The Evolution of the Free Movement of Lawyers in the European Union and the East African Community Compared: Achievements and challenges in implementing integration freedoms in England and Wales and Rwanda

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Abstract: Freedom of movement (FOM) of legal services has brought considerable economic growth to the legal services market in England and Wales and very real benefits to legal practitioners within the European Union (EU). At the same time, another successful Regional Economic Community (REC), the East African Community (EAC), is struggling to commit to FOM of legal services, and Partner States, fearful of competition, prefer to protect their legal services markets rather than embrace integration which could bring growth. This article explores the stream-lined situation in England and Wales and contrasts the concerns associated with the loss of FOM on leaving the EU expressed by legal professional bodies and lawyers there with the reticence encountered in the EAC, focussing on Rwanda.

It examines how the relevant provisions in the EU directives and EAC Common Market Protocol,[1] which provide the framework for FOM of legal services and lawyers, are enabled by Community and domestic provisions in England and Wales and in Rwanda respectively. This article analyses the EAC's reluctance to embrace liberalisation of the market in legal services despite the commitments of the Common Market Protocol, and concludes finally that, in both contexts, lawyers are losing out – EU lawyers practising in the UK, English and Welsh lawyers practising in the EU, seeing their rights to practice restricted. Similarly, the slow progress to liberalisation of legal services has obstructed cross border practice for Rwandan lawyers in the EAC and hampered growth in the legal services market.

Key words: Freedom of movement; legal services; freedom of establishment; European Union; East African Community; Brexit

Introduction

The end of the twentieth century and the start of the twenty-first have seen considerable changes to the way in which legal professionals in Europe are called to operate. The expansion of cross-border trade has signified complex commercial transactions and an internationalisation of the legal profession. The traditional model of the small practice or sole practitioner has given way to large or medium-sized law firms offering a range of commercial services,[2] either as global law firms in their own right or operating across borders in

[1] Protocol on the Establishment of the East African Community Common Market (Common Market Protocol)

[2] G. Muller, "Free Movement of Lawyers Within the EU Internal Market." 26 (3) *European Business Law Review* (2015): 355-390, at 355.

collaboration with foreign partners.[3] In addition, the deepening of European integration has signified a greater need for legal experts' advice for consumers and businesses on EU regulatory frameworks. However, the different legal frameworks in EU Member States, the local character of the law, and the fact that it is a highly regulated profession can create obstacles. The route to FOM of legal services in the EU is accompanied by a plethora of case law, a testimony to the challenges of achieving these freedoms.[4]

EU legal texts and case law ensure the freedom of movement of legal services, which enables economic growth,[5] and at the same time the regulation of legal services. It is not surprising, therefore, that legal professionals in the UK are concerned about the impact that withdrawing from the EU will have on them on both an economic and personal level.

The EAC, another very successful REC in its own geographical region, currently anticipates FOM of legal services with more reticence and appears to have hit an obstacle in the liberalisation of legal services markets. This article analyses the provisions in both RECs for FOM of legal services, assesses the advantages and perceived disadvantages of FOM of legal services, and examines whether the barriers facing EAC lawyers may be overcome. It reflects on the similarities in the challenges confronting both RECs and questions what the way forward for them might be, the one as it leaves profitable relationships in a highly successful REC, the other as it struggles to convince key players of the advantage in moving towards greater integration of legal services.

Within the UK, the legal landscape is complicated by the fact that there are three jurisdictions: England and Wales, Scotland, and Northern Ireland, each with two regulatory bodies which oversee the practice of the two branches of the legal profession, solicitors and barristers. This paper will focus on practice in England and Wales. In every case, the use of the word lawyer is understood to describe legal professionals educated to degree level and holding a professional qualification or certificate to practice as a solicitor, barrister or advocate in these RECs.

[3] May, A., "Globalised Law and Best Friends Networks," *The Principle.* (2019) Available at <https://www.allaboutlaw.co.uk/commercial-awareness/commercial-insights/globalised-law-and-best-friends-networks-> Accessed 24 June 2019.

[4] See, for example, the frequently cited *Gebhard v Consiglio dell'Ordine degli Avvocati e Procurati di Milano* (Case C-55/94) [1995] ECR I-4165; *Thieffry v Conseil de l'Ordre des avocats à la Cour de Paris* (Case 71/76) [1977] ECR 00765; *Van Binsbergen v Bestuur van de Bedrijfsvereniging Voor de Metaalnijverheid* (Case 33/74) [1974] ECR 1299; *Vlassopoulou v Ministerium für Justiz, Bundes und Europaangelegenheiten Baden-Württemberg* (Case C-340/89) [1991] ECR2357; *Jany* (Case C-268/99) [2001] ECR I-8615 and recent case of *Monachos Eirinaios v Dikigorikos Syllogos Athinon* (Case C-431/17) [2019] ECR 00000.

