

Platform Reps

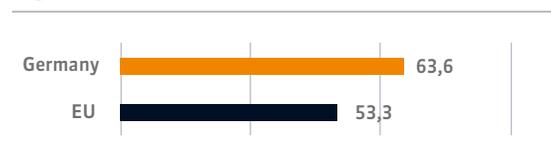
# GERMANY: Country report 2022



# 1. Context: Social dialogue and work in platforms

According to Eurofound, the overall quality of social dialogue in Germany is considerably higher than the EU average (see **Figure 1** below).

**Figure 1: Industrial Relations Index (2013-2017)<sup>1</sup>**

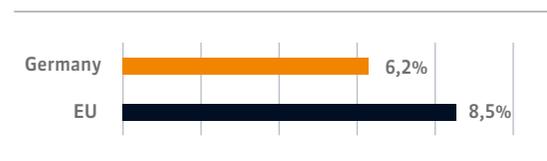


Source: [Eurofound Industrial Relations Index](#)

At the same time, fewer people (measured as a share of the adult population) worked in digital labour platforms (hereafter referred

to as “platforms”) in Germany than in the EU (**Figure 2**).

**Figure 2: The share of workers in platforms in the adult population (2021)<sup>2</sup>**

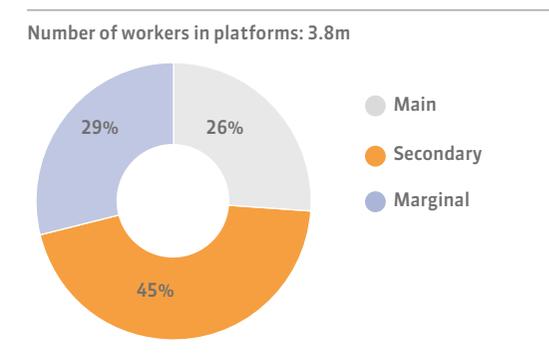


Source: EC (2021); Eurostat.

According to 2021 estimates, up to 3.8 million people might have engaged in work in platforms more than sporadically, i.e., at least 10 hours a week or contributing to more than

25% of their income (**Figure 3**).

**Figure 3: Number and categories of workers in platforms (2021)<sup>3</sup>**



Source: EC (2021)

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1. The index measures the overall quality of the “collective and individual governance of work and employment” across four categories, based on 47 indicators. See: Eurofound (2018). *Measuring varieties of industrial relations in Europe: A quantitative analysis*. Publications Office of the European Union, Luxembourg., p. 1.

2. The numbers cited are an upper-bound estimation based on 2021 survey results. They cover all types of work in platforms from low- to high-skill and from on-location (e.g., transport, delivery) to online work (e.g., ICT, data entry, creative work). See: EC (2021). [Study to support the impact assessment of an EU initiative to improve the working conditions in platform work](#)

3. Main workers work through platforms for at least 20 hours a week or receive at least 50% of their income therein. Secondary workers spend between 10 and 19 hours per week or receive between 25% and 50% of their income from work in platforms. Marginal workers spend less than 10 hours a week working via platforms and get less than 25% of their income via platforms.

## 2. Current legal framework

### 2.1. LABOUR LAW

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German labour law is divided into individual employment law (which concerns relations between the individual employee and the employer) and collective employment law (which regulates the collective representation and organisation of employees and the rights and obligations of employees' representatives). **Germany has no unified labour code**, and the elements of the labour law are guaranteed by federal legislation, case law, collective bargaining agreements, works council agreements, and individual employment contracts.<sup>4</sup> Historically, there was no statutory definition of an employee, and the determination of the employment status relied solely on case law. However, in 2017 the principles which had been used by the German labour Court to determine whether there is an employment relationship were codified into the law. Therefore, the Civil Code (*Bürgerlichen Gesetzbuches* – BGB) currently provides a statutory definition of an employment contract, which outlines key elements of the employment

relationship (Section 611a, Paragraph 1):

