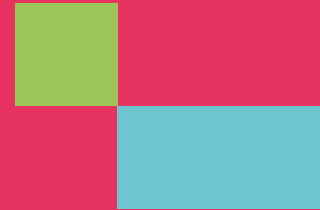
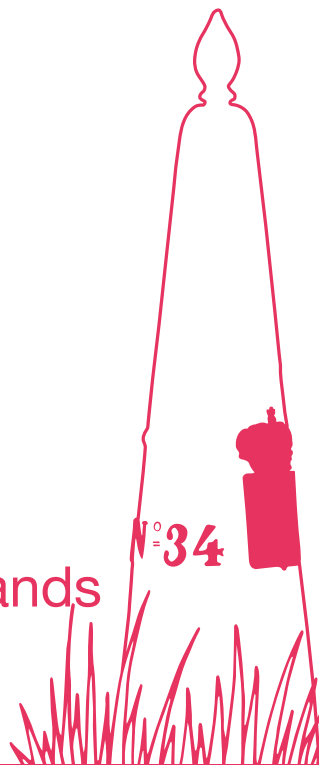


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Crossing borders as self-employed professional

between Belgium, the Netherlands
and Germany



Three countries, three systems, one economic area

Crossing borders as a self-employed professional in the Euregio Maas-Rhine (EMR), i.e. doing business in the border area between the Netherlands, Belgium and Germany, offers many opportunities. However, working as a self-employed in one (or more) neighbouring countries also means encountering **diverging national rules and regulations**, for example in the field of business law, social security and tax law. The aim of this brochure is to guide you through the applicable legislation (national, bilateral and European) in situations of cross-border entrepreneurship in the Belgian-German-Dutch border regions.

Where can I get personal advice and more information?

Cross-Border Information Points (GIP)

Cross-border Business Infodesk (ZZPPfM)

www.zzp-fabriek.nl/zzp-desk

GIP Maastricht

Maastricht International Centre (MIC)
Mosae Forum 10
NL-6211 DW Maastricht
www.grenzinfo.eu/emrm

GIP Aachen-Eurode

Citizens' service centre in the Katschhof
Johannes-Paul-II Strasse 1
D-52062 Aachen
www.grenzinfo.eu/emra

GIP Aachen-Eurode

Eurode Business Center
Eurode Park 1
D-52134 Herzogenrath
www.grenzinfo.eu/emra



ZFP FABRIEK



How to use this brochure?

Disclaimer

All information in this brochure has been compiled with the utmost care. Date of completion: January, 2022. We do not accept any liability for information that is nevertheless incorrect, incomplete or out of date. The published links (links to other websites/sources) were researched and compiled with the greatest care. The editors have no influence on the current and future design and content of the linked pages and therefore accept no liability for the linked content. The information in this brochure is of a general nature. Every self-employed professional has a different personal situation, background and other additional factors that may influence his/her personal situation. Therefore, a personal consultation addressing the personal situation of the independent entrepreneur is recommended.

[youRegion information brochure](#)

'Crossing borders as self-employed professional between Belgium, the Netherlands and Germany'

Addendum / Corrigendum Part 2

DGA considered self-employed in cross-border context

*'Persons partially employed in the Netherlands who, prior to 1 May 2010, were regarded as employees under Regulation 1408/71, but who are regarded as self-employed under Regulation 883/2004, [are] e.g. the **Managing Director-major shareholder (DGA: Directeur-Grootaandeelhouder)** and the auditor.'* (Freely translated – policy rule of the Dutch Social Insurance Bank (SVB), 'Overgangsrecht toepasselijke wetgeving' (Transitional law concerning the applicable legislation), [SB2267](#), 24 March 2022)

* * *

Supplement missing information

An **A1 certificate must ultimately always be issued by the competent State**, which is by no means always the country of residence. For example, a person lives in Belgium and is self-employed in the Netherlands. She will work in Germany for one month. It is not Belgium, but the Netherlands that has to issue the A1 certificate (posting) if all the conditions are met.

* * *

The competent authority in the field of social security in Belgium in the context of cross-border business is primarily the **National Institute for the Social Security of the Self-Employed (NISSE)** – see www.nisse.be. *The information on pages 21 and 23 should be supplemented (read) in this sense.*

* * *

Correction of legal basis and definition

Belgium has a **legal definition of a "self-employed person"**. For the application of the social status in favour of the self-employed, a "self-employed person" is to be understood:

'Any natural person who exercises a professional activity in Belgium by virtue of which he is not bound by an employment contract or by a statute.' (Article 3 of the Royal Decree no. 38 of 27 July 1967 organising the social status of the self-employed)

Cross-border self-employed professionals

Introduction - Three countries, three systems, one economic area

Crossing borders as a self-employed professional in the Euregio Maas-Rhine (EMR), i.e. doing business **in the border area between the Netherlands, Belgium and Germany**, offers many opportunities. However, working as a self-employed in one (or more) neighbouring countries also means encountering diverging national rules and regulations, for example in the field of business law, social security and tax law. The aim of this brochure is to **guide you through the applicable legislation** (national, bilateral and European) in situations of cross-border entrepreneurship in the Belgian-German-Dutch border regions.

Part 1 - Overview by country: The general requirements for starting a business in ...

Belgium

The Netherlands

Germany

- What is required when registering as a self-employed entrepreneur in the **country of establishment**?
- Which **legal form** do I choose for my business?
- How is **social security** organised for self-employed professionals?
- What **professional requirements** are there? Do I need a **licence** to run my business?
- How do I start a business if I **receive social benefits**?
- Where can I go for all my **business-related questions**?

Part 2 – General conditions and pitfalls of cross-border business in practice

- Which local laws and regulations exist regarding **market access** and business in the EMR?
- How does **taxation** work for cross-border self-employed professionals?
- Which typical **fiscal pitfalls** caused by legislative border effects can be avoided?
- How does the **compulsory social insurance work** for cross-border self-employed professionals?
- Which typical **pitfalls in social security** caused by legislative border effects can be avoided?
- How to deal with the **risk of false self-employment**?
- When will there be a procedure for **(employment) status determination**?
- Which special rules apply to cross-border workers in the **arts and culture sector**?
- What are particular **pitfalls caused by legislative border effects** in the arts and culture sector?



What is required when registering as a self-employed entrepreneur in the country of establishment?

Registration requirements

In Belgium, the basic requirements for registering as an entrepreneur are as follows:

- Every self-employed person must apply for a **company number** at a recognised business office.
- A company number is then obtained and registration with the public **Crossroads Bank for Enterprises (Kruispuntbank van Ondernemingen, KBO)** follows.
- **Joining the Social Insurance Fund** of your choice and paying social security contributions is mandatory, including for those who are self-employed.
- Joining a health insurance fund.



Which legal form do I choose?