[5] Muller, "Free Movement of Lawyers Within the EU Internal Market," 356-7.

PART ONE:

FREEDOM OF MOVEMENT OF LEGAL SERVICES IN THE EU

1.1. The benefits of the freedom of movement of legal services in the EU

The UK has benefitted significantly from the internationalisation of the legal sector.[6] This includes, among other things, the creation of jobs and the promotion of London as the main 'European hub' for US law firms, which allows them to access the European market.[7] London has become the world's leading centre for international legal services and dispute resolution, due to the preference of business parties for English common law as a means to resolve international commercial disputes.[8] This international activity provides a substantial source of work for the English Bar and for English Law firms. Within this sector of activity, the EU holds a significant place.[9] About 100 of the foreign UK-based law firms are EU law firms,[10] and a significant number of EU lawyers benefit from the EU's freedom of movement provisions.[11]

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[6] The legal sector contributed over £26 billion to the UK economy in 2016 (TheCityUK, "Legal Excellence, Internationally Renowned UK Legal Services 2018." November 2018. Available at < https://www.thecityuk.com/assets/2018/Reports-PDF/86e1b87840/Legal-excellence-internationally-renowned-UK-legal-services-2018.pdf > Accessed 21 June 2019, p4) and represented the equivalent of 1.5% of the UK's GDP in 2017 (J. Djanogly MP, in Westminster Hall Debates, "Leaving the EU: Legal Services." HC Deb, 21 November 2018, c381WH. Available at < https://www.theyworkforyou.com/whall/?id=2018-11-21b.380.0 > Accessed 15 July 2019, p 2).

[7] Over 380,000 people are trained and employed in the UK legal services market, which is the second largest in the world after the United States, and the largest legal services sector in the EU. In addition, the UK legal services sector was responsible for a net export of £4 billion in 2017: see APPG on Legal and Constitutional Affairs, *The effect of Brexit on legal services.* October 2018. Law Society of England and Wales. Available at < https://www.lawsociety.org.uk/policy-campaigns/articles/appg-legal-consitutional-affairs-effect-of-brexit-on-legal-services/ > Accessed 21 June 2019, p 3.

[8] In 2017, three quarters of cases before the London Commercial Court were international in character: see Queen Mary University London and White & Case, "2018 International Arbitration Survey: The Evolution of International Arbitration." Available at <http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF> Accessed 24 June 2019, p. 5. In an international arbitration at the London Court of International Arbitration and the International Chamber of Commerce, it is not uncommon to find that neither of the parties are English, and that none of the legal representatives are London-based, but clients will be represented by London-based lawyers from international law firms, or English barristers instructed from overseas. Over 200 foreign law firms now have their offices in the UK, and employ over 10,000 people: see TheCityUK, pp. 7-8.

[9] Statistics from the London Court of International Arbitration show that up to twenty-five per cent of the arbitrations referred to this Court in 2015 were from the EU, as compared to 15.6 per cent from the UK, 14.8 per cent from Russia and the Commonwealth of Independent States, and 12 per cent from Asia and the Caribbean. The London Maritime Arbitrators' Association estimated that in 2015, European lawyers were involved in fifty per cent of arbitrations dealt with by documents only: see Bar Council Brexit Working Group *International Arbitration*. March 2017. Paper Two. The General Council of the Bar, pp 3-5.

[10] Bar Council Brexit Working Group "Legal Services." June 2017. Paper One. The General Council of the Bar, 3.

[11] 2.1 per cent of practising solicitors in England and Wales in July 2017 were non-UK European lawyers. There were 661 Registered European Lawyers and 2,364 Exempt European Lawyers in July 2017: see Beqiraj, J. "FAQ: Professional Qualifications after Brexit." (October 2017). *British Institute of International and Comparative Law*, 3. These rose to 741 and 3,548 respectively in September 2019: see SRA, "Population of Solicitors in England and Wales." 2019. Available at <https://www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics/data/population_solicitors/> Accessed 2 November 2019.

