

## CHAPTER 4

### ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

#### ARTICLE 140

##### Scope and definitions

1. This Chapter applies to measures of a Party affecting the performance of economic activities through the entry and temporary stay in its territory of natural persons of the other Party, who are business visitors for establishment purposes, contractual service suppliers, independent professionals, intra-corporate transferees and short-term business visitors.
2. To the extent that commitments are not undertaken in this Chapter, all requirements provided for in the law of a Party regarding the entry and temporary stay of natural persons shall continue to apply, including laws and regulations concerning the period of stay.
3. Notwithstanding the provisions of this Chapter, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including laws and regulations concerning minimum wages and collective wage agreements.

4. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

5. For the purposes of this Chapter:

- (a) "business visitors for establishment purposes" means natural persons working in a senior position within a legal person of a Party, who:
- (i) are responsible for setting up an enterprise of such legal person in the territory of the other Party;
  - (ii) do not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise; and
  - (iii) do not receive remuneration from a source located within the other Party;

- (b) "contractual service suppliers" means natural persons employed by a legal person of a Party (other than through an agency for placement and supply services of personnel), which is not established in the territory of the other Party and has concluded a *bona fide* contract, not exceeding 12 months, to supply services to a final consumer in the other Party requiring the temporary presence of its employees who:
- (i) have offered the same type of services as employees of the legal person for a period of not less than one year immediately preceding the date of their application for entry and temporary stay;
  - (ii) possess, on that date, at least three years professional experience, obtained after having reached the age of majority, in the sector of activity that is the object of the contract, a university degree or a qualification demonstrating knowledge of an equivalent level and the professional qualifications legally required to exercise that activity in the other Party<sup>1</sup>; and
  - (iii) do not receive remuneration from a source located within the other Party;
- (c) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who:
- (i) have not established in the territory of the other Party;

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<sup>1</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

- (ii) have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) for a period not exceeding 12 months to supply services to a final consumer in the other Party, requiring their presence on a temporary basis; and
  - (iii) possess, on the date of their application for entry and temporary stay, at least six years professional experience in the relevant activity, a university degree or a qualification demonstrating knowledge of an equivalent level and the professional qualifications legally required to exercise that activity in the other Party<sup>1</sup>;
- (d) "intra-corporate transferees" means natural persons, who:
- (i) have been employed by a legal person of a Party, or have been partners in it, for a period, immediately preceding the date of the intra-corporate transfer, of not less than one year in the case of managers and specialists and of not less than six months in the case of trainee employees;
  - (ii) at the time of application reside outside the territory of the other Party;

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<sup>1</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

- (iii) are temporarily transferred to an enterprise of the legal person in the territory of the other Party which is a member of the same group as the originating legal person, including its representative office, subsidiary, branch or head company<sup>1</sup>; and
- (iv) belong to one of the following categories:
  - (A) managers<sup>2</sup>;
  - (B) specialists; or
  - (C) trainee employees;
- (e) "manager" means a natural person working in a senior position, who primarily directs the management of the enterprise in the other Party, receiving general supervision or direction principally from the board of directors or from shareholders of the business or their equivalent and whose responsibilities include:
  - (i) directing the enterprise or a department or subdivision thereof;

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<sup>1</sup> Managers and specialists may be required to demonstrate they possess the professional qualifications and experience needed in the legal person to which they are transferred.

<sup>2</sup> While managers do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties as described above, from performing such tasks as may be necessary for the provision of the services.

- (ii) supervising and controlling the work of other supervisory, professional or managerial employees; and
- (iii) having the authority to recommend hiring, dismissing or other personnel-related actions;
- (f) "specialist" means a natural person possessing specialised knowledge, essential to the enterprise's areas of activity, techniques or management, which is to be assessed taking into account not only knowledge specific to the enterprise, but also whether the person has a high level of qualification, including adequate professional experience of a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; and
- (g) "trainee employee" means a natural person possessing a university degree who is temporarily transferred for career development purposes or to obtain training in business techniques or methods and is paid during the period of the transfer.<sup>1</sup>

6. The service contract referred to in points (b) and (c) of paragraph 5 shall comply with the requirements of the law of the Party where the contract is executed.

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<sup>1</sup> The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.

