

CETA Offers Enhanced Mobility for EU Nationals Entering Canada

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Introduction

Canada and the European Union ("EU") commenced their provisional application of the *Canada-European Union Comprehensive Economic and Trade Agreement* ("CETA") on September 21, 2017. The CETA is a comprehensive trade agreement, which covers virtually all sectors and aspects of Canada-EU trade, including labour mobility.

The CETA's temporary entry provisions make it easier for highly skilled EU professionals and business people to temporarily enter Canada. Although as members of the World Trade Organization, all twenty-eight EU member states already had limited temporary entry access to Canada under the [General Agreement on Trade in Services](#) ("GATS"), the GATS provisions were quite restrictive.

The CETA's temporary entry provisions are similar, but not identical, to those contained in the [North American Free Trade Agreement](#) (the "NAFTA") and in Canada's free trade agreements with [Chile](#), [Peru](#), [Colombia](#), and [South Korea](#). A brief discussion of these provisions appears below.

CETA Business Visitors

Under the CETA, there are two categories of business visitors: (a) short-term business visitors, and (b) business visitors for investment purposes. These categories are intended to expand on the general business visitor category, which applies to all foreign nationals.

Immigration officers will first assess an applicant against the general business visitor provisions contained in Subsection 186(a) and Section 187 of the [Immigration and Refugee Protection Regulations](#). If the proposed activity does not fall under the general business visitor category, officers will then refer to the business visitor provisions contained in [Annex 10-D](#) of the CETA.

Permissible Activities for Short Term Business Visitors

[Annex 10-D](#) of the CETA provides a list of permissible activities for entry as a business visitor. The CETA's list of eligible activities is similar but not identical to the [NAFTA business visitor list](#). For example, the CETA list specifically refers to meetings and consultations, as well as training seminars. It also clarifies that the after-sales service provisions should include after-lease service as well. The complete list appears below:

- a. *Meetings and Consultations*: Natural persons attending meetings or conferences, or engaged in consultations with business associates.
- b. *Research and Design*: Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.
- c. *Marketing Research*: Market researchers and analysts conducting research or analysis for an enterprise located in the territory of the other Party.
- d. *Training Seminars*: Personnel of an enterprise who enter the territory of the other Party to receive training in techniques and work practices who are employed by companies or organisations in that Party, provided that the training received is confined to observation, familiarization and classroom instruction only.
- e. *Trade Fairs and Exhibitions*: Personnel attending a trade fair for the purpose of promoting their company or its products or services.
- f. *Sales*: Representatives of a supplier of services or goods taking orders or negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier, but not delivering goods or supplying services themselves. Short-term business visitors do not engage in making direct sales to the general public.
- g. *Purchasing*: Buyers purchasing goods or services for an enterprise, or management and supervisory personnel, engaging in a commercial transaction carried out in the territory of the other Party.
- h. *After-Sales or After-Lease Service*: Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, throughout the duration of the warranty or service contract.
- i. *Commercial Transactions*: Management and supervisory personnel and financial services personnel (including insurers, bankers and investment brokers) engaging in a commercial transaction for an enterprise located in the territory of the other Party;

- j. *Tourism Personnel*: Tour and travel agents, tour guides or tour operators attending or participating in conventions or accompanying a tour that has begun in the territory of the other Party.
- k. *Translation and Interpretation*: Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Business Visitors for Investment Purposes

The CETA also includes a provision for the temporary entry of business visitors for investment purposes. A business visitor for investment purposes is an employee in a managerial or specialist position who is responsible for setting up an enterprise but who does not engage in direct transactions with the general public and will not receive direct or indirect remuneration from a Canadian source. For example, this could include executives, managers, and specialized knowledge workers who are entering Canada to set up a subsidiary or branch office of their foreign employer, before they apply for a Canadian work permit (perhaps as an intracompany transferee).

Duration of Stay for CETA Business Visitors

The maximum period of stay permitted for all CETA business visitors is an aggregate of ninety days in any six-month period, if the applicant does not already qualify under the general business visitor category. Clearly, the default duration for a general business visitor (typically an initial period of six months) is far more generous than the maximum duration permitted for CETA business visitors.

Analysis

As most of the above activities would also qualify under the general business visitor provisions, it appears likely that most EU citizens will choose to enter under those provisions (which offer periods of stay longer than ninety days), rather than seek admission under the CETA business visitor category.

