

# Logistics location North Rhine–Westphalia

New opportunities for international  
transport companies – FAQ



## Dynamic business location in strategically excellent position

As Germany's most important economic region, North Rhine-Westphalia (NRW) offers companies optimal conditions to grow locally and globally. Centrally located in the heart of Europe, this is where the most important national and international traffic routes meet. The most populous of the 16 German states has very high purchasing power and is considered one of the largest sales and procurement markets in Europe. Large listed corporations feel just as much at home here as highly specialized family-owned SMEs and creative start-ups – and over 20,000 international players.

### Innovative strength meets a cosmopolitan outlook and cultural diversity

The state's excellent universities produce highly qualified specialists and are an important innovation driver. Young and established companies – flanked by a broad research landscape – are driving forward future topics such as digitalization or the energy transition

and enriching the market with new business models, services and products. Living and working in NRW is characterized by an open-minded, cosmopolitan attitude and an international flair featuring numerous communities from all over the world. They all value not only the vibrant economic activity, but also the excellent quality of life in NRW with its diverse cities and landscapes, six UNESCO World Heritage Sites, and a wide range of cultural and leisure activities.

### Facts and Figures (2020)

Area	34.112 km <sup>2</sup>
Population	17.9 million
Population density	526 inhabitants per km <sup>2</sup>
Employed persons	9.6 million
GDP	€697 billion
Imports	€221.6 billion
Exports	€176.2 billion

## North Rhine-Westphalia: Central logistics hub in Europe

**NRW continues to assert itself as a central transshipment point for the international flow of commodities and a hotspot for the logistics industry in Europe with optimal location conditions:**

- strategic location in the heart of Europe
- excellent transport infrastructure on water, road and rail routes
- six airports with connections to all major cities in the world
- direct connections to Belgian and Dutch seaports
- link to the Silk Road to China

The logistics sector is one of the leading growth industries in NRW. With over 24,000 companies, 364,000 employees and annual sales of 68 billion euros, it is one of the largest sectors in the state.

### Sites for logistics projects

In NRW, domestic and international investors have the opportunity to find sites free of contamination or restrictions on use, in central locations with excellent transport links, and at good prices. Around a quarter of all German logistics centers are located in NRW. Global players such as Amazon, Esprit, TKMaxx and Zalando have already established their distribution centers here. An important criterion for the location decision of all these companies was the presence of sufficient space for possible expansion.

Around one million square meters of new logistics space are created in NRW every year. More than two-thirds of all logistics investment projects are new buildings, while all other projects expand, convert or renew on the basis of existing properties.

### Fit for the future with innovation transfer

The shift in the flow of commodities and the growing volume of goods require not only a first-class infrastructure, but also efficient solutions for a modern logistics industry. In NRW, research institutes and companies are working closely together to develop the logistics of the future.

The Fraunhofer Institute for Material Flow and Logistics (IML) in Dortmund – the world's largest research institution in the field of logistics – is based in NRW, and in the EffizienzCluster LogistikRuhr more than 160 companies are developing important technologies for the industry together with 12 research facilities. The logistics companies based here use this know-how in international competition.

## Frequently Asked Questions

For foreign companies from the transport sector wishing to establish themselves in NRW, it is important to deal with the relevant legal framework conditions at an early stage. The following FAQs provide a compact overview of the essential issues. The compilation was written by the Transport & Logistics Competence Team of the law firm TIGGES Rechtsanwälte. It is intended to provide general information and does not constitute individual legal advice, nor can it replace such advice.

### **Which legal form is suitable for a company from the transport industry to set up business in Germany?**

When founding a foreign subsidiary, the question arises for entrepreneurs from every industry as to which legal form is suitable for the specific business idea in question. The choice of the appropriate legal form should not only be based on the idea of which legal form is the most favorable from the point of view of liability, costs or organizational effort; rather, it should also be taken into account which legal form best meets any legal requirements associated with the respective industry.

This applies in particular to business activities in the transport industry, as these activities require a license and are therefore subject to a large number of legal requirements.

Foreign transport operators, especially those who have already operated in Germany, e.g. in the context of cabotage, and who would like to expand their activities and strengthen their presence in Germany, ask themselves whether it is possible to use the structures already in place abroad and operate in Germany in the form of a (self-employed) branch office. Since the possibility to operate through a registered branch office is owed to the European legislator, this option is well known in other EU member states in particular.

