



self-employed

selbst
ständig
denken

Basic security in Corona times

Status: 22.12.2020

This paper was automatically translated by the programme <https://www.deepl.com>. - Therefore it is neither perfect in linguistic expression nor in layout...

Preliminary remark

It would be better if there were neither Corona nor Hartz IV - but solo self-employed people have to learn to deal with both: The concrete design of a basic security, the instrument of unemployment benefit 2 (ALG II), is suboptimal - not only for solo self-employed people and not only in Corona times - but it exists and is directly accessible.

We do not want to make the sometimes unavoidable bite into the sour apple palatable here, but to "underpin" it with information and assistance to the extent that at least no one has to grit their teeth on it. Otherwise: Hartz IV should be overcome, but the principle of basic security should not be abolished *without replacement*. It is a welfare state achievement that can and must be transformed from a welfare system for the poor to a general solidarity-based security system.

Many current special rules of basic security are better understood against the background of the older provisions that were only temporarily suspended during the Corona crisis. provisions. Therefore, we have marked in **red** what is currently handled differently. *Some of these are still unclear in their implementation or need to be made more concrete, which we have also put in **italics**.*

Content

Preliminary remark	1
1 By way of introduction: Why "Hartz IV" <i>right now also</i> for solo self-employed people?.....	4
2. classification: basic principles, systematics, other social benefits	5
2.1 Alternatives and supplements to "Hartz IV"	5
2.2 Construction and "logic" of the basic security system	7
2.3 Narrowing down the topic	8
3 ALG II: for whom and how?	8
3.1 In principle, who can receive ALG II and under what circumstances?	8
3.2 What do I have to do to get ALG II?.....	9
4. who is in need at all? (I) - Realisation of assets.....	10
5 How much money does someone in need get?	12
5.1 Standard needs and additional needs	12
5.2 Costs for accommodation and heating	14
Who is in need at all? (II) Offsetting of income in the community of need	14
6.1 Income from gainful employment (with allowance).....	14
6.2 Creditable income without allowance	19
6.3 Income exempt from imputation (privileged) income.....	19
6.4 Can people in receipt of ALG II also borrow money?	20
What are the consequences of receiving ALG II? What obligations are associated with it?	21
7.1 Duty to cooperate and preliminary decision.....	21
7.2 Special problems and (k)one solution.....	22
7.3 Integration agreement and reasonableness	23
7.4 Duty to report and accessibility	24
8. information on health, nursing care, pension and, if applicable, unemployment insurance.....	25
8.1 Excursus on "regular" unemployment benefit I.....	26
9 What, if anything, needs to be settled before applying for ALG II?	27
10 And how do you get out of ALG II?	28
11 Worst case: Pandemic and special regulations end - but the need for assistance remains	29
Appendix: Where can I find out more?	30

1. by way of introduction: Why "Hartz IV" *right now also for solo self-employed?*

In Germany, before the Corona pandemic, more than seven million people had already experienced various forms of basic security or social assistance. We assume that there will be considerably more "after Corona".

All these social benefits are not really "social" in the sense of "benefits", but they have a regulatory function that can be described as carrots and sticks (more politely: promoting and demanding). In particular, the assistance system colloquially known as "Hartz IV" does not have a good reputation, and rightly so; it has been deliberately designed as a deterrent: It assumes that people settle down on benefits - as if they had chosen their need for assistance, freely chosen their dependency and poverty.

This principally discriminatory character remains present even in Corona times, but at the same time it is significantly weakened, at least temporarily. (This is also related to the function of the welfare state, which is ultimately to serve the economy, to make the restrictions bearable and to make a new start possible). Whereas previously receiving basic benefits was particularly cumbersome and unpleasant for "top-ups" from solo self-employment, during the pandemic this has been reduced to a "normal", even moderate level in this bureaucratic system of coercion: Solo self-employed people now face exactly the same problems as everyone else has for a long time.

Especially the self-employed, who cannot help it if they are not allowed to work or lose jobs due to Corona, feel that receiving unemployment benefits is degrading, but those who let themselves be deterred by this are basically doing exactly what the social authorities like best: they forego the benefits to which they are entitled and do not make work for the often already overburdened offices. Therefore, the aim here is to provide practical (informative) and moral support for all solo self-employed people who have not yet had anything to do with "Hartz IV" and do not want to have anything to do with it, but now have to bite the bullet and do not want to be put off.

The social and socio-political criticism of this system is a completely different matter, which should not be concealed here, because of course many large and small improvements, even radical alternatives, are possible, both to improve the system and to overcome it. - There is no need to come up with new ones, they have been available for a long time on the part of those affected.

First of all, however, the legal situation is as it is. That is why we present here how far and in what way it can be used or not. The political demands from the ranks of the unemployed initiatives, the trade unions and some of the welfare organisations are only mentioned in passing. In this practical brochure, the focus is on how "Hartz IV" basically works, what has (temporarily) changed as a result of the Corona crisis and what pitfalls need to be considered.

On this basis, everyone can and must decide for themselves whether to apply for unemployment benefit (ALG) II. - Self-employed people first have to get used to the strange logic: they do not receive basic benefits to support them appropriately as economic subjects in times of crisis, but solely to ensure their survival. It follows from this logic: Operating expenses that exceed profit (see under 6.1) must be financed elsewhere, e.g. with loans or Corona aid from the federal or state governments.

2. classification: basic principles, systematics, other social benefits

It is easy to get lost in the thicket of the welfare state; therefore, first an overview of the most important social benefits in question, of which "Hartz IV" is only the best known:

2.1 Alternatives and supplements to "Hartz IV"

Although many alternatives are conceivable and some of them are desirable, the following options currently exist within the framework of the Social Code (SGB):

Service type	Legal basis(s)	competent authority
Basic income support in old age and in the event of reduced earning capacity/social assistance	SGB XII	Social welfare office
Basic income support for job-seekers "Hartz IV" (= ALG II, social benefit)	SGB II	Job centre* or option municipalities
Child benefit, child supplement	Income Tax Act + Federal Child Benefit Act	Employment agency: Familienkasse
Maintenance advance, if applicable	Advance Maintenance Act	Youth Welfare Office: UV-Kasse
Housing benefit	Housing Benefit Act (WoGG)	City Hall, Citizens' Offices

The job centres are institutions jointly run by the Federal Employment Agency (BA) and the respective municipality. However, 110 municipalities in 13 Länder have "opted" to implement the basic benefits under their own (sole) responsibility without the BA. These option municipalities are also bound by the legal text of SGB II, but are allowed to interpret it differently than the BA.

(In addition, of course, there are social insurance benefits such as "regular" unemployment benefit I, sickness and long-term care benefits as well as pensions, which are fully offset against ALG II).

Apart from the so-called children's housing allowance according to § 40 WoGG, ALG II and housing allowance are mutually exclusive (unless you only receive ALG II as a loan, which is not the issue here). As a rule, a decision is due for one of the two options; in case of doubt, ALG II is applied for and the Job Centre refers you to the housing benefit office if necessary. Sometimes receiving housing benefit plus child benefit can be more favourable and in any case easier than receiving ALG II thanks to the possible child supplement (possibly in connection with an advance on maintenance payments); in most cases, however, the household income is higher with ALG II - especially for one-person households.

Little known is the [child supplement](#) (KiZ), which can be used to supplement child benefit by a maximum of €185 (from 1.1.2021: €205). The advantage is that on the one hand this (largely) avoids drawing ALG II, on the other hand it opens up access to the so-called education and participation package (BuT) and enables exemption from kindergarten fees.

The child supplement is explained by the [DGB](#). Whether there is an entitlement and to what amount can be easily calculated with the official [KiZ-Lotsen](#). (Between April and September 2020, there was also the so-called emergency KiZ).