CETA Professionals

Overview

The CETA covers two types of professionals: (a) contractual service suppliers, and (b) independent professionals. The first type includes an EU-based entity that has entered into a service contract with a Canadian entity and that wishes to send an EU citizen to Canada as its representative. The second type includes an EU citizen who wishes to enter Canada in order to provide professional services directly to a Canadian client.

[Annex 10-E](#) of the CETA provides a list of service sectors that will apply to contractual service suppliers and independent professionals. However, Canada's commitments in Annex 10-E are limited to the NOC O [senior managers] and A [occupations usually requiring university

education] levels except for engineering and scientific technologists, which are NOC B [occupations usually requiring college education or apprenticeship training]. In addition, Canada's commitments for contractual service suppliers and independent professionals will vary by sector.

Canada's list of covered service sectors, along with the corresponding NOC codes, appears in the [Annex 10-E Concordance Table](#). Please note that several sectors listed in Annex 10-E of the CETA do not appear on this list because Canada did not take commitments for those sectors. Independent professionals and contractual service suppliers working in the following service sectors are not eligible to seek work permits as CETA Professionals:

- a. Medical and dental services;
- b. Veterinary services;
- c. Midwifery services;
- d. Services provided by nurses, physiotherapists and paramedical personnel; and
- e. Higher education services.

General Requirements of CETA Professionals

Applicants in both categories of professionals must satisfy the following requirements:

- a. They must be a citizen of an EU member state.
- b. They must be engaged in the temporary supply of a service for a period not exceeding twelve months. If longer than twelve months, Canada's CETA commitments only apply for the initial twelve months of the contract.
- c. They must be contracted to provide a service in accordance with the [Annex 10-E Concordance Table](#).
- d. They must possess:
 - 1. A university degree or a qualification demonstrating knowledge of an equivalent level [some categories of engineering and scientific technologists may be eligible without a university degree]; and
 - 2. Professional qualifications if required to practice an activity pursuant to the laws or requirements in the province or territory where the service is supplied.

Requirements Specific to Contractual Service Suppliers

In addition to the general criteria, contractual service suppliers must also satisfy the following requirements:

- a. They must be engaged in the supply of a service on a temporary basis as an employee of an enterprise which has obtained a service contract.
- b. They must have been an employee of the EU-headquartered enterprise for at least one year prior to application.
- c. They must possess three years of professional experience in the sector of activity that is the subject of the contract, at the time of the application.
- d. They must not receive remuneration for the provision of services other than the remuneration paid by the enterprise employing the contractual service suppliers during their stay in Canada.

Requirements Specific to Self-Employed Professionals

In addition to the general criteria, independent professionals must also satisfy the following requirements:

- a. They must be engaged in the supply of a service on a temporary basis as a self-employed person.
- b. They must possess at least six years of professional experience in the sector of activity that is the subject of the contract, at the time of the application.

Duration of Stay for CETA Professionals

CETA Professionals may be admitted for a maximum cumulative period of twelve months during any twenty-four month period or for the duration of the contract, whichever is less. However, their work permits may be extended, at the discretion of the officer assessing the application, provided that the necessary documentary evidence has been submitted by the applicant to support the request. In other words, there is no maximum duration imposed on CETA Professional work permits.

Analysis

The CETA Professional category offers new options for eligible professionals and contractual service suppliers. Although the applicable criteria are stricter than those applied to NAFTA Professionals, the CETA professional category still represents a significant improvement over the GATS provisions.

Intra-Corporate (Company) Transferees

Overview

The intra-corporate (company) transferee ("ICT") provisions of the CETA are very similar to the general [C12 intra-company transferee exemption](#), which applies to all foreign nationals. However, one significant difference is the inclusion of graduate trainees in the CETA

provisions. Another is that employees having managerial capacity (which are recognized in the NAFTA) do not appear to be eligible under the CETA provisions.

Eligibility Criteria

According to the CETA provisions, ICTs must satisfy the following general requirements:

- a. They must have been employed by an enterprise (or have been partners in an enterprise) of an EU member state for at least one year;
- b. They must be temporarily transferred to an enterprise (that may be a subsidiary, branch, or head company of the enterprise) in Canada; and
- c. The applicant must belong to one of the following categories: (a) senior personnel, (b) specialists, or (c) graduate trainees.

