but is dependent upon passenger demand. Nor does ride sharing qualify as car rental, because the passengers only occupy single seats and the car usually does not return immediately to the corporate office after completing the journey. Nor is it a taxi service, because the cars involved are not kept ready at officially accredited spots for taxis.

All of these regulations mean that ride-sharing services can only operate with special permits. These permits are at the discretion of the competent authorities and their decisions are cannot be predicted

²¹ § 1 par. 1 PBefG.

²² 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.

with any degree of certainty. It is helpful for the applicant to keep up a constant dialogue with the authorities concerned, and tailor a service that is in the public interest. This means that there needs to be a public demand for the service and it must fulfil all of the technical and safety requirements.²³

ee. Combined transport solutions

Legal evaluation and advice

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

Regarding **case 1 (transport of goods using transport modes originally intended for the transport of people)**, there are no special requirements imposed on the provider by passenger transport law. The service needs a permit under the criteria outlined in A.II.1.a. This means that it has to be approved either as line-based or as occasional traffic. The additional transporting of goods does not modify the approval procedure for a passenger transport permit, as long as the safety of passengers is guaranteed.²⁴ Regarding the transport of goods, this means that dangerous substances and items must not be conveyed.²⁵ Dangerous items are, *inter alia*, explosives, easily flammable items or malodorous substances, or unpacked or unprotected items that could physically harm passengers. If a passenger transport permit is issued, German legislation exempts the provider from having to obtain a permit to transport goods.²⁶ The fact that this exemption exists also indicates that transporting goods in a vehicle designed for passenger transport is not actually forbidden.

Case 2 (transport of people using transport modes originally intended for the transport of goods), is clearly regulated in Germany. The use of motor vehicles designed and equipped to transport goods must not be used for passenger transport that needs a permit under the Passenger Transport Act.²⁷

²³ e.g. § 13 PBefG.

²⁴ § 13 par. 1 no. 1 PBefG.

²⁵ § 11 par. 2 BBedV, § 15 par. 2 BOKraft.

²⁶ § 2 par.1 no. 4 GüKG.

²⁷ § 7 par 1 PBefG.

Only in very exceptional circumstances can the competent authority allow such vehicles to convey passengers.²⁸

ff. Service-to-people approaches

Legal evaluation and advice

- There are **no requirements** in passenger transport law that are relevant to **combining service-to-people approaches with the carriage of goods**.
- Service-to-people approaches combined with passenger transport requires a passenger transport permit, if the fare charged exceeds the cost of the journey.
- As a regular permit cannot be lawfully issued, a special permit is needed, which depends upon the discretion of the competent authorities.
- As such, it is advisable, when offering this type of mobility solution to charge a fare that only covers the costs of the journey.

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

In cases where service-to-people approaches are combined with passenger transport, a passenger transport permit may be necessary. This depends on the fare that the provider is proposing to charge. If the passenger transport is free, or only covers cost, and if the vehicle is designed for nine or passengers or fewer, no permit is needed.²⁹

If a fare is charged and it exceeds the cost of the ride, a passenger transport permit will be required. As service-to-people approaches depend upon passenger demand, it is not possible to offer the service as line-based traffic. Nor will the service qualify will it be feasible to qualify as a taxi or rental car service, because the provider will not be keeping vehicles ready for service at officially accredited

²⁸ § 7 par. 2 PBefG.

²⁹ § 1 par. 2 no. 1 PBefG.

places (a requirement for taxis), nor will the driver necessarily be returning to a corporate office after providing the service (a requirement for a rental car).

It will therefore depend up on the discretion of the authorities, whether a combination of a service-to-people offer with a passenger transport 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 in the rural Werra-Meißner district, part of the north Hessian public transport company (NVV). The project offers ride sharing for people whose routes have the same starting and finishing point. It relies on voluntary drivers who use their own private vehicles. 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 it uses the same online booking platform. Drivers can schedule their ride online and publish it on the NVV platform. Service users can then access this information online. If they decide to book a ride with Mobilfalt, a text message (SMS) is sent to the driver, saying that a passenger is waiting. The driver then needs to confirm availability, 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 to provide meeting points.

Legal challenge and solution

It was uncertain whether a passenger transport permit would be issued for Mobilfalt, since the service is neither a clear-cut example of line-based traffic nor occasional traffic. Mobilfalt therefore decided to offer the service without any attempt to make a profit, and it pays drivers financial compensation of just EUR 0.30 per kilometre, which is a small contribution to the cost of the ride. Such an arrangement does not require a passenger transport permit, because it lacks the commercial character that would oblige the authorities to step in and ensure that certain safety requirements are fulfilled.

2. Denmark

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

applicants who are authorized to provide commercial passenger transport services.³⁰ This does not apply to the issuance of permissions to traffic companies, the Bornholm Municipality and declared island municipalities (listed in § 3 Law on Traffic Companies).³¹

According to Danish passenger transport law, permits are issued to the following modes of transport:

³²

- Regular route services.
- Long-distance route services.
- Special route services for teachers/educators between their homes and place of work, or between educational establishments (school runs).
- Special route services for workers between their homes and their work (employee runs).
- Special route services to and from ferry and airports.
- Taxis.

School driving and employee driving do not require permits, if the passengers are people with disabilities.

In 2017, the regulations for taxi drivers were lifted. The provisions limiting taxi operation across municipal borders have also been removed, along with the cap on taxi operator permits. Danish taxi companies can now operate across municipal boundaries. Also, everyone who meets the official requirements to drive a taxi can obtain a taxi operator permit, which means that competition on the taxi market has improved greatly.

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 the transport of passengers in vehicles designed and equipped for the transportation of goods.

Experiences from MAMBA

"At first, we had hoped to integrate municipal vehicles into the freight service. The idea was that if an older person needed medicine from the city, they could order it from home and place a pick-up order"

³⁰ Cf. section 1 1 in the law of bus driving.

³¹ Cf. section 1, subsection 1. 3, of Law on Traffic Companies.

³² Section 1 in the Executive Order on route services.

with an app, so that the home care staff could bring to them on their next visit. We encountered legal problems with this idea, because it did not comply with data protection laws. This is because a social security number is needed to obtain medicine in Denmark.

– Project coordinator NaboGO, Vejle Municipality

3. Finland

In Finland passenger transportation is regulated by the new Act on Transport Services, which came into force on 1 July 2018. Public transport is not restricted to certain modes of transport. Every form of public transport, including taxis, can be provided under a general public transport permit. This has been the case since the provisions of the Public Transport Act, the Taxi Transport Act and the Act on the Transport of Goods by Road were harmonised in the **Act on Transport Services** (Laki liikenteen palveluista, 01.07.2018, No. 24/05/2017//320). The aim of this act is to improve market access and functionality. A specific regulatory framework has therefore been created to enable local government to fund and/or set up platforms (multimodal digital services) within their territory. Their purpose is to provide the public with all available information on transport services within the area, to calculate the best itineraries based on available static and dynamic data regarding traffic, schedules and infrastructure conditions, and to propose combined (multimodal) travel. Since this legal change, the number of taxis has increased by around 2,000 in the past year.³³ Under the reform, taxis are no longer bound to particular station areas and can operate nationwide.

A licence is required for road transport of passengers or goods for remuneration, and for the purpose of earning money (commercial road transport). Licences are issued provided that the following conditions are fulfilled:

- In the case of taxi traffic, the driver needs a taxi-driving licence, and price information must be on display inside the vehicle.
- For all other forms of public transport: a licence for public transport such as a bus licence, is required, and timetables must be made available using ICT-based solutions. Any operator

³³ www.traficom.fi/en/news/taxi-services-reform-increases-number-taxis-largest-increases-uusimaa-lapland-and-southwest.

wishing to provide a public service must set up a ticket and payment system that integrates with other services.

Generally, applicants need a licence which shows that they applicant fulfil certain criteria, such as an adequate financial status, a good reputation, and the right competence and skills to provide the service.

However, no passenger transport licence is required to transport passengers as part of a municipality's (or other public corporation's) social and health care services – in return for a fare laid down by law, and using a vehicle owned by the service (Section 1 part 2 No. 2 of the Act on Transport Services).

A new category called “mobility services” was created for transport services and brokering and dispatch services, data services, parking services and other support services directly related to these (Section 2, No. 4). ICT-enabled solutions like the mobility centres established in the MAMBA project would fall into this category. The Road Traffic Act established multiple rules concerning the sharing of data. The Finnish Transport Agency is required to monitor the demand for, and supply of, mobility services, and to coordinate their development.

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

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

In addition to the new Act on Transport Services, a new **Road Traffic Act** (tieliikennelaki, No. 2018.08.10//729) is due to enter into force on 1 June 2020. The purpose of this new act is to improve the flow and safety of traffic, and to create a favourable environment for both digitalisation and the safe automation of traffic, while simultaneously reducing regulatory burdens.

The introduction of a new **Health and Social Services Reform** is also currently being considered. When introduced, it will give regions – instead of municipalities – the responsibility for organising public health and social services. Another important piece of the new transport service legislation will be the upcoming **Regional Government Reform** (01.01.2021), which aims to give the regions

responsibility for several public services, including regional public transport services organised currently by ELY Centres.

Experiences from MAMBA

In South Ostrobothnia, the newly adopted Act on Transport Services (07/2018) generated many positive effects for the planning of innovative mobility solutions. The less constrained regulations facilitated new opportunities for innovative mobility services. At the same time, more detailed contracts with partner companies were needed, as well as stricter control by the authorities. The process of change in transport legislation was itself perceived as a barrier at first due to the initial uncertainty it caused.