In the case of families in which different types of income often coincide, each with special rules on additional income, it must be examined in each individual case which benefit or combination of benefits is more favourable. This cannot be presented here (and has nothing to do with the employment status of self-employment). In cases of doubt, it is best to ask a local social counselling centre, if available. An internet search function for this is offered, for example, by the Coordination Office of Trade Union Unemployed Groups (Koordinierungsstelle gewerkschaftlicher Arbeitslosenengruppen [KOS](#)) and the Wuppertal "[Tacheles](#)", as well as many welfare organisations: above all Diakonie, Sozialverband and the Paritätische; in the new federal states sometimes also the Arbeitslosenverband.

2.2 Construction and "logic" of the basic security system

Now to "Hartz IV", a complex system composed of many building blocks (which do not always fit together smoothly):

The core of basic income support, like all forms of social assistance, is a comparative calculation: what people need to live is standardised by the state; what people have to live on naturally varies from case to case, often also from month to month - the difference results in the benefit amount.

1st: Preliminary examinations	2: Determination of the community of need		3: Duties/Sanctions
Personal access requirements	Needs assessment	Verification of need for assistance II: Income	Integration agreement, if applicable agreement
a) Earning capacity	1. standard rates optionally additional needs optionally benefits for education and participation	non-creditable income	Obligation to report
b) Employability, labour market access	2. "reasonable" costs of accommodation and heating	plus chargeable income from non-employment	Availability, accessibility (residency requirement)
c) Residence and residence permit	3. Health insurance, if applicable	plus chargeable income from gainful employment	active job search
d) Examination of the need for assistance I: Assets	(Alternative: housing benefit + child supplement?)	minus deductions and allowances	Reasonableness
Difference = benefit amount in individual case			

Beforehand, however, it is necessary to check whether one belongs to the group of people who are eligible for basic income support; the family basis of reference is equally fundamental, because basic income support is not granted individually (except, of course, in the case of single households). However, if one comes into the dubious enjoyment of the benefit, this results in some sanction-bound obligations in the end!

2.3 Narrowing down the topic

This is exclusively about the (possible) receipt of "unemployment benefit" (ALG II) starting in March until (after multiple extensions) now 31 March 2021. The legal basis for this is the Social Code (SGB II as amended by the so-called social protection package.

(= Act on Facilitated Access to Social Security etc., Federal Law Gazette Part I No. 14) of 27 March 2020.

SGB II regulates the "Basic Security for Job Seekers", generally better known as "Hartz IV". Despite the deliberately misleading name "unemployment benefit", the receipt of this social benefit requires neither unemployment (unemployment) nor contributions to unemployment insurance - both can be, but do not have to be. In fact, the vast majority of all adult recipients of ALG II are gainfully employed to varying degrees, i.e. they receive ALG II in *addition* to remuneration, be it wages, salaries and/or fees and remunerations. Whether this gainful employment is or was carried out in a dependent form (marginal or socially insured) or in the form of self-employment (freelance or commercial) does not matter at all.

Therefore, solo self-employed people in receipt of ALG II are not treated differently from people in dependent employment or the unemployed. There are only differences in practical terms, firstly because the income of the self-employed is subject to strong fluctuations and secondly because the determination of profits is not always easy. (see under 6.1). This problem is of course "superfluous" as long as, for example, a business closure brings the turnover to zero anyway.

3. ALG II: for whom and how?

3.1 In principle, who can receive ALG II and under what circumstances?

Before entering the system, an entry check takes place: First, it is checked whether one belongs to the "right" group of people, i.e. people who are basically entitled to benefits (step 1), then whether one is individually in a situation in life that entitles one to receive benefits (step 2). In general, in the first step a) you must be of working age (between 15 and the statutory retirement age, i.e. 65 to 67 years, depending on your birth year), live in Germany and be able to work at least three hours a day. In the second step, of course, you must also be in need of assistance (see 4. and 6.).

Numerous special regulations (complicated exceptions and re-exemptions) apply to trainees, pupils and students as well as to people without German citizenship. None of this is dealt with here. And although ALG II benefits are actually possible until retirement age, some people are forced to take early retirement from the age of 63 (for [more information, see KOS](#)).

Alg II always refers to the entire household, it is checked whether it is a so-called community in need (Bedarfsgemeinschaft, BG). However, this is not to be confused with a mere flat-sharing community. (Between a residential community and a community in need there is also a household community in the narrower sense. Here we will confine ourselves to the household group). As a result, as soon as only one person in the community of need is in receipt of benefits, all the others are also subject to the

Hartz IV regime. Adults capable of working then receive ALG II, for all others the benefit is called social benefit.

"Bedarfsgemeinschaft" is also not identical with marriage, registered civil partnership or "marriage-like" partnership, but goes even further: the Federal Social Court defines Bedarfsgemeinschaft in such a way that one (also financially) "stands up for the other" - which again is not so easy to determine. If children are looked after together, it can be assumed that there is a community; if two adults live together, it is assumed that there is a community after one year.

Who belongs to the "Bedarfsgemeinschaft" and who does not can be found in the [flyer](#) "Wer muss für wen finanziell einstehen" (Who has to pay for whom financially) by the Koordinierungsstelle gewerkschaftlicher Arbeitslosengruppen (KOS). Tricky legal constructions such as the so-called "temporary joint household" (when the partners live separately and the children are sometimes there, sometimes there) will not be discussed further here.

It is sufficient to understand that the community of need is a "Hartz IV collective": the neediness is not determined for each person individually ("vertically"), but for all of them together ("horizontally"). All income of at least the adult members of the community (see 6) is added together, regardless of who earns it; thus, all or none of them are in need. This in turn means that all adults as well as young people over 15 are subject to the "Hartz IV regime", i.e. in principle to the same obligations and sanctions (see 7). It does not matter if a partner could "stand on his or her own two feet". At most, it is conceivable that one or more children could be "taken out" of the group due to their own high income or assets, but we will limit ourselves here to the standard case - all in one boat.

3.2 What do I have to do to get ALG II?

Of course, you have to make an application and submit all possible documents. From a legal point of view, the application is already made with the simple, preferably written announcement "I hereby apply for ALG II"; the application form and all other papers can then be submitted later.

ALG II or social benefit is always granted for the entire community of need (see above) per calendar month and is normally granted for twelve months, but for six months in the case of self-employed persons - even for this shorter period, the forecast of the expected income is difficult enough (see under 6.1). It does not matter on which date within the month the application is submitted, because it automatically takes effect back to the first of the month. However, this also means that income received before the date of application but in the month of application will be taken into account.

At present, it is not always possible to go to the Job Centre in person: although an identity check (with ID) is supposed to take place, it is postponed until later, when the offices are fully open to the public again - otherwise, access is usually only granted by appointment and only if there is no other way.

The application is not bound to any form. Theoretically, it could even be submitted to any authority, which would then have to forward the application to the competent authority, but this cannot be relied upon. There is also the option of applying by telephone, but this is not advisable. Online applications or e-mails may work, but only a fax with a qualified transmission report is really legally secure.

The application form and documents can be sent via the [online portal](#) or "classically" by post: either as a registered letter (advice of receipt is of no use, you can save yourself the trouble) or by personally dropping it in the authority's letterbox in front of witnesses. **More information on effective and efficient communication with the office under Corona conditions can be found at [KOS](#).**

The forms can be found on the website of the Federal Employment Agency, in particular the [simplified application for approval periods](#) and the simplified [annex KAS](#) for income from self-employment.

These forms are indeed much simpler than the earlier versions - but they are by no means simple. However, the BA has also provided good help for completing the forms and clear explanatory videos. However, since ALG II is a type of social assistance (even if it is not called that), the calculation is complicated in principle and cannot possibly fit on a beer mat!