*The employment contract obliges the employee to perform in the service of another, externally determined work bound by instructions in a relationship of personal dependency. (...)*

Furthermore, the Commercial Code ([Handelsgesetzbuch – HGB](#)) defines the term “self-employed” (Section 84, Paragraph 1):

*A person is self-employed if they are essentially able to arrange their activities freely and to determine their working hours.*

Therefore, personal freedom is the main characteristic of self-employment, while **personal subordination is a key feature of an employment relationship and is the main criterion in deciding the worker’s status.**<sup>5</sup> Section 611a of the BGB further specifies that “personal dependency” may imply setting by the employer “the content,

mode of work performance, time or location of the activity”. Finally, it provides two important clauses:

- It acknowledges that the degree of personal dependency is contingent on the nature of the activity and “in order to determine whether an employment contract exists, an overall consideration of all circumstances must be made”.
- It clarifies that the designation in the contract is irrelevant if the actual execution of the contractual relationship shows that it is an employment relationship.

No “third” or “hybrid” statuses exist in the individual employment law. However, in the collective employment law, the [Collective Agreements Act \(Tarifvertragsgesetz – TVG\)](#) extends the rights to **collective representation and bargaining to “employee-like persons”** (independent contractors who are economically dependent and in need of social protection comparable to an employee).

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4. L&E Global (n.d.). [Employment law overview: Germany 2021-2022](#).

5. Weiss, M., Schmidt, M., & Hlava, D. (2020). *Labour law and industrial relations in Germany*. Kluwer Law International BV.

## 2.2. PLATFORM-SPECIFIC LEGISLATION

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Germany has recently pursued several legislative actions that could have impacted the status quo of digital labour platforms, as summarised in **Table 1** below. Nevertheless, no legislation

in the area of labour law has been successful, even though legislative proposals have been discussed in the German parliament.<sup>6</sup> Therefore, the status and working conditions of workers in platforms remain regulated only by the provisions of the general employment law.

**Table 1: Legal acts and proposals in the area of the platform economy**

Legislation	Key provisions
<b>Amendment to the <a href="#">Passenger Transport Act (2021)</a></b>	The Passenger Transport Act was amended to provide an explicit legal framework that allows transport platforms like Uber to operate in Germany. Under this amendment, drivers working in platforms are subject to various restrictions; for example, they are not allowed to pick up spontaneous passengers but can only accept orders that were previously placed by phone or app. They are also not allowed to stand on the side of the road and wait for customers but must return to the company headquarters after every trip.
<b>Amendment to the <a href="#">Act on Restraints of Competition (2021)</a></b>	The amendment is explicitly aimed at digital companies, defined as companies with outstanding cross-market significance for competition and access to competition-relevant data. The act also introduces the legal notion of “intermediation power” to capture platform particularities. With this, the legislator wishes above all to restrict the market power of digital giants like Google, Facebook and Amazon.

Source: Visionary Analytics, based on Eurofound (2021). [Amendment to Passenger Transport Act in Germany](#); FES (2022). [Online Platforms and Platform Work: Germany](#).

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6. Two legislative proposals were brought in by the parliamentary fraction ‘Die Linke’ in 2020, one concerning workers in on-location platforms and one relevant to workers in online platforms. They called for legislation that would establish that workers in platforms are, as a matter of principle, employees of the platform operators. Both legislative proposals have, however, been rejected by the Committee on Labour and Social Affairs of the German Bundestag. In 2021, the parliamentary fraction BÜNDNIS 90/Die Grünen sought to extend some of the labour rights (including sickness and holiday leave) to workers in platforms that are “at the borderline of dependent employment”, and to guarantee self-employed workers in platforms access to the pension insurance scheme, the voluntary unemployment insurance, as well as the coverage by collective agreements. The proposal was rejected. See: EC (2021). [Study to support the impact assessment of an EU initiative to improve the working conditions in platform work](#).

### 3. State-of-play of workers' rights

Workers enjoy different access to labour rights, depending on their status, as summarised in **Table 2** below.

