

SOHJOA BALTIC

LEGAL IMPLEMENTATION ROADMAP FOR SWEDEN



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EUROPEAN UNION

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Legal Implementation Roadmap for Sweden

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Publisher
Metropolia University of Applied Sciences 2018

Photos, cover, graphic design
Milla Åman, Metropolia UAS

ISBN 978-952-328-111-0 (pdf)

www.metropolia.fi/publications
sohjoabaltic.eu

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Legal Implementation Roadmap for Sweden

The EU-funded Project “Sohjoa Baltic” researches, promotes and pilots automated driverless electric minibuses as part of the public transport chain especially for first/last mile connectivity. In this roadmap Mauro Bellone from Chalmers University of Technology together with Ebba Josefson and Bob Lee from Front Law Firm will give an overview of the legal challenges that arise in Sweden when implementing automated buses as a part of public transport in urban areas. Each section summarizes the current legal situation in Sweden.

The areas of law that are being examined are Car registration law (I), Passenger transportation law (II), Personal legal requirements for the driver (III), Data protection law (IV), Liability law (V) and Criminal law (VI).

There is a legal inventory in the annex listing the relevant regulations in Sweden.

I CAR REGISTRATION LAW

1. Necessity and legal basis for the car registration

THE LEGAL SITUATION IN SWEDEN

- Vehicles - including buses – must be registered in the Swedish Road Traffic Registry (sw. Vägtrafikregistret) governed by the Swedish Transport Agency (sw. Transportstyrelsen) to be used according to the LVTR § 12.
 - The vehicle does not need a car registration e.g. if it is used exclusively in a constrained area, LVTR § 13 p.1.
- For a vehicle to be registered, it must first be appropriately inspected and approved, FordL chap. 2 § 1. A vehicle can e.g. receive a type-approval in accordance with EU-regulation, UN-regulation (UNECE) or national law, FordL chap. 2 § 2.
- General requirements for registration:
 - An application, usually by the vehicle owner, FVTR chap. 6 §§ 2-5.
 - Payment of road traffic registry fee, ORTrF chap. 2 §§ 5-6 and FVTR chap. 6 § 17.
 - Vehicle fulfills requirements that are in force in Sweden, FordL chap. 2 §§ 1 and 6, FordF chap. 1 § 1 and chap. 2 § 1.
 - Identity of the vehicle can be established, FVTR chap. 6 §§ 5-7 b.
- Additional requirements to use the vehicle:
 - A traffic liability insurance (sw. trafikförsäkring), TSL § 2.
 - Payment of vehicle tax, VtrSL chap. 2 § 1.
 - Register the vehicle as “in use” (sw. ställa på).

I CAR REGISTRATION LAW

2. Non-compliance with the applicable regulations

THE LEGAL SITUATION IN SWEDEN

- As in Germany and Finland, in Sweden an automated driverless vehicle cannot, in general, obtain a car registration due to its non-compliance with regulations of European law (i.e. UNECE rules No. 79, 5.1.6) and international law (i.e. Vienna Convention on Road Traffic, Art. 8). However, the Swedish Transport Agency can issue a special permit and thereafter register the vehicle. A registration is required for the vehicle to be used, LVTR § 12, but can include exemptions from the normal requirements, SjälvKörF § 1.
- The word “driver” (sw. förare) does not have a legal definition in Swedish law. It is presumed that every vehicle must have a responsible driver. In regulation regarding testing of automated vehicles it is stipulated that a physical driver can be either in or outside the vehicle, SjälvKörF § 7.
 - In Sweden, a driverless vehicle is a vehicle, which either has a fully or partly automated driving system, SjälvKörF § 1.

Policy recommendations

- Promoting the modification of the relevant regulations in the UNECE rules and the Vienna Convention on Road Traffic so that driverless vehicles are not forbidden under international law.
- Introduce a definition of the term “driver”. The definition should entail distinctions allowing a driver to be a natural person or not, respectively in or outside the vehicle.

