The Free Movement of Services, Migration and Brexit

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Abstract:

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Introduction

When the Polish plumber featured in the satirical magazine *Charlie Hebdo* in 2004, he became the embodiment of all that was controversial about free movement of services.[1] In fact, that was the moment that the French woke up to the implications of the Services Directive which, in its Bolkestein version, was in the pipeline at the time. To seasoned EU lawyers, the free movement of services was nothing new. Quite the contrary; free movement of services and freedom of establishment (often by services providers) has been a feature of the EU Treaties since its foundation in 1957, sitting alongside the other fundamental freedoms of goods, workers, and capital.

As with the other freedoms, the essence of free movement of services requires the removal of national rules which restrict movement, unless the rules can be justified either on the grounds provided by the Treaty on the Functioning of the European Union (TFEU) (public policy, public security or public health) or by an open-ended list of judicially developed 'justifications'. Given the sensitivity around some service sectors, some Member States have made good use of these exceptions, justifying obstacles to free movement in the name of cultural diversity, worker protection, the need to protect the national system of health provision: the list is endless. Nevertheless, the Court of Justice has doggedly pursued an agenda whereby some – but not all - of these restrictions have been removed and the UK has generally endorsed the position the Court has taken. The controversial Services Directive 2006/123, also strongly supported by the UK, was intended to consolidate, and make more visible, the gains achieved by the Court's case law. As we shall see, the Directive has not been entirely successful in this objective.

The free movement of services covers a vast area of activity, ranging from small businesses providing services such as hairdressing, to large consultancy projects. This article will focus on the effect that free movement of services has had in two areas which have been of particular relevance for the UK: tourism and education. Financial services, another area of great importance for the UK, is discussed

[1] http://www.lopinion.fr/28-octobre-2013/comment-plombier-polonais-a-fait-voter-non-referendum-2005-5531.

elsewhere in this *Review* by Angus Armstrong. It will be argued that not only are tourism and education areas of great economic significance to the UK but they also provide some of the context for subsequent migration to, and emigration from, the UK, particularly by migrant workers exercising their rights to free movement under Article 45 TFEU. This has become increasingly apparent to us in the course of the research carried out in the framework of the ESRC's project on the UK in a Changing Europe. We have been examining the pull factors bringin migrant workers to the UK. This research has a qualitative (interview based) component. The views expressed in some of those interviews are reflected below. First, however, the article will begin with a brief examination of the TFEU rules on services as well as the Services Directive, the cause célèbre of EU legislation. This provides some context for the discussion that follows.

The free movement of services

The Treaty provisions

The relevant Treaty provisions on free movement of services, Articles 56 and 57 TFEU, apply in three situations:

- *Freedom to (travel to) provide services*. This is the classic situation envisaged by the Treaty. It covers, for example, the right of a lawyer established in one country to provide services on a temporary basis in another.[2]
- *Freedom to (travel to) receive services*. This situation was not envisaged by the Treaty but it was recognised by early secondary legislation[3] and this was subsequently confirmed by the Court in its case law.[4] It covers the situation where an individual travels to another Member State for the purposes of tourism (i.e. to receive tourist services), [5] education,[6] and medical treatment.[7]
- *Neither provider nor recipient travels but service travels*. This situation was also not covered by the original Treaty but the Court has since made clear that service provision includes the cross-border provision of services through electronic means.[8]

In all three cases the service provision must be temporary (a term that has never been satisfactorily defined); if the service provision is 'permanent' then the Treaty provisions on establishment (Article 49 TFEU) apply instead. While the principles are broadly similar for both services and establishment, the temporary nature of services means that much greater emphasis is placed on home state control