Legal forms

In Belgium, there are companies with and without legal personality:

Without legal personality:

SOLE PROPRIETORSHIP (Eenmanszaak)

- Also named: “natural person”
- Low barriers for entry (no founding agreement required)
- Start-up possible **without capital**
- Entrepreneur is liable for debts of the company regarding both business assets as well as private assets
- Taxation: through the **personal income tax return**, the entrepreneur declares his income as profit from business activities
- VAT liable
- Compilation of an annual **customer list** mandatory

With legal personality:

PRIVATE LIMITED LIABILITY COMPANY (Besloten Vennootschap, BV)

- No absolute minimum requirement in place, but sufficient initial capital is required (financial plan of at least 2 years)
- A single founder is sufficient
- Requires a **notarial deed of incorporation** of the articles of association (possibly including an auditor’s report on contribution in kind or labour)
- Capital of a BV is divided into shares held by a shareholder(s)
- In a small BV, the director is often the sole shareholder (formerly called the manager (zaakvoerder))
- The BV is liable for any debts
- In Belgium, a director of a BV automatically qualifies as a self-employed person and **falls under the self-employed status**
- The BV pays corporation tax on their profit
- VAT liable



Tax declaration when staying abroad: ‘non-residents income tax’ (FPS Finance)
<https://finance.belgium.be/en/independent-professions> (EN)



Liberal professionals are also “enterprises” within the meaning of the Belgian Economic Code. The legal form in which a liberal profession is practised is an individual choice. Because liberal professionals have certain characteristics which a traditional enterprise often does not have, they are subject to an adapted approach for a number of matters.
www.federatievrijberoepen.be (NL)



How is social security organised for self-employed professionals?

Compulsory registration for social security

Every self-employed person in Belgium is **obliged to join a social insurance fund** and to pay the compulsory social contributions. The amount of the compulsory contribution depends on the nature of the self-employed person. The self-employed person in a secondary occupation is usually also an employee in addition to his self-employed activities.

www.rsvz.be – National Institute for the Social Security of the Self-employed (NISSE)



ATTENTION: For a self-employed person in a secondary occupation, working as a salaried employee outside Belgium can have important consequences for the social security position of the self-employed person concerned!



What professional requirements are there? Do I need a licence to run my business?

Possible professional requirements: Certificate of Competence

Only in the Brussels Capital Region and in the Wallonia Region is it necessary to be able to demonstrate sufficient basic knowledge of business management in order to start one's own business. This is no longer required in the Flemish Region.

www.belgium.be – search term: *business*

Specific professional requirements

For certain professions, the self-employed entrepreneur must meet professional qualifications; see the website for this.

www.economie.fgov.be – search term: *enterprises professional qualifications*



The economy falls under the competence of the Belgian regions. Therefore, there may be differences between Flanders and Wallonia regarding which formalities may be imposed.



How do I start a business if I receive social benefits?

Starting from social benefits

Starting from unemployment (unemployment regulation) is possible in Belgium through a measure which translates to: “Springboard to self-employment”. The National Employment Office (Rijksdienst voor Arbeidsvoorziening, RVA) applies the unemployment insurance system and a number of employment measures.

Information on the RVA Information Sheet T158:

www.rva.be/nl – search term: *Springplank naar zelfstandigen* (only in Dutch) (NL)

Legal information about the unemployment regulations in Belgium:

<https://werk.belgie.be/nl> – FPS Employment, Labour and Social Dialogue – employment contracts (general information) (EN)

More specifically for information in English see

https://www.belgium.be/en/family/social_security_in_belgium (EN)



Where can I go with all my business-related questions?

Contact point Belgium (Services Directive)

www.business.belgium.be/en

Accredited business counters (public service)

Belgium has contact points for companies, the so-called Accredited business counters (ondernemingsloketten). This one-stop business shop carries out a number of tasks (such as compulsory administrative formalities) which in the past required direct contact with various authorities. The business counters ensure that certain data is accessible to the public. This data is free of charge for the administrative services of the Belgian state; communities (gemeenschappen); regions (gewesten); provinces (provincies) and municipalities (gemeenten); etc. In addition, the accredited business counters perform, among others:

- all the procedures and formalities needed for access to their profession and all applications for authorisation, which are necessary for the exercise of their activities as self-employed persons;
- authorisations, such as:
 - entrepreneurial skills, i.e. proof of basic business management skills, inter-sectoral professional skills and/or sectoral professional skills for specific activities
 - the professional card for foreign nationals (for third-country nationals who are not nationals of an EU Member States or assimilated countries)

Eight business counters are accredited. They have numerous offices throughout the country:

www.economie.fgov.be – search term: *Accredited business counters* (EN)



What is required when registering as a self-employed entrepreneur in the country of establishment?

Registration requirements

In the Netherlands, the basic requirements for registration as an entrepreneur are as follows:

- Every company must be registered in the Commercial Register of the **Chamber of Commerce (Kamer van Koophandel, KvK)**.
- When registering in the Commercial Register of the Chamber of Commerce, the data of the company is passed on by the Chamber of Commerce to the Tax Authorities for the purpose of VAT/Sales Tax registration.
- The company will then be notified by the Tax Office on registration into its records.
- Finally, the company obtains their sales tax number and their VAT identification number.



A self-employed person with a liberal profession must also be registered in the Trade Register. This means that everyone working in the liberal professions are obliged to register with the Chamber of Commerce. For more information see:

<https://ondernemersplein.kvk.nl> – search term: *vrije beroepen* (NL)

<https://business.gov.nl/regulation/crossborder-establishment/> (EN)



Which legal form do I choose?

Legal forms

In the Netherlands, there are companies with and without legal personality:

Without legal personality:

SOLE PROPRIETORSHIP (Eenmanszaak)

- Low barriers for entry (no form required, no foundation agreement)
- Start-up possible **without capital**
- Self-employed is liable for debts of the company regarding both business assets as well as private assets
- Taxation: through the **income tax return**, the entrepreneur declares his income as business profit
- Making use of tax benefits as a self-employed is possible
- VAT liable



Forms of cooperation between two or more entrepreneurs: the partnership and the general partnership (VOF).

With legal personality:

PRIVATE LIMITED LIABILITY COMPANY (Besloten Vennootschap, BV)

- Requires a **notarial deed of incorporation** of the articles of association
- Capital of a BV is divided into shares held by a shareholder(s)
- In a small BV, the Managing Director (DGA: Directeur Grootaandeelhouder) is often the sole shareholder.
- Minimum deposit of €0.01 in the company by means of cash or in kind
- The BV is liable for debts
- The DGA is employed as an **employee** of the BV
- The BV pays corporation tax on the profit
- The DGA pays income tax on his salary
- VAT liable



How is social security organised for self-employed professionals?

Social insurance is partly compulsory, partly voluntary

The self-employed entrepreneur is not automatically insured for loss of income through illness, occupational disability or unemployment. **National insurance schemes however are compulsory for everyone who works or lives in the Netherlands.** The national insurances are: the Survivor Benefit (Algemene nabestaandenwet, Anw), Old Age Pension (Algemene Ouderdomswet, AOW) and the Long-Term Care Act (Wet langdurige zorg, Wlz) which regulates intensive care and special health costs. The self-employed person pays the national insurance contributions through income tax. Other social risks, such as illness or incapacity for work, can only be covered by **voluntary insurance**.