As freedom of movement rights are reciprocal, UK lawyers have also been able to practice in the EU.[12]

A rapid rise in cross-border transactions in the late nineties helped to stimulate this demand for legal professional services,[13] but there are concerns amongst legal practitioners that, as a consequence of Brexit, the loss of freedom of movement will have a negative impact on the UK legal services market,[14] and, in an attempt to preserve these rights, some Anglo-Welsh lawyers are registering with the Irish professional bodies.[15]

Until January 2021, lawyers can move without imposition of immigration controls between EU Member States on a permanent or temporary basis, but to date, there are only a few bilateral arrangements regarding future relationships under discussion (eg with Belgium, France and Germany[16]) and some Memoranda of Understanding outlining possibilities of co-operation in training (with Poland and Slovakia).

Although, in the short term, Brexit is likely to create a rise in demand for legal work, the legal sector expects to be negatively affected by the transition and loss of freedom of movement, with turnover in growth expected to fall in the long term.[17]

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[12] There were 2,731 solicitors practising in the other EU Member States, and thirty-six of the top UK law firms had at least one office in one of the twenty-seven other EU Member States in 2016: see The Law Society of England and Wales, "House of Lords call for evidence," *Internal Market Sub Committee Submission of evidence*. 5 October, 2016, 4.

[13] M. Hennsler, and Terry, L. S. "Lawyers without Frontiers - A View from Germany." *Dickinson Journal of International Law,* 19, 2 (2001): 269-299, p. 272.

[14] The loss of freedom of movement may affect London's central role in international arbitrations and its potential to generate income from legal services across borders within the EU and EEA: see Bar Council Brexit Working Group, op. cit*. supra*, note 14, p. 3. Legal professionals fear that international firms will in future prefer to have recourse to EU courts, where they will be able to appeal decisions to the Court of Justice of the European Union (CJEU). A small majority of respondents in a survey of just under a thousand private practitioners, arbitrators, in-house counsel, academics, experts and other stakeholders carried out by Queen Mary University London and White & Case on international arbitration seats felt that Brexit was unlikely to affect the choice of London as a seat for arbitration. However, a significant number (thirty-seven per cent) were less optimistic, and seventy per cent of those questioned speculated that Paris would be the seat to benefit the most from any negative impact of Brexit on London: Queen Mary University London and White & Case, "2018Internatioanl Arbitration Survey," 11.

[15] In an attempt to preserve these rights, some Anglo-Welsh lawyers are registering with the Irish professional bodies. Barristers whose work currently involves work with the CJEU are registering with the Irish Bar in an attempt to preserve their rights of audience before the EU courts, or give privileged legal advice on EU competition law to clients: G. Peretz, "Make mine a Guinness: why I've joined the Irish Bar." *The Times*, 26 July, 2018. Available at < https://www.thetimes.co.uk/article/make-mine-a-guinness-why-i-ve-joined-the-irish-bar-rfwln2tsc> Accessed 15 July 2019; since the referendum, 2,722 solicitors have registered in Ireland. Lawyers from England and Wales now represent one in every seven lawyers on the roll in Ireland as opposed to about 100 per year pre-2016: J. Hyde, "Brexit hitch as firms eye Ireland." *Law Society Gazette,* 20 May, 2019, 3.

[16] S. Kahmann, "British young lawyers' practising rights: how will Brexit impact the future in Brussels and beyond?" *The UK Law Societies' Joint Brussels Office,* 30 October 2019*.* Available at <https://www.lawsocieties.eu/viewpoint/british-young-lawyers-practising-rights-how-will-brexit-impact-the-future-in-brussels-and-beyond-by-siobhan-kahmann/6000484.article> accessed 24 November 2019.

[17] The Law Society of England and Wales *Legal Services Sector Forecasts 2017-2025.* (2018) Available at <https://www.lawsociety.org.uk/support-services/research-trends/legal-services-sector-forecasts/> Accessed 24 June 2019, pp. 4 and 22.