In any case, it is quite possible to operate in Germany through a registered branch office. The advantage here is that:

- the branch office already comes into existence at the time the resolution is passed, because for this legal form the entry in the German Commercial Register is only declaratory;
- it is more cost-effective because the branch does not need to have any prescribed share capital.

However, since the branch office is not a legal entity in its own right and therefore not an independent bearer of rights and obligations, but acts as an (asset) part of the foreign company, it can be difficult in practice to prove to the German authorities responsible for freight transport that the legal requirements intended for transport companies have been met. This applies in particular to proof of capacity and the associated obligation to submit documents that are alien to the foreign legal system. It should be noted, for example, that – regardless of whether or not the branch keeps its own accounts – its assets are assigned to the foreign main branch. In short, the independence of the branch on the one hand and its dependency on the foreign main branch on the other hand, lead to practical problems and additional work on an everyday basis.

Our many years of consulting experience show that the effort involved in setting up your own company pays off in the short, medium and long term and is therefore to be preferred over a branch office. A proven legal form for start-ups in the transport industry in Germany is the limited liability company (GmbH).

### **What are the requirements to start working in the transport industry in Germany?**

The basic requirements for operating in the transport sector are derived from Regulation (EC) No. 1071/2009 of the European Parliament and of the Council of 21 October 2009. These are basic requirements already known in the legal systems of other EU member states, i.e.

- establishment in a member state,
- reliability (see point 5)
- financial capacity (see point 5)
- professional suitability (see point 5)

### **Does the subsidiary need a permit in Germany? Are foreign permits, authorizations, licenses, etc. recognized in Germany?**

The conduct of business in the transport industry is regulated by the German Road Haulage Act.

The commercial transport of goods by road is generally subject to a permit. The permit is required if the commercial transport is carried out with motor vehicles of more than 3.5 tons total weight. The permit is issued for a period of up to ten years.

As a rule, the economic authority of the respective municipality is responsible for issuing the permit. Local jurisdiction depends on the registered office of the applying company, e.g. the registered office of the applying GmbH (see point 1).



If the entrepreneur intends to operate not only on the territory of Germany, but internationally, it is advisable to apply for the Community license within the meaning of Regulation (EC) No. 1072/2009 of the European Parliament and of the Council of October 21, 2009. If the Community license is granted, it is valid for the entrepreneur as a permit under the Road Haulage Act, unless the transport is from Germany to a state that is neither a member of the European Union nor a contracting state of the Agreement on the European Economic Area, nor Switzerland. In such a case, the German permit is required separately.

Since the newly established German company is a separate legal entity and requires its own permit, any permits, authorizations or licenses that the parent company may have can not be used. These will not be recognized.

If the newly established German company employs foreign workers, it is possible that the foreign certificates issued for these persons, e.g. of professional qualification, will be recognized in Germany. The authority responsible for issuing the permit decides on this.

#### **How long does the procedure for obtaining permission take? What are the costs?**

Before applying for the permit or Community license, it is necessary to obtain all the documents that are annexes to the application and that demonstrate compliance with the legal requirements. This process can take up to 2 months. It is essential to note that the documents to be obtained must not be older than 3 months at the time of submission of the complete application.

The procedure for issuing a permit or a Community license may take up to 3 months from the date of submission of the complete application including annexes. In practice, it often happens that the competent transport authority decides on the application more quickly, provided that it has a complete application. The authority has the right to gain an impression of the circumstances at the applicant's site and to conduct interviews. For this reason, it is recommended to contact the transport authority before submitting the application in order to agree on the complete list of documents to be obtained in advance and to find out whether the authority would like to have an interview before issuing the Community license.

The cost of issuing the permit / Community license varies from city to city and usually ranges from 120 – 700 euros. For the issuance of each additional copy (certified copies) of the license, the authorities charge another 30 – 120 euros.

#### **What documents must be submitted with the application?**

When submitting an application, the entrepreneur must prove that he/she meets the basic requirements by submitting the relevant certificates.

It should also be noted here that the certificates submitted must not be older than 3 months at the time of the complete application.

There is no definitive list of documents to be submitted. The requirements for documents can vary throughout Germany. The documents to be submitted also depend on the legal form selected. It is therefore advisable to contact the authority responsible for the specific case in advance to find out which documents the authority will require.

