PRESS RELEASE

Düsseldorf/Erfurt, January 28, 2026

KLIEMT.HR Lawyers wins case with landmark significance for the digitalized world of work before the Federal Labor Court

The Federal Labor Court confirms the definition of a workplace in the platform economy – Lieferando prevails in three parallel proceedings before the Federal Labor Court with KLIEMT.HR Lawyers.

Takeaway Express B.V. & Co. KG has prevailed in three parallel proceedings before the Federal Labor Court (BAG). The 7th Senate rejected the appeals filed by the employee side, thereby confirming the decisions of the regional labor courts. According to these decisions, so-called remote cities – supply areas without own employer functions – are not independent workplaces or parts of workplaces within the meaning of the Works Constitution Act (BetrVG). Works council elections cannot be held separately in these areas, but are linked to the hub cities responsible for their organization.

Essentially, all three proceedings revolved around the same legal question: Can deliverers who are deployed via app in a purely operational delivery area elect an independent works council, even though all employer functions – human resources, resource planning, disciplinary authority, IT control – are bundled elsewhere?

The BAG clarified, in line with its previous case law, that

- Remote cities without their own employer functions are not eligible for works councils.
- The connection under works constitution law remains with the organization created by the employer and the “institutionalized management structures” there.
- Works councils cannot be established “separately” in local employee groups where there is no real operational management center.

The appeals, which sought to shift these basic principles toward comprehensive independence for local delivery areas, were thereby unsuccessful. By confirming the decisions of the regional labor courts, the Federal Labor Court has made it clear that there will be no special path for the platform economy and the logistics industry via “co-determination in a vacuum.” Rather, the established principles of the concept of a workplace continue to apply—even and especially in highly digitized structures.

This decision sends a signal far beyond Lieferando. It answers a key question regarding co-determination in the digitalized workforce: co-determination continues to be linked to real operational management and organizational structures. Employers cannot be forced to artificially create “on-site employer functions” solely to enable new works council structures.

Lieferando mandated KLIEMT.HR Lawyers to clarify the fundamental issues.

Employment law advisors to Takeaway Express B.V. & Co. KG (Lieferando):

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About the proceedings:

The proceedings before the Federal Labor Court were the culmination of a conflict that had been growing for over six years regarding the correct structure of co-determination in a highly digitized business model. Since the first works council elections, the company had been confronted with hundreds of court cases, a three-digit number of conciliation committees, and recurring status disputes—often with the same fundamental question underlying them: Where can works councils be elected and who is responsible for whom? According to the statement of reasons for its decision, the Senate paid particular attention to the limits of judicial legal development. The employee side had attempted to effectively push the court into the role of a "substitute legislator" in order to fundamentally redesign the works constitution for platform-based delivery services. The BAG clearly rejected this.

About KLIEMT.HR Lawyers:

With around 100 lawyers working exclusively in employment law, KLIEMT.HR Lawyers is the largest law firm in Germany specializing in employment law. The law firm was founded in 2002 as a spin-off of a team led by Prof Dr Michael Kliemt and Dr Oliver Vollstädt from the Düsseldorf office of Clifford Chance. With offices in Düsseldorf, Frankfurt am Main, Munich, Berlin, Hamburg and Cologne, the firm is now one of the market leaders in employment law. More than half of the DAX companies, a large number of successful German SMEs and several global corporations rely on the employment law expertise of KLIEMT.HR Lawyers, as do numerous start-ups and scale-ups. KLIEMT.HR Lawyers advises on the implementation of restructuring and integration projects as well as on collective bargaining issues. Other areas of focus include works constitution law, company pension schemes, temporary employment, ESG, compliance and data protection. The firm also supports companies and top executives in all matters relating to manager liability, including litigation. KLIEMT.HR Lawyers has been ranked among the top law firms in employment law for many years by the leading ranking handbooks for commercial law firms, for example by JUVE, Legal 500 or Chambers, and is ranked in the "Tier 1". KLIEMT.HR Lawyers is the German member of IUS LABORIS, a global alliance of leading employment law firms in more than 55 countries and associated law firms in a further 60 countries. KLIEMT.HR Lawyers – together with the IUS LABORIS partner law firms – offers seamless employment law services in more than 100 countries worldwide.

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