4. who is in need at all? (I) - Realisation of assets

The examination of the need for assistance (i.e. from the point of view of the person concerned: the disclosure of all financial circumstances) is divided into two parts, namely firstly the asset examination and secondly the income examination. The first is always done *before* the granting of ALG II, because everything that a person receives in money *while* receiving benefits is first and foremost income - even a lottery win or an inheritance; in other words: existing assets must not increase. In the first step, therefore, it must be examined whether there is any entitlement to ALG II at all within the framework of the given asset situation. This is the point with the most far-reaching relaxation of the previous ALG II criteria (and with which the offices seem to be least comfortable):

Whereas the assets not to be taken into account, the so-called exempt assets, varied between € 3,850 and € 10,500 for each adult before the facilitated access depending on age, now only "substantial" assets are taken into account, whereby the housing allowance law is taken as a guideline: According to this, an allowance of 60,000 € applies first for singles, with 30,000 € added for each additional person in the household. This is considerably more than before - but this relaxed means test is only valid for applications until (provisionally) the end of the first quarter of 2021 (or slightly beyond, depending on the current approval period). At

the end of September, an ordinance and the corresponding [directive of the Employment Agency of 2 October 2020](#) brought

two significant changes: It was expressly clarified that these (non-significant) assets are not taken into account even in the case of applications for continued approval. A new addition is that there is also a reserve for old-age provision for those who are not subject to statutory pension insurance. If it is made plausible that the funds are used for old-age provision, "an amount of rounded € 8,000 ... for each year or part thereof of self-employment" is not to be taken into account as assets. However, this provision is not anchored in the law and can therefore be "overturned" at any time. Moreover, it is formally only a working aid for the offices (and is therefore not binding for the option municipalities).

What will apply in the longer term from 2021 or even 2022 is written in the stars and could then become a problem for people who have "too much" wealth according to the old rules (see under 11.). Therefore, one should also know about these basic rules, which are currently only temporarily suspended: they can be read in the [KOS flyer](#) "Consideration of assets".

It is **actually sufficient to tick in the simplified ALG II application that there are no "considerable" assets in the sense of housing benefit.** (If this tick is missing, this regularly leads to queries and investigations by the offices). However, the job centres and even more so the option municipalities tend to question such declarations and demand proof - although they are actually only supposed to carry out a detailed asset check in the case of clear indications and not in the case of unfounded general suspicion. Unfortunately, those affected can only avoid this with difficulty and at a certain risk, because this falls under the still valid duties to cooperate (see under 7.1). Although the offices are supposed to believe the declaration in the application, they do not have to - in cases of justified suspicion they are allowed to check more closely, and since there is no definition anywhere of what counts as justified suspicion,

they do so. Nevertheless, for the time being, no one is obliged to fill out the "VM" annex for the asset verification if the "no significant assets" box was ticked in the main application.

However, it should not be forgotten that before such calculation experiments, in which the total sum of assets is at stake, one must first take a step back, so to speak, and consider which asset components are included in the calculation at all. In principle, only those assets count that a) can be freely disposed of and b) are economically realisable. **An important new Corona rule is that the assets c) must be immediately realisable ("liquid").** Until now, this could make the means test extremely complicated in some cases, for example in the case of communities of heirs; one then had to consider not only a possible sale, but also mortgaging, renting, leasing, etc. This cannot be discussed in detail here. This cannot be discussed in detail here and is not specific to the self-employed anyway. The only important thing to know is that business assets are indirectly protected: objects that are needed for the start or continuation of the gainful activity are excluded from realisation from the outset (just like household effects or books, of course). Therefore, there is no reason to fear that the piano teacher will have to sell her piano, the photographer his digital reflex camera or the restaurateur the tables and chairs of his restaurant - not even if the activity is in a corona lockdown. Section 7 (1) of the ALG II Ordinance cannot be interpreted otherwise, although the word "business assets" does not explicitly appear in it. In the case of insolvency or closure of the business, however, the question arises anew, taking into account the actual realisability (see under 11.).

Furthermore, a "reasonable" motor vehicle with a maximum market value of € 7,500 is protected. Business vehicles with a higher market value could fall under the aforementioned regulation for "business assets", although there are certainly upper limits in individual cases that can only be clarified by case law.

If - for whatever reason - there are still "too many" assets, this does not automatically mean that the ALG II application will be rejected completely. This would only be the case in the case of liquid assets; however, ALG II is often also granted as a transitional loan until the sale or other realisation of assets is successful. This applies, for example, to weekend houses that go beyond an ordinary summer-house, to undeveloped land or similar. **Owner-occupied residential property is protected anyway (although previously only in "reasonable" size, now provisionally in general). Property that is not owner-occupied is not protected, but in many cases it is unlikely to be realisable as long as the property market is effectively depressed in Corona times.**

Also with regard to retirement assets, the restriction to €750 per year of life was abolished during the Corona crisis. **Currently, it applies instead that endowment life insurance policies and endowment pension insurance policies whose payment or realisation is excluded before the end of the 60th year of life, regardless of the amount, do not constitute substantial assets.** Bank deposits or equity funds etc., on the other hand, can only be declared as retirement provisions temporarily and limited to €8,000 per year of self-employment. Beyond that, they could be substantial - but they do not have to be, since the entire asset situation, not the individual item, always has to be taken into account: A single person may, after all, dispose of €60,000, also in shares at will. Only if the shares (or whatever securities one has in the custody account) exceed this would they have to be "sold off" - and since this happens quickly, there would be no loan. A possible loss would not play a role in such forms of investment, while the so-called uneconomicalness of realisation would have to be examined in the case of other assets, as would the question of special hardship (for example, in the case of family and inherited items). All this can easily become so complicated that the job centres, with their staffing, are simply not in a position to process very many new applications completely and correctly in the way that was

prescribed "before Corona": the facilitated access became necessary above all so that "Hartz IV" could be managed administratively at all on the new scale that is to be feared.

In any case, the financial situation must be carefully examined and, if necessary, structured before filing an application (see under 9.); for this purpose, it is best to take advantage of the support of a social counselling centre, if this is offered locally (see above under 2.1).

And even if it can be assumed that at some point the old, "stricter" rules of asset verification will apply again, no new verification or other assessment of the unchanged asset situation can take place during the six-month approval period. This will probably only take place at the beginning of the next grant period - and this further grant can be avoided (see under 10.). Online calculators ([example](#)) can also help with the calculation of the sheltered assets.

5. how much money does someone in need get?

The determination and imputation of income is, especially in the case of self-employed persons (and even more so in the case of those in a community of need), pretty much the most difficult chapter in the ALG II calculation. Therefore, we want to postpone this income check to a later subsection (see under 6.) and, for the sake of simplicity, first assume that no more income is earned. Then the determination of the benefit amount is relatively simple, because it is determined by the state who needs, or rather is allowed to need, how much money to live on:

5.1 Standard needs and additional needs

The standard needs (standard rates) for adults and children are not so much calculated according to the so-called statistical model from the sample survey on income and consumption (EVS) as they are "cobbled together" and adjusted slightly every year. From these politically standardised standard needs, certain additional needs are also calculated on a percentage basis.

Overview of standard requirements

		2020	2021
Level 1	Single persons, single parents and persons with a minor/year-old partner*in	432,00 €	446,00 €
Level 2	Partners from 18 each	389,00 €	401,00 €
Level 3	Members of the community of need from 18 to 24	345,00 €	357,00 €
Level 4	Teenagers from 14 to 17	328,00 €	373,00 €
Level 5	Children from 6 to 13	308,00 €	309,00 €
Level 6	Children up to 5	250,00 €	283,00 €
Additional demand	Single parent with 1 child under 7	155,52 €	160,56 €
Additional demand	Single parent with 1 child from 7	51,84 €	53,52 €
Additional demand	Single parents with 2 children from 7, of which at least 1 from 16	103,68 €	107,04 €
Additional demand	Single parent with 2 children under 16	155,52 €	160,56 €
Additional demand	Single parent with 3 children	155,52 €	160,56 €
Additional demand	Single parent with 4 children	172,80 €	178,40 €
Additional demand	Single parents with 5 children (and more)	190,08 €	196,24 €

Apart from the above-mentioned additional needs for single parents, there are also additional needs for pregnant women (from the 13th week of pregnancy) and disabled persons who are not capable of working (17% of the standard needs levels 1 to 4). Special benefits, such as initial equipment when moving into a flat or the birth of a child, are not covered by the above-mentioned standard needs, but may be provided separately and are not dealt with here. In addition, there is the above-mentioned education and participation package for children and young people, the most important component of which is €150 per school year (or €154.50 from 2021) for school supplies. (KOS has compiled a list of what else is included.) The additional needs for decentralised water heating (boiler or continuous-flow water heater) show how small-scale everything is calculated: depending on the composition and size of the needs group, between €2.00 and €9.94 (from 2021: €2.26 and €10.26) are added in the standard needs levels 1 to 6.