[2] Case 33/74 *Van Binsbergen* [1974] ECR 1299.
[3] Article 1(b) of Directive 73/148 requires the abolition of restrictions on the movement and residence of "nationals wishing to go to another Member State as recipients of services".
[4] Case 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377 (Italians travelling to Germany to receive medical and tourism services); Case 186/87 *Cowan v Le Tresor Public* [1989] ECR 195 (Englishman mugged on French metro. As a recipient of a service he was entitled to receive criminal injuries compensation as a French man would).
[5] Case 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377.
[6] Case 293/83 *Gravier* v. *Ville de Liège* [1985] ECR 593, para. 30. For background see Shaw, 'From the margins to the centre: Education and training law and policy' in P. Craig and G. de Búrca (eds.), *The Evolution of EU Law* (Oxford: OUP, 1999).
[7] Case C-159/90 *SPUC v Grogan* [1991] ECR I-4685.
[8] See for example, Case C-384/93 *Alpine Investments BV v Minister van Financien* [1995] ECR I-1141 (cold calling by Dutch company offering financial services in other Member States).

(sometimes referred to as the country of origin principle) when the provisions on services are engaged.

Provided that the situation falls within Article 56 and 57 TFEU, then the Treaty prohibits any national rule which discriminates on the grounds of nationality. This is why, for example, tuition fees must be the same for students from elsewhere in the EU as for students from England and Wales. However, the Treaty only prohibits discrimination in *inter-state* situations; discrimination that arises in *intra-state* situations is not caught by EU law. This principle, known a reverse discrimination, enables Scotland to offer free higher education for Scottish (and EU students) but not to students from the rest of the UK.

More recently, the Court has established that any rule that hinders access to the market for the out-of-state service provider is caught by the Treaty prohibition on restrictions on the freedom of movement, even if not discriminatory on the grounds of nationality. This is sometimes referred to in the shorthand as the 'restrictions' or 'obstacles' approach. So in *Carpenter*[9] the Court found that the deportation of a Filipino spouse of a UK national service provider who had overstayed her visa but looked after his children when he was working abroad, was an obstacle to her husband's freedom to provide services contrary to Article 56 TFEU.

The restrictions approach provides service providers with a powerful tool with which to challenge any obstructive national rule. States are, however, able to justify their national rules which, in principle, breach Article 56 TFEU either on the grounds provided by the Treaty (public policy, public security or public health) or by reference to so-called 'public interest requirements' which are, essentially, good reasons recognised by the Court. In both cases account must be taken of the level of protection provided by the home state. Depending on the sensitivity of the sector, the Court has been more or less willing to recognise a public interest advocated by the defendant state and to find it proportionate. Gambling, for example, is widely regarded as an area of great sensitivity for Member States. Consequently, the Court has applied a fairly relaxed level of scrutiny to national rules on, for example, who can offer gambling services, who can participate, and what happens to the winnings. Indeed in the first major case that came before it, *Schindler,*[10] a reference from the UK, the Court was so accommodating to the UK (which was trying to defend its blanket ban on national lotteries despite the fact that the National Lotteries Bill was going through Parliament at the time) that it failed to consider the question of proportionality at all.

The Services Directive

The Court developed key principles in its case law but this approach to developing the law is, by its very nature, ad hoc: it all depends on who has the motivation and the money to sue. The Services Directive was intended to put the case law on a more transparent footing, while also opening up the market in services. Chapter III of the Directive, which concerns the *establishment* of service providers, codifies much of the Court's case law. Chapter IV of the Directive specifically concerns the free movement of services. This Chapter was subject to major revision in the final draft, because of the controversy surrounding the 'Bolkestein' version (so-called because the European Commissioner

[9] Case C-60/00 *Mary Carpenter v. Secretary of State for the Home Department* [2002] ECR I-6279.
[10] Case C-275/92 *Customs Excise v Schindler* [1994] ECR 1039.

Frits Bolkestein introduced the Directive).[11] The Directive is now less effective than was first intended. Among the most contested aspects of the Directive was the country of origin principle. The final version of the Directive favoured burying the issue rather than stating it explicitly. Article 16 provides:

> Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.
>
> The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

For many it is not clear how different this provision is from the original country of origin principle but it is certainly less transparent.