## ARTICLE 141

### Intra-corporate transferees and business visitors for establishment purposes

1. Subject to the relevant conditions and qualifications specified in Annex 21:
  - (a) each Party shall allow:
    - (i) the entry and temporary stay of intra-corporate transferees;
    - (ii) the entry and temporary stay of business visitors for establishment purposes without requiring a work permit or other prior approval procedure of similar intent; and
    - (iii) the employment in its territory of intra-corporate transferees of the other Party;
  - (b) a Party shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests regarding the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or that an investor of the other Party may employ as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory; and
  - (c) each Party shall accord to intra-corporate transferees and business visitors for establishment purposes of the other Party, during their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The permissible length of stay shall be for a period of up to three years for managers and specialists, up to one year for trainee employees and up to 90 days within any six-month period for business visitors for establishment purposes.

## ARTICLE 142

### Short-term business visitors

1. Subject to the relevant conditions and qualifications specified in Annex 21, each Party shall allow the entry and temporary stay of short-term business visitors of the other Party for the purposes of carrying out the activities listed in Annex 21, subject to the following conditions:

- (a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;
- (b) the short-term business visitors do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily; and
- (c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a legal person that has not established in the territory of the Party where they are staying temporarily, and a consumer there, except as provided for in Annex 21.

2. Unless otherwise specified in Annex 21, a Party shall allow entry of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.
3. If short-term business visitors of a Party are engaged in the supply of a service to a consumer in the territory of the Party where they are staying temporarily in accordance with Annex 21, that Party shall accord to them, with regard to the supply of that service, treatment no less favourable than that it accords, in like situations, to its own service suppliers.
4. The permissible length of stay shall be for a period of up to 90 days in any six-month period.

#### ARTICLE 143

##### Contractual service suppliers and independent professionals

1. In the sectors, subsectors and activities specified in Annex 22 and subject to the relevant conditions and qualifications specified therein:
  - (a) a Party shall allow the entry and temporary stay of contractual service suppliers and independent professionals in its territory;

- (b) a Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party allowed entry and temporary stay, in the form of numerical quotas or an economic needs test; and
  - (c) each Party shall accord to contractual service suppliers and independent professionals of the other Party, with regard to the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.
2. Access accorded under this Article relates only to the service which is the subject of the contract and does not confer entitlement to use the professional title of the Party where the service is provided.
  3. The number of persons covered by the service contract shall not be greater than necessary to fulfil the contract, as it may be required by the law of the Party where the service is supplied.
  4. The permissible length of stay shall be for a cumulative period of 12 months, or for the duration of the contract, whichever is less.

## ARTICLE 144

### Non-conforming measures

To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, points (b) and (c) of Article 141(1), Article 142(3) and points (b) and (c) of Article 143(1) do not apply to:

- (a) any existing non-conforming measure of a Party at the level of:
  - (i) for the Union:
    - (A) the Union, as set out in the Schedule of the Union in Annex 19;
    - (B) the central government of a Member State, as set out in the Schedule of the Union in Annex 19;
    - (C) a regional government of a Member State, as set out in the Schedule of the Union in Annex 19; or
    - (D) a local government, other than that referred to in point (C); and

- (ii) for the United Kingdom:
  - (A) the central government, as set out in the Schedule of the United Kingdom in Annex 19;
  - (B) a regional subdivision, as set out in the Schedule of the United Kingdom in Annex 19; or
  - (C) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in point (a) of this Article;
- (c) a modification to any non-conforming measure referred to in points (a) and (b) of this Article to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with points (b) and (c) of Article 141(1), Article 142(3) and points (b) and (c) of Article 143(1); or
- (d) any measure of a Party consistent with a condition or qualification specified in Annex 20.

## ARTICLE 145

### Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in Article 140(1).
2. The information referred to in paragraph 1 shall, to the extent possible, include the following information relevant to the entry and temporary stay of natural persons:
  - (a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;
  - (b) documentation required and conditions to be met;
  - (c) method of filing an application and options on where to file, such as consular offices or online;
  - (d) application fees and an indicative timeframe of the processing of an application;

- (e) the maximum length of stay under each type of authorisation described in point (a);
- (f) conditions for any available extension or renewal;
- (g) rules regarding accompanying dependants;
- (h) available review or appeal procedures; and
- (i) relevant laws of general application pertaining to the entry and temporary stay of natural persons for business purposes.

3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into, temporary stay in and, where applicable, permission to work in the former Party.