In the Netherlands, the Tax Office is responsible for collecting both (income) taxes and social security contributions.



What professional requirements are there? Do I need a licence to run my business?

No specific professional requirements

In the Netherlands, no proof of competence, i.e. the official demonstration of sufficient basic knowledge of business management, is required as in some parts of Belgium. There are also far fewer formalities to deal with than in Germany, even if the company requires specific professional requirements or qualifications.

This being said, the Netherlands does have certain protected or regulated professions for which the entrepreneur must possess professional qualifications. You must prove that you have the correct training and experience to practise these professions (by means of a diploma, certificate or exam) and/or register with a professional organisation.

See the website for this:

<https://ondernemersplein.kvk.nl> – search term: *beroepseisen*(NL)

<https://business.gov.nl/regulation/professional-qualifications/> (EN)



How do I start a business if I receive social benefits?

Starting from social benefits

Starting as a self-employed person with an unemployment benefit (werkloosheidsuitkering, WW) in **the Netherlands** is only possible with permission of the Dutch public employment service, the **Employee Insurance Agency (Uitvoeringsinstituut Werknemersverzekeringen, UWV)**. For the requirements and conditions, see this link:

www.uwv.nl/particulieren – search term: *eigen bedrijf starten* (NL)

Under certain conditions, a person can start as a self-employed person under the social assistance system (Bijstand voor zelfstandigen, Bbz). To do so, this person must report to the Social Services Department (Sociale Dienst) of his or her municipality. For more information see this link:

www.rijksoverheid.nl – search term: *eigen bedrijf starten bijstand* (NL)

If receiving an occupational disability benefit (Wajong, WIA, WAO, WAZ or Ziektewet) it is still possible to start your own business. For the requirements and conditions, see this link:

www.uwv.nl/particulieren – search term: *eigen bedrijf starten met WIA* (NL)



Where can I go with all my business-related questions?

Contact point Netherlands (Services Directive)

Central contact point (EU Services Directive) for self-employed entrepreneurs and their business inquiries:

<https://ondernemersplein.kvk.nl> (NL),

<https://business.gov.nl> (EN)

Business Counters Netherlands

In addition, every municipality in the Netherlands has its own Business counter (ondernemersloket) where entrepreneurs from that municipality can go with various questions about establishment and opportunities, among other things. This can be found on the website of the municipality concerned.



For help with starting up and drafting a Business Plan, one can go to the Starters Centre Limburg: www.starterscentrum.nl



What is required when registering as a self-employed entrepreneur in the country of establishment?

Registration requirements and taxes

In Germany, the registration requirements differ for each profession. Every self-employed person must register with the tax office (**Finanzamt**), where they must also submit their tax returns. For a **Freiberufler** (for example, freelancer), which is a German term for those employed in liberal professions, this one-off registration is in principle sufficient. This applies to all professional activities which are not subject to the Crafts, Trade and Industry Regulation Act (Gewerbeordnung, GewO). Small businesses with a simple and limited business structure and those who are self-employed or working in the liberal professions have neither to be registered with the Chamber of Commerce (Industrie- und Handelskammer, IHK) nor the Chamber of Crafts (HWK). Small business owners (Kleingewerbetreibende) and **Kaufleute** must additionally register (Gewerbe anmelden) with the public commercial office (Gewerbeamt), pay their trade tax (GewSt) and become members of the Chamber of Commerce (IHK) or Chamber of Crafts (HWK). Some professions are required by the Commercial Code (HGB) to keep regulatory books (Buchführungspflicht).



The Finanzamt decides which category of self-employed professional an entrepreneur belongs to (e.g. on the basis of a description of the professional activities (Tätigkeitsbeschreibung)).



Which legal form do I choose?

Legal forms

In Germany, there are companies with and without legal personality:

Without legal personality:

FREIBERUFLER (freelance professionals)

- The most important feature of this form is the close link between personal training and professional independence
- Examples are lawyers, doctors, architects, journalists, etc.
- Is liable for debts of the enterprise with the company assets as well as with the private assets

KLEINGEWERBETREIBENDE (small business owners)

- A Kleingewerbe (small business) is an enterprise that, due to its nature and size, does not require any facilities and equipment
- Is liable for debts of the enterprise with both company assets as well as private assets

With legal personality:

UG **UNTERNEHMERGESELLSCHAFT** (entrepreneurial company with limited liability)

- "Mini-GmbH"
- Requires a notarial deed of incorporation of the articles of association
- Capital is divided into shares held by shareholder(s)
- Must have one or more directors (Geschäftsführer)
- The authorised capital of a UG must be at least €1
- The UG is liable for any debts

GESELLSCHAFT MIT **BESCHRÄNKTER HAFTUNG,** **GmbH (Limited Liability Company)**

- Idem UG
- However, the registered capital of a GmbH must be at least €25,000
- Bilanzierungspflichtig - Obligation to draw up an annual financial balance sheet (HGB)



Specific professional group: The definition of a Kaufmann is legally determined by the Handelsgesetzbuch (HGB). This depends on the turnover, profit, business relations, extent of the services offered and so on. A Kaufmann is personally liable with his assets for debts of the sole proprietorship.



How is social security organised for self-employed professionals?

Generally there's no compulsory social insurance, with exceptions

In general, it is not compulsory for self-employed persons to take out social insurance, **except for accident insurance in certain cases**. For the risks of old age, death and incapacity for work, voluntary insurance can be taken out with the German pension insurance (Deutsche Rentenversicherung). Self-employed entrepreneurs are, like all citizens in Germany, only obliged to have health insurance. They have a choice between voluntary affiliation to the statutory health insurance scheme or affiliation to a private health insurance scheme (in this case, no later changeover is possible).



In addition, the compulsory insurance against certain social risks may differ from one professional group to another. In Germany, for example, artists are obliged to join the Künstlersozialkasse. There are also special insurances for the liberal professions, information on this can be found at:

www.dguv.de – search term: *Gesetzliche Unfallversicherung Unternehmen* (DE)

<https://www.dguv.de/en/index.jsp> search term: *entrepreneur* (EN)



What professional requirements are there? Do I need a licence to run my business?

Specific professional requirements (necessary formalities)

In Germany, craft activities/professions and building work/professions are governed by the Crafts Law, particularly the Crafts Regulation Act - the *Handwerksordnung* (HwO). The **Handwerksordnung** specifies which work is exempt from permit requirements and which work requires a permit. The qualification for these activities must be demonstrated by means of diplomas and experience, via the so-called *Meisterbrief* (Master craftsman's diploma).

If one wishes to carry out such work in Germany from the Netherlands or Belgium, the **professional competence must be demonstrated by means of an EU declaration** in the following manner:

- Apply for an EC declaration through the Chamber of Commerce, costs €80.
- Submit the EC declaration to the German *Handwerkskammer* (HWK), the local Chamber of Crafts.
- This entitles the self-employed to a *Handwerkskarte* (craftman's card).
- Only when the self-employed entrepreneur has the *Handwerkskarte* they're allowed to carry out a protected craft in Germany.