1.2. Legal framework for the FOM of legal services in the EU

The four fundamental freedoms of movement were initially set out in the Treaty establishing the European Economic Community (TEC) - the Treaty of Rome - signed in 1957. They can now be found in the Treaty on the Functioning of the European Union (TFEU), which, along with the Treaty on European Union, contain the provisions of the EEC Treaty as it was amended following the Treaty of Lisbon. The Single European Act of 1986 (SEA), which provided for the completion of the internal market and the movement without restriction of goods, services, capital and persons within the EU by 1992, furthered the implementation of the freedoms[18] which form the basis upon which the freedom of movement of lawyers and legal services is built. The aim in constructing the common market had been to consolidate peace in post-war Europe and promote economic prosperity, this latter to be achieved by removing barriers to trade between Member States, such as tariffs and quotas, which are generally considered to raise the cost of traded goods and decrease efficiency and productivity. Despite the existence of the common market and jurisprudence on FOM from the European Court of Justice (ECJ), significant barriers to trade still existed within the EU in the 1980s. Since 1993, the single market has created a single territory, which today numbers more than 500 million inhabitants and over the years, internal borders and regulatory restrictions to the free movement of goods and services have been dismantled.[19] At the same time, unrestricted movement of people throughout the territory has enabled the workforce to move freely to find employment and provide labour where there is a greater demand than supply, to pursue career choices in another member state, or to achieve family reunification. Initially viewed as factors of production, workers and their families are now considered citizens of the EU,[20] and are possessed of a range of rights in the host member state based on EU law. Like workers, the self-employed also enjoy free movement rights: the right to provide services in another member state and the right to establish themselves, and the right to settle their families with them. These free movement provisions enable lawyers to practice across borders within the EU.

The principle EU Treaty provisions regarding freedom of movement are found in Articles 45, 49 and 56 of the TFEU (ex Articles 39, 43 and 49 TEC). These articles provide for the freedom of movement of workers, the freedom of establishment in another EU member state and the free movement of services across borders respectively. Initially, according to former ECJ Judge Mancini, 'Community Law did not purport to have an impact on internal rules governing individual employment relationships… except in so far as was necessary to do so in order to eliminate the obstacles which hindered the integration of workers coming from other Member States,' but the ECJ has progressively taken a leading role in defining and confirming the FOM rights of workers 'extend[ing] the jurisdiction of the Community to make up for the set-backs … suffered at the decision-making level at the hands of the Member States.' Migrant workers are

[18] Article 13 Single European Act OJ L 169, 29.6.1987, now enshrined in Art 26 TFEU: 'The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992... The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty. '

[19] Jan in 't Veld, "The economic benefits of the EU Single Market in goods and services," *Journal of Policy Modeling*, 41, 5(2019): 803-818, 803.

[20] Art 20 TFEU.

not now required to comply with the hurdles which confronted them in the past, and the Court's interpretation of the rules has literally been 'emancipatory'.[21]

Article 45 TFEU lays out the framework for the free movement of workers, and states that their freedom of movement '… shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.'[22] No definition of what constitutes a worker was or is provided in the Treaties or in EU legislation (other than in contrast to the freedom to pursue self-employed activities and the freedom to provide services expressed in Articles 49 and 56), a situation which could risk leading to inconsistency in application.[23] The task therefore fell to the Court of Justice to develop a definition via case law, a role which it adopted resolutely from an early juncture, in order to avoid Member States 'modify[ing] the meaning of the concept of "migrant worker"' and eliminating 'at will the protection afforded by the Treaty to certain categories of person.'[24] In the words of Judge Mancini 'the Court conferred on itself what we might describe as a hermeneutic monopoly for the purpose of counteracting the unequal and discriminatory application of the rules on freedom of movement,'[25] and thus 'claimed ultimate authority to define its meaning and scope.'[26] The ECJ has crafted a wide and inclusive definition of worker status, and this is now found in *Lawrie-Blum*. The essential feature of an employment relationship is found to be satisfied if 'for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.'[27] This combines a 'subordination' requirement and a 'remuneration requirement' (which the ECJ sees in the broadest sense, including remuneration via benefits in kind and subsidies from public funds[28]), and builds on the foundation provided by *Levin* in 1982, that the 'rules cover only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary.'[29] EU migrant salaried lawyers, even engaged on part-time contracts, are therefore entitled to equal treatment alongside workers in the host state. In contrast, 'any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity,'[30] which is protected by different FOM provisions.