**Table 2: Worker statuses and corresponding labour rights**

Worker status	Legal basis	Social security	Union representation	Collective bargaining
Employee	Labour law	✓	✓	✓
Self-employed and independent contractors	Civil law	✓ (self-paid)	✗*	✗*

Source: Visionary Analytics.

Note: \*Except “employee-like persons” who are entitled to collective representation and bargaining.

Most platforms in Germany provide employment contracts to their workers (albeit often fixed-term), which entitle them to a range of labour rights guaranteed by the employment law (e.g., a minimum wage or paid sick, holiday, and parental leave).<sup>7</sup> Particularly since late 2021, **there has been a notable improvement in the share of workers with an employee status** in the platform economy.<sup>8</sup> This relatively less prevalent misclassification of worker status in Germany (compared to most EU countries) can be attributed to several factors, including:<sup>9</sup>

- Strong labour courts and several important rulings on worker status and working conditions in platforms (see below), as well as some re-

gional courts ruling in favour of the employees

- A stable and competitive labour market, where platforms need to ensure they are attractive employers to “win” employees
- Business models of platforms operating in Germany (e.g., Deliveroo, which offered more precarious conditions, has left the market, while Liferando, which generally employs workers, established itself in Germany)
- Increasing criticism of platforms in the media (e.g., a “deliver at the limit” campaign<sup>10</sup>) and therefore mounting political pressure

However, platforms still often evade their responsibilities as employers; for example, they obstruct collective action (see the section be-

low) or fail to implement regular safety audits, exposing workers to occupational risks and accidents. Furthermore, **some platforms use legal loopholes that allow them to avoid some of the usual employer’s obligations and dilute employment rights**, mostly by using independent service contracts (bogus self-employment) and sub-contracting arrangements (i.e., using intermediary staffing companies to evade the employers’ responsibilities). The self-employed, in particular, face precarious and insecure working conditions, including below-minimum wages and scant health and safety provisions.<sup>11</sup>

Furthermore, although to a lesser degree than elsewhere, **misclassification of worker status remains an obstacle for some workers in ensuring fair access to rights**, combined with the judicial procedure that requires the litigant to provide proof of their employment status. Proving personal subordination, which is the key criterion for establishing the employee status, is extremely difficult, not least because of the non-transparent algorithmic management structures of the platforms: information about the mechanisms of control, management, and evaluation of work is inaccessible to the work-

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7. Interview results; Fairwork (2022). [Fairwork Germany ratings 2021: Labour standards in the platform economy](#).

8. Ibid.

9. Interview results

10. See the [Lieferrn am limit](#) campaign on Facebook.

11. Interview results; Fairwork (2022). [Fairwork Germany ratings 2021: Labour standards in the platform economy](#).

ers. Therefore, workers are reluctant to go the judicial path. If they do so, they usually have limited means to prove their subordinate situation (exactly because of this lack of information access), and therefore find themselves in a “state of evidentiary emergency” in labour law

proceedings. In addition, individual legal action is extremely time-consuming and costly.<sup>12</sup>

Nevertheless, two important court rulings have established the emerging case law on this matter – these are summarised in **Table 3** below.

Given the high barriers to judicial procedure, the German metalworkers’ union (IG Metall), several platforms and the German Crowdsourcing Association have established a joint Ombuds Office. The Office aims to provide a platform for solving employment issues outside courts and stimulate dialogue between **platform companies and trade unions on working conditions**.<sup>13</sup>

However, the initiative’s scope is rather limited as it applies only to platforms that have signed the Crowdsourcing Code of Conduct.<sup>14</sup> A total of 48 complaints were submitted to the Office between 2017 and 2020.