The most innovative aspect of the Directive was the screening provisions: all existing national rules had to be screened for their compatibility with the Directive by the end of December 2009. The UK undertook this process with vigour. Nevertheless, it argued that authorisation requirements such as being registered with the Local Authority before exhibiting or training performing animals, keeping a kennel or cattery and operating a riding establishment could all be justified on the grounds of public policy (i.e. protection of animal health and welfare).[12] Likewise, it argued that licensing of regulated entertainment service providers (e.g. plays, cinema, live music and indoor sport) was necessary for reasons of public policy – for example, public security and the prevention of crime, and the protection of young persons.[13]

The UK's approach to regulation of services has generally been hands off: the predominant view is that if a service provider is no good, it will not receive more custom and so the market deals with failure. Continental systems, by contrast, seek to protect the consumer ex ante, and so insist on much more regulation. Slowly, slowly, the pendulum is beginning to swing in the UK's direction. This can be seen in the UK's New Settlement deal. In the Annex to the basket on 'competitiveness', the Heads of State and Government meeting in the European Council agreed that:[14]

> 'The European Council highlights the enormous value of the internal market as an area without frontiers within which goods, persons, services and capital move unhindered. This constitutes one of the Union's greatest achievements. In these times of economic and social challenges, we need to breathe new life into the internal market and adapt it to keep pace with our changing environment. Europe must boost its international competiveness across the board in services and products and in key areas such as energy and the digital single market.'

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[11] See, for example, TUC, 'Beside the point?', December 2005: https://www.tuc.org.uk/sites/default/files/extras/besidethepoint.pdf.
[12] BERR Consultation Paper 2007, 78.
[13] BERR Consultation Paper 2007, 81-2.
[14] Conclusions – 18 and 19 February 2016.

Tourism

Having looked at the context of free movement of services, we turn now to examine the free movement of services in two sectors: tourism and education. We begin with tourism.

As we have seen, Article 56 TFEU permits visa free travel across the EU for EU nationals to provide or receive services. When in another EU Member State, EU law provides EU travellers with rights to non-discriminatory access to services, such as museums. This means that EU travellers enjoy the same price of entry as locals. Where necessary, they also enjoy emergency healthcare in the State they are visiting on production of an European Health Insurance Card (EHIC). These rights come at a price. Evidence produced by FullFact, based on a report produced by the Department of Public Health, suggests that gross costs to the UK National Health Service (excluding 'deliberate' health tourists) are £260 million per year for visitors and non-permanent residents from the European Economic Area (EEA) to England (as compared to £1.4 billion per year for visitors and temporary migrants from outside the EEA to England, and irregular migrants).[15] However, UK tourists also benefit from emergency treatment in other Member States while they are there, on holiday for example. This is provided free at the point of delivery.

Tourists from other EU countries form the largest group of visitors to the UK - double that from the rest of the world. EU tourism is of huge value to the UK economy:

- EU tourists spend on average 581 euros per trip to the UK.[16]
- The direct contribution of travel and tourism to UK GDP was £61.9bn (3.5% of total GDP) in 2014, and is forecast to rise. [17]
- The total contribution of travel and tourism to UK GDP was £187.7bn (10.5% of GDP) in 2014.[19]
- In 2014, travel and tourism directly supported 1,892,500 jobs (5.7% of total employment) in the UK and indirectly supported 4,228,000 jobs (12.7% of total employment).[20]

Opening up the EU's skies has played a key part in this development. As the Commission puts it, the aviation market was gradually liberalised through three successive packages of measures adopted at EU level, which covered air carrier licensing, market access and fares. So, decades of restrictions that had limited air transport markets in Europe and prevented cross-border investment by European airlines have been removed.[21] This created the space for low cost carriers to set up and succeed – as the likes of Ryanair and EasyJet have shown. Not only have these low cost carriers made travel significantly easier and cheaper,[22] they have also had transformative effects on local economies. This

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[15] https://fullfact.org/health/health-tourists-how-much-do-they-cost-and-who-pays/.
[16] http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Average_expenditure_per_inbound_trip_by_residents_from_other_EU-28(%C2%B9),_2013_(Euro)_updated.png.
[17] https://www.wttc.org/-/media/files/reports/economic%20impact%20research/countries%202015/unitedkingdom2015.pdf.
[19] Ibid.
[20] Ibid.
[21] http://ec.europa.eu/transport/modes/air/index_en.htm.
[22] The government estimates that EU reforms in the 1990s resulted in a drop in fares of over 40% for lower cost flights: HM Government, Why the Government believes that voting to remain in the European Union is the best decision for the UK (April 2016).

