Employees without Employers

The Structural Problem of Subcontracting in German Food Delivery

Joanna Bronowicka & Eva Kocher

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Working conditions in platform work show an "urgent need for action," according to the *Bundesrat* (Federal Council). It recently called on the German government to present a draft bill to implement the Platform Work Directive ("the Directive") before the 2 December 2026 deadline. Effective regulation in food delivery, the Bundesrat states, could be achieved by requiring platform workers to be employed directly by digital platforms. Indeed, such a prohibition on the use of subcontracted labour would be really helpful.

Fleet Partners: A New Low for Workers

Working conditions in Germany's food delivery sector have reached a new low. As a first reaction, in January 2026 German law classified platform-based delivery services as a sector at particular risk of undeclared work and illegal employment. However, the German government has yet to indicate how it plans to implement the Directive adopted in 2024. Workers have been calling for an implementation that would address the structural problems posed by the proliferation of intermediaries.

The risks go beyond employment status – delivering food on a bike is also particularly dangerous: a 2026 survey of more than 700 food delivery riders by TU Dresden for the German Road Safety Council (DVR) found that bike workers averaged almost one accident per year, and those in their first year on the job reported around five.

On paper, Germany has been ahead of other legal systems. The Directive's centrepiece, the presumption of employment (Articles 4 and 5), addresses an issue that German labour law has already more or less resolved, at least for food delivery platform workers. Germany is one of the countries where courts have made clear that delivery platform workers must be classified as employees, rather than disguised as self-employed. Employment became the norm, and with it came labour rights, including the right to strike and to elect works councils. Moreover, the Federal Labour Court established that bike delivery workers have the right to be provided with a suitable bicycle and a mobile phone as essential and appropriate work equipment.

So why is the Bundesrat now calling for action "particularly" on bogus self-employment, labour and social protection, lack of transparency in the organisation of work, and information asymmetry – in other words, on almost every area relevant for worker protection?

Because the Directive's presumption of employment alone will not fix the problem – an issue we already discussed in a Verfassungsblog symposium in 2023. Since its adoption, food delivery platforms have continued to adapt their business models based on the exploitation of workers, and searched for new ways to disrupt labour law. Their instrument of choice: placing intermediaries, so-called "fleet partners", between themselves and their workers. Investigative journalists have documented these risks in detail, including footage of fleet partners distributing pay in cash after deducting a 20% cut. Fleet partners, which act as formal employers, sometimes provide no contract at all, or only part-time contracts, while requiring their employees to work full-time.

Wolt, which entered the German market in 2020, has gradually transitioned to a hybrid model that combines some directly employed couriers and those hired by subcontractors. Uber Eats implemented the subcontractor model from the start when it launched in Germany in mid-2021. Lieferando, by contrast, has long remained the only major delivery platform to

employ a significant share of its workforce directly. With the announcement in 2025 that Lieferando would also outsource part of its workforce, the shift towards indirect employment is close to complete.

For workers, the consequences have been severe. What began as an outsourcing arrangement has developed into a parallel layer of labour-market intermediaries. Many workers are now managed by small fleet partners that are invisible to the public, and often to the workers themselves. In some cases, workers could identify their supposed employer only by a number in a WhatsApp group. More recently, larger intermediaries have emerged, including Fleetlery, Closer Go and Opriša, some of which have introduced their own apps to manage workers' shifts and orders. These intermediaries often lack the expertise, resources and willingness to comply with their responsibilities as employers, including legal obligations on health and safety or data protection.

Subcontracting and Structural Enforcement Gaps

The spread of intermediaries came to the EU legislator's attention relatively late in the adoption of Directive (EU) 2024/2831, but not too late to introduce a fallback clause: Article 3 now obliges Member States to ensure equal treatment of workers engaged through intermediaries.

This provision should be central to Germany's implementation of the Directive if it is to meet the effectiveness requirements of EU law (Art. 5(1) and 6; Art. 288(3) TFEU; Art. 47 EU-CFR). Employment status alone provides little protection if the employer is an invisible intermediary without the willingness or even the means to fulfil its legal responsibilities. These responsibilities go beyond financial obligations like minimum wage or social security payments. In a sector such as food delivery on bikes, in which workers put their bodies at daily risk, occupational health and safety protection is a major concern – from road traffic accidents and exposure to adverse weather to physical strain and the psychosocial pressures created by algorithmic management.

This is not to say that the legislator has been completely idle. The recent reform of the German Act to Combat Undeclared Work and Unlawful Employment now lists platform-based delivery services among the sectors at high risk of undeclared work and unlawful employment (Sec. 2a(1) No 4 *Schwarzarbeitsbekämpfungsgesetz*). However, the powers of the federal customs administration exercised through the local agencies for the Financial Control of Undeclared Work (*Finanzkontrolle Schwarzarbeit*, FKS) focus on compliance with social security obligations, work authorisation for foreign workers, and minimum wage. When FKS officers request working-time records, for example, they typically use them to check minimum wage and social security compliance, not working conditions more broadly. Its right to sanction "exploitative working conditions" (Sec. 2(1) No 7) deters fleet partners with fines and criminal penalties (Secs. 8-11), but creates no rights for workers. Issues of health and safety fall to yet another authority, the Länder *Arbeitsschutzbehörden*. While larger intermediaries with identifiable premises should be easier to monitor than a myriad of fleet partners, all authorities face the same problem: workers spend their days dispersed across the city, so no inspector sees the full picture.