The term “senior personnel” is considered equivalent to “executive capacity” under the NAFTA, which refers to a position in which the employee primarily:

- a. Directs the management of the organization or a major component or function of the organization;
- b. Establishes the goals and policies of the organization, component, or function;
- c. Exercises wide latitude in discretionary decision-making; and
- d. Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

An executive does not generally perform duties necessary in the production of a product or in the delivery of a service.

The term “specialists” is also considered equivalent to “specialized knowledge” under the NAFTA. The [current guidance on specialized knowledge](#) (which applies to both NAFTA and C12 ICTs) states that a specialized knowledge worker must possess “knowledge at an advanced level of expertise” and “proprietary knowledge of the company’s product, service, research, equipment, techniques or management.”

The graduate trainee category (which is unique to the CETA provisions) requires applicants to satisfy the following requirements:

- a. They must possess a university degree; and
- b. They must be temporarily transferred to an enterprise in Canada for career development purposes or to obtain training in business techniques or methods.

Clearly, the eligibility threshold for graduate trainees is relatively low, making it a very useful option for multinational organizations.

Duration of Stay for CETA ICTs

For senior personnel and specialists, applicants may seek admission for an initial period of three years or the length of the contract, whichever is less. They may also seek an extension of up to eighteen months, at the immigration officer's discretion, if the applicant is able to provide documentation that satisfies the processing officer of their need to have their stay extended.

Graduate trainees may be admitted for an initial period of one year or the length of the contract, whichever is less. They are not permitted to seek extensions of their work permits.

The above limits are significantly shorter than the seven-year limit applied to NAFTA executives/managers or the five year limit applied to NAFTA specialized knowledge workers.

Open Work Permits for Spouses of CETA ICTs

In accordance with Annex 10-F of the CETA, spouses of EU citizens who enter Canada as CETA ICTs are eligible for an open work permit for the same duration as their spouses' work permit. However, spouses of CETA ICTs who are citizens of the United Kingdom or Denmark are not eligible for the CETA spousal provision, as per the agreement.

Of course, spouses of skilled workers are already entitled to seek [C41 open spousal work permits](#) under the general law. As a result, spouses of United Kingdom or Danish CETA ICTs could still seek C41 open work permits for the same duration as the principal applicant.

Analysis

In general, the CETA ICT provisions are more restrictive than the C12 ICT category, which is available to all foreign nationals. However, multinational organizations are likely to take advantage of the graduate trainee category, which has a relatively low eligibility threshold.

CETA Investors

Overview

The CETA Investor provisions are virtually identical to [those contained in the NAFTA](#). They apply to persons who establish, develop, or administer the operation of an investment in a capacity that is supervisory or executive, and to which those persons or the enterprise employing those persons has committed, or is in the process of committing, a substantial amount of capital.

Eligibility Requirements

If the available NAFTA Investor guidance is applied to CETA cases, a prospective CETA Investor will need to satisfy the following requirements:

- a. The applicant must possess the citizenship of an EU member state;

- b. The treaty enterprise must also possess the citizenship of an EU member state;
- c. A substantial investment must have been made, or must be actively in the process of being made;
- d. The applicant must be seeking entry solely to develop and direct the treaty enterprise;
- e. If the applicant is an employee, proposed position must be executive or supervisory; and
- f. The applicant must comply with existing immigration measures applicable to temporary entry.

Duration of Stay for CETA Investors

The maximum initial period of stay for a CETA investor is one year, which is the same as the initial period of stay for NAFTA investors. Work permit extensions are possible, at the immigration officer's discretion, if the applicant is able to provide documentation that satisfies the processing officer of their need to have their stay extended. In other words, there is no maximum duration imposed on CETA investor work permits.

Analysis

The CETA Investor provisions may be useful to some investors who are unable to otherwise qualify under another work permit category. However, the NAFTA Investor category has not been a popular option, likely due to the complexity of investor applications and the one-year limit imposed on the investor's initial period of stay. For the same reason, it is likely that the CETA investor provisions will be used only in limited cases.

Conclusion

Clearly, some of the temporary entry options described in the CETA will do little to improve the labour mobility of EU citizens. However, a few options (in particular, the CETA ICT work permit for graduate trainees and the CETA Professional work permit for contractual service suppliers and self-employed professionals) should significantly expand the labour mobility opportunities of EU citizens seeking temporary entry into Canada.