I CAR REGISTRATION LAW

3. Issuing a special permit

THE LEGAL SITUATION IN SWEDEN

- Trials of automated vehicles (SAE levels 0-5) are possible with a special permit for vehicles that are not approved in any other way for driving on the road, FordF chap. 8 § 18 and SjälvKörF § 1.
- The Swedish Transport Agency may issue a special permit, on a temporary basis, if the applicant shows that traffic safety can be ensured and that the test does not impose any major inconvenience on the surroundings, SjälvKörF § 4.
- Natural person/s must be responsible for that the test is in accordance with the permit, SjälvKörF § 6.
- When the vehicle is driving, a vehicle operator (natural person) must be present in or outside the vehicle and other requirements may apply, SjälvKörF § 7 and § 11.
- Such additional requirements (besides the registration requirements) may be:
 - Technical specifications of the test vehicles and the automated functions to be tested
 - Information regarding geographical area where the tests are to be conducted
 - An accepted assessment concerning road safety and that the test does not impose major inconvenience on the surroundings
 - A general description of the test plan and organization (including aim and scope) and how the trials will be assessed
 - Description on how the responsibility for the test is distributed, respectively with whom the liability lies.
 - Duty to report accidents and incidents
 - A plan for processing data collected through the test
 - Assessment of the effect of weather conditions, light conditions, road conditions etc.

II PASSENGER TRANSPORTATION LAW

1. Need for a passenger transportation permit

THE LEGAL SITUATION IN SWEDEN

- Passenger transportation is in general regulated under YTL, YTF, TTL, KolltrL and (EC) No 1071/2009.
- Commercial traffic requires permission from the Swedish Transport Agency through a commercial traffic permit (sw. yrkestrafiktillstånd), YTL chap. 1 § 1-2 and 2 § 1 and YTF chap. 1 § 4.
- Automated buses require a passenger transport permit if:
 - the motor vehicle is constructed for carrying more than 9 persons, including the driver, and
 - intended for passenger transport services for public or for specific categories of users in return for payment by the person transported or by the transport organiser, (EC) No 1071/2009 Art 2 and YTL chap. 2 § 1.
- YTL and YTF are applicable on:
 - Line-based traffic (sw. linjetrafik): commercial traffic for passenger transport that is bound to a timetable and where the remuneration is set for every passenger separately. The transportation cannot only be part of an event where the main scope is another than the transport itself. If line-based traffic is performed with a car, a taxi traffic permit (sw. taxitrafiktillstånd) is required, TTL chap. 1 § 3 and 2 § 1.
 - Ordered traffic (sw. beställningstrafik): Such commercial traffic for passenger transport with bus that is not line-based traffic, YTL chap. 1 § 5 and 2 § 1.

II PASSENGER TRANSPORTATION LAW

2. Requirements for obtaining the permit

THE LEGAL SITUATION IN SWEDEN

- Requirements for a natural person or a legal person to receive a commercial traffic permit (taxi, passenger, goods), YTF chap. 2 § 1:
 - To be deemed fit and proper, YTL chap. 2 §§ 2-5, including:
 - Clean criminal record.
 - No outstanding tax debt or other payment errors.
 - No record of bankruptcy.
 - Proficiency and adequate competence in the field, YTL chap. 2 § 6.
 - To have sufficient fundings (financially in good standing), YTF chap. 2 § 1.
 - Must be permanently established in a member state, YTF chap. 2 § 1.
 - A permit may require additional requirements, YTL chap. 2 § 7 and 3 § 7.
 - A permit is issued for an indefinite period of time but can be restricted to be valid for a fixed term if special conditions apply, YTL chap 2 § 8.
 - Must act in accordance with traffic regulations, YTL chap. 3 § 6.
 - For permits issued to a legal person; a natural person, that has a genuine link to the legal person (i.e. an employee, director, owner, shareholder or administrator), must be designated as Transport Manager to safeguard the fulfilment of the same requirements, (EC) No 1071/2009 Art 4.
- To use the vehicle, after receiving a permit for commercial traffic, the permit holder must:
- Notify the Swedish Transport Agency, in writing, about the vehicle, YTF chap. 4 §§ 2-3.
- The Swedish Transport Agency will supervise the vehicle's compliance of all the requirements and that the vehicle is properly registered in the Swedish Road Traffic Registry, YTF chap. 4 § 4 and FVTR chap. 2 § 3 p. 3. The Agency will verify if the vehicle is owned or properly leased by the permit holder.