The Call for a Prohibition on the Use of Subcontracted Labour

Fragmented enforcement underpins calls to prohibit subcontracted labour in the food delivery sector. To pursue this demand, the Lieferando Workers Collective and the trade union NGG organised a protest in September and a strike in October 2025, with immediate media and political reactions. In November 2025, the Länder labour ministers called on the federal government to introduce a direct employment requirement for the food delivery sector (p. 82). The Bundesrat has now followed up on this call.

The prohibition on the use of subcontracted labour, or the requirement of direct employment (*Direktanstellungsgebot*), is a new instrument of labour law. It was first introduced in the meat-processing industry in 2021, where it prohibits the use of external personnel for core activities in slaughterhouses and meat-processing plants. At the time, it was described as one of the most ambitious and successful social

policy measures since the minimum wage. And it delivered: an evaluation found that after subcontracted workers were employed directly, violations of working-time regulations fell. Better access to employment records made legal advice for workers easier, while easier access to overtime records strengthened enforcement. Progress seems to have halted now, but the level of protection has remained higher than before the reform.

The Constitution Is Not an Obstacle

Last year, Federal Labour Minister Bärbel Bas already considered introducing a direct employment requirement for food delivery platforms, but held back because of legal and constitutional concerns. Following the Federal Constitutional Court's decision confirming, earlier this year, that the instrument is compatible with the German Constitution, these concerns should no longer stand in the way.

In its ruling, the Court addressed the problem of intermediaries with striking clarity: "There is no constitutional entitlement to benefit from one's workforce without having to address the challenges arising from regular employment relationships" (para. 141). The Court held that the requirement of direct employment is constitutionally justified if it satisfies the principle of proportionality: it must pursue a legitimate aim, such as protecting workers' health and safety, and be suitable, necessary and appropriate to that aim.

The "necessity" part of the principle is the point of uncertainty in food delivery, as it was in meat processing: are there less intrusive ways to address risks posed by intermediaries? Platforms routinely say they conduct voluntary due diligence on their fleet partners, but reveal little about how. More importantly, sustained public scrutiny of working conditions in the sector, including assessment by the Fairwork project, has not brought substantial improvements. This is, after all, a sector that stands for disruption rather than compliance; unlike the meat-processing industry, most players in the sector do not even claim to embrace the European Social Model.

Why Liability Rules Aren't Enough

The most obvious alternative to direct employment would be to strengthen liability along the subcontracting chain. German law already establishes a general "chain liability" for breaches of minimum wage legislation by subcontractors (Sec. 13 MiLoG; see also Sec. 28e(3a) and (3g) Book IV Social Code for social security liabilities in the construction and courier, express and parcel services sectors). These provisions give workers a legal claim against an identifiable and financially stronger party. They could also work against digital platforms such as Wolt.

Food delivery workers have in fact already tried to hold platforms accountable in court – and failed. In 2025, a Wolt rider sued for more than €3,000 in unpaid wages. Instead of using the liability rules, she argued that Wolt, not its fleet partner, was her real legal employer. Although the Berlin Labour Court found the evidence insufficient and upheld the corporate veil between platform and fleet partner, the claimant had the right intuition: changing the underlying employment relationship is the only way to address the problems created by diffuse subcontracting. Liability rules address financial obligations and not the significant health and safety risks of delivering food by bike. They merely add a solvent debtor when financial obligations are not met: they do not keep a worker safe on the road. As the Federal Constitutional Court put it: when it comes to workers' health and safety – "clear responsibilities are a prerequisite for the enforcement of rights" (para. 21).

Food Delivery and Beyond

Since the Constitutional Court's judgment, a requirement of direct employment has been discussed for various sectors, from parcel services to seasonal employment in agriculture. The health and safety risks make the food delivery sector a particularly strong case for prohibiting the use of subcontracted labour. Employers are obliged to assess risks and take appropriate measures to prevent harm, but these obligations are difficult to enforce where the formal employer is separated from the organisation and control of work.

And unlike unpaid wages, a serious work accident cannot be remedied by a subsequent administrative fine. A prohibition on subcontracted labour would make the platform the employer by law, rather than leaving riders with the legal risk of establishing this in litigation, as the current law does.

The Platform Work Directive's provisions on algorithmic management add another argument: Where subcontractors rely on a platform's algorithmic tools, it is the platform and not the subcontractor that controls key aspects of the employment relationship: how tasks are allocated, how performance is scored, what targets are set, and which sanctions are imposed. The same applies to the Directive's transparency and oversight requirements, including the right to an explanation of algorithmic decisions and to request human review (Arts. 7-11); they are hard to enforce against an employer that does not control the technology.

This is, after all, a strong argument for a broader approach: because algorithmic rights can hardly be enforced against subcontractors, a requirement of direct employment should apply across the Directive's scope, and extend beyond food delivery to platform work in general.

To return to the Constitutional Court: no one should benefit from a workforce without taking on the responsibilities of an employer. Health and safety risks make the case for direct employment in food delivery; algorithmic management makes it for platform work as a whole. A requirement of direct employment is the most straightforward way to ensure the Platform Work Directive is implemented effectively in German law.

ABOUT THE AUTHORS

Joanna Bronowicka
Joanna Bronowicka is a sociologist at the Centre for Interdisciplinary Labour Law Studies at the European University Viadrina. She takes a socio-legal approach to studying platform work, algorithmic management, and emerging forms of worker organisation.

Eva Kocher
Dr. Eva Kocher is a professor at the European University Viadrina, Frankfurt (Oder) and head of the Center for Interdisciplinary Labour Law Studies (C*LLaS)

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