The right to freedom of establishment is contained in Article 49 TFEU, which allows nationals of Member States to 'take up and pursue activities as self-employed persons' and to set up firms 'under the conditions laid down for [their] own nationals'. Discrimination against them on grounds of nationality is prohibited and they are granted the possibility to be engaged in

[21] Mancini, G *Democracy and Constitutionalism in the European Union*, (Hart Publishing 2000): 100, 127.
[22] Art 45 (2) TFEU.
[23] See reflection by Kountouris: 'Some provisions, especially in secondary instruments regulating working conditions, appear to reserve the role of defining terms such as "employee" or "contract of employment or employment relationship" exclusively to national law.' N. Kountouris, N., "The concept of 'worker' in European Labour Law – Fragmentation, Autonomy, and Scope," *Industrial Law Journal*, 47, 2, (2018): 193.
[24] *Hoekstra v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten* (Case 75/63) [1964] ECR 177, para 1.
[25] Mancini, *Democracy and Constitutionalism in the European Union*, 124.
[26] P. Craig, and de Búrca, G *EU Law*, (6th edition, OUP, 2015): 749.
[27] *Lawrie-Blum v Land Baden-Württemberg* (Case C66/85) [1985] ECR 02121, para 16.
[28] Kountouris, "The concept of 'worker' in European Labour Law – Fragmentation, Autonomy, and Scope," 199.
[29] *Levin v Staatssecretaris van Justitie* (Case 53/81) [1982] ECR 1035, para 17.
[30] *Jany* (Case C-268/99) [2001] ECR I-8615, para 34.

the economic activity of their host state in a durable manner and, as expressed in *Gebhard,* 'pursue professional activity on a stable and continuous basis in another Member State'.[31] In *Reyners* in 1974, the ECJ affirmed the right of self-employed migrants to establish themselves, confirming the principle of non-discrimination, and asserted this as directly effective, even though the implementing measures at Community or national levels may not be fully in place.[32] This freedom of establishment extends also to legal persons, defined in Article 54, thus to law firms, and these may additionally set up subsidiaries in another Member State as well.[33] Law firms have increasingly availed themselves of this opportunity to extend the reach of their business into other EU Member States.

The initial focus of the European economy was on trade in goods when the internal market was established, but services have become increasingly important and now constitute over 70% of the European economy.[34] The freedom to provide services is laid out in Article 56 TFEU, which prohibits 'restrictions on the freedom to provide services within the Union … in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.' Article 57 TFEU defines services as activities that are 'normally provided for remuneration' and 'not governed by the provisions relating to the freedom of movement for goods, capital and persons', highlighting 'the professions' as a category of services. It stipulates specifically that 'the person providing a service may … temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that state on its own nationals. These articles provide the basis for lawyers to work across borders on a temporary basis. The fact that a lawyer is providing services on a temporary basis rather than establishing him or herself does not prevent him or her from equipping him or herself with 'some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) … for the purpose of performing the services in question,'[35] nor for providing those services regularly or for a sustained period of time.[36] Article 56 only applies where a cross-border element is concerned, but both service provider and recipient may rely on this provision.[37] Cuyvers explains the breadth of the possibilities available under the FOM of legal services:

> 'Four possible cross-border scenarios can be envisioned. Firstly, the service provider may travel to another Member State to provide a service. Secondly… service recipients may travel to another Member State to receive a service. Thirdly, the service itself may

[31] *Gebhard v Consiglio dell'Ordine degli Avvocati e Procurati di Milano* (Case C-55/94) [1995] ECR I-4165, para 25. *Gebhard* concerned a German lawyer who set up his own chambers in Italy.
[32] *Reyners v Belgium* (Case 2/74) [1974] ECR 631, paras 24-30.
[33] A. Cuyvers, "Freedom of establishment and the freedom to provide services in the EU" in *East African Community Law* eds. Ugirashebuja, E., Ruhangisa, J.E., Ottervanger, T. and Cuyvers, A.. (Leiden. Brill Nijhoff, 2017): 391.
[34] Ibid, 376.
[35] *Gebhard v Consiglio dell'Ordine degli Avvocati e Procurati di Milano* (Case C-55/94) [1995] ECR I-4165, para 22.
[36] 'It follows that the mere fact that a business established in one Member State supplies identical or similar services with a greater or lesser degree of frequency or regularity in a second Member State, without having an infrastructure there enabling it to pursue a professional activity there on a stable and continuous basis and, from the infrastructure, to hold itself out to, amongst others, nationals of the second Member State, is not sufficient for it to be regarded as established in the second Member State.' *Schnitzer* (Case C-215/01) [2003] ECR I-14847, para 32.
[37] Luisi and Carbone (Cases 286/82 and 26/83) [1984] ECR 377.

cross a border, for example via the internet. Fourthly, the service provider and the service recipient may travel together to another Member State, for an example with an Irish consultant joining his Irish client on a business trip to Malta.'[38]

Article 53 TFEU provides for the issuing of directives to bring about the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