4. Latvia

a. *Regulatory framework in Latvia*

Since 2014, the Latvian public transport system has been centralised. The institutions involved in the provision of public transport services are the Ministry of Transport, the Public Transportation Board, the Road Transport Administration, and the local governments of Latvia's nine republican cities.

The Ministry of Transport is the state authority, and its main responsibilities are national transport policy, drawing up legislation, and ensuring observance of laws and regulations for public transport.

The Public Transport Board falls under the Ministry of Transport. It was formed on 1 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 organisation on the regional level (bus and rail), including decisions on public transport tariffs and the financing of services.

The Road Transport Administration is a public company. Its 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 organises service procurement and enters into public service contracts. The Republic city local governments are independent when it comes to decision-making. They are responsible for public transport [buses, trams (Riga, Daugavpils and Liepaja) and trolleybuses (Riga)] within their jurisdictions.

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 – ones which provide mobility within the administrative boundaries of a city, as well as from a city to the surrounding area.

The competence of authorities in the field of public transport services, the conditions for operation and organisation of those services, and the main financing principles are all governed by the **Law on Public Transport Services** (Sabiedriskā transporta pakalpojumu likums, hereinafter – Law) and the **Law on Carriage by Road** (Autopārvadājumu likums). 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 its Council (23 October 2007) on public passenger transport services by rail and by road. This repealed Council Regulation (EEC) No. 1191/69 and the Law of Public Transportation Services (in force as of 15th 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 limited passenger flow, meaning that on a certain route there may sometimes be no passengers;
- the revenue from ticket sales and revenues generated by passenger transport specified for the fare compensation do not exceed additional 15% of the costs of providing regular public transport services.

The bus journey is guaranteed if the passenger request is received 24 hours prior to the scheduled departure, or if a ticket had already been reserved or purchased previous to that request. The operator must publicly disclose the arrangements for bus transport on demand, as well as any changes to it, including the requests, advance reservations and ticketing arrangements. Operators must provide a phone service during normal office hours to allow for booking and ticket purchases.

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 must have the right to carry baggage free of charge which is easily portable, the nature and packaging of which allows it to be stored easily, and the size of which (length, width, height) does not exceed 60 x 40 x 20 cm and weight – 20 kg.

Luggage that exceeds the size and weight in these regulations must be put in a luggage compartment.

Experiences from MAMBA

In Latvia, the Road Transport Administration deals with all implementation-level matters of road transport under the supervision of the Ministry of Transport. The original intention was that Vidzeme Planning Region would enter into a partnership with the Road Transport Administration in order to make the Transport on Demand solution part of the Latvian Public Transport system. When it became apparent that this was not possible, it became necessary to adapt.

"At the end of October 2018, we had to adapt to some changes in our project implementation. After discussing the situation with transports experts, the decision was made to integrate the transport on demand pilot with the mobility centre, making both services of Vidzeme Planning Region. This meant that the transport on demand service became an alternative to the public transport system (rather than being part of it). As a result, from a legal perspective it was important that the new mobility offer did not clash with public transport routes and times.

– Project coordinator, Vidzeme Planning Region

5. Poland

In Poland, there are nationwide legal regulations for passenger and freight transport services. In addition, each public transport provider may introduce additional requirements (regulations), in their area. This mainly applies to issues related to the quality of services provided.

The issuing of permits depends on the nature of the activity:

- **Taxi** – the appropriate licence must be issued by the local authority of the area in which the services will be provided. In addition, the vehicle must meet the appropriate regulations, including recording devices and payment systems.
- **The transport of 7–9 people, including the driver** – an appropriate licence 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 vehicle is equipped.
- **The transport more than 9 people (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 vehicle is equipped.

Providers wishing to run **bus** services must also apply for a permit per route. Occasional services are exempt from this rule.

The main documents related to transport development are the **National Transport Policy** for 2006-2025 which covers the issues of investments in public transport and suburbanisation and the **Transport Development Strategy**, that sets national priorities for the creation of an integrated transport system by investing in transport infrastructure. Additionally the local authorities are required to draw up and implement a '**Plan for Sustainable Public Transport**' for their regions.

Experiences from MAMBA

At the time the transport on demand solution was being established in Bielsko-Biała, Polish law did not refer to innovative transport services. As such, the team at Bielsko-Biala Regional Development Agency did not expect to encounter any legal challenges with setting up the solution. However, after a change of government, new legal restrictions were imposed, and the duties of the local authorities were transferred to other bodies. This affected both the Transport on Demand solution and the mobile application and increased the overall set-up costs of these activities. This experience suggests the need to be prepared for unexpected developments regarding the legal requirements, including leaving some financial leeway to adjust to changing circumstances.

"The changes to the law meant that established forms of cooperation and transport solutions had to be reevaluated to comply with the new conditions. Specifically, clauses had to be added regarding rides being free of charge, safety measures and the security of personal data. There were also challenges related to legal restrictions around flexible timetables. As things stand, transport services must have timetables, which are approved by the relevant institutions. Once a license has been granted the timetable must be followed strictly, making it impossible to make quick and efficient changes to timetables in response to passenger demand.

– Project coordinator, Bielsko-Biala Regional Development Agency

6. Sweden

In Sweden passenger transportation is regulated by the legislation for road transport operators (Yrkestrafiklagen 2012:210). Regions and municipalities within a county are jointly responsible for regional public transport, which is regulated at a national level by the Public Transportation Act (Lag (2010:1065) om kollektivtrafik). Public transport on a local or regional level is primarily provided by

the public sector or through procurement. However, the Act (2010: 1065) on public transport provides options to register a service if a gap in the publicly provided network is recognised.³⁴

A public transport company that intends to operate on a commercial basis must report this to the relevant regional public transport authority, providing a common information system for all road users.³⁵ Licence holders must register the vehicles they intend to use for public transportation.

The Swedish Occupational Traffic Act (Yrkestrafiklagen 2012:210) applies to companies that provide professional freight services by road with light trucks or passenger vehicles with a maximum permissible weight of 3.5 tonnes.³⁶ The operator requires an official permit (Yrkestrafik tillstånd) to practice the **profession of road transport**.

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

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

There are no general legal reasons, why innovative mobility solutions should not be able to fulfil 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.³⁷ In contrast, it is not permitted to transport passengers in a vehicle designed for the transport of goods. The person providing the service must have a permit for professional passenger transport by road, or a **taxi traffic permit**, according to the Taxi Traffic Act (2012: 211).³⁸ Taxi licences may only be granted if the applicant's

- professional expertise,
- financial standing

³⁴ Erik Johansson, Lena Winslott Hiselius, Till Koglin & Anders Wretstrand (2017), Evaluation of public transport: regional policies and planning practices in Sweden, Urban, Planning and Transport Research, 5:1, 59-77.

³⁵ Section 1 & Section 2, Yrkestrafiklag 2012:210.

³⁶ § 1 Yrkestrafiklag 2012:210.

³⁷ § 9 Yrkestrafiklag 2012:210.

³⁸ 2. Chapt. Yrkestrafiklag 2012:210.

- and reputation

are considered appropriate.³⁹

Taxi drivers do not require an additional licence, but must have supplementary ID in addition to the regular driving licence.

To be granted a taxi driver ID, the following requirements must be met. The person must be:

- aged 21 or over.
- the holder of a driving licence, category B, for at least two years; or be a holder of a driving licence, category D.
- able to meet the medical requirements, taking into account the safety of passengers and other road users.
- In possession of professional skills and respect for the law.
- have passed a driving test for the awarding of taxi driver ID.⁴⁰

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

Experiences from MAMBA

The original idea for the pilot in Trelleborg Municipality was to utilise school buses for other purposes during times that they are not being used to transport school children. Specifically, the idea was to use the buses to run excursions for elderly residents.

"Trelleborg's population is aging, and the municipality has a responsibility to develop new solutions to support the well-being of its older residents. At the beginning of the project, we thought we could do this by tapping into an underutilised resource – school buses – however, we ran into legal barriers regarding procurement law. We then adapted the plan and instead rented buses from a local bus company for the excursions.

– Project coordinator, Trelleborg Municipality

³⁹ § 5 Taxi Traffic Act (2012: 211).

⁴⁰ <https://transportstyrelsen.se/en/road/Commercial-transport/recognition-of-professional-qualifications/professional-qualifications-taxi-driver/>; Taxitrafiklag (2012:211).

III. Personal legal requirements for the drivers of motor vehicles

1. Germany

a. Regulatory framework in Germany

- Drivers of motor vehicles used on public roads need a **driving licence**.
- The category of licence is determined by the weight and length of the vehicle, as well as its passenger carrying capacity.
- 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 fewer than **eight passengers**

Everyone who runs a motor vehicle on public roads must have a deriving licence.⁴¹

The category of driving licence is regulated by the **European directive 2006/126/EC**.⁴² The decisive criteria for determining the right category are the weight and length of the vehicle, as well as the number of passengers. The latter refers to the theoretical capacity of the vehicle, and not to the actual number of passengers at any one time.

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

- Apart from a driving licence, the German legal system demands that, under certain conditions, an additional licence is required for the transport of passengers.
- This additional licence is needed if the mode of transport also requires a passenger transportation permit.

⁴¹ § 4 FeV.

⁴² § 6 FeV transposes the Directive into German law.

- There are exceptions from this rule. They are further specified in the German “Ordinance on the right to drive”.⁴³

The additional driving licence for passenger transport⁴⁴ is not a category of driving licence on its own. Rather, it is supplementary to the regular driving licence. It is required if the mode of transport also has to be approved by means of a passenger transportation permit.

