

## Immigration for self-employment/investment in Europe

The Netherlands

Key notes and criteria for admission

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### **Self-employment**

According to Dutch immigration law, applications for activities in self-employment imply:

- that the setting up and the pursuing of the business is aimed at developing multiple customer/client relations
- that the setting up and the pursuing of the business require establishment by the applicant, i.e. taking up residence for an indefinite period of time.

Self-employment can be distinguished in these respects from service provision as far as it is client exclusive and temporary, i.e. confined to the duration of the service provision.

In the Dutch Aliens Circular, a distinction is made between professionals and entrepreneurs. For example, physicians, chemists, physiotherapists, visual artists or sports teachers, are considered professionals; those seeking self-employment in retail trade, a restaurant or a butcher's shop are considered as entrepreneurs. Managing directors of companies, who share in profits and losses, have a say about the level of their salary and hold at least 25% of the shares in the company, are not considered regular employees but entrepreneurs. In all cases, the purpose or 'title' of stay mentioned on the residence permit will read: 'self-employment as ....', without any further distinction.

The key requirement is that the intended activities of the applicant will serve an essential Dutch interest: in the economic field, or in the field of public health, sports, culture and fine arts. Assessment of merit will involve advisory activities by the concerned Ministerial Departments; their advisory reports on merit for the Netherlands serve as a basis for deciding on an application.

Criteria for admission:

- Merit for the Netherlands
- Professional or entrepreneurial qualifications approved by/registered with Dutch authorities
- Income: independent, lasting, sufficient.
- Public order, national safety warranted.

The policy rules state that these criteria for admission will only be considered if the enterprise is new. 'New' means:

- A first entry on the market and a first registration in the chamber of commerce, or
- Simultaneously changing the corporate structure and management (expanding, reducing, replacing), or
- A drastic change of business activity

Also, applicants will be rejected who:

- Are on a Dutch payroll, but are still living abroad
- Are considered sole investors not engaged in any other business activity
- Are over 60 years of age

This age requirement is not applicable for Turkish nationals (standstill clause article 41, par.1 Additional Protocol, Association Treaty EC-Turkey)

### **Economic merit for the Netherlands**

The Dutch immigration policy rules about economic merit date from 1992 and are both vague and restrictive. According to the Dutch Aliens Circular, the applicant's intended activities should be 'serving an essential Dutch economic interest'. This is explained as adding 'innovative value', i.e. 'adding something positive', to the Dutch economy. Furthermore, the activities should not have a negative impact on the competition in the concerned industry and require knowledge and skills that are not readily available in the Netherlands. The only exception in this respect is made for succession of an entrepreneur in an established successful business, in case of 'unexpected death or long illness'.

The key document for assessing economic merit and income would be a professionally drawn up business plan including: personal details of applicant, company details, legal aspects, commercial plan, management plan and a financial plan accounting for the budgeting of investments, operating costs, liquidity and the financing thereof through e.g. bank contracts. A certificate of registration with the chamber of commerce, annual reports, company and product references and Dutch contracts are also required for assessment.

Privileged categories:

- EU/EEA nationals have a right of establishment based on EC law and the EEA Treaty
- Nationals from Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia have a right of establishment based on the Europe Agreements and the jurisprudence of the Court of Justice EC; (economic) merit for the Netherlands will not be tested. Policy rules say submission of a business plan is still required for assessment of the other admission criteria (qualifications and income) and to warrant against false self-employment
- Swiss nationals have a right of establishment as an entrepreneur or a professional under the provisions of the Friendship Treaty between the Netherlands and Switzerland; (economic) merit for the Netherlands will not be tested. Policy rules say submission of a business plan is still required for assessment of the other admission criteria ( qualifications and income)
- US nationals have a right of establishment as an entrepreneur under the provisions of the American- Dutch Friendship Treaty; (economic) merit for the Netherlands will not be tested. The Treaty requires a 'considerable investment' and taking up management. In the Protocol to the Treaty, professionals are excluded from the right of establishment. Policy rules in the Dutch Aliens Circular define the minimum amounts qualifying as considerable investment: EUR 4.500 for a one-man business, a firm, or limited company, and EUR 12.500 for a public company. The same policy rules also say submission of a business plan is still required for assessment of the other admission criteria (qualifications and income).

## **Investors/persons of independent means**

The Dutch Aliens Act and the Dutch Aliens Decree of 2000 provide for a closed system of residence permit titles; there are no provisions for granting residence permits other than for the 25 purposes explicitly mentioned in the Aliens Decree. Investors and persons of independent means are not included. The Minister of Justice has discretionary power to grant an exceptional residence permit for another purpose. Published policies on the use of this discretion are not known.

One might say, that outside the scope of the free movement rights of European Community law, there are no specific provisions for the admission of investors and persons of independent means in Dutch immigration law.

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*This memo was drafted in accordance with the requirements of the Dutch Aliens Act of 2000. Although this information was carefully selected for your purposes, Everaert Advocaten cannot guarantee that this memo is either correct or complete.*

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