III PERSONAL LEGAL REQUIREMENTS FOR THE DRIVER

1. Driving license

THE LEGAL SITUATION IN SWEDEN

- Swedish law does not define the word “driver” (sw. förare) but, like Finnish law, uses the wording “road user” (sw. trafikant).
- A road user is someone who travels or otherwise dwells on a road or in a vehicle on road or in terrain and someone who is traveling in terrain, VägDefF § 2.
- Like in Finland, it can be said that a person who is driving and/or operating a vehicle is a road user.
- A bus may be driven only by someone with a valid driving license for that type of vehicle, KörkL chap. 2 § 1.
- The type of driving license required depends on the vehicle weight and length as well as the number of passengers, KörkL chap. 2 § 5.
 - When driving a vehicle with at length of eight meters and constructed for the transport of 16 passengers excluding the driver, a driving license (type D1) is required.
 - For a D1 license to be issued the person must qualify for a driving license and must have a minimum age of 21, KörkL chap. 3 § 1 e (exceptions may be given, KörkL chap. 3 § 1 a).
- A vehicle owner is liable to secure that the vehicle is not used in conflict with TF. When someone else uses the vehicle the owner’s responsibility is reduced, TF chap. 1 § 5. According to Swedish law, the “driver” or “road user” is generally the responsible party when utilizing the vehicle.

III PERSONAL LEGAL REQUIREMENTS FOR THE DRIVER

2. Transport of passengers

THE LEGAL SITUATION IN SWEDEN

- In addition to a driving license a driver of a vehicle registered and used for commercial traffic, in general, must have a commercial traffic driver qualification certificate (sw. yrkeskompetensbevis), LYK chap. 3 §§ 1 and 5-7 and FYK chap. 2 § 1, 4 §§ 1-2 and chap. 6.
- There are exceptions to the certificate requirements e.g. for non-commercial passenger transport or for vehicles, which utilizes technical means that restrict the vehicle's maximum speed limit to 45 km/h, LYK chap. 2 § 4.
- The commercial traffic driver qualification certificate can be issued to a person that has passed the qualifying test and has a minimum age of 18-23 depending on the type of driving license and i.e. if there are passengers on board or, in line-based traffic, the distance does not exceed 50 kilometers, LYK chap. 3 § 1.

3. Standards for the driving behavior of the vehicle operator

THE LEGAL SITUATION IN SWEDEN

- A road user must adhere to traffic rules.
- To avoid traffic accidents a road user must act with the care and caution necessary for the prevailing conditions, TF chap. 2 § 1.
- A road user must not obstruct or disturb traffic without reason, TF chap. 2 § 1.
- The vehicle may not be conducted by someone who, because of sickness, fatigue or is influenced by alcohol or substances, cannot conduct the vehicle in a safe manner, TF chap. 3 § 1.

4. Special safety training

THE LEGAL SITUATION IN SWEDEN

- There is no requirement in SjälvKörF that the vehicle operator is obliged to complete a special safety training.
 - However, when applying for a test permit the applicant must describe how to ensure that people that take part in the testing operations have adequate competence for the task assigned to them.

IV DATA PROTECTION LAW

1. Regulatory framework

THE LEGAL SITUATION IN SWEDEN

- Processing of personal data in a test for driverless vehicles may be a challenge due to the GDPR.
- For example, LVTR (i.e. § 2) mentions only collecting and processing of personal data according to PUL, but not the rules in GDPR. However, when GDPR entered into force it replaced PUL that was repealed (with some specific exceptions). According to Article 94 GDPR references made to the repealed Directive shall be construed as references to GDPR.
- In Sweden LK-GDPR supplements GDPR on a general level.
- In the application for a special testing permit for automated vehicles the applicant must describe how the test operation will be conducted to be compliant with the GDPR.