**Table 3: Court rulings recognising the rights of workers in platforms**

Court decision	Summary
<b>Court ruling on working conditions in Lieferando (2021)</b>	The case was brought forward by a courier supported by the Food, Beverages and Catering Union ( <i>Gewerkschaft Nahrung-Genuss-Gaststätten – NGG</i> , affiliated to DGB) at the Hessian Regional Labour Court. The court decided that their employer has to provide food delivery couriers with work equipment (including an adequate bike and a smartphone). Previously, Lieferando riders only received a small compensation for using their own equipment (a credit of €0,25 per hour worked that could only be used with designated companies). Lieferando appealed the decision, but the Federal Court confirmed the ruling.framework.
<b>Court ruling on employment status in Roamler (2019)</b>	In collaboration with the union of metal workers (IG Metall, affiliated to DGB), an online gig worker filed a lawsuit against the crowdworking platform Roamler, arguing that he should not be classified as self-employed. After losing the dispute at the Regional Labour Court in Munich, the National Labour Court ruled that the worker had to be qualified as an employee. The court argued that the platform organised work in a way that secured the attachment of workers through the perpetual provision of spontaneous offers for micro-jobs. Thus, the platform determined the location, time and content of work.

Source: Visionary Analytics, based on Eurofound (2021). [Court judgement on working conditions \(Lieferando\)](#); Eurofound (2021). [Court judgement on employment status \(Roamler\)](#).

## 4. State-of-play of union action

Union action on behalf of workers in platforms in Germany can be analysed at three levels, as summarised in **Table 4** below.

**Table 4: Action taken on behalf of workers in platforms**

Level	Actions
<b>Established trade unions</b>	The established trade unions support workers in platforms through dedicated initiatives (e.g., Verdi's <a href="#">advice for self-employed crowdworkers</a> or IG Metall's <a href="#">Code of Conduct</a> ) and negotiate with platforms. Furthermore, works councils are established (e.g., at <a href="#">Foodora</a> ).
<b>Emerging movements</b>	New entities are being formed with the trade unions' support, which work as contact points between the unions and workers (such as <a href="#">Velogista</a> , the <a href="#">Gorillas Workers Collective</a> , or <a href="#">Deliverunion</a> ). People also set up cooperatives as an alternative business model to multinational platforms that emphasise the working conditions aspect (e.g., the <a href="#">Crow Cycle Courier Collective</a> or the <a href="#">Khora Courier Collective</a> ).
<b>Anti-union action</b>	Platforms engage in union busting and obstruct works council elections.

Source: Visionary Analytics, based on interview results and sources indicated in the hyperlinks.

The Fairwork report signals that “few platforms could provide evidence of functioning bodies

for workers to raise their voice in a collective manner, and those that do are usually in the

### Gorillas Works Council

First, workers organised themselves in less formal structures – the Gorillas Workers Collective, which organised strikes, sued Gorillas (a delivery platform) for some illicit practices (namely, the practice of constantly firing workers after the end of their one-year contract), and brought forward demands regarding working

and employment conditions. In the meantime, workers fought to establish a works council. However, the platform obstructed the works council organisation and election processes in many ways. It terminated contracts of workers who had taken part in “unauthorised strikes”; it sought to block the council election through the courts (but the Berlin Labour Court rejected its claim); finally, it announced it would pilot a

earlier stages of development.”<sup>15</sup> Nevertheless, the unionisation progress is relatively advanced compared to most EU countries. Workers generally have positive attitudes towards the union movement and declare willingness to join a union and organise.<sup>16</sup>

Many actions have emerged in Germany, both at the initiative of individual workers (grassroots movements) and organised by established trade unions from various sectors. A notable development is the ongoing negotiations of a collective agreement between NGG and Lieferando.

NGG is calling on Lieferando to guarantee a €15 hourly wage, payment of a 13<sup>th</sup> salary, appropriate bonuses for work on Sundays and public holidays, entitlement to six weeks' vacation and full payment for the last journey home.<sup>17</sup>

new franchise model – a move that workers see as an attempt to fragment their organising efforts. Nevertheless, after an almost year-long struggle, Gorillas workers were able to set up a recognised works council.