The provisions contained in these Articles are fleshed out by a number of Directives, which are then translated into the domestic law of the Member States by local laws and regulations. The freedoms extend to the legal professions, regardless of the 'relatively deep differences' in entry requirements and 'the varying structures, customs, cultures, and legal traditions' of individual Member States across the EU, which have caused obstacles to the FOM of lawyers and legal services in the past.[39] An abundance of case law in the 1970s and 1980s is testimony to the initial reticence to apply the general liberalising provisions on the freedom to provide services and the freedom of establishment to the legal professions.[40] However, the only exception to the freedom of movement rights specifically made in the EEC Treaty relates to employment within public services and activities connected with the exercise of official authority, which does not affect the majority of work carried out by lawyers,[41] and, in 1974, *Reyners* confirmed that lawyers are not caught by the exception.[42] The Directives which refer specifically to the legal professions now confirm without doubt that lawyers also are entitled to benefit from the freedoms.

The following provisions outline the freedom of movement rights of self-employed EU lawyers across the EU: i) the Lawyers' Services Directive,[43] which grants lawyers the right to provide legal services under their home state professional title throughout the EU on a temporary basis; ii) the Professional Qualifications Directive,[44] which grants the right to practice under the same conditions as nationals of the host state, thanks to the mutual recognition of academic and vocational qualifications; and iii) the Lawyers' Establishment Directive,[45] which grants the right to set up a practice providing legal services in another Member State on a permanent basis.

For lawyers not establishing themselves on a permanent basis outside of their home state, but wishing to offer services to clients from another Member State, the Lawyers' Services Directive, implemented in 1977, provides the framework for EU qualified lawyers to carry out

[38] Cuyvers, "Freedom of establishment and the freedom to provide services in the EU," 384.
[39] J. Lonbay, "Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union." *Fordham International Law Journal*. 33, (2010): 1640.
[40] V. Višinskis, Žalėnienė, I. and Tvaronavičienė, A.. "Legal environment within the EU: free movement of lawyers and legal services," *Business: Theory and Practice.* 10, 1 (2009): 30-37, 31.
[41] See Articles 45 and 51, TFEU.
[42] *Reyners v Belgium* (Case 2/74) [1974] ECR 631, para 52.
[43] Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, OJ L 78, 26.3.1977, p. 17–18.
[44] Directive 2005/36/EC on the recognition of professional qualifications OJ L 255, 30.9.2005, p. 22–142, recently amended by Directive 2013/55/EU amending Directive 2005/36/EC on the on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') Text with EEA relevance OJ L 354, 28.12.2013, p. 132–170. Directive 2005/36/EC consolidates and replaces Directives 89/48/EEC, 92/51/EEC and 99/42/EC.
[45] Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained OJ L 77, 14.3.1998, p. 36–43.

cross-border legal services, using their home professional title. This is the first of the above directives to be passed specifically referring to the activity of lawyers, who had been meeting restrictions to their attempts to exercise free movement rights. It followed the decision in *Reyners*,[46] which had served to confirm that legal services did not fall within the official authority exception of Article 45 TEC (now Article 51 TFEU). There is no provision in the Directive for the mutual recognition of diplomas or harmonisation of legal training – these were sensitive areas at the time – it but stipulates that host Member States must recognise as lawyers those persons practising the professions in the various Member States.[47] The Directive states that there is no need to register with the professional body in the host state, although lawyers are expected to observe the rules of professional conduct of the host state,[48] and may be required 'to work in conjunction with a lawyer who practises before the judicial authority' of the host state.[49]

The Lawyers' Services Directive outlined the framework within which lawyers could practise cross-border on a temporary basis, but did not regulate for those wishing to establish themselves permanently in another Member State, for which more 'detailed measures' would be necessary. A step in this direction was made through the first Diploma Directive of 1989, replaced now by the Professional Qualifications Directive (PQD).[50] The mutual recognition of qualifications was elaborated through case law of the ECJ at first but was nonetheless intended to be reinforced by the development of directives, as can be seen from the TEC.[51] A sectoral approach was adopted initially, focussing on medical and health-related professions, but harmonisation of minimal standards of professions across Member States posed challenges, and a mutual recognition approach based on trust was preferred and adopted with the 1989 Diploma directive. For client protection, some professions, such as law, are highly regulated in all EU Member States, and the differences in education and training vary considerably from state to state. The Diploma Directives provide for the mutual recognition of higher education diplomas in general and aim to remove barriers facing EU nationals to pursue their careers in a Member State other than the one in which they studied and qualified. They grant automatic recognition of professional qualifications for those professions with harmonised minimum training conditions (nurses, midwives, doctors, dental practitioners, pharmacists, architects and veterinary surgeons).[52] More generally, they specify that professional qualifications must be recognised by Member States, who must allow beneficiaries to gain access in another Member State to the same profession as that for which they are qualified in their home Member State, and to pursue that profession under the same conditions as its nationals.[53] Specific mention is made in the Directive of recognition of professional qualifications and training for lawyers.[54] The PQD sets out five levels of