On the website of the *Zentralverband des Deutschen Handwerks*, ZDH (German Confederation of Skilled Crafts), you will find an up-to-date **overview of the professions subject to licensing** and a map of all regional *Handwerkskammern* (HWKs):

www.zdh.de – search term: *Handwerksordnung* (DE)

www.ihk.de – search term: *Existenzgründung und Unternehmensförderung* (DE)

www.zdh.de – search term: *Adressen Handwerkskammern* (DE)

<https://www.zdh.de/english/the-skilled-crafts-organisation-and-the-zdh/> (EN)



Access to so-called liberal professions also requires an application for a licence in several cases. Further information and advice on assessing whether or not the professional activity in question could be considered a liberal profession can be found at the following organisations:

www.freie-berufe.de – Bundesverband der freien Berufe, BfB (Federal Association of Liberal Professions)

<http://ifb.uni-erlangen.de/en/> – Institut für Freie Berufe, IFB (Institute for Liberal Professions)



How do I start a business if I receive social benefits?

Starting from an allowance

In Germany, it's possible to start a business both if you receive unemployment benefit (Arbeitslosengeld, ALG) and if you receive social assistance (ALG II). For the requirements and conditions see the website of the Bundesagentur für Arbeit (BA):

www.arbeitsagentur.de – search term: *durchstarten Existenzgründung* (DE)

<https://www.arbeitsagentur.de/en/welcome> – search term: *Starting a business* (EN)



Where can I go with all my business-related questions?

Germany contact point (Services Directive)

Gründerplattform Behördenwegweiser (guide to relevant authorities when starting a business in Germany)

<https://gruenderplattform.de/> – search term: *behoerdenwegweiser* (DE)

Overview of all central contact points in each Bundesland

www.ixpos.de – search term: *points of single contacts* (EN)

Business Counters in Germany

For all of Germany, please contact:

www.bmwi.de – search term: *Ansprechpartner* (DE)

<https://www.bmwi.de/Navigation/EN/Home/home.html> (EN)

Each federal state has its own business counter. You can search for the desired federal state via the above-mentioned website.

For North Rhine-Westphalia, the business counter can be found at:

<https://service.wirtschaft.nrw/der-einheitliche-ansprechpartner-nrw/ueber-uns> – Go to: *Einheitliche Ansprechpartner* (DE)

<https://service.wirtschaft.nrw/en/node/40> – search term: *points of single contacts* (EN)

<https://www.make-it-in-germany.com/en/> (EN)

Which local laws and regulations exist regarding market access and business in the EMR?

Before you do business across the border for the first time

Obligation to register for foreign entrepreneurs for the provision of services

Belgium

For foreign self-employed persons who provide services temporarily in this country, there is a general obligation to register in Belgium (see LIMOSA on www.limosa.be).

The Netherlands

For some sectors, the Netherlands has a reporting obligation for foreign self-employed persons who temporarily provide services in this country (see www.postedworkers.nl). For example:

- **construction industry**
- **agriculture, forestry and fisheries**
- **industrial sectors (meat industry, etc.)**

<https://english.postedworkers.nl/> (EN)
<https://deutsch.postedworkers.nl/> (DE)

Germany

In Germany, there is a registration obligation for foreign self-employed persons who temporarily provide services in Germany. In particular, there is a reporting obligation for posting in various sectors such as the construction industry or the meat industry (see www.meldeportal-mindestlohn.de).

www.zoll.de/EN/ (EN) **German Customs Authority (Zoll)** – search term: *notification* (pursuant to the Minimum Wage Act etc.)

➔ *In addition, the application for an A1 certificate is obligatory in all three countries. An A1 certificate shows in which country the self-employed person is socially insured. This A1 certificate should normally be applied for in the country of residence.*

Specific professional requirements

Recognition of diplomas and professional qualifications

Some professions (such as nurses, physiotherapists or teachers) are regulated. Governments do this for reasons of consumer and patient protection. For these professions, there are legal rules laying down which diplomas and work experience (also called professional qualifications) are required to work in the profession. Do you have a foreign diploma and do you want to work in a regulated profession across borders? Then you must first have your professional qualifications recognised. More information on the **ITEM Cross-border Portal** and via the national competent authorities below:

<https://itemcrossborderportal.maastrichtuniversity.nl/link/id/nzudxZdokeAmZWjL>

Belgium

Be-Assist – Belgian assistance centre for the recognition of professional qualifications

Contact point for the accreditation of professional qualifications in Belgium: www.economie.fgov.be – search term: *professional qualifications* (EN)

The Netherlands

NUFFIC national centre of expertise for educational comparison and diploma evaluation

Contact point for the recognition of professional qualifications in the Netherlands: www.nuffic.nl – search term: *National expertise centre for the recognition of foreign qualifications* (EN)

Germany

Anerkennungportal - information portal of the German authorities, Federal Institute for Vocational Training (BIBB)

Contact point for the recognition of professional qualifications in Germany: www.anerkennung-in-deutschland.de

Which local laws and regulations exist regarding market access and business in the EMR?



Regional trade representatives

Euregional Chamber of Commerce

The four cooperating Chambers of Commerce (IHK Aachen, IHK Eupen-Malmédy-St.Vith, CCI Liège-Verviers-Namur, Voka- Limburg Chamber of Commerce) in the Euregio Meuse-Rhine, de Stichting Structuur Versterkende Projecten Zuid Limburg and LIOF want to promote international trade and entrepreneurship in this region and support companies in their business activities.

www.euregiochambers.eu

- Industrie und Handelskammer (IHK/CC) Aachen
- Industrie und Handelskammer (IHK/CC) Eupen Malmédy-St. Vith
- Chambre de Commerce et d'Industrie (CCI) de Liège - Verviers - Namur
- Voka - Kamer van Koophandel Limburg
- N.V. LIOF



How does taxation work for cross-border self-employed professionals?



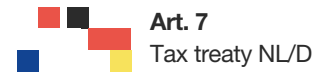
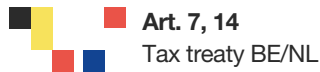
Applicable legislation

Preventing double taxation (bilateral tax treaties)

Each resident pays tax in the country where they work/operate (basic principle of taxation). That is to say, the resident is principally tax liable in the country where they work and only for the economic activities performed there. This is contrary to the basic principle of social security coordination.

Basic rule: Living and working in two countries

The country of residence has the authority to levy tax, unless the self-employed person possesses a permanent establishment in the country of work. Where the entrepreneur must pay tax is regulated in the double taxation treaty. If the cross-border self-employed professional has a permanent establishment in the country of work, for example a shop or an office, the entrepreneur must pay the taxes on the income that is attributable to the activities in the permanent establishment in the country of work.



If, due to the nature of the work, it is unclear where the work is carried out, it is possible to request a **ruling** from the national tax authority. In addition, it is also important to prove and demonstrate that the self-employed entrepreneur works in the country where the client(s) is (are) established. For example, by means of invoices stating the location.