These standard rates and additional needs apply for an entire calendar month. They include, for example, for food and non-alcoholic beverages (figures for 2021): between € 3.65 (for young children) and € 5.16 (for adults) per day, for education between € 0.67 and € 1.61 per month.

Since, firstly, many things become more expensive in Corona times and, secondly, no one should "go hunting" for bargains in the supermarkets, trade unions, welfare associations and initiatives for the unemployed are demanding an immediate increase of €100 as a flat-rate additional requirement.

5.2 Costs for accommodation and heating

In addition to the standard and additional needs that are uniform throughout Germany, there are of course the costs of accommodation and heating (KdU), which vary greatly from place to place. However, these were only covered at an "appropriate" level for the first six months in the case of initial applications. *This critical adequacy limit, which varies greatly from municipality to municipality, is temporarily suspended (until the end of the first quarter of 2021) by the Corona rules: now the actual KdU for up to one year are assumed without further ado. - According to a ruling by the Lower Saxony-Bremen Regional Social Court of 29.9.2020 (Ref. [L 11 AS 508/20 B ER](#)), this also applies to the new renting of a flat. Thus, a move under facilitated conditions would also be possible - but only for the new arrivals, not for "old cases".*

It is unclear whether the confirmation of the assumption of rental costs still has to be obtained before the new tenancy agreement is signed: Actually, this makes no sense if the job centres are not allowed or not obliged to check the adequacy of the rent. Nevertheless, one has to think carefully about moving into a more expensive flat, because at some point the special regulations on facilitated access will expire and those who do not "escape" from benefit receipt in time may have a problem (see 11. below).

Compared to the old application form, only summary information is now required; in particular, it is no longer asked whether the flat contains a separate study; this is therefore no longer excluded, but included. (This is only consistent, since the "exclusion" of the study from the KdU and instead consideration as a business expense was only of importance if the flat would otherwise not have been "appropriate", i.e. too large and/or too expensive. As long as this examination of appropriateness is suspended, it is of course no longer relevant whether a study is included or not).

This calculation of needs, i.e. the cost and expenditure side, is still fairly clear despite all the attention to detail in the logic of social assistance. It only gets really complicated when the existing income is offset on the other side (see under 6.).

Who is in need at all? (II)

Offsetting of income in the community of need

There are three types of income to be distinguished: Some income is credited in full, some in part, and some not at all. This is completely independent of which person in the community of need earns the income. We start with the types of income for which there is an allowance:

6.1 Income from employment (with allowance)

All types of income from dependent and/or self-employed gainful employment are only partially taken into account. In the case of dependent employees, regardless of whether they are subject to social insurance or in a mini-job, the net income is clear; in the case of self-employed persons, a profit calculation is carried out as an income surplus account (EÜR), whereby the profit under social law is not congruent with the profit under tax law. And anyone who engages in more than one type of self-employed

activity may not offset his or her various lines of business against each other, but must prepare a separate EÜR for each.

Adjustment and imputation of current income

from dependent employment	from self-employment since 2008
* Gross pay	Proportionate operating income / turnover in the grant period
- Taxes	- "reasonable" operating expenses
- Social security contributions	*= Profit (income under social law)
= net earnings	- Taxes and "adequate" private provision
- Advertising costs	- Additional income-related expenses, insofar as not already deducted as operating expenses**.
- If applicable, further compulsory insurance contributions	- Compulsory insurance contributions***, if applicable
- Insurance lump sum 30 €	- Insurance lump sum 30 €
- Contributions to the Riester pension, if applicable	- Contributions to the Riester pension, if applicable
- Attachments, maintenance orders, etc.	- Attachments, maintenance orders, etc.
= adjusted net	= available profit
- Basic deduction € 100	- Basic deduction € 100
- degressive free contribution ...(related to gross)	- degressive free contribution ...(related to profit)
= Offset = ALG II reduction	= Offset = ALG II reduction

Calculation basis of the tax-free allowance according to § 11b SGB II

** No flat rate for advertising costs

Health insurance (private or statutory) is compulsory in any case; private health insurance contributions are, however, only included if you receive ALG II. There is also the option of voluntary pension and/or unemployment insurance.

The deductions in italics do not apply if the gross salary or profit does not exceed € 400. In this case, business expenses and insurance contributions are considered to be included in the basic tax-free amount of € 100. Above € 400, these € 100 are considered the minimum deductible amount (which acts like a tax-free allowance, but strictly speaking is a flat-rate deductible amount).

Since no one is in a position to calculate this exactly on their own anyway, it is more important to understand the basic principle.

It is more important to understand the basic principle:

Start:	Turnover	
Step 1:	minus operating expenses in the narrower sense: money used to generate the turnover	"Determination of profit"
Step 2:	minus business-related expenses in the broader sense: taxes, social security contributions, insurance premiums, income-related expenses ...	"Profit adjustment"
Step 3:	minus allowances	"Determination of profits"

Target:	= chargeable profit income	
----------------	-----------------------------------	--

(These terms are not official, legally correct terms,
but are useful as an aide-mémoire and for orientation).

With this "extended EÜR" it does not matter what you deduct and in which order; nevertheless, the systematics of the calculation steps plays an important role in the correct allocation of individual items. However, you do not have to take care of this yourself: Within the framework of the obligation to cooperate (see 7.1), one simply informs the Job Centre which income and expenses are made and when, according to the inflow and outflow principle: the decisive point in time is when the money is actually received in the account (or in the cash box) or when it goes out. Refinements, such as the "modified inflow theory", are ignored here.

However, you should use the following possibility to adjust your profit: If the profit does not reach the limit of 400.01 €, but the insurance, pension expenses and "real" income-related expenses (without business expenses in the narrower sense) are over 100 €, the surplus amount can be partially deducted from other types of income within the community of need.

The main difficulty in determining profits for the self-employed is the recognition (or non-recognition) of "necessary and appropriate" business expenses. There are no generally binding guidelines for this, nor can there be: These are all decisions on a case-by-case basis, a matter of negotiation and thus a constant point of contention.

The only thing that is clear is that since workrooms (but not studios or similar) are covered under the costs of accommodation (see under 5.2), they are of course no longer business expenses. The following applies to motor vehicles: If they are predominantly used for business purposes, 10 cents per kilometre must be deducted for private journeys, the rest is a business expense. If, on the other hand, the motor vehicle is predominantly used privately, 10 cents per kilometre can be claimed for business trips (as a minimum, unless higher costs are demonstrably necessary).

Also omitted here is the special regulation for seasonal entrepreneurs, who are required to put money aside for low-turnover, bad times in the good times with high turnover. This is only irrelevant for the initial application, but it may well happen that the Job Centre refers to this obligation for the future. This so-called "year-round approach" affects, for example, parts of the catering industry and tourism businesses, but according to the offices also actors with changing engagements - seasonal does not necessarily mean seasonal.

In contrast, the following rules apply generally and irrespective of the sector:

Both for profits from self-employment and for remuneration (wages, salary, pay) including short-time allowance or insolvency allowance, a certain percentage of the gross or social-law profit is granted as an employment allowance:

- ✦ The first 100 € are completely exempt from deductions and are therefore usually referred to as the basic tax-free amount (strictly speaking, however, it is a flat-rate deduction).
- ✦ The real tax-free amount starts at 20% of the gross salary or profit from € 101.01 up to a maximum limit of € 1,000; according to Adam Riese, this is a maximum of € 180.
- ✦ If applicable, 10% of the gross income or profit from € 1,000.01 up to an upper limit of € 1,200 is added; this upper limit increases to € 1,500 if minor children belong to the community of need. This also applies if the person earning the income in question can prove that he or she has at least one child outside the community of need.
- ✦ Furthermore, there is an additional allowance of up to € 200 per month for tax-privileged activities with non-profit organisations ("Übungsleiterpauschale").