The additional licence can be dispensed with if the driver is in possession of a category D1 or D driving licence, and if the vehicle is not a taxi or rental car.⁴⁵ If it is a rental car, the licence is not required provided that the driver has a category D or D1 licence, and provided that the relevant corporate office is located in a community with a population of fewer than 50,000 people.⁴⁶

b. Applications to run innovative mobility solutions

Innovative mobility solutions are often run with smaller, motorised vehicles suitable for eight or fewer passengers. If this is the case, drivers only need a **category B driving licence**, unless the vehicle is exceptionally heavy (more than 3.5 tons, which requires a Category C licence).

Whether an **additional driving licence for passenger transport** is required depends upon different variables. If the mobility solution itself does not require a passenger permit (see B.I.1), then the driver does not need the additional licence. In cases where a passenger transport permit is needed, and is issued by the competent authority, the category of the approved mode of transport plays an important role. If the mobility solution is approved as a taxi (anywhere) or a rental car (in bigger towns with more than 50,000 inhabitants) an additional driving licence for passenger transport is always necessary. If it is approved as line-based traffic or similar to line-based traffic⁴⁷, the carrying capacity is decisive. If the vehicle carries eight or fewer passengers, an additional licence is required. If it carries more, the driver has to have a category D or D1 driving license and is thus exempt from the additional

⁴³ FeV.

⁴⁴ Required by § 48 par. 1 FeV.

⁴⁵ § 48 par. 2 No. 4 FeV.

⁴⁶ § 48 par. 2 No. 4 FeV.

⁴⁷ According to § 2 par. 6 PBefG.

driving license for passenger transport.⁴⁸ The same goes for rental cars in smaller towns with a population of fewer than 50,000.

The **mobility provider has to make sure that these requirements are fulfilled by drivers**. This is easier if the drivers are employees of the provider. The provider can make agreeing to the employment contract dependent on the driver being in possession of, or subsequently obtaining, the right category of driving licence and (if necessary) an additional driving license for passenger transport.

In the case of **car sharing**, which is characterised by private individuals driving their own vehicles, the provider needs to ensure that drivers of all vehicles are only granted access to them if they have the right licence. This can be achieved by an adequate registration system that requires 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 they have the right licence. This might also be achieved by establishing a registration system for drivers (see B.I.3) that obliges them to show proof that they have the right license(s).

c. Best practice examples

Mobilfalt (see above B.I.3.a) established a mandatory driving licence and 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 to new drivers registering for the service. The driving licence check was kept, but drivers now only have to send a copy of their licence to the authorities.

2. Denmark

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

- Category AM – Large moped.
- Category A1 – Small motorcycle.

⁴⁸ § 48 par. 2 No. 4 FeV.

- Category A2 – Medium motorcycle.
- Category A – Large motorcycle.
- Category B – Regular car.
- Category C1 – Small truck.
- Category C – Large truck.
- Category D1 – Small bus.
- Category D – Large bus.
- Category E – Large trailer:
- Category B with large trailer (category B//E).
- Category C1 with a large trailer (category C1//E).
- Category C with large trailer (category C//E).
- Category D1 with large trailer (category D1//E).
- Category D with large trailer (category D//E).

An additional commercial driving licence is required for commercial passenger transport when:

- conveying people with no connection to the driver, business or association providing the service,
- driving for remuneration, or
- when driving is the primary purpose of the driver, company or association.

This can be obtained at the Borgerservice Indre. The applicant needs a completed form P23, a driving licence, a medical certificate from their own doctor (not older than three months prior to the application date), and a drivers-licence photo. They also need a clean criminal record to prove their reliability and good manners. Additionally, they will need to pass the driving test for the commercial transportation of passengers.

There are also different categories of professional driving licences:

- Category B/DI for cars (applicant must be at least 21 years old).
- Category D for busses (applicant must be at least 24 years old).
- Category B for taxis (special rules).

3. Finland

Finland has integrated European directive 2006/126/EC into its national legislation, so the categories stipulated in the directive apply in Finland.

Which licence is necessary for the innovative mobility solution adopted depends upon the vehicle that is used. For example, truck drivers need to have a verified licence. An additional license for passenger transport is not required, but the driver needs to pass appropriate health and criminal record checks. Additionally, drivers need to pass a test organised by TRAFI (the Finnish Transport Safety Agency).

The minimum age requirement for driving vehicles in categories D1 and D1E (smaller buses and coaches) is 21. The permits for this are usually valid for five years. All bus and coach drivers working in commercial transport must prove their professional competence. They can apply for the permit at an office of Traficom's service provider, Ajovarma. In addition to instruction at a driving school, to drive a bus you must already have at least a category B driving licence (for cars). Applicants must then pass a driving test after completing the mandatory driving instruction. For the categories D and D1 (bus) this consists of a theory test and a practical driving test on the road.

Since the release of the mobile app in 2019, a driver has the option of obtaining a so-called "mobile driving licence" (Mobiiliajokortti) on their mobile phone, in addition to the traditional physical driving licence.

4. Latvia

Latvia has integrated European directive 2006/126/EC into its national legislation, so the categories stipulated in the directive apply in Latvia.

Drivers in the Latvian Transport on Demand solution need a category D driving licence for motor vehicles designed and intended for more than eight passengers, in addition to the driver. They also need a license that covers the category applicable to road tractors with trailers (having a gross vehicle mass not exceeding 750 kilograms).

In addition, a special licence is necessary for carrying passengers by bus. Only professional drivers with a competence certificate are allowed to drive passenger buses. The certificate is obtained by following the "Procedures for Issuing, Suspending or Revoking Special Permits (Licences) and Licence Cards for Commercial Road Transport and Issuing Certificates of Professional Competence for Road Transport

Operators". A transport provider can apply in person, via a website, or by post to obtain a certificate. They need to present a driving licence, as well as information about the good reputation and financial state of the enterprise they work for, following the European regulations set in (EG) Nr. 1071/2009. A licence card will then be issued by the authorities. Drivers must prove their professional competence by passing a written test, which involves a theoretical multiple-choice test and a practical driving situation analysis.

5. Poland

Poland integrated European directive 2006/126/EC into its national legislation via the relevant Act of 5 January 2011 on drivers, which uses the categories of driving licences described above.

For the pilots in Poland a category D driving licence, entitling the holder to drive a bus, is necessary.

According to new laws in Poland there are now different resting times for drivers and updated requirements of the technical state of vehicles of the category M 2 and M 3 and N 2 and N 3, that need to be borne in mind.⁴⁹ The vehicle categories are as follows:

M 2 Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum mass not exceeding 5 tonnes. (Bus)

M 3 Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum mass exceeding 5 tonnes. (Bus)

N 2 Vehicles used for the carriage of goods and having a maximum mass exceeding 3.5 tonnes but not exceeding 12 tonnes. (Commercial Truck)

N 3 Vehicles used for the carriage of goods and having a maximum mass exceeding 12 tonnes. (Commercial Truck.)

6. Sweden

Sweden has also integrated European directive 2006/126/EC into its national legislation, and issues driving licences in the following categories:⁵⁰

AM – moped class I (EU moped.)

A1 – light motorcycle.

A2 – medium-sized motorcycle.

⁴⁹ Poz. 2123, Rozporządzenie ministra infrastruktury z dnia 21 października 2019 r w sprawie systemu oceny ryzyka podmiotów wykonujących przewóz drogowy.

⁵⁰ Körkortslagen (1998:488).

- A – heavy motorcycle.
- B – private car.
- Extended B (“conditions/code g6”).
- BE – private car with heavy trailer.
- C₁ – medium-duty lorry.
- C_{1E} – medium-duty lorry with heavy trailer.
- C – heavy lorry.
- CE – heavy lorry with heavy trailer.
- D₁ – medium-sized bus.
- D_{1E} – medium-sized bus with heavy trailer.
- D – bus.
- Tractor licence.
- Driver’s certificate snowmobile.

For the pilots in Sweden category C (heavy lorry) and D (bus) licences are required for the drivers.

An additional driving licence for passenger transport is not needed, but there is a minimum age limit. Individuals aged under 21 years are not allowed to transport passengers in motor vehicles.⁵¹ In addition to that, a special permit is needed for conducting professional traffic on the road (professional traffic permit).

⁵¹ Lag 2007:1157 om yrkesförarkompetens.

IV. Finance law⁵²

1. Germany

a. Regulatory framework in Germany

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

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

In German law the legal term “public transport” is defined in the Passenger Transport Act. It states that public transport consists of 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 kilometres, or a total travel time of one hour.⁵³ Taxis or rental cars that replace or supplement the aforementioned types of line-based traffic are also defined as public transport.⁵⁴

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.

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 significantly disabled

⁵² This section was drafted with reference to BMVI-Online-Publication, Integrierte Mobilitätskonzepte zur Einbindung unterschiedlicher Mobilitätsformen in ländlichen Räumen, 2016, p. 78.

⁵³ § 8 par. 1 PBefG.

⁵⁴ § 8 par. 2 PBefG.

people. Some local authorities also subsidise certain kinds of mobility provision, or compensate for financial losses incurred 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 from different sectors. In addition, tax benefits, specifically tailored for public transport provision, may help fund the services.

Costs for financing investments are largely met from public funds. Public transport companies can receive subsidies under the Municipal Transport Financing Act ⁵⁵ for vehicle procurement and infrastructure.