VAT reverse charge mechanism

Cross-border supply of goods and services

When an entrepreneur supplies goods or services to customers in another EU country, he does not, in principle, charge VAT to entrepreneurs from the other EU country. With goods, the entrepreneur applies the 0% rate and with services the entrepreneur shifts the VAT to the customer. The customer, in case they're an entrepreneur and/or liable for VAT, pays the VAT in their own country.

For customers who are unable to submit a VAT return, the self-employed does charge the relevant VAT. This applies to both private individuals and organisations that are not subject to VAT.

Organisations that are not liable for VAT typically amount to foundations, associations and government bodies.

➔ *Pay close attention when invoicing and do not simply assume that the reverse charge mechanism applies to cross-border supplies of goods and services.*

➔ *Entrepreneurs can find out how to apply the reverse charge mechanism from the tax authorities in their country of work or residence.*

<https://finance.belgium.be/en/enterprises> – search term: VAT

www.belastingdienst.nl – Go to: English page (end of page), search term: VAT

www.bundesfinanzministerium.de – search term: VAT (EN)

Which typical fiscal pitfalls caused by legislative border effects can be avoided?

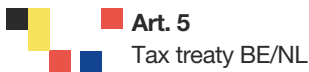


Exception bilateral tax treaties

Permanent establishment under international law

According to the three tax treaties, a permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on, such as:

- a place of leadership
- a branch
- an office
- a factory
- a workshop.



Attention!

Practical application

Special attention is required in a situation where a self-employed person works outside of the country where the enterprise is established, if these **foreign activities have a certain degree of regularity and importance** (such as a place of management, a workplace or a fixed pattern). In that case, the right to levy tax on these activities may be allocated to the country where these activities take place, because the competent tax authorities may (come to) regard these activities as a 'permanent establishment' in its own right.

When assessing a permanent establishment, the competent tax authority, wherever the permanent establishment may be located, always looks at the facts and circumstances, yet the weighing of the various factors may vary from country to country. It is important to keep the **necessary documentation** (e.g. train tickets, fuel bills, invoices, agenda notes).



The Belgian tax authority states, for example:

Results from services provided by foreign companies in Belgium for more than 30 days in a 12-month period (status 2020) - without a fixed place of business - are taxable in Belgium and must be declared. Both a corporate tax return as well as a corporate contribution to the Belgian social insurance fund is required.



In principle, Belgium may only levy taxes if there's a permanent establishment according to the tax treaty between the Netherlands and Belgium.



Personal advice

Cross-Border Employment and Enterprise Team (GWO)

More information is available via the joint service of the three competent tax authorities (BE Federale Overheidsdienst Financiën, NL Belastingdienst, NRW Finanzverwaltung)

www.belastingdienst.nl – Go to: English page (end of page), *Team GWO (Cross-Border Employment and Enterprise team (GWO))*

How does the compulsory social insurance work for cross-border self-employed professionals?



Applicable legislation

EU coordination rules (Regulation EU 883/2004)

A self-employed person is **only socially insured in a single country** (basic principle of social security). Only one Member State's social security legislation can be applicable to any individual cross-border work situation.

25% rule: living and working in two countries

The self-employed person is socially insured in the country where he works, i.e. where he conducts his business (art. 11 (3) (a), main rule country-of-work). If he is active in **two or more countries**, the following rules apply:

- If the self-employed person works **25% or more** in their country of residence, than they are socially insured in their country of residence (Article 13, paragraph 2 under a in conjunction with Article 14, paragraph 8 EU nr. 987/2009). Activities such as acquiring customers and writing offers and invoices from the country of residence also count towards the 25% limit. When determining the 25% limit, not only are the ratio of hours worked considered, but also the services provided and income acquired.
- If the self-employed person works **less than 25%** in his country of residence, they are socially insured in the member state where the **centre of interest** of his activities is located (article 13 paragraph 2 sub a in conjunction with article 14 paragraph 8 EU nr. 987/2009).



See the topic PITFALLS on priority rules and other specific cases regarding hybrid work/combined social statutes, as well as links to further information and advice.



Important formality

Application for the A1 certificate

If the self-employed person operates across borders, or if they post themselves abroad for an assignment, or if they work as a self-employed person in two or more Member States at the same time, they have to apply for an A1 certificate. An A1 certificate clarifies in which country the self-employed person is socially insured.



*An A1 certificate should always be applied for in the **competent State**, regardless of whether the self-employed activity involves occasional cross-border activities (e.g. when self-employed person post themselves to a neighbouring country to carry out their work), permanent cross-border self-employed activities or simultaneous work in several Member States.*



***ATTENTION:** Some EU countries require an A1 certificate to perform activities. Acquiring an A1 certificate is always advisable when working across borders.*



Which typical pitfalls in social security caused by legislative border effects can be avoided?



Cross-border self-employed activities

Starting a business as a benefit recipient

The consequences for social security of cross-border business activities when starting the enterprise from a social benefit payment can differ from case to case.

➔ *Therefore, always seek advice from the competent authorities!*



Working in two or more countries

Hybrid workers/ combinations of social statuses

In this case, the EU Regulation 883/2004 on social security coordination defines clear priority rules:

- If the person works in different Member States as both an **employee** and a self-employed person, he/she is covered by social insurance in the country where he/she works as an employee (Article 13(3)).
- If the person works in different Member States as both a **civil servant** and a self-employed person, he or she is covered by social insurance in the country where he or she works as a civil servant (Article 13(4)).



Attention!

Self-employed as a main or secondary occupation?

Cross-border working as a self-employed person in a secondary occupation may have important consequences for the social security position of the self-employed person concerned.



For example, if the person works as a self-employed person in Belgium and as an employee in the Netherlands.



According to the European rules of prioritisation, the social insurance obligation lies in the Netherlands, because they are an employee there. Therefore, they cannot join one of the social insurance funds for self-employed persons in Belgium, because they can only be socially insured in one country.



Information and expert advice

Competent authorities in the field of social security

Belgium

NISSE - National Institute for the Social Security of the Self-Employed, **RSZ** - Rijksdienst voor Sociale Zekerheid (NL/FR/DE) www.nisse.be & www.rsz.be

The Netherlands

SVB - Sociale Verzekeringsbank, Bureaus voor Belgische (BBZ) en Duitse Zaken (BDZ) (EN) www.svb.nl/en/bbz-bdz

Germany

DVKA - Deutsche Verbindungsstelle Krankenversicherung Ausland (DE) www.dvka.de



Working in two or more countries

Home office

For various reasons, an entrepreneur can decide to have a home office (temporarily). This is possible, but the entrepreneur must observe certain rules, depending on the country:

www.financien.belgium.be –
search term: *zelfstandigen & vrije beroepen*

<https://ondernemersplein.kvk.nl/> (NL)

<https://business.gov.nl/> (EN)

www.existenzgruender.de –
Ga naar: *Gründung vorbereiten*, Ga naar: *Gründungswissen*,
Ga naar: *Standort*

→ For example, a self-employed person works in the neighbouring country while also working at home (in the country of residence). Then the 25% coordination rule on the social security obligation for working in two or more countries can apply to him.