#### a) Establishment in a Member State

Establishment in a Member State shall be evidenced by presentation of the memorandum and articles of association, the list of shareholders, the extract from the commercial register, the lease agreement for the commercial premises and the lease agreement for the truck parking spaces.

#### b) Good repute

The entrepreneur has to prove good repute by submitting the information from the central business register and tax clearance certificates, the city treasury, the health insurance and the employers' liability insurance association.

The company's executives (in the case of a limited liability company, the managing directors; in the case of a partnership, all personally liable partners) and the transport manager must also submit police certificates of good conduct, information from the central commercial register and, in most cases, tax clearance certificates.

With regard to the requirement for good repute, it should be noted that the provisions of EU Regulation No. 1071/2009 contain a list of areas in which a conviction leads to loss of good repute. Within the framework of the EU Mobility Package I promulgated in 2020, the previously applicable listing was supplemented by additional areas. Thus, as of Feb. 21, 2022, convictions for posting and cabotage violations in road freight transport will also lead to loss of good repute.

#### c) Standing

Financial standing is established by submitting proof of equity capital. The amount of the entrepreneur's required equity depends on the number of vehicles used. For the first motor vehicle, the required equity capital is EUR 9,000. For each additional motor vehicle, the required equity is EUR 5,000 each. Proof of the aforementioned amounts is independent of how the vehicle fleet used is legally organized (ownership, rental/lease, leasing). The proof of equity capital is provided by a declaration of the tax advisor or accountant working for the entrepreneur. It is also possible to provide this proof by presenting a bank or insurance guarantee issued by a credit institution or insurance company. However, since the newly established companies do not have a bank history, the possibility of obtaining

such a guarantee is not very realistic in practice.

#### d) Professional competence

Proof of professional competence to run a transport company is usually obtained by passing a corresponding examination at the Chamber of Industry and Commerce responsible.

Proof of professional competence is required from the transport manager. Very often, the managing director and the transport manager are one and the same person. However, if the transport manager is not chosen from among the managing directors, the managing directors of the company no longer have to prove professional competence for themselves.

If the transport manager has a foreign certificate of professional competence, then in the case of successful recognition of his certificates, the examination at the Chamber of Industry and Commerce in Germany no longer needs to be taken. The recognition of comparable foreign certificates from bodies authorized to conduct examinations usually functions without any significant problems.

Please note that this article lists only the basic documents required to apply for the permit / community license and that this compilation is not exhaustive. Due to the different practices of authorities in different municipalities, it is recommended that before submitting the application, you contact the relevant municipal authority and ask them to send you a complete list of the documents they require. This will help to avoid formal deficiencies and prevent a delay in the procedure.

#### **What is the requirement for the transport manager? Can the transport manager be from abroad?**

Each entrepreneur operating in the transport industry must appoint a transport manager when applying for the permit / community license. The duties of the transport manager include the operational and continuous management of the company's transport activities. The transport manager must be reliable and professionally competent. These qualities of the transport manager must be proven when submitting the application.

The transport manager must have a genuine connection with the newly established company – he can be the owner / partner or manager of this company, but he can also be employed as a transport manager on the basis of an employment contract.

Although the provisions of the Regulation do not require the transport manager to be permanently resident in Germany, in view of the case law of the German courts, it is not advisable for the transport manager to work for the transport company exclusively from abroad.



In the case law of the German courts, the view has become established that the transport manager must be able to actually manage the traffic on the basis of his employment contract, working hours, salary and company structure. This therefore also entails the requirement of the physical presence of the traffic manager in the company, to the extent that the exercise of effective control over the operational traffic processes of the company is guaranteed.

### **Can the newly established German company drive vehicles registered abroad?**

The wording of Art. 5(b) of EU Regulation No. 1071/2009 expressly states that the requirement for a transport company to be established in Germany is already met if, among other things, the company has a single vehicle registered in Germany. The registration of the individual vehicle in Germany can also take place only after obtaining the permit or the Community license. This enables the company to save certain costs in the application phase. When submitting the application, only the list of vehicles must be submitted, as well as proof that the applicant has a title that entitles him to use the vehicles named in the list. As proof of this, a (pre-)purchase, rental, lease or leasing contract, if applicable, can be submitted.