Source: Visionary Analytics, based on Meaker, M. (2021). [Germany: Gorillas accused of union busting efforts after court rejects attempt to block works council election.](#)

15. Fairwork (2022). [Fairwork Germany ratings 2021: Labour standards in the platform economy, p. 9.](#)

16. Ibid.

17. Interview results

The key obstacles to more effective unionisation of workers in platforms are presented in **Table 5** below.

**Table 5: Obstacles to unionisation for workers in platforms**

Legal	Social and cultural	Related to platforms' business model
<ul style="list-style-type: none"> <li>- The EU competition law restricts the ability to conclude collective agreements for solo self-employed workers.<sup>18</sup></li> <li>- The current procedure for reclassification of status is burdensome for workers.</li> </ul>	<ul style="list-style-type: none"> <li>- Language barrier and the need for basic awareness-raising about the trade union role and labour rights in Germany (related to the relatively high share of third-country nationals in workforces in platforms) amplify the challenge of organising workers in platforms.</li> </ul>	<ul style="list-style-type: none"> <li>- The permanent uncertainty under fixed-term contracts or self-employment creates a climate of fear of retaliation and losing one's job.</li> <li>- Platforms obstruct worker activism and engage in union busting.</li> </ul>

Source: Visionary Analytics, based on interview results.

**Potential application of the proposal for a Directive of the EC and/or the ETUC policy proposal**

DGB is in favour of a strong and legally secure Directive. It generally welcomes the EC's proposal for the Directive, including, particularly, the presumption of the employment status, the reversed burden of proof, and the "comprehensive transparency obligations for the platforms as regards automated monitoring and decision-making systems". Nevertheless, DGB has pointed out several shortcomings, including unnecessary exemptions from the definition of a digital labour platform, the exclusion of contractual relationships signed before the implementation of the Directive from its application, not covering human-driven monitoring and decision-making by the transparency obligations, and insufficient role granted to trade unions in representing the workers and enforcing the regulation.

No direct clashes between the proposal for a Directive of the EC and the existing German legal framework have been pointed out, although the definition of an employee in the German Civil Code is much broader and permissive compared to the criteria proposed by the EC (including the provision on "consideration of all circumstances"). Therefore, although DGB welcomes the criteria that trigger the presumption of employment, it advocates extending them to an "open-ended catalogue" of conditions covering other aspects, including technology that allows exercising control. In particular, "instruments of other-directed employment and worker control should be given consideration, such as concrete specifications of the platform with regard to the content, execution, time and location of the task, pricing, controlling the awarding of contracts, disciplinary and control methods in the form of reputation or rating systems and strict monitoring of the work processes".

At the same time, the German unions see potential obstacles in implementing the ETUC proposal, particularly due to the general (unconditional) presumption of employment. They argue that a mechanism is required that triggers the presumption and that the universal presumption would not be "legally comprehensible" in Germany. However, it must be acknowledged that the lack of general presumption could limit the effects of the policy and sustain legal and administrative obstacles for workers as it would still require the worker to initiate legal action.

Source: Visionary Analytics, based on DGB (2022). [Position of the German Confederation of Trade Unions \(DGB\) on the Draft Directive of the EU Commission on improving working conditions in platform work](#) and other DGB position letters (unpublished).

18. However, the European Commission's "Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed people providing services" might help resolve this issue.

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# 5. Action checklist

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Preliminary suggestions for actions are summarised in **Table 6** below.

**Table 6: Action checklist in two main areas**

Policy	On-the-ground action
<ul style="list-style-type: none"><li>• Lobby for a good implementation of the EU Directive (including the reversed burden of proof).</li><li>• Lobby to establish a clear framework for collective representation of solo self-employed workers.</li><li>• Pursue the issue of union busting via legal and judicial means.</li></ul>	<ul style="list-style-type: none"><li>• Bring more cases related to the misclassification of worker status or working conditions before the German courts to establish strong case law.</li><li>• Consider expanding organisation efforts to less visible sectors where platforms dominate (such as domestic services).</li><li>• Fight against the precarious forms of fixed-term contracts that are misused and overused by platform companies.</li></ul>

Source: Visionary Analytics.