Working in two or more countries

In hindsight, incorrectly insured
In very exceptional cases (lasting a number of years), it may happen that someone has been incorrectly socially insured for a long time. In such a case, the competent authorities of two or more Member States can agree on how to deal with such a case, by concluding a derogation agreement based on Article 16 of Regulation 883/2004.



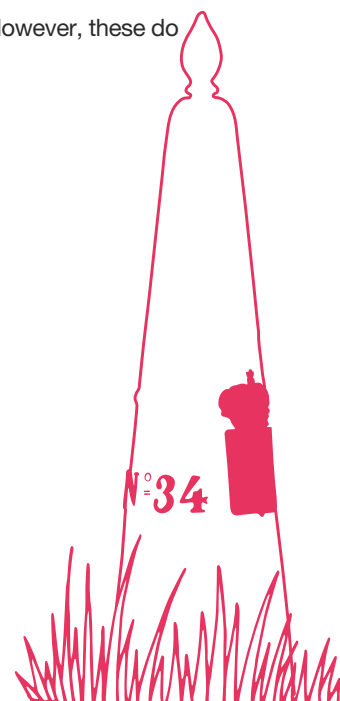
COVID-19 pandemic/crisis measures

Pandemic related aid measures

In response to the Corona pandemic, various support measures have been taken for entrepreneurs. However, these do not always guarantee 'cross-border access'. For more information see:

GrensInfoPunten (GIP)
www.grenzinfo.eu –
search term: *Coronavirus en grensganger*

ITEM Cross-border Portal
<https://itemcrossborderportal.maastrichtuniversity.nl> –
search term: *corona news* – go to: *Entrepreneurs/Employers*



How to deal with the risk of false self-employment?



Divergent statutes

Legal position of the self-employed

Belgium

Legal definition of a self-employed person

Belgium has a legal definition of a “self-employed person”. For the application of the social status in favour of the self-employed, a ‘self-employed person’ is to be understood as:

‘any natural person who exercises a professional activity in Belgium by virtue of which he is not bound by an employment contract or by a statute.’ (Free translation - Article 3 of the Royal Decree no. 38 of 27 July 1967 organising the social status of the self-employed)

In addition, the following terms are used in Belgium: *eenmanszaak* (sole proprietorship), *zelfstandige in hoofdberoep* (self-employed as a main occupation), and *zelfstandige in bijberoep* (self-employed as a secondary occupation). These qualifications are important for determining the legal obligations of the self-employed person.

The Netherlands

Self-employed without personnel (ZZP) is not a legal concept

In the Netherlands, the following terms are used: *freelancer*, *eenmanszaak* (sole proprietorship) and **zzp-zelfstandige zonder personeel (self-employed without personnel)**. There is no singular, unambiguous term in use. The entrepreneur registers at the Chamber of Commerce (Kamer van Koophandel) as a sole proprietorship. For the income tax return, the company is also a **sole proprietorship**. However, there is no legal definition.

In addition, according to established case law (tax law), a professional is considered self-employed if their work is performed by the taxpayer independently, at his or her own risk/ expense and he or she thereby runs a business risk (ECLI:NL:GDHA:2018:1184).

Germany

Solo-Selbständige is not a legal concept

In Germany, there is no legal definition for the term Solo-Selbständige (solo-self-employed). This applies to labour law as well as to tax and social security law and criminal law, which must also be taken into account.

There is a consensus that one can only speak of self-employment when individuals (entrepreneurs), who do not have their own employees, carry out their work and services independently, i.e. independently of instructions and not in personal dependence. These two characteristics of solo and self-employed are distinctive. The following terms are also used in Germany in addition to Solo-Selbständige: **Einzelunternehmer (sole proprietor)**, **Kaufmann (merchant)**, **Kleingewerbetreibende (small business owner)**, **Freiberufler (freelance professional)**. These qualifications are important for the entry or exclusion from the trade register, *Gewerbeamt* or (solely at the) *Finanzamt*.



Risk of reclassification

False self-employment: Differing legal criteria

As a self-employed person, you must work solely on your own account. This means that there must not be any relationship of authority or command between you and your client. To conduct work activities under the authority of an employer would, under normal circumstances, qualify as salaried employment.

Depending on the jurisdiction in each country, different factors weigh into the assessment of whether a certain situation is legally considered false self-employment. As a result, a risk of false self-employment may arise. For example, when a self-employed person works for a singular client. Such a relation produces recognisable similarities to salaried employment, such as subordination and remuneration. Each country applies its own criteria for the demarcation between self-employment and salaried employment, which is checked by national authorities. The following factors usually play a role in these checks:

- Owning various clients;
- The freedom as a self-employed person to organise one’s own work (no demonstrable relationship of authority);
- The client may not oblige the self-employed person when, where and how the tasks are to be carried out.

When will there be a procedure for (employment) status determination?

Belgium

The **National Institute for the Social Security of the Self-Employed (NISSE)** checks what the actual work situation is, what it has been labelled as on paper and accordingly whether the relationship qualifies as an employment contract. If a work situation does not meet the criteria, the NISSE can establish an employment relationship based on facts, even if the person in questions writes out invoices and has a VAT number. When assessing (false) self-employment, the NISSE assesses the work situation for a number of sectors established by law on the basis of specific criteria, in addition to the general criteria (chosen status, free organisation of working time and work, hierarchical control). For more information see the website of the Federal Public Service (FPS) Employment, Labour and Social Dialogue. If an employment relationship is unclear, de Commissie ter regeling van de Arbeidsrelatie (the Employment Relations Commission) of the FPS Social Security can give a ruling (upon request). It will decide whether someone should be considered self-employed or an employee. Control by the NISSE is done in cooperation with the RSZ.

For more information see:
(FPS) <https://employment.belgium.be/en/themes> – search term: *employment contracts* (EN)
<https://commissiearbeidsrelaties.belgium.be/nl> (NL/FR)

The Netherlands

The **Belastingdienst** (Dutch Tax Office) checks what work situation a self-employed person has. According to the tax office, someone is an entrepreneur if he/she supplies goods and/or services in exchange for money, ensures the continuity of his/her business, runs a business risk and is liable for the debts of his/her business, has several clients (the Tax Office use the criterion of at least three clients as a guideline) and is free to decide on his/her own how to carry out his/her activities. Since 2020, the Tax Office has had a policy of stricter supervision of possible cases of false self-employment following the legislation in force (Wet DBA).

For more information see:
(Tax Office) www.belastingdienst.nl – search term: *wet DBA* (NL), Go to: *German page, business*

(Dutch Chamber of Commerce) <https://business.gov.nl/> – search term: *Avoid false selfemployment* (EN)

Germany

Several authorities may have an interest in investigating false self-employment in Germany. Such monitoring is mainly carried out by the German Rentenversicherung, for the labour court, the Finanzamt (German Tax Office) or the Social Insurance Institution (Sozialversicherungsanstalt). Both the client and the contractor may request a determination of a person's legal employment status from the **Clearingstelle of the German Pension Insurance Association (Deutsche Rentenversicherung Bund, DRV)**. The Clearingstelle is the decision-making body of the German pension authority (DRV) in deciding whether someone is an employee or self-employed. At the request of the persons concerned (employer, employee, client, contractor), it determines the status, i.e. whether the person is an employee or self-employed. The decision is legally binding.

www.deutsche-rentenversicherung.de – search term: *clearingstelle* (DE)

www.aachen.ihk.de – search term: *Scheinselbststaendige (criteria)* (DE)

Which special rules apply to cross-border workers in the arts and culture sector?