[46] *Reyners v Belgium* (Case 2/74) [1974] ECR 631.
[47] Preamble, Directive 77/249/EEC.
[48] Article 4(2) Directive 77/249/EEC.
[49] Article 5 Directive 77/249/EEC.
[50] Directive 2005/36/EC on the recognition of professional qualifications, which replaced Directive 89/48 on a General System for the Recognition of Higher Education Diplomas Awarded on Completion of Professional Education and Training of at Least Three Years' Duration O.J 19/16; amended by Directive 2013/55/EU.
[51] Article 53 TFEU (ex Article 47 TEC).
[52] L. Kortese, "Exploring professional recognition in the EU: a legal perspective," *Journal of International Mobility*, 1, 4, (2016): 43-58, p. 46.
[53] Art 4 (1), Directive 2005/36.
[54] Para 42, Directive 2005/36.

qualification and diploma that can be recognised ranging from primary to higher education,[55] based on the principle of mutual recognition. It allows compensation measures to be imposed if the applicant's qualifications are not considered to be equivalent to those required by the host state, and can require the sitting of an aptitude test or completion of an adaptation period in order to attain the required standard.[56] This Directive takes its inspiration from the ruling in *Vlassopoulo.*[57] In this case, the European Court acknowledged that Member States may lay down specific requirements for access to the Bar, but must not hinder non-nationals in their right of establishment and must take into account previously acquired qualifications. Qualifications must be compared with national requirements to ascertain whether they are equivalent, and if they are, they must be accepted as such. If the qualifications are not found to be equivalent, then the host state has the right to require the applicant to bring forward evidence of any additional knowledge, aptitude and experience s/he may have acquired.[58] In the case of non-regulated professions, the principles outlined by the ECJ in *Vlassolpoulou* also appear to apply,[59] following Article 49 TFEU.

This Directive is now somewhat less significant for lawyers, due to the effects of the Lawyers' Establishment Directive of 1998, which specifically allows lawyers to set up in another Member State, but it marks a significant step in the path to freedom of establishment.

Lawyers tend to have self-employed status, being typically members of the self-employed Bar, sole practitioners or partners in a law firm and the Lawyers' Establishment Directive allows EU nationals who are members of a legal profession in one of the Member States to set up a practice in another Member State.[60] Self-employed status is held by the ECJ to consist of an economic activity carried out by a person 'outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration; under that person's own responsibility; and in return for remuneration paid to that person directly and in full.'[61] The Directive addresses issues such as the use of professional title, registration requirements and rules of professional conduct. It effectively provides two different means of accessing a Member State's legal market. Firstly, an EU lawyer moving to another Member State may practise, in all areas of law, in the host state under the professional title obtained in his or her home state, subject to some potential restrictions, where it may be necessary to practise alongside a lawyer holding a qualification from the host state.[62] For example, pre-Brexit an English solicitor was able to open a practice in France and, using their home professional title of solicitor, give legal advice on most areas of English law, French law, European law and international law. The second possibility is to apply for admission to the local law society or Bar Association of the host state after three years of

[55] Article 11, Directive 2005/36/EC.

[56] Article 14, Directive 2005/36/EC.

[57] *Vlassopoulou* concerned a Greek lawyer who had practised at the Athens Bar. She subsequently gained a doctorate in law in Germany, and worked at the German Bar under the supervision of German lawyers. Her application to the German Bar was turned down on the grounds that she had not followed the traditional route to the Bar of German lawyers.

[58] *Vlassopoulou v Ministerium für Justiz, Bundes und Europaangelegenheiten Baden-Württemberg* (Case C-340/89) [1991] ECR2357.

[59] Craig and de Búrca, *EU Law*, 846.

[60] It should be noted that the Establishment Directive applies to both salaried and self-employed lawyers: Article 1 (3), Directive 98/5/EC.

[61] As defined in *Jany* (Case C-268/99) [2001] ECR I-8615, para 71.