The financing instruments in Germany in more detail are:

Costs for the provision of the service

- **Fares** (Fares only cover 42–45% of overall costs incurred by public transport in Germany)
- **Public subsidies for cheaper tickets for school pupils** (A company offering line-based traffic will be compensated for offering cheaper tickets to school pupils.⁵⁶ Every federal state in Germany can amend this provision and allow other modes of transport, apart from line-based traffic, to receive such subsidies. In most of the federal states, compensation is only paid to line-based traffic services, for example in Schleswig-Holstein ⁵⁷).
- **Public subsidies for free transportation of people with significant disabilities** (People with significant disabilities must be transported free of charge in line-based traffic.⁵⁸ The financial losses are compensated by the state.⁵⁹ However, compensation is not paid for occasional traffic (rental cars or taxis)).
- **Operating grants** (Local authorities pay operating grants on a contractual basis, particularly for additional services set up for political reasons that exceed the obligatory minimum public mobility offer [e.g. night bus lines]).

⁵⁵ GVFG.

⁵⁶ § 45a PBefG.

⁵⁷ § 7 ÖPNVG SH.

⁵⁸ § 228 SGB IX.

⁵⁹ § 231 SGB XI.

- **Grants for cooperation-related financial losses**⁶⁰ (More and more transport companies are organising 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 integrated transport network, she or he can buy a single ticket for the whole transport network. This ticket is cheaper than the sum total 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 the federal states in Germany. This happens on a voluntary basis.)
- **Tax benefits through establishing a municipal “multi-utility company”** (Financing can be optimised 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 from financially lucrative sectors (e.g. energy) with losses from loss-making sectors (e.g. public transport).
- **Tax reductions specifically tailored for public transport services** (The public sector indirectly subsidises public transport through tax incentives. Passenger transport in trains, trolleybuses and motor vehicles used in line-based traffic, as well as by taxis (but not in rental cars), is subject to a reduced VAT rate of 7% instead of the usual 19%.⁶¹ In addition, buses and motor vehicles with eight or nine seats are exempted from motor vehicle tax, if the vehicle is used more than 50% of the time for line-based traffic.⁶²)

Costs for financing investments

- **Financial support by the federal government for municipalities** (The federal government’s financial support for municipalities investing in a better public transport is regulated by the Municipal Transport Financing Act. Projects eligible for funding include the procurement of buses as long as they are designed for more than nine persons (including the driver) and are required in order to maintain or improve line-based traffic in the region.⁶³)

⁶⁰ German: „Verbundbedingte Belastungen“.

⁶¹ § 12 par. 2 No. 10 **UStG**.

⁶² § 3 No. 6 **KraftStG**.

⁶³ § 2 par. 1 No. 6 p. 1 **GVFG**.

The following table summarises the funding options for public transport that are only available to line-based traffic:

<i>Financing option for public transport</i>	Available to line-based traffic	Available to occasional traffic
<i>Fares</i>	YES	YES
<i>Public subsidies for cheaper tickets for pupils</i>	YES	Depends on the federal state level regulations. In most cases there is no subsidy for occasional traffic
<i>Public subsidies for free transport of significantly 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 services</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 few public sector subsidies are available to occasional traffic services. Public subsidies, financial support by the federal government, and tax reductions tailored for public transport, are confined to line-based traffic.

b. Application to innovative mobility solutions

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

In the section on passenger transport law, the prospects for each type of innovative mobility solution receiving a passenger transport 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 services in line-based traffic also 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 the various different kinds of public funds for public transport.

Most other solutions (**DRT, ride sharing and service-to-people approaches, combined with passenger transport**) depend upon special permits, since they fulfil neither the criteria for line-based nor occasional traffic (see A.II.1.b. aa, dd, ff). If they are permitted as the mode of transport which is most similar to line-based traffic⁶⁴, they would qualify for all above-mentioned public funds available to line-based traffic. But the question as to whether an innovative mobility solution resembles line-based or occasional traffic is always subject to an assessment by the authorities, and the outcome of that is hard to predict. The competent body takes all the similarities and differences between the mobility solution and line-based traffic into account, and then decides whether the regulations concerning line-based traffic should apply to the solution.⁶⁵ Whether DRT, ride-sharing or service-to-people approaches qualify as line-based traffic can, therefore, only be decided on a case-by-case basis. This heavily compromises financial planning for such mobility solutions. In order to have access to public funding, solutions need to be tailored as closely to line-based traffic as possible.

Car sharing, on the other hand, has no access to public funding for public transport, since it does not even fall under the scope of the Passenger Transport Act (see above, A.II.1.b. cc). The provider of car sharing does not offer a service with which “persons are being transported”⁶⁶. The users of car-sharing services are themselves the drivers of the vehicles and are thus not “being transported”. The same goes for **service to-people-approaches that are combined with carrying goods**, because no passenger transport is involved from the outset.

2. Denmark

Danish public transport is financed by a combination of subsidies and ticket revenues. A price ceiling is used to control the price of fares.

The collective traffic is subsidised annually by:

⁶⁴ § 2 par. 6 PBefG, § 42 PBefG.

⁶⁵ Federal Administrative Court, Judgement on the 27.8.2015 – 3 C 14/14.

⁶⁶ § 1 par. 1 PBefG.

- state contractual payments for ferry and rail services, and
- regional and municipal grants to transport companies.

Tax benefits for public transport can be awarded on an individual basis. Individuals are eligible for a driving allowance in the form of a tax rebate if they travel more than 24 kilometres to and from work (over 12 kilometres each way), provided that the employer does not pay transport costs. School pupils travel free on buses and trains. Carers accompanying disabled people on trains also travel free of charge. Discounts are offered to some categories of young, elderly and retired people, and to carers accompanying disabled people when they travel by metro and bus. Transport operators are compensated for these discounts 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 that a private company (the carrier) it would not be in the carrier's commercial interest to take on, or at least not to the same extent, and not on the same conditions. In other words, public service traffic cannot be operated commercially.
- **Public traffic** covers all forms of interconnection:
 - transport planned or operated by public authorities, which receive public funding, and
 - transport not controlled by public bodies, and which does not receive public funding.

3. Finland

In the first instance, market-driven transport services dominate in Finland. But, at present, transport services often receive public funding. In accordance with EU regulations on public transport services, the authorities can support transport services in areas where these could not have been established under market conditions. This refers to publicly-supported transport services, run by government bodies or municipalities.

The taxes on public transport services are 10% lower than those for private transport services. Transport operators offer discounts to school pupils, elderly and disabled people, and they are compensated for this by the state.

Transport services which are eligible for public financing have to be chosen through a tendering process. This also applies to innovative mobility solutions. The comparison criteria for selecting the

most economically advantageous bids are the quality of the service), the quality of the fleet, accessibility, 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 is paid in accordance with the conditions specified by the government. Initially, the legislation states that the carrier's losses related to a public transport service contract should be reimbursed in full. In accordance with the national legislation, must have the administrative and financial independence to decide their own fares. They do so in accordance with methodology approved by the government.

When granting the right to provide a public transport service, the official body granting permission is entitled to determine the fares and 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 service 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 relief. The Latvian state compensates the public transport operators for transporting these groups free of charge.

5. Poland

Public transport organised by the state, provinces (*Voivodships*), counties (*Poviats*) and Communes, is funded by public money from those sources. 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 price).

Public transport is subject to lower VAT tax at 8%. Otherwise there are no other tax allowances.

For selected groups, such as students or disabled people, additional discounts are covered by the state budget and transferred directly to public and private carriers. Subsidies from the state budget for concession tickets are not covered by public transport (the entity responsible for the public transport,

e.g. the city or municipality has to finance the granted concession itself). Depending on the route, pilot schemes under the project may be eligible for subsidies from the state budget for concessionary tickets – for example for non-urban transport, for which tickets are available to selected groups (defined by law).

6. Sweden

The financing of innovative mobility solutions depends upon who it is that runs the business, but normally it is financed through a combination of public funds and incomes from ticket sales. Skånetrafiken, which runs transport services in the Trelleborg Region, sources 40% of its funding from ticket sales and the rest from public money.

Other non-public actors may apply to run a transport service. They have to provide their own financing. One such example is the “Flygbussarna” (airport coaches), which are fully financed via ticket sales or private investment.

Public transport services are subject to the same tax legislation as other businesses and the same VAT rules as other transport companies.

During the summer, for the years 2018–2020, schoolchildren between 13-17 will be able to travel for free on public transport, subsidised by the government.

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 to provide numerous, safe and high-quality public transport services.
- Public transport is defined as public passenger transport services of general economic interest, 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 the basis of a competitive tendering process.

The regulatory framework in Germany is characterised by Regulation (EC) No. 1370/2007,⁶⁷ which is directly applicable in all EU member states. Its main objective is to guarantee safe, efficient and high-quality passenger transport services via regulated competition.⁶⁸ Therefore, it defines how the competent authorities may act in the field of public passenger transport, in order to guarantee the provision of services of general interest which are more numerous, safer, of a higher quality, or provided at lower cost, than those that market forces alone would have provided on their own.⁶⁹

The authorities may compensate public service operators for the costs incurred, or grant exclusive rights in return for the discharge of public service obligations.⁷⁰ A “public service obligation” means a requirement defined or determined by a competent authority in order to ensure public passenger transport services in the public interest that an operator, if it were considering its own commercial

⁶⁷ Regulation (EC) No. 1370/2007 of the European parliament and of the Council on 23 October 2007, on Public Passenger Transport Services by Rail and by Road and repealing Council Regulations (EEC) Nos. 1191/69 and 1107/70.

⁶⁸ Recital 4 of Regulation (EC) No. 1370/2007.