In any case, a person can keep 100 € plus x. However, the basic allowance cannot be exhausted more than once and is therefore deducted from the special allowance for "exercise leaders" if applicable; basic and special allowances do not add up.

Apart from the above-mentioned regular income, there may also be one-off income such as Christmas and holiday bonuses, which are not dealt with here as they do not play a role in the case of self-employed persons: Even very irregular income that accrues at long intervals is considered current here.

Due to the inflow and outflow principle, all income and expenditure must be assigned to an exact date or at least to the respective month, then an average balance is calculated over the entire grant period of usually six months. This procedure cannot be deviated from even if this results in a temporary short-fall in needs, although the minimum subsistence level would actually have to be ensured throughout. The legislator (§ 3 para. 4 ALG II-VO) has normatively assumed here that an "up and down" is the rule for self-employed persons, without considering that an "up and down" may be no less probable.

Finally, it is important to note that "negative income", i.e. losses, are generally not taken into account by the Job Centre. This means that you do not make a profit-and-loss account, but only the surplus of income over expenditure counts!

6.2 Creditable income without tax-free allowance

The allowances are intended to act as "work incentives" and therefore only apply to money that is earned. Everything else is either taken into account in full (mostly) or not at all (rarely, see 6.3). In particular, all social benefits (pension, unemployment benefit 1, sickness benefit, etc.) reduce the need in full, even if they are indirectly based on work (payment of contributions). Of course, this applies all the more to social benefits such as basic security in old age and in the case of reduced earning capacity as well as child benefit/child allowance, but also to maintenance payments/advance maintenance payments and maternity benefit; only for parental allowance can there be an allowance (to be calculated individually).

Of course, capital income (interest), income from renting and leasing, tax refunds, etc. are also fully deducted. From all these types of income, only an insurance lump sum of €30 can be deducted, and only if this lump sum is not already included in the €100 basic allowance. Only for interest from non-pecuniary assets (see 4. above) is there a de minimis limit of €100 per year that humans may keep.

However, full imputation without a tax-free allowance does not mean that deductions are not made where applicable, such as insurance premiums over €30, motor vehicle tax, Riestert contributions, etc. - items that are normally deducted in the context of profit adjustment for self-employed persons. However, if there is no turnover and no profit, this can be "shifted" to other types of income and social benefits.

6.3 Income exempt from imputation (privileged) income

Only basic pensions under the Federal Pensions Act, etc. are privileged. In the case of expense allowances and public benefits, it depends on the purpose for which they are intended: Only what expressly serves a purpose other than the benefits of Book II of the Social Code is exempt from imputation.

This applied and still applies not least to the Corona emergency aid of the federal government and most of the Länder, but not to the emergency aid programmes of all the Länder at all times - the respective funding conditions have often been changed in the meantime. This makes it difficult to decide whether there is so-called identity of purpose (and thus eligibility) or not - especially since the benefits were provided quickly and unbureaucratically, i.e. without a detailed written notification with small-print legal instructions. As a rule of thumb, one can assume: Most Corona emergency aid is liquidity aid for current operating expenses, not an "entrepreneur's salary" for living expenses. But even if there is no identity of purpose and no chargeability, emergency aid received is not irrelevant in ALG II receipt: They have to be inquired about and declared because they are either (rather rarely) "entrepreneurial wages" and identical in purpose or (mostly) cover business expenses, which can then of course no longer be taken into account in the context of profit determination. Only as long as there is no turnover at all, such questions hardly arise - but as soon as low income is achieved again, which does not cover needs, the job centres will have to calculate with a very sharp pencil!

To make matters even more complicated: The above remarks, according to which the question of identity of purpose is decisive, apply without restriction to the previous bridging aid - but according to the Federal Ministry of Economics and Federal Ministry of Finance (www.ueberbrueckungshilfe-unternehmen.de) this is to be handled differently for the November and then also the December aid. (See also <https://www.ueberbrueckungshilfe-unternehmen.de/UBH/Redaktion/DE/FAQ/FAQ-Novemberhilfe/faq-novemberhilfen.html>.) These are supposedly "on top", i.e. the allowance neither reduces ALG II nor vice versa; the allowance also does not appear in the calculation and adjustment of profits. This is, of course, a very simple regulation, but it completely contradicts the legal system (see 2.2 above) and also previous case law.

Furthermore, there is a de minimis limit of € 10 per person belonging to the community of need per month for donations from independent charities and private gifts.

6.4 Can people in receipt of ALG II also borrow money?

In principle, yes, but ... All money that accrues to a person while receiving benefits is income and is normally taken into account. Therefore, the earmarking also matters here, as does the form of the income (loan vs. gift).

Money that is informally "borrowed" is considered a gift and thus always reduces the amount of the benefit paid out. Only repayable funds that are expressly not intended for living expenses - for example, for business purchases - are not counted. However, this must be clearly stated in the loan agreement, which also regulates the repayment modalities and deadlines.

It is also not uncommon to borrow money from relatives and acquaintances to tide you over until the Job Centre processes your ALG II application and transfers the money. This should also be done with a written loan agreement stating the purpose of the loan, i.e. to bridge the gap until the job centre payment.

What are the consequences of receiving ALG II? What obligations are associated with it?

Even if access to basic benefits has been made easier, staying there has not: it is and remains "uncomfortable", programmatically, because no one is supposed to settle down on benefits. At the same time, it has always been (deliberately?) overlooked that in situations of crisis and lack, one has to settle in as best one can: it does not follow at all from the adjustment that one no longer tries to overcome the need for assistance. The activation ideology, however, tacitly assumes that all people are lazy by nature if they are not given a push or a kick now and then. The job centres have internalised this "culture" even in Corona times, which is why even simplified access becomes anything but "pleasure tax".

7.1 Duty to cooperate and preliminary decision

First of all, the usual duties to cooperate (according to SGB I) are not suspended even in the case of "facilitated" access. This is the obligation to submit to the Job Centre all documents relevant to the provision of benefits and to inform it of any changes in circumstances. This becomes relevant for solo self-employed persons when they resume business operations and generate new turnover:

Until now, an income estimate (EKS forecast) with the expected income and expenditure had to be submitted in advance for each six-month grant period; on this basis, a provisional ALG II decision was drawn up and the accounts were settled at the end: only then does one know whether the forecast on the income and expenditure side has been met or exceeded or fallen short of. Details on this (both for the self-employed and for employees with monthly fluctuating income) are explained at the [KOS](#) and supplemented [here by](#) the Coordination Office of Trade Union Unemployment Groups.

In principle, this applies unchanged, with the only significant difference that during the Corona crisis, no plausibility check of the forecast is possible on the basis of past turnover. The Job Centre simply believes (for now) the applicant's estimate. In case of doubt, the estimate will amount to a turnover of zero until further notice; only those who do not merely speculate on income with sufficient certainty, but firmly expect it, should indicate it in the new Annex KAS. No clairvoyant abilities are required for this, but unexpected changes are to be communicated to the office within the framework of the duty to cooperate - thus the previous mechanism of a "prospective average calculation" is not completely, but to a large extent invalidated. This is the second important change compared to the previous procedure: The final account is omitted or is only made if the beneficiary wants it.

Instead, it is now to be reported on an ongoing basis within the framework of the duty to cooperate whether additional income is being generated. The Job Centre then has various options: It can change the provisional decision and adapt it to the new circumstances, or wait and pay later (this practically never happens) or demand money back (this is more likely). A new regulation is that a final decision does not have to be issued for approvals from 01.03.2020, but can be issued if changes have occurred: Normally, the provisional decision automatically becomes final.

It is therefore up to the person receiving benefits to demand a final decision if he/she has to claim an additional payment from the Job Centre; this will of course always be the case if he/she was too optimistic in the KAS forecast after all. In this respect, the duty to cooperate is also a right of those affected if the circumstances change in their favour.