Special rules

Social security

Each country in the EMR has legal exceptions for these professions because of the special circumstances in which they are typically practiced.

Belgium	The Netherlands	Germany
<ul style="list-style-type: none"> ■ No separate social security status (no separate contributions), joining Social Insurance Fund (Sociaal Verzekeringsfonds) ■ The Artists' Committee (Commissie Kunstenaars) evaluates activities and formalities such as: <ul style="list-style-type: none"> ■ Artist card (occasional art); holder is not covered by social security legislation ■ Artist's visa ("system article 1bis" of the law of 27 June 1969); classic employment contract missing; possibility of accessing the social security regime for employees even in absence of a subordination/overarching authority ■ Certificate of self-employment, valid for max. 2 years <p>www.artistatwork.be (NL/FR/DE)</p>	<ul style="list-style-type: none"> ■ National insurance applies to everyone, no separate scheme for artists (i.e. only AOW (old age), ANW (surviving dependants), WLZ (long-term care), AKW (child benefit)) ■ Self-employed persons must personally arrange matters of income in case of unemployment, sickness and disability <p>www.beroepskunstenaar.nl/en – search term: <i>Overview social security</i> (EN)</p> <ul style="list-style-type: none"> ■ Exception on live performances lasting less than 3 months: The artist regulation (fictitious employment) may apply if an artist is engaged for a particular performance is <p>www.belastingdienst.nl – search term: <i>artiesten</i> (NL)</p>	<ul style="list-style-type: none"> ■ Separate social security regime for artists and performers through the Social Insurance for Artists Act (Künstlersozialversicherungsgesetz, KSVG), the Künstlersozialkasse (KSK) (Artists' Social Insurance Fund) is responsible for implementation ■ Income is guaranteed in case of retirement, sickness and disability ■ Similar level of statutory social insurance as employees, but not insured against accidents and unemployment ■ Artists only pay half of the contributions themselves, with the amount depending on their income ■ The Künstlersozialkasse (KSK) determines who is obliged to be insured and sets the level of contributions <p>www.kuenstlersozialkasse.de</p>



→ **Restrictive administrative requirements for highly mobile workers**
CAUTION: There may be potential limitations **in the use of A1 declarations** because they are formatted for 'standard' employment situations. That is, there may be hindrances in applying them to non-standard types of employment and where a prediction of work activity over a longer period is difficult.

→ Specific obligatory formalities such as **arrival declarations** and contractual declarations (e.g. in the context of posting) may create additional administrative burdens for highly mobile border workers.

Further information and advice

- www.smartbe.be/nl – The Smart cooperative
- www.touring-artists.info – German information portal for touring artists
- www.cultuurloket.be – Cultuurloket, Belgian/Flemish Information Centre
- www.dutchculture.nl/en – Dutch Culture, Dutch information portal
- www.on-the-move.org/about – On the Move-network for cultural mobility

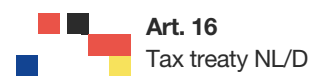
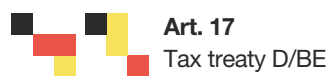
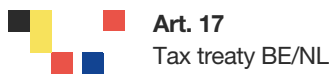
What are particular pitfalls caused by legislative border effects in the arts and culture sector?



Highly-mobile worker

Counterproductive tax schemes

According to the OECD Model Convention, governments may **collect taxes from foreign artists in the country where their performance takes place**. It is problematic for cultural operators touring in different countries to pay taxes in all the countries where they perform. This results in high administrative costs for both artists and governments. Some countries have exceptions to this rule, often dependent on whether or not the performance is (at least partly) publicly funded:



A precarious position

Models and coordination rules of social protection not adapted to highly-mobile workers

The recognition of specific social security rights for highly mobile workers is all the more complicated in the case of foreign assignments. Definitions and professional statutes vary in each country, which affects tax and social security rights and other administrative procedures. Some countries, such as Germany, have a special regime for artists, while other states, such as the Netherlands, do not.

- Risk of **“yo-yo” effect** (frequent changes in the applicable legislation) due to inaccuracy in the legal text caused by the application of Article 13 VO883/2004 (EU coordination rule).
- **Legal uncertainty** arises in the practical application of this article because the assessment criteria (e.g. for marginal activities) depend on the specific situation, the applicable legal system and the competent authority. All these factors **may therefore be weighted differently in each situation and country**.

European Internal Market principles



Fundamental EU rights

Basic principles of the European internal market

Each citizen of an EU Member State has the freedom to establish themselves in another Member State, according to Article 49 of the TFEU (Treaty on the Functioning of the European Union). The **right of free establishment** includes working as a self-employed person, as well as setting up and running a business, as stipulated by the law of the country of establishment. Furthermore, each citizen of a Member State within the Union has the right **to provide services** in a Member State other than the one in which the service provider is established (Article 56 of the TFEU).

The Services Directive (2006/123/EC) gives nearly all service-providing entrepreneurs the right to establish themselves or offer their services in another EU Member State. To this end, **each Member State** is obliged **to designate one-stop shops** where these entrepreneurs can arrange their affairs, such as permits. These points of single contact have been explicitly designated for each country in this brochure.

Furthermore, the EU obliges Member States to apply the principle of **equal treatment between men and women engaged in an activity in a self-employed capacity** (Directive 2010/41 EU), whereby a self-employed person is defined as 'any person who, under the conditions laid down by national law, carries out a gainful activity for his own account'.



Freedom to provide services and establishment

Free professions

According to the EU rules on the recognition of professional qualifications (Directive 2005/36/EC), a **liberal profession is** defined as

a profession exercised on the basis of a relevant professional qualification by a person who, on his or her own responsibility and in a professionally independent manner, performs intellectual services for the benefit of the client and of society in general”.

The exact definition for national law differs from country to country. Thus, in accordance with European law, the exercise of the profession in the Member States may be subject to specific legal obligations. Based on national law, these obligations are **rules independently established by the relevant professional association**, which guarantee and promote professionalism, quality of service and the relationship of trust with the client.



Partners compendium

 Maastricht University

Institute for Transnational and Euregional
cross border cooperation and Mobility / ITEM

The interdisciplinary centre of expertise ITEM is located at Maastricht University's Faculty of Law. It is the focal point for research, advice, knowledge exchange and training activities in the field of cross-border mobility and cooperation and its mission: knowledge - connection - cooperation. ITEM strives to remove obstacles found along the internal borders of the EU. Our scientific support for facilitating borderless living and working in the Euregio Meuse-Rhine includes practice-based research, cross-border case studies, development of (digital) legal information tools, such as this guide, and training courses, such as on diploma recognition.