has enabled British people to travel abroad for work and pleasure, explore new places,[23] and buy second homes there.[24]

The arrival of low cost carriers has also created the context in which EU migrants might come to the UK, as students (through the Erasmus exchange programme) or as tourists, to explore what the UK has to offer. As we have learned through the interviews we have been conducting as part of a research project funded by the ESRC's programme *'UK in a Changing Europe'*, these experiences as students or tourists prompt some people to return to the UK as migrant workers. Interviewees have also told us how low cost travel to airports throughout the EU has also made it possible for them to come to the UK in a way that feels fairly 'low stakes': they can afford to 'tip their toes' in UK employment waters and can (and do[25]) easily return home if they do not find what they had hoped for in life and work in the UK.

Migrant workers have also described to us the importance of low cost travel to them as a way to stay in touch with family and friends at home. Migrant workers, especially those who come from Southern European States, have told us about their intentions to return home for good once the economy has picked up: there is much about life in their home country that they miss. José is one such example.[26] Unable to get work in Spain, he came to the UK as a qualified teacher. He had no English but still found a job washing dishes in a restaurant where he worked for a couple of years while working on his English. His English improved sufficiently and this helped him get a job as a cover teacher in a local comprehensive school. He plans to return to Spain and work as a teacher in a bilingual school, now better qualified with his newly acquired English. Ryanair flights from Stansted enable him to stay in contact with his family.

Low-cost carriers have also enabled migrant workers to return to their home countries for medical treatment. Despite the narrative of healthcare tourism and the burden that migrants are said to place on the NHS, several of our interviewees have talked us about how they prefer to return to their own countries for healthcare. This is partly because of familiarity with home systems. For some, though, it is that they have more positive healthcare experiences at home than in the UK in terms of shorter waiting times, greater access to specialist physicians and more routine testing and screening practices. As Francesco said 'I've only had one experience with a GP in the UK and it wasn't that great. So I sort everything medical out at home. My Mum books my blood tests in Italy and I bring six months of pills back with me.' Some migrant workers have told us that they did not expect such open access to services such as healthcare and that they feel that returning home to access these services is the right thing to do in return for the employment opportunities that they are enjoying in the UK. As Andrea put it, 'I don't want to be perceived as a burden, clogging up the health system. The country is giving me an opportunity so I repay them by behaving well.'

Finally, convenient and low cost travel have enabled some EU citizens to see the world as a smaller, more connected place: mobility has become much more routine; opportunities and horizons do not

[23] See e.g. 'Ryanair Effect sees Azores Tourism boom': http://www.traveldailynews.com/news/article/68191/ldquo-ryanair-effect-rdquo-sees-azores-tourism.
[24] See e.g. 'Castellón set for "Ryanair effect" property boom' http://www.thelocal.es/20150407/castelln-to-be-2015-property-hotspot.
[25] See, for example, Barbara's story: http://www.eumigrantworker.law.cam.ac.uk/Listening/a-fun-adventure-for-self-development-but-returning-to-poland-for-a-better-quality-of-life.
[26] http://www.eumigrantworker.law.cam.ac.uk/Listening/betterbenefitsinspain.

stop at national European frontiers. We interviewed Jadzia and Rafal, who own a dental practice in the East of England. When asked about the effect of Brexit, they were philosophical:[27]

> 'Migrants working in the fields and in lower level jobs will move on. There are plenty of fields in France and Spain. But the British businesses that rely on the migrants will close because British people don't want to do that sort of work anymore.'

This fluidity between freedom of movement for the purposes of receiving or providing services and free movement of workers can also be seen in the context of higher education.