7.2 Special problems and (k)one solution

In principle, it makes sense to work with income expectations and average values, because otherwise each month would have to be accounted for separately - a considerable bureaucratic effort for both sides. However, this often creates a new problem: expected income sometimes arrives late or not at all; especially under pandemic conditions, such forecasts are even more uncertain than they already are. Although this is corrected at the end of the grant period, not everyone can always wait that long.

In contrast to dependent employees who work on call with fluctuating income, for self-employed persons the mode of calculating the average is not merely possible, but binding. Deviations from this are not foreseen (especially not programmed into the software of the offices); therefore, once a forecast has been made, it is extremely difficult to correct it downwards in the course of the six-month grant period, while the obligation to cooperate described above applies upwards. However, this can lead to the subsistence level not being guaranteed temporarily, but over a longer period of time.

In these cases, one can and must fall back on savings, if available; and indeed also on "protected" assets in the sense of chapter **Fehler! Verweisquelle konnte nicht gefunden werden.**) - the withdrawal will be compensated later, so that in the end there is no loss. Or you can borrow money to tide you over, but then please have a written loan agreement (see **Fehler! Verweisquelle konnte nicht gefunden werden.** above). If none of this works and the amicable-communicative solution with the job centre does not work either (this almost always fails, not because of bad will, but because of the lack of accessibility and/or the inflexible software), then you have to improvise and should consult legal protection:

The ongoing (!) guarantee of the subsistence minimum must have priority, and one would actually expect that a provisional decision would be easier to change than a final one - however, this is not the case, because there is simply no administrative procedure for this. One way to get legally into the procedure at all could be to file an application for final settlement "in the middle of the grant period", because even if this would be inadmissible (which it probably is), the Job Centre has to react to it somehow.

Conversely, the Job Centre can "suspend" benefits from the outset (but not retrospectively) in months for which income that meets needs is forecast in the application - which, however, runs counter to the mode of a binding average calculation. This is at least what is stated in the technical instruction on § 67 SGB II, although this actually contradicts the ALG II Regulation; such a broad interpretation should then, however, also be possible in the interest of those entitled to benefits and not only unilaterally in the sense of the authority.

Another unresolved problem is that the job centres can already take the employment allowance (see above under 6.1) into account in the provisional decision, but they do not have to. Everything that exceeds the 100-euro basic allowance can only be taken into account in the final decision - and this decision will only be issued upon application as long as the Corona special rules apply, which, however, triggers a final settlement that would otherwise be omitted. So you will have to pay attention to this, and there is also a downside: If you have earned more income than originally assumed without reporting this to the office, you will not only have to reckon with reclaims, but can also get into trouble for violating the obligation to cooperate. This depends very much on how precisely and generally comprehensibly this obligation is specified in the respective notification of grant.

The wording of the law (§ 67 para. 4 SGB II) states that the job centres cannot issue final decisions "on their own initiative", but only at the request of the persons concerned - but this is hardly the intention in cases where a claim for repayment is made by the office; otherwise it would not make sense

that the obligation to cooperate was not explicitly restricted. In any case, no one who is forced to file an application should be too optimistic during the pandemic that sales and profits will soon or even temporarily be able to secure a livelihood again: After all, you can only spend money when you have it.

7.3 Integration agreement and reasonableness

More serious than the obligation to inform the job centre, which is actually a matter of course (and which is explicitly mentioned in the notification of approval), are the obligations to actively look for a job, which are regulated in the integration agreement. **Legally, the Corona crisis has hardly changed anything in this area of labour market integration, but factually it has changed even more, because there is more short-time work and unemployment than job vacancies and the job search is shifting from the analogue world to the digital space, if at all.** Previously, the offices were supposed to conclude such an agreement with as many ALG II recipients as possible, but they did not have to; now they are no longer supposed to, but they can - this is more a question of personnel capacities. Nevertheless, the Job Centre may insist on an integration agreement (with or without meaning) for all employable members of the community of need. Often, but not always, this is harmless and irrelevant - namely, if it only "regurgitates" the legal text that applies anyway. However, if concrete measures are demanded, such as a certain number of job applications or participation in labour market policy "measures", the draft of the integration agreement must be examined carefully, but one can also try to introduce one's own ideas (such as subsidised further education). The motto is: If you do nothing, you can do nothing wrong. Such agreements are neither necessary nor desirable on the part of the people concerned. Fortunately, no one is forced to sign an integration agreement! The office may unilaterally put it into effect (by administrative act), but you can take legal action against it - but not against an integration agreement once it has been signed.

It is important that the self-employed should not "stiffen" their self-employment: Anyone receiving ALG (I or II) must be available to the general labour market! But if the general labour market is more or less "frozen" during the pandemic, this will of course not be eaten as hot as it is cooked.

Nevertheless, a few words about the reasonableness of work offers: As described in the KOS [information sheet "Reasonableness"](#), you have to do almost everything you are able to do - this still applies, but of course the job centres can only make binding placement proposals for jobs that are reported to the authorities by employers; even before the pandemic, this was not far off. But it is definitely worth taking a look at the job exchange of the

Employment Agency before you make yourself compulsorily available to the employment agency by applying for unemployment benefit II! This applies above all to self-employed persons who, in addition to their previous work, have other, possibly earlier, still usable professional qualifications.

7.4 Duty to report and accessibility

The same applies to the theoretical obligation to register, which is, however, largely counteracted by the heavily restricted public traffic at the offices. Nevertheless, anyone who is given an appointment must in principle keep it, unless there is an important reason that can be justified. What counts as an important reason is decided by the social courts, as are the concrete limits of the above-mentioned obligation to cooperate.

In practice, the most serious obligation when receiving ALG II is the so-called residence obligation, specified by the availability order based on § 138 (5) SGB III: It is not enough to be subjectively available to the general labour market, but there is an obligation to respond promptly to placement proposals and to respond to all invitations from the authorities every working day. To ensure this, one's own mailbox must be emptied in person from Monday to Friday - telephone and/or electronic availability is expressly not sufficient!

This means that people on benefits are in principle only allowed to leave the local area (daily commuting area) to the office at the weekend without having to deregister with and obtain permission from the job centre. This applies at least to private trips, but not to business trips - the latter do not have to be registered or approved. You can apply for "holiday" = absence from your place of work for three weeks a year and an additional three weeks for "educational leave". The offices check whether there are realistic chances of placement in the labour market during this time - **as this is still hardly the case in some sectors, the discretion to be exercised is often reduced to (almost) zero. Nevertheless, it remains a discretionary decision, the relevance of which, however, is strongly relativised if there are travel restrictions.**

Sanctions due to failure to report (= reduction of the standard benefit by 10%) or refusal to work (= reduction of the standard benefit by 30%) are possible, but - based on a ruling of the Federal Constitutional Court of 5 November 2019 - may not exceed 30% in total until further notice, also in connection with other reductions such as the offsetting of loans, and can therefore no longer jeopardise the tenancy relationship in particular; for more details, see the KOS [flyer "Attention sanction threat"](#). The consequences of violations of the above-mentioned duties to cooperate can be much more serious, because then there is no reduction of the standard benefit by x%, but the entire benefit is no longer based on any legal grounds. **However, all these reductions and legal consequences may only take place after the person concerned has been heard, which often cannot be completely replaced by a written statement (§ 24 SGB X). Here, too, the following applies: As long as and to the extent that public access is severely restricted or even discontinued, it remains difficult for the job centres to impose sanctions with legal certainty. It remains to be seen how this will be handled when the restrictions are relaxed and appointments are made for visits; until then, sanctions are actually ruled out according to the BA's guidelines. Only the option municipalities do not have to comply with this.**

Until now, sanctions were justified with the argument that if there was no threat at all, anarchy and chaos were inevitable. Now, however, it is becoming apparent that even under crisis conditions, basic security can be administered quite correctly without special sanctions.

8. information on health, nursing care, pension and, if applicable, unemployment insurance.