Although, in our experience, German authorities often prefer that all vehicles used in the transport activities of the company based in Germany are also registered in Germany at all times, which would make it easier for the authorities to monitor the transport company's compliance with technical safety standards, there is no explicit legal basis for such a requirement in European law. According to German vehicle registration law (Section 20 of the Vehicle Registration Ordinance), a vehicle registered in another member state of the European Union or another state party to the Agreement on the European Economic Area may participate in traffic in Germany on a temporary basis (for a maximum of 12 months from the date specified in the ordinance), unless a regular location for this vehicle is established in Germany. As a consequence of establishing a regular location of the vehicle in Germany, the vehicle must be registered in Germany. Determining when a regular location is established is contentious and requires an examination of the circumstances of each individual case. According to some opinions, a regular location is only established after months of use of the vehicle in Germany (e.g. use of the vehicle for 3 or 6 months). According to other opinions, the fact that the vehicle is used by a company organized and established in Germany is sufficient to establish a regular location.

Provided that at least one vehicle from the fleet of the newly established German company is registered in Germany, this company can also drive the other vehicles registered abroad, at least at the start of its activities, but without these establishing a regular location in Germany. Since the problem of establishing a location is not infrequently unclear and the associated risk of a possible infringement of German vehicle registration law cannot be ruled out, it is advisable to have the vehicles used registered in Germany at an early stage.

In addition to the documents already mentioned, the application for the permit / Community license must usually be accompanied by the rental or lease agreement for the truck parking spaces.

**Can the newly established German company employ foreign drivers?**

Drivers coming from member states of the European Union or states of the European Economic Area do not need a permit for their employment in Germany and can be employed by the newly established company without further ado.

The situation of drivers from third countries (e.g. Ukraine, Belarus, Serbia or Macedonia) is more problematic. Drivers from these countries require a residence permit that also permits gainful employment. The residence permit must be obtained from the competent German agency abroad (embassy or consulate) before entering Germany.

If the residence permit is to permit gainful employment, the Federal Employment Agency must usually approve its issuance.

Permission may be granted to foreign drivers if they possess:

1. an EU or EEA driving license and
  2. an initial qualification or accelerated initial qualification according to Directive 2003/59/EC of the European Parliament and of the Council of July 15, 2003
- which are required in order to work as a driver.

Approval is granted by the Employment Agency after a priority check, i.e. before granting approval, the Agency checks whether or not the employment of a foreign citizen will have a detrimental effect on the German labor market and whether or not preferred employees such as German citizens, EU citizens and citizens from EEA states are available.

It should also be noted that the working and remuneration conditions for foreign employees must correspond to those of German employees.

For foreign drivers who would take up employment in Germany after reaching the age of 45, further requirements must be observed with regard to the amount of remuneration to be paid to the driver.

In the case of professional drivers who have completed a qualified two-year vocational training program in their home country and are classified as skilled workers within the meaning of the Skilled Worker Immigration Act, the accelerated skilled worker procedure could in principle also be used. The advantage of the accelerated procedure is that, in the event of recognition of the qualified training, the priority check no longer has to be carried out. Under the accelerated procedure, the future employer of the third-country national to be admitted is in contact with the authorities and can handle most of the formalities on his/her behalf.

However, in our experience, not all countries offer training similar to the German training.

It should also be noted that the use of the accelerated procedure for skilled workers requires the payment of a fee of 411.00 euros. Furthermore, an additional visa fee in the amount of 75.00 euros as well as fees for the recognition of professional qualifications are due for payment.

### **Do foreign drivers have to prove German language skills?**

Since the foreign driver has to visit the German representation responsible for him/her during the procedure for obtaining the residence permit, at least a basic knowledge of the German language is required.

The Central Service Point for Professional Recognition (ZSBA) was created with the Skilled Workers Immigration Act. This is intended to guide and advise skilled workers employed in Germany through the recognition process without carrying out recognition procedures itself. The „Bergische Industrie und Handelskammer Wuppertal-Solingen-Remscheid“ in Wuppertal and the IHK Foreign Skills Approval in Nuremberg are listed as the competent recognition bodies for professional drivers in NRW.

From the information published on the ZSBA website, it appears that proof of German language skills is not required in the recognition procedure as a professional driver in NRW.