ITEM is an interdisciplinary institute initiated by Maastricht University (UM) in cooperation with Zuyd University of Applied Sciences, NEIMED, the (Dutch) Province of Limburg, the city of Maastricht and the Euregio Meuse-Rhine (EMR).
<https://www.maastrichtuniversity.nl/item>

region aachen

The Region Aachen Zweckverband is an association of the districts of Düren, Euskirchen and Heinsberg as well as the city of Aachen and the StädteRegion Aachen. The Aachen Region is located on the western edge of Germany, close to Belgium and the Netherlands, right in the heart of Europe. This makes the Aachen Region an international area that offers interesting prospects for companies, employees and students - with excellent support services such as the Cross-Border Information Points (GIPs). As part of the youRegion project, the Region Aachen Zweckverband, together with other partners, organises job placement and counselling networks for cross-border commuters and develops modules on intercultural competence for future cross-border commuters and job seekers.

www.regionaachen.de



ZYP FABRIEK

The ZYP fabriek Maastricht specialises in projects that respond to the needs of self-employed professionals in the Maastricht region and beyond. In cooperation with the local government, ZYP fabriek promotes cross-border entrepreneurship by organising Euregional information and networking events for self-employed professionals. In close cooperation with the local Cross-border Information Point (GIP) Maastricht, ZYP fabriek offers free expert advice to self-employed professionals and flexibly-employed workers with cross-border activities in the Euregio Meuse-Rhine. The ZYP fabriek Information Desk provides personal expert advice regarding the right prerequisites needed for successful cross-border self-employed activities. The ZYP fabriek has consulting hours at the Maastricht International Centre (MIC):
www.zyp-fabriek.nl



There are close to 4 million inhabitants, more than 250,000 companies, five universities, 300 research institutes, 110,000 students, strategic ports, airports and high-speed train stations in an area of about 11,000 km² in the Euregio Meuse-Rhine. Every day, around 30,000 people in the Euroregion commute from their homes to their place of work across the border. Almost all inhabitants regularly cross national borders for shopping and recreation. The Euregio Meuse-Rhine (EMR) is one of the oldest Euroregions in Europe - a shared administrative structure linking five partner regions and three countries (Belgium, Germany and the Netherlands) with three official languages (German, French and Dutch). Each country has its own rules, administrative systems and its own culture. Their interaction with each other is part of daily life in a cross-border area. 'Where diversity connects' is the motto of the Euregio Meuse-Rhine.
<https://www.euregio-mr.info>



Euregional Welcome Centre & information portal www.youregion-emr.eu
youRegion project website www.youregion.eu
youRegional dienstenplatform and general orientation





Interreg Euregio Meuse-Rhine (EMR)

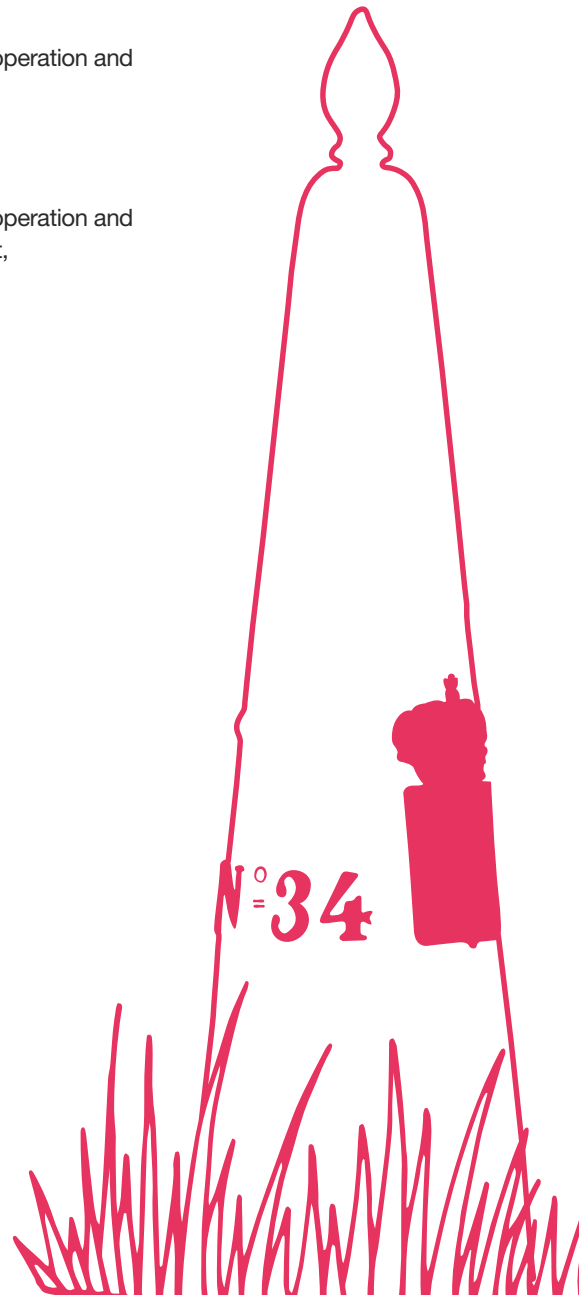
Objectives

The Interreg V-A Euregio Maas Rhine (EMR) programme is investing almost 100 million euros in the development of this Interreg area in the period up to 2020. The area stretches from Leuven in the west to the borders of Cologne in the east, and from Eindhoven all the way to the borders of Luxembourg. More than 5.5 million people live in this cross-border region, where the best of three countries comes together in a truly European society. With this investment of EU funds in the Interreg projects of regional project partners, the EU is investing directly in the economic development, innovation, territorial development and social inclusion and education of this area.

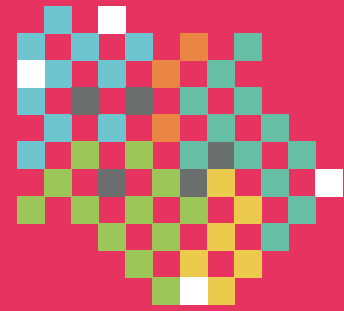


About this publication

- Publisher:** Institute for Transnational and Euregional cross-border cooperation and Mobility / ITEM, Kapoenstraat 2, NL-6211 KW Maastricht, item@maastrichtuniversity.nl
- Web:** itemcrossborderportal.maastrichtuniversity.nl
www.maastrichtuniversity.nl/item
- Text:** Institute for Transnational and Euregional cross-border cooperation and Mobility / ITEM in cooperation with ZZP Fabriek Maastricht, GrensinfoPunt (GIP) Maastricht and Region Aachen ZV / GIP Aachen-Eurode.
- Design:** C/O Lauscher GmbH, Charlottenstraße 14, 52070 Aachen
- Edition:** © February, 2022. youRegion ITEM. All rights reserved.
- ID:** EN/2022/02



Partner



Ministerium für Wirtschaft, Innovation,
Digitalisierung und Energie
des Landes Nordrhein-Westfalen



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www.maastrichtuniversity.nl/item | www.zzp-fabriek.nl | This project is supported by the Interreg V-A Euregio Meuse-Rhine
programme of the European Union with funds from the European Regional Development Fund (ERDF).

www.youregion-emr.eu