⁶⁹ Art. 1 par. 1 Regulation (EC) No. 1370/2007.

⁷⁰ Art. 1 par. 1 Regulation (EC) No. 1370/2007.

interests alone, would not assume, or would not assume to the same extent or under the same conditions without financial reward.⁷¹ 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 must be provided to the public on a non-discriminatory and continuous basis.⁷²

The authorities can award public service contracts to third-party operators. Public service contracts act as legally binding confirmation of an agreement between a competent authority and a public service operator, entrusting the operator with the management and operation of public passenger transport services as per their public service obligations.⁷³ Only operators with a public service contract are eligible for exclusive rights or subsidies in return for the discharge of their public service obligations.⁷⁴

Public service contracts have to be awarded to the operator on the basis of a competitive tendering procedure under this regulation (Art. 5 par. 3 Regulation (EC) No 1370/2007). That applies to all public service contracts, except for the ones involving public passenger transport services by bus or tram.⁷⁵ These are subject to the general procurement rules under directives 2004/17/EC and 2004/18/EC. In contrast, Directive 1370/2007 applies to service concession contracts for public transport services by bus or tram. A service concession contract transfers all operating risk to the third-party operator. By contrast, with a public service contract, the risk stays with the public body.⁷⁶

The tendering process must be open to all operators, be fair and observe the principles of transparency and non-discrimination.⁷⁷

⁷¹ Art. 2 par. 1 lit. e Regulation (EC) No. 1370/2007.

⁷² Art. 2 par. 1 lit. a Regulation (EC) No. 1370/2007.

⁷³ Art. 2 par. 1 lit. i Regulation (EC) No. 1370/2007.

⁷⁴ Art. 3 par. 1 Regulation (EC) No. 1370/2007.

⁷⁵ Art. 5 par. 1 Regulation (EC) No. 1370/2007.

⁷⁶ ECJ, Ruling 13. 10. 2005 - C-458/03, „Parking Brixen“, NZBau 2005, 644, 647.

⁷⁷ Art. 5 par. 3 Regulation (EC) No. 1370/2007.

Competitive tendering is not necessary if the average annual value of the public service contract is estimated to be less than €1,000,000, or if the service concerns the annual provision of less than 300,000 kilometres of public passenger transport services.⁷⁸ In this case, the public service contract can be awarded directly to the chosen operator.

Following the EU directive Nr. 1407/2013 from 18th December 2013, the threshold of €200,000 was established for so-called *de minimis* state aid that was given based on Art. 107 and 108 AEUV. For this state aid, a European procurement procedure is not necessary. An enhanced threshold of €500,000 is applicable for so called “activities of general economic interest”, as per the EU directive Nr. 360/2012. Following the definition derived from Art. 106 Sect. 2 AEUV, an activity of general economic interest is the provision of a public service that is for the common good and meets a basic, general need. Public transport clearly fits this definition.

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 necessary infrastructure and public services are considered to be of general economic interest.⁷⁹ All innovative mobility solutions in MAMBA fulfil this criterion, because they are intended to meet the basic mobility needs of citizens in rural areas ; needs that need to be met by the state, if private actors are not providing them. Due to the lack of passenger numbers in these regions, in most cases it is the public sector that has to provide such services. It is not in the commercial interest of private companies to do so.⁸⁰

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 fulfil these criteria and can be awarded through a public service contract following the procedure outlined in Regulation (EC) No. 1370/2007. The vehicles involved transport passengers and

⁷⁸ Art. 5 par. 3 Regulation (EC) No. 1370/2007.

⁷⁹ Jung, in Calliess/Ruffert, EUV/AEUV, 2016, Art. 106 AEUV no. 36.

⁸⁰ Diemon-Wies, Die Vergabe von Busdienstleistungen im ÖPNV nach der VO (EG) 1370/2007, VergabeR 2014, 305, 306.

the service is usually open to everyone who demands it. It is also offered continuously at pre-determined times.

Whether **ICT-enabled solutions** fulfil the criteria depends heavily on how they are specifically tailored. E-hailing platforms can only be considered as **public transport**, if the platform provider also sells or brokers the rides and is not only offering an information tool for passengers. If the platforms only provide information, the entity transporting the passengers would be a transport company or a private person driving the vehicle. Through providing these rides the private drivers may be seen as employees of the e-hailing platform, or it could seem like the contracts are concluded between the passengers and the platform provider and not 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 desktop-based. In other cases only if the users own a smartphone and install a particular application. The more complicated and technically advanced the registration process is, the more likely it is that the service cannot be described as non-discriminatory, and therefore qualify. Elderly people in rural regions, in particular, might have difficulties in accessing the service if the technical barriers are too high. The requirement that the service is offered on a continuous basis could be fulfilled by regular e-hailing platforms, since they usually operate every (working) day at specific times.

Car sharing does not qualify as public transport according to Regulation (EC) No. 1370/2007. Passengers are not being “transported”, because they have to drive themselves and the service is only accessible to people with a driving licence, and is, therefore, discriminatory.

Ride-sharing services usually **transport** passengers, 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 transport the passengers. Ride sharing is **non-discriminatory**, if it is offered through a publicly accessible platform (digital or analogue), 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 among friends or within a certain group of people and the general public has no access (associations, companies, etc.). A **continuous** service needs to run at certain pre-determined times and on a regular basis.

Combined transport solutions fulfil the three criteria, if regular public transport services are also used to transport goods at the same time (**case 1**), because 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 provides passenger transport, but whether it is non-discriminatory and continuous is highly dependent on how the service is organised. The transport service could not be considered non-discriminatory if the person/people receiving goods or using a service are the only ones who have access to transportation and the transportation is provided after the goods have been delivered or the service has been provided. Furthermore, if an offer is only available for passenger transport purposes at times when an additional service is provided or goods will be delivered, this irregularity would mean that the additional services could not be characterised as continuous. An example for this could be the delivery of groceries to elderly people or a hairstylist visiting at home and offering to transport to a person after fulfilling their initial task.

As a result of the above, in order to qualify as public transport under Regulation (EC) No. 1370/2007, any combination of service-to-people approaches with passenger transport would have to be organised in a way that makes it operational at all times, or available to the general public at pre-determined times.

When **combining service-to-people approaches with goods transport** Regulation (EC) No. 1370/2007 is not applicable, since passengers are not being transported.

2. Other countries

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

Following the public procurement law enacted 1 January 2017 in Finland, online channels are used for publishing procurement notices and submitting proposals. The law permits the use of award criteria based on product or service quality, lifecycle costs and sustainability criteria. Innovation partnership is introduced as a new procurement method, allowing procurement of development and deployment of a new solution using a single contract.

Experiences from MAMBA

Many pilots had some sort of delay because of long procurement processes. This should be kept in mind when setting up a timetable for the implementation of a new service. To address the issue appropriately, a time buffer should be considered. The pilot in Seinäjoki, Finland, did not establish its planned call centre because the procurement process was too complex.

In Latvia, the legal framework was not flexible enough to categorise transport on demand (ToD) concepts under the current public transport system on a national level, so a good deal of time was wasted finding out how to organise procurement, and how the servers for the digital options would run. Other projects can learn from this that it is essential to understand the legal framework before starting the implementation process.

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**, that covers the damages done to others in an accident.⁸¹ The holder is the person who pays the bills and has a power of disposal over the vehicle, but is not necessarily the owner or the driver.⁸² Only the holder, and not the actual users of the vehicle, are legally obliged to have a liability insurance. The owner, the driver and the passengers are co-insured. The liability insurance is used to cover any damages which caused by the vehicle. This covers personal injuries, material damages and other pecuniary losses.

The injured party can raise a direct claim against the insurer.⁸³ This also holds for claims based on product liability. Therefore, the liability insurer has regress claims against the manufacturer, in a case where the damage was caused by a technical failure of the vehicle.

Another type of insurance that is recommended, but not prescribed by law, is **automobile collision insurance**. It covers all damage caused to the vehicle. However, in certain cases the insurer will not

⁸¹ § 1 PflVG.

⁸² See Lampe in Erbs/Kohlhaas, Strafrechtliche Nebengesetze, 2017, § 1 PflVG, no. 2.

⁸³ § 115 VVG.

pay for damages or only for a certain part of them. The insurer is not obliged to pay if the policyholder intentionally causes the damage or injury.⁸⁴ Furthermore, if the policyholder causes the event by gross negligence, the insurer is entitled to reduce the amount payable commensurate with the severity of the policyholder's negligence.

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 organised by a business in the sense of German commercial law, as the transport provider is liable for all damages caused to the goods in the period from receiving them until delivery.⁸⁵ This risk could be covered by insurance. A business, in this sense, is a planned activity, which is pursued for a prolonged period of time, on an independent basis, and with the aim of generating financial profits.⁸⁶

b. Application to innovative mobility solutions

Since **all innovate mobility solutions** defined above (see A.I.1.-6.) will involve the use of motor vehicles on public roads, **vehicle liability insurance is compulsory** for all of them. This insurance needs to be purchased by the holder of the vehicle(s). The **holder** in most of the cases here, is not the driver, but the **mobility provider** responsible for, and having at their disposal, the vehicles concerned.

One possible **exception** might be **ride sharing facilitated by 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 take out 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, in order for insurance coverage to take effect.⁸⁷ Car-sharing providers should, therefore, liaise at an early stage with their insurance company and determine whether the procedures that are in place are sufficient for the requirements of the insurer.

⁸⁴ § 81 VVG.

⁸⁵ § 425 HGB.