Higher education

Free movement for the purposes of receiving higher education was originally considered to be travel for the purposes of receiving a service. It is also now covered by the Citizens Rights Directive (CRD) 2004/38: students have a right to reside for more than three months if they have sufficient resources and sufficient medical insurance. EU students enjoy equal treatment with their home state peers. So in *Gravier*[28] the Court said that if a host state charged a registration fee to migrant students but not to its own students, there was a breach of the principle of non-discrimination.[29] *Gravier* is therefore authority for the fact that migrant students must have access to higher education on the same terms as nationals and must be charged the same *fees*. However, Article 24(2) CRD provides that, prior to the acquisition of permanent residence (mainly after five years' residence), the host state is not obliged to provide students or their family members with *maintenance aid* (student grants or loans) unless students are also workers or are working on a self-employed basis.

The principle of equal treatment in terms of access to education has started to pose problems for countries, such as the UK and Ireland, which are net recipients of students. Out of 2,266,000 students in higher education in the UK, about 125,000 are from the EU. Although there was a sharp drop in the number of EU students studying in the UK, which coincided with the introduction of higher university fees of £9,000 per year, numbers have started to increase again, albeit not yet to levels that match the peak of 2010. EU students are the second largest group of non-UK domiciled students studying in the UK (the largest group is from Asia with about 192,000 students). The total number of non-UK domiciled students is about 437,000.[30]

In respect of the availability of places, in the UK at least, every incoming migrant EU student will take a place which might have been occupied by a domestic student.[31] This issue was considered directly by the Court in *Commission v. Austria*.[32] Austrian law allowed broad access to higher education for

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[27] http://www.eumigrantworker.law.cam.ac.uk/Listening/migrants-are-not-afraid-about-benefit-cuts-because-everyone-has-work-or-can-get-work.

[28] Case 293/83 *Gravier* v. *Ville de Liège* [1985] ECR 593, para. 30. For background. Shaw, 'From the margins to the centre: Education and training law and policy' in P. Craig and G. de Búrca (eds.), *The Evolution of EU Law* (Oxford: OUP, 1999).

[29] Para. 26.

[30] https://www.hesa.ac.uk/stats.

[31] See M. Dougan, 'Fees, grants, loans and dole cheques: who covers the costs of migrant education within the EU?' (2005) 42 *CMLRev.* 943.

[32] Case C–147/03 [2005] ECR I–5969, noted Rieder (2006) 43 *CMLRev.* 1711. See also Case C–73/08 *Bressol* v. *Gouvernement de la Communauté française* [2010] ECR I–2735.

holders of Austrian school leaving certificates but subjected those with comparable certificates from other Member States to more stringent requirements. The principal ground offered by Austria to justify its indirectly discriminatory rules was to preserve the 'homogeneity of the Austrian higher or university education system'.[33] Austria argued that if it did not impose some limitation, its policy of unrestricted access to all levels of education[34] would mean that a large number of students with diplomas awarded in other states (especially Germany), who had failed to be admitted to higher education courses in those states, would try to attend higher education courses in Austria. Such a situation, it argued, would cause 'structural, staffing and financial problems'.[35]

The Court found that there was little evidence that this was in fact a problem[36] and, even if it was, the justification based on preserving the homogeneity of the Austrian higher education system was not, in fact, made out by the Austrian government.[37] Even if it was a problem, the Court offered a simple solution: excessive demand for access to specific courses could be met by the adoption of specific non-discriminatory measures such as the establishment of an entry examination or the requirement of a minimum grade.[38]

The presence of EU students does help the UK economy, albeit not to the same extent as international students, who pay significantly higher fees. According to a study published by UniversitiesUK,[39] expenditure by international students (EU and non-EU) on fees and accommodation amounted to £4.4 billion in 2011–12; £3.8 billion was from non-EU students, £0.6 billion by EU students. This expenditure, as well as that spent off-campus, has positive knock-on effects for the UK economy, including generating and sustaining many jobs throughout the UK. That said, for every UK and EU student recruited by a UK university, it is one fewer overseas student who are more valuable in terms of revenue they generate for the UK's economy.