However, since March 2, 2020, the Central Office for Skilled Workers Immigration NRW (ZFE NRW) has existed in NRW. This supports employees and employers in fulfilling the legal residence requirements for the issuance of the visa. From the checklist published on the website of the ZFE NRW with documents that are required for the implementation of the Skilled Workers Immigration Act and that must be submitted by each applicant, it can be seen that among the „General Documents“, proof of language skills of the German language of at least level A1 should be submitted.

Foreign drivers employed in Germany should therefore have German language skills of at least level A1.

### **What are the minimum wage requirements for drivers?**

The statutory German minimum wage applies to professional drivers.

Since January 1, 2022, the legislator has prescribed a gross minimum wage of EUR 9.82 per hour. From July 1, 2022, the minimum wage is to be EUR 10.45 per hour. According to the draft legislation proposed by the federal cabinet, the gross minimum wage is to be EUR 12.00 from October 1, 2022.

It should also be noted that, in addition to pay, professional drivers are regularly entitled to per diems for accommodation and meals, which are generally payable in addition to wages.

**What changes will the EU Mobility Package bring for transport operators within the EU?**

The Mobility Package I announced in 2020 brings many changes for the daily business of transport companies. Mobility Package I is a set of regulations that have been enacted by the European Parliament and the Council. These are Regulations (EU) 2020/1054, 2020/1055 and 2020/1056, as well as Directive (EU) 2020/1057. These regulations partially amend the previously applicable regulations, including the core regulations for the European transport industry i.e. the regulations of Regulation (EC) No. 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and Regulation (EC) No. 1072/2009 on common rules for access to the international road haulage market, however in part they also regulate areas that have not yet been uniformly regulated.

Although the validity of individual new regulations has been extended in time (many new regulations will apply from February 22, 2022, and some not even until July 1, 2026), the new legal situation in some areas requires the adaptation of previously applied business models.

On the one hand, the new regulations will ensure better working conditions for drivers (e.g. changes with regard to drivers' working hours, new regulations regarding rest periods); on the other hand, they will impose new obligations on transport companies, the implementation of which will involve costs and organizational efforts.

Some selected changes:

- the introduction of minimum intervals within which the vehicles used should return to the haulier's registered office,
- the obligatory return of the driver to his place of residence or to the seat of the transport operator at four-week intervals,
- the introduction of the four-day waiting period before further cabotage transport operations are carried out within the same country with the same vehicle.

The introduction of the four-day waiting period for cabotage transports is the EU legislators' response to those domestic industry representatives for whom the competition with often cheaper Eastern European transport companies became noticeable. Although the latter had hoped for further liberalization of cabotage regulations, European legislators decided to extend the protections already in place. Although the individual member states are entitled to waive the newly introduced waiting period or to make it more favorable for foreign carriers, it is to be expected, e.g. with regard to German legislators, that hardly any use will be made of this right.

According to the previous legal situation, transport companies were allowed to carry out cross-border transport after three cabotage transport operations in one Member State, and then to return to one Member State in order to carry out three further cabotage transport operations there. Based on these possibilities, many transport companies have designed their business model in such a way that the vehicles used have not infrequently been on the road abroad for longer than in their home countries. Transport companies will have to refrain from this practice by now being obliged to leave a Member State for at least 4 days after carrying out three permitted cabotage transport operations in that Member State. With the new regulations under discussion, the Community legislator wants to strengthen the only occasional character of cabotage. Compliance with these restrictions is to be ensured by the use of corresponding tachographs that register border crossings.

The introduction of the four-day waiting period together with the introduction of minimum intervals within which the vehicles used are to return to the registered office of the transport operator binds these transport companies more to their registered office than was previously the case. The obligation to have the vehicle return to the company's headquarters on a regular basis not only raises environmental concerns, but in view of the associated costs can also threaten the existence of transport companies that have their headquarters near the external border of the European Union.

One effect of the Mobility Package measures could therefore be that foreign transport companies reconsider their previous business models and consider a regional expansion of their activities, either by establishing a subsidiary or by setting up an independent branch. This development has already been observed in North Rhine-Westphalia for a number of years, and it is to be expected that the German authorities will place even greater emphasis in the future on ensuring that newly established companies are not shell companies but real and locally managed companies.





## Your contacts

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