IV DATA PROTECTION LAW

2. Personal data and lawfulness of processing

THE LEGAL SITUATION IN ALL EU-COUNTRIES

- 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.
- If software applications are used e.g. for the booking system, passengers may be required to give their consent to the processing of any personal data, for compliance with the GDPR.
- Requirements for permit is for example, KamBL §§ 8 and 11:
 - The interest of such surveillance overrides the interest of a natural person not to be surveilled. An assessment of the interest of surveillance may include, KamBL § 8:
 - Prevent or discover accidents or limit the effect of occurring accidents, or
 - to accommodate a similar purpose.
 - Assessment of risk of unlawful processing of data.
 - Assessment of the need for surveillance.

THE LEGAL SITUATION IN SWEDEN

Camera surveillance regulation in Sweden has been a major challenge for test operations of automated driving since a permit has generally been a pre-requisite.

On August 1, 2018, a new Camera Surveillance Act, KamBL, was entered into force. Some of the major novelties are for example:

- Fewer operators are covered by the permit requirement.
- Privacy will be protected by the GDPR since someone performing camera surveillance must fulfil the GDPR requirements when performing surveillance, KamBL §§ 1-2 and 6.
- Permit is required for camera surveillance, on places to where the public has access, by government agencies and certain other operators that conduct activities of public interest, such as public transport, KamBL § 7, which may affect test operations with automated vehicles.
- It is required to inform that camera surveillance is performed, KamBL § 15.
- The Swedish Data Protection Authority is the Data Protection Authority that supervise compliance with both the GDPR and KamBL.
- Cameras used to facilitate the safe movement of the automated vehicle may capture faces of individual persons, either outside or inside the vehicle. Like in Germany and Denmark, such recordings should only store movement information that makes personal identification impossible.

V LIABILITY LAW

1. Liability

THE LEGAL SITUATION IN SWEDEN

- Directive 85/374 EEG on product liability has been implemented in Sweden in PAL.
- As in Germany the use of automated vehicles, likely, has no negative effect on the legal liability protection of the damaged party. The damaged party has different options for claiming damages:
 - TSL § 2, Defendant: Owner of the vehicle
 - PAL § 6-8, Defendant:
 - Manufacturer
 - Importer (under certain circumstances)
 - Marketeer
 - Provider
- There is, so far, no specific regulation in Sweden regulating liability for damages caused by an automated vehicle.
- "Liability without fault" for the owner does not apply according to Swedish law.

2. Insurance

THE LEGAL SITUATION IN SWEDEN

- The insurer of the traffic liability insurance can make a claim against the manufacturer of the vehicle if the damage is also covered by PAL, i.e. if the damage is based on a failure of the automated driving system or the vehicle, TSL § 20.
- In Sweden it is mandatory for the vehicle owner to have a traffic liability insurance for the vehicle if it is registered and used in traffic, TSL § 2. The traffic liability insurance covers damage on a third party or third party property. If the owner does not insure the vehicle, the owner will be imposed a penalty, increasing daily per uninsured day.

VI CRIMINAL LAW

THE LEGAL SITUATION IN SWEDEN

- Criminal liability in case of accidents with a driverless vehicle may possibly be ascribed to the:
 - Vehicle operator/driver
 - The manufacturer (provided that the automated driving system is an inserted part of the vehicle)
 - The provider of the necessary data infrastructure
 - The vehicle owner
- Intent and negligence are pre-requisites for criminal liability.
- In Sweden there is so far no specific legislation regulating criminal liability for tests with automated driving. However, the Swedish government has recently appointed a committee to investigate and submit a constitutional proposal with the view to create a better legal framework for the introduction of automated driving of vehicles on public roads (Statens Offentliga Utredningar 2018:16, Vägen till självförande fordon - introduktion). The committee has also considered the specific situation regarding criminal liability for automated driving. The committee's proposals is now under submission for comment with other authorities and organizations relevant to the subject. The committee's proposals have already received some critique.