⁸⁶ Thume in Münchener Kommentar zum HGB, 2014, § 407 no. 127.

⁸⁷ 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 that plan to carry goods. This is the case when combining passenger transport or service-to-people approaches with goods transport (A.I.5. and 6.).

Experiences from MAMBA

Obtaining the right mandatory car insurance for the village car in Cuxhaven was a challenge, because the legal owner of the car is the town of Geestland (the local authority for the village) but a voluntary association takes care of the operation and maintenance of the village car under a special rental contract. If you plan to establish a new mobility service, start looking for an appropriate form of insurance at an early stage.

2. Denmark

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

Under the Road Traffic Act, the obligation to provide an insurance for vehicles is the responsibility of its owner or the user, who is permanently in possession of the vehicle. It would be reasonable to acquire an additional insurance policy, such as a **goods transport insurance**, for the mobility solution in a situation where the solution requires the transport of equipment, containers and trailers.

3. Finland

The person responsible for obtaining the necessary insurance coverage is the owner of the vehicle. If the insurance obligation is neglected, the vehicle is not allowed on the road. In addition, the required annual vehicle inspection cannot be carried out on an uninsured vehicle.

4. Latvia

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

5. Poland

Every vehicle allowed on public roads 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 responsible for taking out 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 the safety of passengers and goods from pick-up until delivery. The person responsible for obtaining the insurance is the owner of the vehicle. The mandatory insurance policy (*Trafikförsäkringen*), which has to be obtained for every vehicle used in open road traffic also covers damages on the own vehicle and transported goods.

VII. Data protection law

1. European legislation implemented in Germany

a. European regulatory framework

- Since 25th 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**.
- National legislation can enhance data protection, as with the National and Federal Data Protection Regulations in Germany.⁸⁸

On the **European level**, data protection law was harmonised by the GDPR, which came into force on 25th May 2018. This regulation is directly applicable in all EU member states, and national legislators have to adapt their national legislation to its requirements. As the transport solutions within the MAMBA project have mainly been after this date, the European regulatory framework will be analysed 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.⁸⁹

‘**Processing**’ means “any operation or set of operations which is performed on personal data or on sets of personal data [...] such as collecting, recording, organizing, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.”⁹⁰ In short, the GDPR covers every handling of personal data.

⁸⁸ BDSG.

⁸⁹ Art. 2 par. 1 GDPR.

⁹⁰ Art. 4 No. 2 GDPR.

'**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 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."⁹¹ Whether a person is identifiable or not depends upon the other circumstances, especially the amount of time and money and the technology needed to identify them.

As a result, data is only to considered non-personal if it has been anonymised 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 randomisation or generalisation. Pseudonymisation, however, does not result in non-personal data, because pseudonymised data can still be attributed to a specific data subject, with the use of additional information.

Personal data may only be processed if the processing complies with the legislation.⁹² Of great practical relevance is the following legal justification: the data subject has given **consent** ⁹³ to the processing of his or her personal data, for one or more specific purposes.⁹⁴

Other lawful bases for processing are that:⁹⁵

- 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;

⁹¹ Art. 4 No. 1 GDPR.

⁹² Art. 6 par. 1 GDPR.

⁹³ Consent is defined in Art. 4 No. 11 GDPR.

⁹⁴ Art. 6 par. 1 lit. a) GDPR.

⁹⁵ Art. 6 par. 1 lit. b) – f) GDPR.

- 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;
- 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 minimisation**.
- The **territorial scope** is defined by where the data is processed.

Furthermore, personal data must be processed **lawfully, fairly** and in a **transparent** manner in relation to the data subject.⁹⁶ Another important principle of the GDPR is ‘**purpose limitation**’.⁹⁷ 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 or another reason allowed under the GDPR is needed⁹⁸.

The principle of **data minimisation** 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.⁹⁹ In addition to the principle of data minimisation, the GDPR limits the storage period for personal data to the period that is necessary to fulfil the intended purposes (‘**storage limitation**’).¹⁰⁰ The limitation is backed by the right to deletion of personal data (‘**right to be forgotten**’).¹⁰¹

⁹⁶ Art. 5 par. 1 lit. a) GDPR.

⁹⁷ Art. 5 par. 1 lit. b) GDPR.

⁹⁸ See Art. 6 par. 1 lit. b) – f) GDPR.

⁹⁹ Art. 5 par. 1 lit. c) GDPR.

¹⁰⁰ Art. 5 par. 1 lit. e

¹⁰¹ Art. 17 GDPR.

The GDPR also specifies the **prohibition of coupling**: fulfilling a contract must 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.¹⁰²

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.¹⁰³ Therefore, the controller holds the decision-making power regarding processing, whereas the '**processor**' processes personal data on behalf of the controller.¹⁰⁴ The involvement of the processor is based on the controller's decision.

The protection offered by the GDPR applies to natural persons, with specific protection for children.¹⁰⁵ 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.¹⁰⁶ This makes the place where the data is processed crucial to 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 applicable and potential users are protected by it. 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, it may be assumed that once personal data has been recorded, some form of processing – as defined by the GDPR – will take place.

Whether the kind of data generated in the process of providing the mobility solution qualifies as personal data is crucial. As stated above, personal data is any information relating to an identified or identifiable natural person.¹⁰⁷

¹⁰² Art. 7 par. 4 GDPR.

¹⁰³ Art. 4 No. 7 GDPR.

¹⁰⁴ Art. 4 No. 8 GDPR.

¹⁰⁵ E.g. Art. 6 par. 1 lit. f) GDPR.

¹⁰⁶ Art. 3 GDPR.

¹⁰⁷ Art. 4 No. 1 GDPR.

Concerning **demand responsive transport (DRT)**, it is possible to provide the service without processing personal data. To offer a flexible timetable, the operator just needs to know the requested departure times, which are not related to an identifiable natural person. In contrast, providing a door-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 operating along pre-defined stations or stops. On the other hand, processing an address would probably be legally justified, because it is necessary in order to fulfil the transport contract.¹⁰⁸ 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 in a way which 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 so doing – processing personal data. **MaaS** requires the identification of customers across different services. It is unlikely that anonymisation (e.g. through a random, unrelated customer number) is possible, given the need to bill travellers for the services. Any way of pseudonymising the user through a customer number that is only theoretically connectable to the data subject is still 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 via a smartphone app. Only in the (unlikely) case of technically disconnecting the personal information from the mechanism used to match drivers and passengers, is no personal data processed. Typical characteristics like rating the service (as well as the passenger) also depend upon identification via the smartphone app.

Car sharing usually also calls for user accounts. Particularly considering the significant 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 keys in person, paying cash, and only requesting the driver's personal information, if liability questions arise. But when looking at current

¹⁰⁸ Art. 6 par. 1 lit. b GDPR.

business models on the market for car sharing, it becomes apparent that nearly all are account-based, and considering the possibility of car theft, this option may seem far-fetched.

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

bb. Lawful basis for processing

Every time personal data is processed under the GDPR, there needs to be a **lawful basis** for it.¹⁰⁹ The specific legal justification depends on the design of the mobility service. Therefore, the following assessments are limited to general considerations, and will need to be adapted, depending on the actual design of the service in question.

In some cases, the processing of personal data will be necessary for the **performance of a contract** to which the data subject is party.¹¹⁰ For example, demand responsive transport (DRT), which offers a door-to-door-service, needs the user's address to provide a stop at the requested place. Likewise, a user's bank details are needed to process a payment for a mobility service. When using an app to book a ride, the device ID or the location data of the user may be needed.

The GDPR also 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.¹¹¹ 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 will depend largely upon the specifics of the situation. In addition to that, the scope of the regulation is very broad, and so a wide range of interests is acknowledged, and those interests have to be considered on a case-by-case basis. A legitimate interest could, for example, be of a legal, economic, ideational or other nature – in short, any lawful interest must be taken into account.

¹⁰⁹ Art. 6 par. 1 GDPR.

¹¹⁰ Art. 6 par. 1 lit. b) GDPR.

¹¹¹ Art. 6 par. 1 lit. f) GDPR.

If no other legal justification is pertinent, the data subject's **consent is required**. The provider can obtain that consent when concluding the transport contract. In doing so, the purpose of the processing needs to be explained (purpose limitation) and the prohibition of coupling has to be observed. Therefore, making the performance of the contract dependent upon the data subject's consent is not permitted. Another requirement for the data subject's consent is that he or she makes an informed decision.¹¹² To be able to make that decision, the provider has to make all relevant information available to the data subject. This is usually done in the provider's privacy policy. A so-called opt-in method is preferable to an opt-out method.

Finally, any innovative mobility solution should be aware of the **right to erasure**, and for this reason should provide appropriate mechanisms for fulfilling it. Requirements such as **privacy by design**¹¹³ and **privacy by default**¹¹⁴ 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 transport services. The regular rules of the Data Protection Regulation, pursuant to Regulation (EU) 2016/679 of 27 April 2016 apply to transport services.

Applying the GDPR to innovative mobility solutions will only be an issue in relation to the operators' event notifications, which will involve processing personal data.

3. Finland

In Finland, customer registration is the main issue that raises data protection concerns. Finland has customised data legislation for specific customer groups (e.g. disabled people).

As innovative mobility service providers are usually micro-enterprises, which are not necessarily familiar with data protection laws, compliance with these rules may be a major challenge.

One of the aims of the Act on Transport Services is to enable one-stop shop solutions for travel chain purchases. There had therefore been a legal obligation for operators maintaining customers' user

¹¹² Art. 4 Nr. 11 GDPR.

¹¹³ Art. 25 Par. 1 GDPR.