The long-term care insurance follows the health insurance (KV) 1:1. Because of the general statutory health insurance obligation, everyone must have health and long-term care insurance in some way. As a rule - according to § 5 para. 1 no. 2a SGB V - the KV takes place directly via the job centre, which then pays the contributions directly to the chosen statutory health insurance fund. If you have been voluntarily insured as a self-employed person, you can simply switch to compulsory health insurance (and you can also change your health insurance fund at the same time). It is advisable to inform the health insurance fund about the ALG II application - this is not necessary, but it is useful, because the data exchange between the offices does not always work promptly.

The situation is different for the self-employed who were previously privately insured. They can switch to the reduced basic tariff while receiving ALG II and must of course contact their private health insurance (PKV) to do so. Although the contributions could also be deducted from the income, they are better taken into account from the outset as increased needs and paid for by the job centre. To do this, you have to fill in the SV form. The Job Centre then makes two comparative calculations to determine whether you would be in need of assistance even without the private health insurance contributions. This is done for the following reason:

Rare, but not impossible, is the case constellation in which the need for assistance arises solely from the private health insurance contributions. In this case (§ 26 Para. 4 SGB II), you will not receive ALG II, but only a PKV subsidy; however, you still have to go through the entire application procedure described here, because there is no other way to determine whether you are in need of assistance and, if so, why. Those who only receive the PKV allowance instead of ALG II are not counted as benefit recipients in the statistics, but are otherwise still subject to the "regime" of the offices with all the obligations (see 7. above).

After the end of the benefit payment, the person informs the private health insurance company and is then reinstated in the standard tariff, but so far only after a new health check. This can be avoided, however, as long as the period of benefit receipt is not too long - we will discuss this later (see 10. below), but here are the legal bases from the Insurance Contract Act: § 154 para. 1 for the reduced basic tariff and § 204 para. 2 for the return option.

As far as pension insurance (RV) is concerned, receiving ALG II does not in principle create a pension insurance obligation, which is why the Job Centre does not pay any RV contributions. On the other hand, the previous compulsory pension insurance, if it existed, is not immediately cancelled: compulsory contributions to the statutory pension insurance fall under the heading of subsequent profit adjustment, i.e. if contributions are paid, this must be taken into account to reduce profits. However, this would presuppose that turnover is achieved and that a profit assessment can take place at all. **In the Corona crisis, state emergency or bridging aid should and should cover the "real" operating expenses instead, whereby step 1 of the "extended EÜR" (see 6.1 above) is omitted - as soon as turnover is generated, this would be adjusted for social security and insurance contributions immediately in step 2. Therefore, in this exceptional case, as long as the state temporarily pays for the business expenses in the narrower sense, one should calculate in business management terms in such a way that the (probably reduced) turnover is at least sufficient for the deduction of such taxes.**

Otherwise, you have to contact the pension insurance institution to suspend the payment of contributions (with reference to the receipt of basic income support); then the time in "Hartz IV" is only a credit period under pension law without any effect on the later pension amount. Under no circumstances

should you leave a gap in your pension insurance history, as this would undermine your entitlement to a reduced earning capacity pension.

In this context (KV + RV), a note on the Künstlersozialkasse (KSK): Temporary receipt of social benefits such as ALG II does not affect [KSK membership](#).

Finally, as far as the (in any case only rarely possible) so-called voluntary unemployment insurance (AV) is concerned (strictly speaking, this is a "compulsory application insurance"), its legal prerequisite is in any case the actual exercise of self-employment. **In the case of Corona-related unemployment, one either receives unemployment benefit (the regular "unemployment benefit I", which may be topped up by ALG II), or the payment of contributions is postponed until (currently) 31.03.2021, but not cancelled.**

Of course, ALG I is counted towards ALG II just like short-time allowance (KuG), but in contrast to the latter, it is counted in full - only recipients of KuG receive an employment allowance.

8.1 Excursus on "regular" unemployment benefit I

The actual unemployment benefit (ALG, referred to as ALG I for better differentiation) is based on the provisions of SGB III and can, in principle, be supplemented with ALG II, i.e. "topped up", if it does not cover needs. And since it is based on contributions, it can remain correspondingly low (below the needs threshold), especially for low-wage earners. For self-employed people who have paid contributions voluntarily according to § 28a SGB III, it is usually comparatively high due to the so-called fictitious assessment.

A person is potentially entitled to ALG I if he or she has either paid AV contributions for at least 360 calendar days within the last 30 months (not necessarily continuously) and thus acquired a so-called entitlement, or if he or she still has a residual entitlement from previous ALG receipt "left over". However, this is not sufficient for an actual claim: In addition, one must register as unemployed with the employment agency (AA), file an ALG application and - of course - be without employment. Unemployment", as a prerequisite for ALG I but not for ALG II, is defined as follows: One must have a working time of less than 15 hours per week, i.e. one may work a maximum of 14.9 hours per week "on the side" - otherwise one is no longer unemployed and receives no money from the BA. At the Job Centre, on the other hand, this does not play a role, as I said.

This means, of course, that full-time self-employment is no longer possible, but part-time self-employment is. But beware: if you teach (as a freelance lecturer), you may work a maximum of half as many (time) hours, because (by rule of thumb, the exact formula is much more complicated) the same number of hours is added for preparation and follow-up work! An additional income of 165 euros (net) per month remains free of charge in ALG I, although it is certainly taken into account if ALG II is received at the same time. Since it is permissible to claim a flat rate of 30% of the turnover as business expenses (only if the actual business expenses are higher in total and must be proven individually), this corresponds almost exactly to an imputation-free turnover of 201 euros.

The tricky and insidious regulation according to which, in the event of an interruption of ALG-I receipt (deregistration and re-registration), one may not be allowed to return to voluntary AV contribution payments has been suspended (on the initiative of ver.di) by the Corona social protection package. At least that is what it says on the BA's homepage (see appendix), but not in the law! The basis is rather a so-called sub-legislative regulation - i.e. the BA and BMAS have informally agreed (by email of 30.03.20) to temporarily waive the application of the paragraph (§ 28a para. 2 sentence 2 SGB III), which in itself continues to apply. This "extended interpretation" was, This "extended interpretation" has been extended several times, parallel to the "facilitated access" in

the legal area of SGB II, and is currently valid until 31.03.2021. The justification for this can be read, if you really want to, on p. 17 (in the penultimate paragraph) of [Bundestag printed paper 19/22073](#).

All other regulations are "standard unemployment law", which we do not explain here. Only one special feature should be mentioned: Anyone who registers as unemployed and receives ALG I no longer pays voluntary AV contributions (logical). It is not always certain that this happens automatically: Sometimes at the BA the left hand does not know what the right hand is doing. It is therefore better to inform the department that administers the inclusion in the "compulsory application insurance" in addition to the unemployment notification. Incidentally, this department is often not located where you file your unemployment insurance claim.

9. what, if anything, needs to be settled before the ALG II application?

The most important thing is to first clarify for yourself who belongs to the community of need and is thus affected by the application. Then the persons concerned must consider their financial situation and, if necessary, make arrangements for it: Those who are only just above the tax-free amount (see 4. above) could sensibly bring forward upcoming purchases (such as "white goods": refrigerator, washing machine). It also makes economic sense to pay off rent and tax debts; however, it is considered a "deliberate deprivation" to pay off private debts whose due date cannot be proven by a credit agreement (see 6.4 above).

All permissible asset dispositions must be completed before filing an application (if possible, already in the previous month), because measures for "asset adjustment" are of course excluded once one is in current receipt; and one can never know in advance exactly how long the receipt of benefits will last and whether or how long the special regulations for facilitated access will be extended. At the moment it is not even possible to estimate this, but for comparison: the increase in short-time allowance is to apply until the end of 2021.