Title (English)	Title (Swedish)	Abbreviation
Title (English)	Title (Swedish)	Abbreviation
Instrument of Government (Swedish constitution)	Regeringsformen	RF
Personal Data Act (implemented directive 95/46/EG)	Personuppgiftslag 1998:204 (genomfört direktiv 95/46/EG)	PUL
DIRECTIVE 2007/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles	-	Directive 2007/46/EC
Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 con- cerning type-approval require- ments for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor		(EC) No 661/2009
The Road Traffic Ordinance	Trafikförordning (1998:1276)	TF
Vehicle Act	Fordonslag (2002:574)	FordL
Vehicle Ordinance	Fordonsförordning (2009:211)	FordF
Ordinance on Autonomous Vehi- cle Trials	Förordning (2017:309) om försöksverksamhet med självkörande fordon	SjälvKörF
REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIA- MENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)	Dataskyddsförordningen	GDPR
Act with Supplementing Provi- sions to GDPR*	Lag (2018:218) med kompletterande bestäm- melser till EU:s dataskyddsförordning	LK-GDPR
Product Liability Act	Produktansvarslag (1992:18)	PAL
Product Safety Act	Produktsäkerhetslag (2004:451)	PSL
Penal Code	Brottsbalk (1962:700)	BrB
Road Traffic Offences Act	Trafikbrottslagen (1951:649)	TBL

Title (English)	Title (Swedish)	Abbreviation
Road Traffic Register Act	Lag (2001:558) om vägtrafikregister	LVTR
Road Traffic Register Ordinance	Förordning (2001:650) om vägtrafikregister	FVTR
Motor Traffic Damage Act (1975:1410)	Trafikskadelag (1975:1410)	TSL
UNECE - UN Vehicle Regulations - 1958 Agreement	-	UNECE rules
Vienna Convention on Road traffic	-	-
Insurance Contracts Act	Försäkringsavtalslag (2005:104)	FörsAvtL
Driving License Act	Körkortslagen (1998:488)	KörkL
Driving License Ordinance	Körkortsförordning (1998:980)	KörkF
Act on Road Traffic Definitions	Lag (2001:559) om vägtrafikdefinitioner	VägDefL
Regulation on Road Traffic Definitions	Förordningen (2001:651) om vägtrafikdefinitioner	VägDefF
Road Signs Ordinance	Vägmärkesförordning (2007:90)	VägMärkF
Roads Act	Väglag (1971:948)	VL
European Parliament and Council Directive 2006/126/EC of 20 December 2006, the Third Directive on Driving Licenses	-	Directive 2006/126/EC
Camera Surveillance Act	Kamerabevakningslag (2018:1200)	KamBL
Ordinance on electronic announcement of certain road traffic regulations	Förordning (2007:231) om elektroniskt kungörande av vissa trafikföreskrifter	EKTF
Work Environment Act	Arbetsmiljölagen (1977:1160)	AML
Tort Liability Act	Skadeståndslagen (1972:207)	SkL
Road Traffic Tax Act	Vägtrafikskattelag (2006:227)	VtrSL
Ordinance on fees in the road traffic area	Förordning (2001:652) om avgifter inom vägtrafikområdet	ORTrF
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 and repealing Council Directive 96/26/EC		(EC) No 1071/2009
Commercial Transport Act	Yrkestrafiklag (2012:210)	YTL
Commercial Transport Ordinance	Yrkestrafikförordning (2012:237)	YTF
Taxi Traffic Act*	Taxitrafiklag (2012:211)	TTL
Qualifications of Professional Drivers Act	Lag (2007:1157) om yrkesförarkompetens	LYK
Qualifications of Professional Drivers Ordinance	Förordning (2007:1470) om yrkesförarkompetens	FYK

Title (English)	Title (Swedish)	Abbreviation
Public Transportation Act	Lag (2010:1065) om kollektivtrafik	KolltrL
Act with special rules concerning street cleaning and signage	Lag (1998:814) med särskilda bestämmelser om gatuhållning och skyltning	-
Planning and Building Act	Plan- och bygglag (2010:900) (2010:900)	PBL
Act on authorisation to announce provisions on road traffic, transports and communications*	Lag (1975:88) med bemyndigande att meddela föreskrifter om trafik, transporter och kommunikationer	-
* No official translation found, therefore translated by author.		