¹¹⁴ Art. 25 Par. 2 GDPR.

accounts to open up their interface and facilitate acting on someone else's behalf, and to facilitate contracts with other mobility services, since the 1st of January 2019.

4. Latvia

In Latvia, one major data protection law issue is expected to be the personal data of passengers entitled to discounted fares, such as school pupils or significantly disabled individuals. These people need to be identified in order to claim the discounts. It is therefore necessary to process their personal data.

The necessary data should be provided free of charge by the State Medical Commission for the Assessment of Health Condition and Working Ability, the State Inspectorate for Protection of Children's Rights, the Society Integration Foundation, and the Office of Citizenship and Migration Affairs. During the processing, special care needs to be taken to ensure that the requirements of the GDPR are observed. The Road Transport Administration is responsible for the information system, and the processing of personal data. It will have to make sure that all personal data is deleted from the system, as soon as it is no longer needed to determine who is entitled to discounted fares.

5. Poland and Sweden

In Poland and Sweden, the national legislation corresponds to the GDPR and no specific challenges are envisaged that differ from the other countries.

B. Mobility Centres

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

I. Characteristics of a Mobility Centre

Mobility Centres (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 in Kiel has elaborated a definition of an MC, and three basic types are used for the legal analysis below.

According to the pre-study in WP 2.3 Mobility Centres are:

"interconnected facilities and/or service providers which offer information and services around personal mobility, combining all available transport modes." ¹¹⁵

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

- The **"Traditional" Mobility Centre** is a central physical facility//hotline which offers access to a variety of transport modes to people.
- The **"Advanced" Mobility Centre** is a virtual facility//app which offers access to a variety of transport modes to people.
- The **"Local" Mobility Centre** (or "Mobility Hub") is a physical location which offers people access to a variety of modes of transport.

¹¹⁵ Franke, Pre-study of mobility centre models, 2018, p. 3.

The characteristics and the ways these types work are described in greater detail in the pre-study in WP 2.3.

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

Mobility Centres 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 mobility provided via an MC is an economic activity, this question must be answered before it is possible to set up MCs on a sound legal basis. In the following, these questions will be answered with reference to the national legal frameworks of the countries participating in the MAMBA project (1. – 6.).

1. Germany

a. Non-commercial association

- Non-commercial associations should offer services through a Mobility Centre only at a price that covers their costs, or they should tailor the MC in a way that it clearly serves the association's main non-commercial 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.¹¹⁶ **Non-commercial associations can be deleted from the register of associations, if they lose their non-commercial character.**¹¹⁷ 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.

According to the German Supreme Court, an association loses its non-commercial character if it develops entrepreneurial activities according to a management plan, on a permanent basis and directed at the public, i.e. people outside the association, with the aim of making money either for the

¹¹⁶ §§ 21 and 22 of the German civil code (BGB)

¹¹⁷ § 395 FamFG.

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 help achieve it (so-called secondary purpose privilege).¹¹⁸

The services of the MCs should therefore be offered for free, or only at a price that covers the costs, in order to avoid deletion from the register of associations. Another option is to use the commercial activities to achieve the association's main non-commercial goals. The Diaconie, for example, should offer the delivery of groceries only as a part of its help for elderly people, who are not able to go shopping themselves due to their physical conditions. Delivery to other persons would probably cast doubt on the non-commercial nature of the Diaconie.

b. Municipal companies

- The economic activity of municipalities is limited to a certain scope defined by law.
- The law prescribes that the establishment of an MC, because it is an economic activity, has to be justified by a public purpose, be reasonable in financial terms, and 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 in a financially viable form 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.

A commercial activity means, in this context, any activity of the municipality in 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.¹¹⁹

¹¹⁸ See BGH, Decision on the 16.05.2017, II ZB 7/16, NJW 2017, 1943, 1944.

¹¹⁹ Kläß in BeckOK Kommunalrecht Niedersachsen, 2018, NKomVG § 136 No. 18.

When offering mobility via an MC, these requirements are fulfilled. The MC could be run by a private company, and selling tickets is usually done with a view to making a profit.

In most cases municipalities establish companies for these purposes.

In Schleswig-Holstein and Niedersachsen, the participating federal states in the MAMBA project 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**.¹²⁰

These companies can be established under private or public law. If they are established under private law, the municipalities have to abide by 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 company's 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 from which the whole population benefits, and hence it is a public purpose. The MC should be tailored reasonably when it comes to spending public resources, and the capacities of the municipality should also be borne in mind. It is unlikely that a private company could provide the service in a better or more financially viable way because rural areas are characterised by a low demand for mobility and, therefore, low expectations when it comes to private companies making a profit.

2. Denmark

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

¹²⁰ § 136 NKomVG, § 101 GemO SH.

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

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

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

In the case of a **municipally-run MC**, the general assumption has to be made that a municipality cannot legitimately run 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,
- the service is provided by the municipality itself and not through a third-party provider,
- the activity must be beneficial to all or a specifically defined circle, and
- not for the benefit of anyone other than the citizens of the municipality.

An MC is likely to fulfil these conditions.

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 on a small scale, or if it is considered as involving a major economic activity of a continuous nature.

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

MC activities by municipalities are also subject to certain legal requirements. Municipalities cannot provide services that distort market competition. Due to the ongoing reform of regional government 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 to the new regions through their own sub-corporations.

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

Experiences from MAMBA

In Finland, non-commercial associations can lose their status if their activity is not on a small scale or is considered a major economic activity of a continuous nature. It was therefore important that the mobility activities in the **Region of North Karelia** were kept on a small scale and did not generate major economic value or profits. It was also important to ensure that the mobility activities did not interfere with commercial services, as public authorities cannot legally provide services that distort market competition.

To avoid conflict, innovative mobility solutions and MCs should be organised by sub-corporations. Furthermore, new MCs should remember that it is mandatory for municipalities to provide information about the mobility services to the Finnish Transport Safety Agency (TRAFI), so that all (private) service providers have the opportunity to offer their own services. An additional tip for other projects is that matters of access rights and the involvement of the authorities in technical systems should be resolved early in the project, in order to prevent delays – since they can lead to a long coordination process.

In the **Region of South Ostrobothnia** (Finland), the mobility solution was designed to align with the implementation of the regional government, health and social services reform. It aimed to integrate the existing transport services provided by municipalities across the region. When the regional reform was abandoned by the government in early 2019, there was less political and economic incentive to create a common transport service model at the regional level. The Regional Council of South Ostrobothnia will continue with development of the new model, however this change in policy resulted in significant delay in the implementation. While there are of course benefits to aligning with ongoing political processes it is important to also take into account their unpredictable nature.

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 become involved in commercial activities.

The **MC activities of municipalities** are also subject to certain legal limitations.

In accordance with the law on local government activities, municipalities should only carry out certain functions, which include organising 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 organisations are:

- Organisations that are not public finance sector bodies as defined by the Public Finance Act.
- Organisations that do not seek to make a profit.

Municipalities and counties (*poviats*) can only carry out tasks permitted by law.

The activity of municipalities may be limited to public services that meet the collective needs of the local population. This applies, for example, to public transport, running hospitals, and maintaining infrastructure.

The establishment of an MC by the Powiat Bielski is, therefore, in the line with national regulations, since it will serve to understand the transport needs of the local people. Other advantages include an innovative form of learning about transport needs and the introduction of innovative forms of transport, such as DRT.

The activities of the MC must, therefore, be based on Polish law and take forms that the Powiat Bielski is permitted to undertake. Two considerations are important in setting up the MC: 1) its activities should be in line with Polish law, 2) The county needs the power (given by law) to establish an MC.

6. Sweden

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

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

C. Summary, Conclusion and Outlook

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 transport law represents a major barrier in Germany, with its strict approval regime, whereas the other countries have more liberal approaches to the issuing of passenger transport permits. In Germany, the legal framework needs to be adapted to new modes of transport, like those planned in MAMBA. It is yet to be seen how and whether the German parliament will address innovative mobility services in upcoming reform of the Passenger Transport Act. Especially with regard to data-driven solutions, like MCs, solutions such as those embodied in the Finnish Act on Transport Services could be used as role models. Finnish mobility service providers (transport services and brokering and dispatch services, data services, etc.) are now required to provide open access to their sales interface for integrated mobility services offering travel chains¹²¹. Operators maintaining customers' user accounts are also obliged to open up their interface to facilitate acting on someone else's behalf. This allows providers to make intermodal travel chains more accessible to costumers.

In most countries, those who drive vehicles as part of an innovative rural mobility solution need a **category D driving license**. In Finland and Latvia, additional professional qualifications for drivers need to be demonstrated to the authorities.

Project funding played a major role in getting the MAMBA mobility solutions started, but future **financing** needs could rely on private and public sources. In this context, it is a great advantage if the activities of the mobility solutions qualify as public transport legally, since this makes public funding options more easily accessible.

Insurance coverage for MAMBA mobility activities was guaranteed. In Germany, it is the holder of the vehicle who needs to take out vehicle liability insurance. In most other countries, the owner of the vehicle is responsible for insurance.

¹²¹ Act on Transportation Services, Part III, Section 4 (301/2018), Chapter 2.

Data protection law also played an important role in the process of establishing the innovative rural mobility solutions trialed in the MAMBA project, since it is 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, a municipality should in general terms refrain from offering a profit-making service, as this may raise additional legal challenges.