EU students also study in the UK as part of the highly successful Erasmus programme where students spend 3-12 months in another EU country. The Erasmus programme has played a major role in the internationalisation and globalisation of higher education.[40] Over 20,000 UK students a year spend time on an Erasmus programme.[41] These experiences expose students to new cultures and ideas. They present opportunities to learn languages, and they have the potential to broaden horizons, offering platforms from which to address global and cross-border problems such as environmental protection or terrorism.[42]

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[33] Para. 47.
[34] According to the Advocate General's Opinion, this policy was introduced to improve the percentage of Austrian citizens with a higher education qualification, which at the time was one of the lowest in the EU (para. 26).
[35] Para. 50
[36] Para. 65.
[37] Para. 66.
[38] Para. 61.
[39] http://blog.universitiesuk.ac.uk/2014/04/04/study-highlights-value-of-international-students-to-the-uk/.
[40] See e.g. G. Breton and M. Lambert (eds.) *Universities and Globalization: Private Linkages, Public Trust* (Paris: UNESCO, 2003) and R. Brooks and J. Waters, *Student Mobilities, Migration and the Internationalization of Higher Education* (Basingstoke: Palgrave Macmillan, 2011).
[41] http://go.international.ac.uk/sites/default/files/Further%20up%20the%20road%20carbonell%202014.pdf.
[42] See e.g. R. Brooks and J. Waters, 'Social networks and educational mobility: the experiences of UK students' (2010) 8(1) *Globalisation, Societies and Education*, 143-157.

This student mobility has an impact on the immigration debate. While it is difficult to quantify, our interview evidence has shown that some individuals who are now migrant workers under Article 45 TFEU had originally come to the UK as students. The help their host universities had provided them with when they came to the UK as students fed into their confidence and ability to re-establish themselves in the UK as migrant workers. So as Raj explained to us, he already had a UK bank account from his time as a student. This made life more straightforward when he came to the UK to work as a computer scientist and meant that he didn't have to face again the frustrating 'chicken and egg' problems of, for example, providing proof of UK address when he wanted to open a bank account.[43]

The effect of Brexit on free movement of services

If there is a vote to leave the EU, the effect on free movement of services will depend on what, if anything is put in its place. One possibility is for the UK to become a member of the European Free Trade Agreement (EFTA)[44] and then join the European Economic Area (EEA). The European Economic Area (EEA) Agreement enables three of the four EFTA Member States (Iceland, Liechtenstein and Norway) to participate in the EU's Internal Market. So that if this option were adopted, the current rules, as outlined above, would continue to apply. The UK would not, however, have any formal input into the drafting and adoption of future EU legislation to which the UK would continue to be bound. The UK would also be required, under this model, to continue to contribute to the EU's budget. However, under the EEA model the UK would no longer be covered by trade agreements entered into by the EU, but could join the existing EFTA trade agreements. EFTA has 25 free trade agreements covering 36 countries, compared to more than 50 countries that are covered by the EU's trade agreements, some of which cover goods and services, some goods only.[45]

Where a state is in breach of EEA law, the EFTA Surveillance Authority (ESA) can bring proceedings before the EFTA Court in the same way that the European Commission can bring proceedings against a defaulting state of the EU before the Court of Justice. However, the protection for individuals and economic operators under EEA law is less strong than under EU law. Large parts of EU law, including Article 56 TFEU on free movement of services are directly effective which means they can be enforced in, for example, courts in the UK (with national courts making a preliminary reference to the Court of Justice in Luxembourg in cases of uncertainty about the meaning of EU law). The principle of direct effect has not currently been recognised in EEA law.[46] Put simply, an EU student or a tourist who faces discrimination can bring a case before a local court in the UK; it would not be so easy in the EEA

A second possibility would be for the UK to join EFTA and then have a series of bilateral agreements with the EU, as do the Swiss. Switzerland has over 120 separate bilateral agreements with the EU (but crucially not in the field of financial services). Under this approach, the UK would not have full

[43] http://www.eumigrantworker.law.cam.ac.uk/Listening/there-needs-to-be-a-common-federal-pool-of-money-that-follows-citizens-that-can-be-spent-on-what-they-need-wherever-they-are-living-at-the-moment.2019.
[44] The UK joined EFTA in 1960 but left in 1973 when it joined the EU.
[45] http://www.efta.int/legal-texts/free-trade-relations.
[46] M. Johansson, Judicial Proteciton in the EEA EFTA States' in the EFTA Court (eds) *The EEA and the EFTA Court: Decentred integration* (Oxfrod, Hatrt Publishing, 2014), 318.

