

MODE IV: EU-SADC EPA VS EU-CARIFORUM EPA

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CONTEXT

- Categories of Mode IV in EPA
- Definition of the different categories
- Conditions of entry of the different categories of persons in the EU-CARIFORUM EPA
- EU-SADC EPA
- Conclusion

Categories of mode IV

EU-SADC EPA

- Key personnel are Business visitors, and intra-corporate transferees (managers, specialists & graduate trainees)
- Services sellers
- Contractual services suppliers
- Independent professionals

EU-CARIFORUM EPA

- Key personnel – business visitors and intra-corporate transferees (managers, specialists)
- Graduate trainees
- Business services sellers
- Contractual services suppliers (CSS)
- Independent professionals (IP)

Both include the definition of qualifications in the definitions

Definition of qualifications

- This means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

Definition of Key personnel

- ‘Key personnel’ means natural persons of a Party employed within a juridical person of that party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of a commercial presence.
- ‘Key personnel’ comprises ‘business visitors’ and ‘intra-corporate transferees’

"Business visitors setting up a commercial presence" means natural persons employed in a senior position within a juridical person of one Party, who are responsible for setting up a commercial presence in the other Party.

"Intra-corporate transferees" means natural persons who reside outside the territory of the Party at the time of the application and who have been employed by a juridical person of one Party or its branch or have been partners in it for at least one year and who are temporarily transferred to a commercial presence in the territory of the other Party.

Intra-corporate transferees (cont)

Managers

- Natural Persons working in a senior position within a juridical person, who primarily directs the management of the commercial presence, receive general supervision or direction principally from the board of directors or shareholders of the business or their equivalent
- The role of the managers (executives) will include:
 - directing the establishment or a department or sub-division thereof;
 - supervising and controlling the work of other supervisory, professional or managerial employees
 - having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions

Specialists

- Persons working within a juridical person who possess uncommon knowledge essential to the commercial presence's production, research equipment, techniques or management.
- Knowledge specific to the commercial presence,
- Possess a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession

Definitions (cont)

Graduate trainees

- Natural persons of a Party who have been employed by a juridical person of that Party for at least one year
- Possesses a university degree
- Temporarily transferred to a commercial presence or to the parent company of the juridical person in the territory of the other Party
- For career development purposes or to obtain training in business techniques or methods

Services sellers

- Natural persons who are representatives of a services supplier of one Party seeking entry and temporary stay in the territory of the other Party
- For the purpose of negotiating the sale of services, or entering into agreements to sell services for that supplier
- They do not engage in making direct sales to the general public
- do not receive remuneration from a source located within the Member State concerned, nor are they commission agents.

Definitions (cont)

CSS

- Natural persons employed by a juridical person of a Party
- Not an agency for placement and supply services of personnel nor acting through such an agency
- Has no establishment in the territory of the other Party
- Has concluded a bona fide contract to supply services with a final consumer in the other Party requiring the presence on a temporary basis of its employees in that other Party in order to fulfil the contract to provide services

Independent Professionals

- Natural persons engaged in the supply of a service
- Established as self-employed in the territory of a Party who have no commercial presence in the territory of the other Party
- Who have concluded a bona fide contract, other than through an agency for placement and supply services of personnel, to supply services with a final consumer in the Member State concerned, requiring their presence on a temporary basis in that Member State in order to fulfil the contract to provide services.

Conditions for entry in the EU-CARIFORUM EPA

Key Personnel, Business services sellers and Graduate Trainees

- The temporary entry and stay shall be for a period of up to three years for Intra-corporate transfers
- For business visitors & business services sellers - 90 days in any 12-month period
- Graduate trainees - one year

- Limitations on the total number of natural persons that an investor may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations should be inscribed in the schedules of commitment

Conditions for CSS and IP in the EU-CARIFORUM

1. Stays for up to 6 months in a year or length of contract
2. Must have university degree (except entertainers, models, chefs)
3. Must have worked for at least one year for the company & have 3 years experience
4. CSS must be paid by employer in home country
5. Can only do work stipulated in service contract
6. Limited to the number of persons necessary to supply the contract.

Short term visitors for business purposes

- EC and CF states to facilitate temporary entry for the following activities for up to 90 days:
 - Research & design
 - Marketing
 - Training seminars
 - Trade fairs and exhibitions
 - Sales & purchasing
 - Tourism personnel

Temporary entry access for CARIFORUM CSS in 29 sectors in EU

1. Legal advisory services in respect of international public law and foreign law
2. Accounting and bookkeeping services
3. Taxation advisory services
4. Architectural services
5. Urban planning and landscape architecture services
6. Engineering services
7. Integrated Engineering services
8. Medical and dental services
9. Veterinary services
10. Midwives services
11. Services provided by nurses, physiotherapists and paramedical personnel
12. Computer and related services
13. Research and development services
14. Advertising services
15. Market Research and Opinion Polling
16. Management consulting services

Temporary Entry for CARIFORUM CSS into the EU (cont)

- 17. Services related to management consulting
- 18. Technical testing and analysis services
- 19. Related scientific and technical consulting services
- 20. Maintenance and repair of equipment
- 21. Chef de cuisine services
- 22. Fashion model services
- 23. Translation and interpretation services
- 24. Site investigation work
- 25. Higher education services (only privately-funded services)
- 26. Environmental services
- 27. Travel agencies and tour operators' services
- 28. Tourist guides services
- 29. Entertainment services other than audiovisual services

Access for CARIFORUM Independent Professionals into the EU

1. Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
2. Architectural services
3. Urban planning and landscape architecture services
4. Engineering services
5. Integrated Engineering services
6. Computer and related services
7. Research and development services
8. Market Research and Opinion Polling
9. Management consulting services
10. Services related to management consulting
11. Translation and interpretation services

EU-SADC EPA: MFN exclusion of Mode IV implications

- Mode IV not excluded under MFN in the EU-CARIFORUM EPA agreement
- The request by EU to exclude mode IV from MFN in the EU-SADC Agreement maybe motivated by the commitments obtained by CARIFORUM from the EU in their EPA agreement
- This means that if mode IV is excluded, then PSE States cannot under the ACP-EU agreement then be extended the commitments under the CARIFORUM-EU agreement
- It may not be in PSE States interest to exclude mode IV from MFN even at the regional level for it might also mean that one country in the region can get better treatment from the EU than other countries

EU-SADC EPA: Treatment of conditions under mode IV

- The EU has provided conditions of entry for each type/ category of service provider
- PSE States in their proposal has requested for conditions to be inscribed in the schedule of specific commitments, how feasible will this be especially to facilitate the inclusion of skilled and semi-skilled categories of export interest to them?
- In addition, how will this ensure that the categories already in the CARIFORUM agreement are extended to PSE States?

Conclusion

- There is need for clarity in terms of the treatment of mode IV in the EU-SADC Protocol on trade in services
- Ensure that mode IV is not excluded under MFN treatment as it would undermine commitments made by the EU on mode IV
- Consider retaining or maintaining conditions in the different types of mode IV so as to have clarity on the conditions of entry for each category and negotiate for favourable terms with the EU
- Might consider using the inclusion of conditions for each type of mode IV as a bargaining tool with the EU to get back mode IV under MFN

THANK YOU FOR YOUR ATTENTION