Therefore, for the sake of completeness, a consideration that does not play a role in "Hartz IV under Corona conditions", but which could become relevant if the relaxed conditions no longer apply and the old rules of the game are reinstated - and one is nevertheless forced to apply for the continued granting of ALG II. This is more likely because even after resuming work, the turnover is not likely to jump up immediately:

In the case of life insurance policies, there is the option of withdrawing part of the money from the Job Centre's access as well as from one's own access until retirement. To do this, one has to contact the respective insurer and conclude an agreement according to § 168 para. 3 VVG; this means that, depending on the year of birth, up to about 50,000 € are irrevocably "reserved" as old-age provision assets. This so-called exclusion of realisation is well known in the insurance industry as a perfectly legal way to protect assets above the exemption amount; but of course it has the disadvantage that you can no longer access the money yourself before the age of 60. For older people who are already approaching the age of 60, this is still worth considering, because you cannot make up for it later while still receiving benefits. However, this will probably not be necessary if you regularly end your benefit receipt (see 10.): If, sooner or later, an application for ALG II cannot be avoided, you can still agree on the exclusion of realisation.

On the other hand, as soon as the age of 60 is exceeded, the possibility of early retirement should be examined. On the other hand, one should not be deterred by the so-called forced retirement by the Job Centre (see above under 3.1).

And how do you get out of ALG II again?

Of course, the legal basis for receiving benefits does not apply if you win the lottery, receive a large inheritance, move in with a high-earning partner, etc. However, the point here is that such basic parameters do not change, but the amount of income and/or expenditure does, as is normal for self-employed people. It is also very common that people simply don't want to have anything to do with the Job Centre any more. What is the best way to do that?

This can normally only be done simply and elegantly at the end of the approval period (six months for self-employed persons) by simply not submitting a follow-up application. Of course, you then have to pay the contributions to the statutory health insurance yourself again and arrange this with the health insurance company; in the case of private health insurance, a new regulation has been in force since 15 March 2020 (by the way, for an unlimited period, so not due to the pandemic): If you have received ALG II for no longer than two years and the wish to return from the basic tariff to the standard tariff is notified within three months, there is no new health check.

The "normal", not quite so simple and elegant way to end benefit receipt is not a subjective waiver, but the objective end of need. This has to be determined ex officio, then the Job Centre will subsequently cancel the approval (according to § 48 SGB X).

So you have to inform the job centre not only that you have income, but also what income you are earning and how much (now again). But then you immediately end up in the shoals of the social-law calculation of profits for the self-employed; the office then calculates with the aforementioned sharp pencil and either comes to the conclusion that you are no longer in need (in which case the benefit decision is of course cancelled), or that your need has at least been reduced (in which case the benefit decision is changed accordingly).

On the other hand, in legal theory it is not possible to waive ALG II; to be more precise, the Job Centre does not have to and will not accept the waiver of benefits if it is at the expense of the office (§ 46 SGB I) - and a waiver to one's own disadvantage is of course not recommended. Simply deregistering from benefits may work in administrative practice, but it is not actually intended to do so. (Why not is explained [here](#); open the embedded PDF document and scroll down to the last two pages).

Presumably, the job centres will hardly have the necessary capacities to deal in detail with the determination and adjustment of the profits of numerous self-employed persons - especially with the examination of the necessity and appropriateness of all business expenses. In practice, therefore, contrary to all legal doctrine, it could come down to simply asking for the benefit to be stopped. If, at the same time, one expressly waives the right to a final decision, there is a high probability that the payment will be discontinued without further ado. However, if you have to return to receiving benefits in the foreseeable future because your income is not sufficient, problems can arise - and in an unforeseeable way, because this procedure of "deregistration" is simply not provided for in law!

Therefore, one has to consider the exit from the Hartz IV system just as well as the entry. This guidebook is intended to help.

11. worst case: pandemic and special regulations end - but the need for assistance remains

Actually, both the bridging assistance and the facilitated access to the ALG II assistance system are only supposed to apply for a limited period of time, but they have now had to be extended several times. (Why this is happening "bit by bit" and not, as with the short-time allowance, consistently until the end of 2021, is not at all clear). However: at some point, if no other conditions can be imposed, the old, "normal" rules will apply again without restriction.

Unfortunately, it is not to be expected that after such a long time everything will immediately go back to the way it was "before Corona". Many things will only start up again slowly, some business models will probably no longer work at all, and a cold start "from zero to hundred" will probably remain the exception. This means that the probability of not being able to leave the ALG II system "after Corona", or not being able to do so immediately, is also growing.

Even then, however, the regular, significantly stricter provisions will not come into force for everyone in one fell swoop, on cut-off date X. The transition will take place with a time lag. Rather, the transition will take place with a time lag: There will be such a cut-off date, but the current benefit period (BWZ) can still be completed under the previous conditions, as approved. The comparatively "more difficult" access will only "take effect" again with the subsequent application, when it is a question of extending the receipt of benefits - otherwise the job centres would not be able to cope.

For this purpose, or in good time beforehand, the "clients" will be contacted by the Job Centre and will probably have to fill in new (old) forms, but above all submit documents on assets and accommodation costs (KdU), which have not been checked so far as a rule.

It is important to know that only the assets test has an immediate effect and may stand in the way of extended benefit receipt. As soon as this hurdle has been cleared, the actual costs of living will be covered for a further business year, even if they are not "reasonable" in the sense of the Job Centre. The costs for rent and heating therefore remain secured for at least another six months: Only in the next benefit period after the cut-off date X will the official request be made to reduce the "too high" costs for living expenses with effect from the next but one business year.

The KOS explains [here](#) what you can and must do about it.

However, a move cannot be forced, of course - but there is nothing else to do than to start looking for a cheaper flat (regardless of whether the housing market offers it or not) and, above all, to document it carefully. In the worst case, this will reduce the benefit because the Job Centre will then only pay the "reasonable" costs instead of the actual costs. The shortfall must then (not so rarely) be paid out of the already scarce standard rate, but there is no threat of losing the flat.

Appendix: Where can I find out more?

- × **Corona-FAQ of the ver.di self-employed:**
<https://tinyurl.com/FAQ-Selbststaendige>
- × All **flyers** of the Coordination Office of Trade Union Unemployed Groups:
<https://www.erwerbslos.de/medienbestellung>
- × **Tips from** the coordination office for dealing with the Jobcenter:
["Nothing but trouble with the job centre"](#) (Doc) and
["Applying for benefits and defending yourself against notices"](#) (PDF)
- × **Employment Agency:**
[Basic information on the social protection package](#) as well as the forms at <https://www.arbeitsagentur.de/download-center> (e.g. on the simplified [application for ALG 2](#), in addition the [simplified online application](#) as well as the ["Instructions on the social protection package"](#) as PDF).
- × The **Instructions on Facilitated Access** (§ 67 SGB 2) as a [loose-leaf collection](#) (PDF)
- × Further **instructions of the Employment Agency**, which are temporarily and partly strongly modified by § 67, are available at <https://www.arbeitsagentur.de/veroeffentlichungen/gesetze-und-weisungen#1478808823843>. For example, the [explanations on § 12 \(asset verification\)](#) and on [§§ 11 to 11b \(income imputation\)](#). Also important for the self-employed are § [41a \(provisional decision\)](#) and the [instruction on the accessibility order in § 138 SGB III](#).
These interpretations of the law formally apply only internally to the employment agencies and thus not in the so-called Optionskommunen ([see Wikipedia list](#)). Moreover, they are not binding for the social courts, yet most of them follow them. What is not regulated in the directives - and there are many things that are - must be decided on a case-by-case basis. Apart from that, the [AlglI Regulation](#) still applies ([here especially § 3](#)).
- × **Corona-related special feature for voluntary unemployment insurance:**
<https://www.arbeitsagentur.de/unternehmen/corona-informationen-freiwillige-arbeitslosenversicherung>
- × ver.di self-employment advice and the ver.di online guide for solo self-employed workers:
<https://selbststaendigen.info>
- × Current **Facebook information of** the ver.di self-employed:
<https://www.facebook.com/Selbststaendige/>

IMPRINT

Editorial office: Kurt Nikolaus

V.i.S.d.P.: Veronika Mirschel | ver.di, Department Self-Employed Paula-Thiede-Ufer 10 | 10179 Berlin

selbststaendige@verdi.de

<https://selbststaendige.verdi.de/>