The regional authorities need better planning tools to improve adaptability to change and uncertainty, so that citizens' initiatives can be considered a credible solution for rural areas, as part of the public transport system. With the voluntary involvement of local people, it can be hard for public bodies to judge the long-term effects of new mobility solutions, but without their support they become even harder to establish. The involvement of local people can be a good starting point for reviving bus lines and bring a new sense of community to these areas.

To establish new mobility solutions in the context of a particular legal system, it is important to allow limited regulatory exemptions for tests and trials. The use of these should be closely observed, so that new models can then be implemented within the law. Frequent reviews of existing legislation and risk assessments pertaining to new ideas are just as important as the working relationship with public bodies and regulators. With every new regulatory solution, the environmental aspects and the effects on the public transport system in general, should be carefully considered.

After evaluation of feedback from the MAMBA partners, it became clear that easier and faster procurement law is needed, because many of the MAMBA activities faced the kind of challenges and delays which can have a highly demoralising effect on citizens' initiatives. From the ToD solution in Poland, we learned about the importance of consistency in legislation and administration. The changes there caused a great deal of uncertainty that had to be addressed by the project partners. It is important that legislators come up with solid structures that provide citizens with certainty. But with a good deal of cooperation, early involvement of the stakeholders, and flexibility in implementation, many problems can be overcome, and new mobility solutions can become a reality.

Annex

A. Relevant regulations for Innovative Mobility Solutions in Germany

Title (English)	Title (German)	Abbreviation
<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	BBedV
<i>Civil Code</i>	Bürgerliches Gesetzbuch	BGB
<i>Ordinance on the operation of motor vehicle companies in passenger transport</i>	Verordnung über den Betrieb von Kraftfahrunternehmen im Personenverkehr	BOKraft
<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)	European directive 2006/126/EC
<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	FamFG
<i>Ordinance on the right to drive</i>	Verordnung über die Zulassung von Personen zum Straßenverkehr	FeV
<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	FrStllgV
<i>General Data Protection Regulation</i>	Datenschutz-Grundverordnung	GDPR
<i>Community Regulations for Schleswig-Holstein</i>	Gemeindeordnung für Schleswig-Holstein	GemO SH
<i>Municipal Transport Financing Act</i>	Gemeindeverkehrsfinanzierungsgesetz	GVFG

<i>Act on the Transportation of goods with motor vehicles</i>	Güterkraftverkehrsgesetz	GüKG
<i>Commercial Code</i>	Handelsgesetzbuch	HGB
<i>Motor Vehicle Tax Act</i>	Kraftfahrzeugsteuergesetz	KraftStG
<i>Municipal Constitutional Law of Lower Saxony</i>	Niedersächsisches Kommunalverfassungsgesetz	NKomVG
<i>Act on local public transport in Schleswig-Holstein</i>	Gesetz über den öffentlichen Personennahverkehr in Schleswig-Holstein	ÖPNVG SH
<i>Passenger Transportation Act.</i>	Personenbeförderungsgesetz	PBefG
<i>Ordinance on the admission to a profession within road passenger transport</i>	Berufszugangsverordnung für den Straßenpersonenverkehr	PBZugV
<i>Compulsory Insurance Law</i>	Pflichtversicherungsgesetz	PfIVG
<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	Regulation 1370/2007
<i>Social Security Code IX</i>	Neuntes Sozialgesetzbuch	SGB IX
<i>Value Added Tax Act</i>	Umsatzsteuergesetz	UStG
<i>Insurance Contract Act</i>	Versicherungsvertragsgesetz	VVG

Table 3: Legal inventory for Germany

B. Relevant regulations for Innovative Mobility Solutions in Denmark

Title (English)	Title (Danish)	Abbreviation
<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

Title (English)	Title (Finnish)	Abbreviation
<i>General Vehicle law</i>	Ajoneuvolaki	
<i>Regulation for Unobstructed taxi transport</i>	Asetus taksiliikenteessä käytettävän esteettömän kaluston laatuvaatimuksista (723/2009)	
<i>Public Transport Act</i>	Joukkoliikennelaki -> 30.6.2018	JLL
<i>Regulation for School Transport</i>	Koulukuljetusasetus	
<i>The Act on Transport Services</i>	Laki Liikenteen palveluista 1.7.2018 ->	LPL
<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	PSA
<i>Service for disabled persons law</i>	Vammaispalvelulaki	

Table 5: Legal inventory for Finland

D. Relevant regulations for Innovative Mobility Solutions in Latvia

Title (English)	Title (Latvian)	Abbreviation
<i>2010, Law on Public Transport Services</i>	Sabiedriskā transporta pakalpojumu likums	
<i>2015, Law on the Equalisation of Local Government Finance</i>	Pašvaldību finanšu izlīdzināšanas likums	
<i>2012, Procedures for Issuing, Suspending or Revoking Special Permits (Licences) and License Cards for Commercial Road Transport and Issuing Certificates of Professional Competence for Road Transport Operators, Regulations of the Cabinet of Ministers No.121</i>	Kārtība, kādā izsniedz, uz laiku aptur vai anulē speciālās atļaujas (licences) un licences kartītes komercpārvadājumu veikšanai ar autotransportu un izsniedz autopārvadājumu vadītāja profesionālās kompetences sertifikātus, Ministru kabineta noteikumi Nr.121	
<i>2011, Spatial Development Planning Law</i>	Teritorijas attīstības plānošanas likums	
<i>1995, Law on Carriage by Road</i>	Autopārvadājumu likums	
<i>2014-2020, Latvian Rural development program</i>	Latvijas lauku attīstības programma 2014-2020	
<i>2015, Road Traffic Regulations</i>	Ceļu satiksmes noteikumi	
<i>1997, Road Traffic Law</i>	Ceļu satiksmes likums	
<i>2001, Law on the Regulated Professions and the Recognition of Professional Qualifications</i>	Par reglamentētajām profesijām un profesionālās kvalifikācijas atzīšanu	
<i>2017, Protocol amending the Treaty concerning a European Vehicle and Driving License Information System (EUCARIS), 2006/126/EC</i>	Protokolu, ar ko groza Līgumu par Eiropas transportlīdzekļu un vadītāja apliecību informācijas sistēmu (EUCARIS)	

Table 6: Legal inventory for Latvia

E. Relevant regulations for Innovative Mobility Solutions in Poland

Title (English)	Title (Polish)	Abbreviation
<i>National Transport Policy for 2006-2025</i>	Krajowa polityka transportowa na lata 2006-2025	
<i>Transport Development Strategy until 2020</i>	Strategia rozwoju transportu do 2020 r	
<i>National Spatial Development Concept 2030 (NSDC)</i>	Narodowa koncepcja zagospodarowania przestrzennego 2030	
<i>National Strategy for Regional Development 2010-2020: Regions, Cities, Rural Areas (NSRF)</i>	Krajowa strategia rozwoju regionalnego 2010–2020: Regiony, miasta, obszary wiejskie	
<i>Public Transport Act</i>	Ustawa o publicznym transporcie zbiorowym	
<i>Act on Municipal Self Government</i>	Ustawa o samorządzie gminnym	
<i>Act on the Metropolitan Union in the Silesian Voivodship</i>	Ustawa o Unii Metropolitalnej w województwie śląskim	
<i>Act on Road Traffic</i>	Kodeks drogowy	
<i>Act on Drivers</i>	Ustawa o kierujących pojazdami	

Table 7: Legal inventory for Poland

F. Relevant regulations for Innovative Mobility Solutions in Sweden

Title (English)	Title (Swedish)	Abbreviation
<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 8: Legal inventory for Sweden

References

Publications:

Bundesministerium für Verkehr und digitale Infrastruktur (BMVI) (2016): Integrierte Mobilitätskonzepte zur Einbindung unterschiedlicher Mobilitätsformen in ländlichen Räumen, Online-Publication, Berlin.

Diemon-Wies, Ingeborg (2014): Die Vergabe von Busdienstleistungen im ÖPNV nach der VO (EG) 1370/2007, Vergaberecht, Page 305-310, Werner Verlag, Neuwied.

Dietlein, Johannes/Mehde, Veit (2018): Beck'scher Online-Kommentar, Kommunalrecht Niedersachsen, Beck Verlag, Munich.

Erbs, Georg/Kohlhaas, Max (2017): Strafrechtliche Nebengesetze, Beck Verlag, Munich.

Franke, Peter (2018): Pre-study of mobility centre models, MAMBA-Publication.

Heinze, Christian/Fehling, Michael/Fiedler, Lothar (2014): Personenbeförderungsrecht, Beck Verlag, Munich.

Calliess, Christian/Ruffert, Matthias (2016), EUV/AEUV, Beck Verlag, Munich.

Karl, Astrid/Mehlert, Christian/Werner, Jan (2017): Reformbedarf PBefG (Reforming the PBefG), Study of the KCW, KCW GmbH, Berlin.

Schmidt, Karsten (2014): Münchener Kommentar zum HGB, Beck Verlag, Munich.

Schulze, Hans-Georg (2013): Juristische Herausforderungen beim Car-Sharing, Betriebsberater, Page 195-202, DFV Media Group, Frankfurt/Main.

Jurisprudence:

Administrative Court Berlin, Decision on the 26.09.2014, 11 L 353.14.

Federal Administrative Court, Judgement on the 27.8.2015 – 3 C 14/14.

Federal Administrative Court, Judgement on the 12.12.2013, C 30.12.

Federal Court of Justice (BGH), Decision on the 16.05.2017, II ZB 7/16.

European Court of Justice (ECJ), Ruling on the 13. 10. 2005 - C-458/03, „Parking Brixen“.

High Administrative Court Hamburg, Decision on the 24.09.2014, 3 Bs 175/14.