access to the Single Market because access would depend on the existence of an agreement. It would still have to make contributions to the EU's budget and in return for access to the single market it would still have to comply with single market rules. A permutation of the Swiss model would be for the UK to enter into its own UK-EU free trade agreement involving one single agreement. This would provide greater continuity over access to the Single Market, but, as with the Norwegian/Swiss options, the UK would not have influence over the drafting of EU legislation to which it would be bound. Again there would be serious questions about the ease of enforcement of those rights.[47]

A third possibility would be for the UK to enter into a customs union with the EU, such as that which exists between Turkey and the EU, which covers trade in industrial products and some agricultural products. This does not, however, apply to services. So in this scenario, as in the scenario in which no agreement is reached regulating the UK's future relationship with the EU, the UK would be reliant on the protection provided by the World Trade Organisation (WTO). The WTO does have a General Agreement on Trade in Services (GATS) but this provides less extensive protection against discrimination for those wishing to access or provide services in other countries. Put simply, GATS prohibits all Member States from negotiating selective preferential arrangements with some States for trading in services. There is also a general obligation of transparency in respect of national rules that govern access and conduct of services markets. However, individual countries can decide which services markets they want to open up to international trade and can subject access to limitations. This means that GATS offers a much more limited freedom to provide services in other Member States on equal terms with domestic service providers. The WTO's dispute settlement mechanism that enforce GATS is also weaker than the current system involving the European Court of Justice which is the ultimate enforcer of the Treaty's provisions on free movement of services. At WTO level, claims are brought by States rather than individuals, so that traders could not challenge State rules that present obstacles to free trade in the ways that are currently possible before national courts (and the Court of Justice in Luxembourg).

For the UK, where the services market makes up 80% of its economy,[48] it is dependent on the European Commission pushing a liberalisation agenda and the Court of Justice enforcing it. Apart from membership of the EEA, the alternatives to EU membership may not meet the UK's agenda for international liberalisation of services.

Conclusions

This article has explored tourism and higher education as examples of two service sectors that are of particular importance to the UK. We have explored the economic significance of cross-border service provision in these fields and we have presented some interview data about how travel to the UK as a student or as a tourist can play a role in migration decision-making. While the social effects of migration in the UK are keenly debated, research has demonstrated the macro-economic benefits of

[47] A. Semertzi, 'The preclusion of direct effect in the recently concluded EU free trade agreements' (2014) 51 *Common Market Law Review*, 1125.

[48] HM Government, Why the Government believes that voting to remain in the European Union is the best decision for the UK (April 2016)

migration to the UK.[49] If the UK votes to leave the EU later this year, there is no 'easy win' alternative system for regulating services. Concerns about Brexit have already been said to have reduced the confidence of UK service businesses and reduced growth to a three-year low.[50]

But even if the UK votes to remain in the EU, the process of liberalising services will not be smooth. Yes, services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20% of global trade.[51] But some states remain cautious about liberalisation. They fear that the liberalisation of, say, the provision of pharmacy or optician services will lead to lower levels of protection for their consumers and so they have fought against any such move. This is one of the reasons why Boots the Chemist cannot be found on any high street in Spain or Italy. Where concerns about public health have been raised, the Court has been more ready to support the state's position. But at least in the EU there is a judicial body to appeal to. It puts considerable power in the hands of the Court but it is an accessible forum.

[49] See especially https://www.ucl.ac.uk/news/news-articles/1114/051114-economic-impact-EU-immigration and https://fullfact.org/immigration/do-eu-immigrants-contribute-134-every-1-they-receive/.
[50] https://next.ft.com/content/2b33e744-e125-11e5-9217-6ae3733a2cd1 and http://www.theguardian.com/business/2016/mar/03/brexit-fears-dent-confidence-uk-services-firms-eurozone.
[51] https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm.