

Autonomous driving: From vision to reality – German Autonomous Driving Act comes into force

GERMANY CREATES THE WORLD'S FIRST LEGAL FRAMEWORK FOR AUTONOMOUS VEHICLES IN PUBLIC ROAD TRAFFIC.

Executive summary

- Now that the Bundestag passed the Autonomous Driving Act on 20 May 2021 and the Bundesrat gave its approval on 28 May 2021, the law will come into force within the next few weeks.
- That means autonomous driving is going to become a reality in Germany, transitioning from test operation into regular operation. The law will make it possible to render mobility more versatile, safe, environment friendly and user oriented.
- This legal certainty is needed for investments in new and innovative mobility concepts, as well as for society's acceptance of autonomous driving.

Introduction

Autonomous driving functions can already be found on roads today. Vehicles are able to park themselves, keep themselves in a lane and maintain distance from other vehicles in front of them. From a technical perspective, a great many things are already possible today, even autonomous driving. However, the corresponding legal framework hasn't been in place. This has now changed in Germany. The newly enacted Autonomous Driving Act adds the new sections 1d - 1l to the Road Traffic Act and creates the world's first legal framework for the approval of SAE Level 4 vehicles on public roads in specified operating areas.

The new Act not only enables approval, but also creates development incentives and finally transfers autonomous vehicles from test operation to regular operation. The

legal certainty now provided is also intended to bolster trust and acceptance for these new technologies.

However, completely autonomous driving in the sense of a robot car will not yet be possible on German roads under the new law. Only autonomous driving in specified operating areas under what is being termed "technical supervision" will become legally permissible.

I. Development stages - The five levels of autonomous driving

Experts from the Society of Automotive Engineers (SAE) have defined 5 levels of driving automation which are widely used in research and development:

Level 1: Assisted driving: Simple systems like distance control provide drivers with support.

Level 2: Partly-automated driving: Systems like automatic parking and lane keeping are used.

Level 3: Highly automated driving: Autonomous driving for specific applications (e.g. steering, lane changing, overtaking on motorways). Driver intervention required after a warning.

Level 4: Fully automated driving: Autonomous driving in extended defined applications/areas. The driver chooses whether he or she wants to intervene via steering. In risk situations, the vehicle will automatically switch to the "minimal-risk condition".

Level 5: Autonomous driving: (The vehicle performs all driving tasks completely autonomously, regardless of road and environmental condition. Zero human attention or interaction is required



III. New law on autonomous driving

After passing in the Bundestag on 20 May 2021 and receiving approval from the Bundesrat on 28 May 2021, the new law will come into force following signing by the Federal President and official publication.

1. Use of autonomous vehicles

The background to this law is the creation of a legal framework for the use of autonomous vehicles in specified operational areas, such as for:

- Shuttle transports,
- Automated transport of people and goods,
- Driverless connections between logistics centres,
- “Dual Mode Vehicles”, such as Automated Valet Parking (AVP) - where a vehicle parks itself after the driver exits.

2. Primary features of the law

The Autonomous Driving Act particularly regulates the:

- Technical requirements for the use of autonomous vehicles,
- Verification procedure and process for obtaining an operating permit from the Federal Motor Transport Authority (KBA),
- Obligations for owners, manufacturers, and technical supervision,
- Data processing during the operation of motor vehicles which are enabled for autonomous driving.

3. Amendments to the previous Road Traffic Act

The first amendment is section 1d of the Road Traffic Act (new version), defining the newly introduced terms in the field of autonomous driving. A motor vehicle enabled for autonomous driving is understood to be a vehicle that can independently perform driving tasks within a defined operating range without being driven by a person, and that has technical equipment aligning with section 1e para. 2 of the Road Traffic Act (new version).

a) Technical requirements

The technical requirements in section 1e para. 2 Road Traffic Act (new version) were not significantly altered in the legislative process. It remains the case that a vehicle's driver must be capable of taking back control of the vehicle or the permanent availability of a technical supervisor.

Compared to the original draft introduced by the Federal Government, changes were made such as according to section 1e para. 2 no. 8 of the Road Traffic Act (new version) a vehicle now must be capable of being placed into a minimal-risk condition either via technical supervision or the vehicle's driver. In response to criticism from consumer protection organizations, placing the car into a minimal-risk condition will not only be possible now via technical supervision, but also by the driver himself. This is intended to improve the subjective perception of safety.

b) Technical supervision

The legislative process did not yield any far-reaching modifications with respect to technical supervision. section 1d para. 3 of the Road Traffic Act (new version) continues to define technical supervision as consisting of a person who can deactivate the motor vehicle during operation and release driving manoeuvres for this purpose. This is required under international law, which prescribes a “person in command” in order to meet vehicle controllability. That means complete autonomy - in the sense of a robot car - is not possible.

c) Specified operating range

Despite criticism, it will remain the case that a specific operating range must be defined in public road traffic in order to obtain approval for an autonomous vehicle. General or nationwide approval therefore will not be possible, which considerably limits the scope of application for autonomous vehicles.

That is why some have criticised that this law is tailored to local public transport providers and its provisions are not realistic for private transportation. It also remains open



how the operating areas are to be defined. Most observers do not consider it likely that the law will result in a permit being granted for an entire city. Rather, it can be assumed that autonomous vehicles will exclusively be permitted for easy-to-manage routes.

d) Data protection

Due to criticism regarding the data protection provisions in the draft bill, the law has been supplemented such that more extensive specifications are spelled out in section 1g para. 7 Road Traffic Act (new version).

Despite the criticism voiced, it does remain the case that extensive data storage and transmission will be mandatory, e.g. to the Federal Motor Transport Authority (KBA). However, the law stipulates that a manufacturer must inform a vehicle owner of the extent to which potential privacy settings exist in a vehicle. Thus, manufacturers must provide vehicle owners with a way to select how their personal data is going to be stored and transmitted. Yet this does not change anything about the very broad obligation for vehicle owners to transfer data to authorities upon request (such as Federal Motor Transport Authority (KBA)). That means a vehicle owner's ability to select how data will be stored and transmitted will be limited.

Furthermore, section 1g para. 7 of the Road Traffic Act (new version) provides that third parties have the right to demand information about stored data if such data will aid in asserting a claim against the vehicle owner (such as after a traffic accident). This is intended to reveal information about whether alternative driving manoeuvres were enabled at the time of the accident. That is why section 1g para. 7 of the Road Traffic Act (new version) grants a right to information not only to the victim of an accident, but ultimately also to the owner vis-à-vis the Technical Information Centre.¹ This should make it possible for all parties involved to find out for sure whose behaviour caused an accident.

¹ Bundestag Printed Matter 19/29875, Resolution recommendation and report from the Committee on Transport and Digital Infrastructure dated 19 May 2021.

IV. Outlook

With the Autonomous Driving Act coming into force, the first step is - notwithstanding all the criticism - indeed being taken towards integrating self-driving vehicles into everyday road traffic. It is very much to be welcomed that Germany is taking on a pioneering role worldwide. Thus, Germany is strengthening its position as a centre for innovation and development for digital mobility. Furthermore, the legal certainty now provided by the new law is a key prerequisite for society's acceptance of autonomous driving.

Dr. Jörg Kahler

Attorney-at-Law (Germany), partner
Berlin office
Tel +49 30 20390-70
joerg.kahler@gsk.de

Dr. Friedrich Ludwig Hausmann

Attorney-at-Law (Germany), partner
Berlin office
Tel +49 30 20390-70
friedrich.hausmann@gsk.de

Dr. Andreas F. Bauer

LL.M. (George Washington University)
Attorney-at-Law (Germany), partner
Munich office
Tel +49 89 288174-74
andreas.bauer@gsk.de

Simonié Schlombs

Attorney-at-Law (Germany)
Berlin office
Tel +49 30 20390-70
simonie.schlombs@gsk.de



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www.gsk.de

GSK Stockmann

BERLIN

Mohrenstrasse 42
10117 Berlin
T +49 30 203907-0
F +49 30 203907-44
berlin@gsk.de

HEIDELBERG

Mittermaierstrasse 31
69115 Heidelberg
T +49 6221 4566-0
F +49 6221 4566-44
heidelberg@gsk.de

FRANKFURT / M.

Taunusanlage 21
60325 Frankfurt am Main
T +49 69 710003-0
F +49 69 710003-144
frankfurt@gsk.de

MUNICH

Karl-Scharnagl-Ring 8
80539 Munich
T +49 89 288174-0
F +49 89 288174-44
muenchen@gsk.de

HAMBURG

Neuer Wall 69
20354 Hamburg
T +49 40 369703-0
F +49 40 369703-44
hamburg@gsk.de

LUXEMBOURG

GSK Stockmann SA
44, Avenue John F. Kennedy
L-1855 Luxembourg
T +352 271802-00
F +352 271802-11
luxembourg@gsk-lux.com



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