[62] Article 4, Directive 98/5/EC.

effective and uninterrupted practice in the host state, essentially becoming a host state lawyer, without the need to sit the formal examinations passed by host state lawyers.[63] In this case, there will be no restrictions on areas of practice,[64] which has caused concern that migrant lawyers may not have adequate knowledge of the law of their new host state. However, an element of control exists in so far as lawyers are bound by codes of conduct, of both home and host state, and will potentially face disciplinary action by their professional bodies if they accept instructions outside their range of competence.[65] This issue was raised by Luxembourg, but the court ruled:

> It would therefore seem that the Community legislature, with a view to making it easier for a particular class of migrant lawyers to exercise the fundamental freedom of establishment, has chosen, in preference to a system of *a priori* testing of qualification in the national law of the host Member State, a plan of action combining consumer information, restrictions on the extent to which or the detailed rules under which certain activities of the profession may be practised, a number of applicable rules of professional conduct, compulsory insurance, as well as a system of discipline involving both the competent authorities of the home Member State and the host State. The legislature has not abolished the requirement that the lawyer concerned should know the national law applicable in the cases he handles, but has simply released him from the obligation to prove that knowledge in advance. It has thus allowed, in some circumstances, gradual assimilation of knowledge through practice, that assimilation being made easier by experience of other laws gained in the home Member State. It was also able to take account of the dissuasive effect of the system of discipline and the rules of professional liability.[66]

More recent case law demonstrates that trainee lawyers who have not yet completed their training also possess free movement rights with regard to their qualification process, which must be respected. The case of *Morgenbesser*[67] concerns a French national, holding a French *maîtrise en droit* but not qualified as an *avocate* in France. She had carried out a period of training in Italy, and wished to apply for enrolment on the register of trainee lawyers in order to complete qualification as a lawyer in Italy. Her application was refused on the grounds that she did not hold an Italian Law degree, which was a prerequisite for registration. Morgenbesser challenged this decision. Neither the QPD nor the Lawyers' Establishment Directive applied to Morgenbesser, as the traineeship was not a 'regulated profession' and she was not a fully qualified lawyer in France. However, the ECJ held that national authorities must take into consideration the professional qualifications of an applicant and any professional experience regardless of where it was acquired, and compare them to those required in the host state. If the applicant's qualifications were considered equivalent, then

[63] Articles 10 and 14, Directive 98/5/EC.

[64] In M. Schelkens, "The Freedom of Establishment of Lawyers in the European Union," *Jura Falconis,* 51, 2, (2014-15): 214-241, 235.

[65] See Council of Bars and Law Societies of Europe Code of Conduct, para 3.1.3: 'A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.' CCBE, "Charter of core principles of the European legal profession & Code of conduct for European lawyers." Available at https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEON_CoC.pdf> Accessed 11 June 2020.

[66] *Luxembourg v European Parliament* (Case C-168/98) [2000] ECR I-09131, para 43.

[67] *Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova* (Case C-313/01) [2003] ECR I-13467.

they had to be accepted. If not, the host state could require the applicant to demonstrate that they had acquired the knowledge, skills and qualifications deemed lacking either in the host State or elsewhere, or to acquire the missing elements in order to be registered. This effectively extends rights to those still training to become lawyers, who may potentially 'mix and match' their training and qualification process (subject to the requirements of the host state in respect of knowledge of, for example, domestic law), and may have 'a highly deregulatory effect on accredited access routes to the professions.'[68]

These Directives and case law demonstrate that, pre-Brexit, EU lawyers could set up independently or as members of a set of chambers in the UK, work for an Anglo-Welsh law firm, for an international law firm or as an in-house lawyer in the UK, or provide cross-border legal services on a temporary basis, and UK lawyers could do the same in another EU Member State.

1.3. Regulation of FOM of legal services in the UK

The UK implemented the EU legislation on freedom of movement of legal services in England and Wales and Northern Ireland via the European Communities (Lawyer's Practice) Regulations 2000, and in Scotland via the European Communities (Lawyer's Practice) (Scotland) Regulations 2000. These domestic regulations implemented the Lawyers' Establishment Directive. The Lawyers' Services Directive was implemented across the UK in domestic legislation by the European Communities (Services of Lawyers) Order (S.I. 1978 no. 1910). These regulations and the statutory instrument led to the creation of the status of Registered European Lawyers (REL), for lawyers practising in the UK on a permanent basis and Exempt European Lawyers (EEL) practising in the UK on a temporary basis. In addition, the Legal Services Act 2007, which regulates who may provide reserved legal activities (such as the right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths), applied to both UK and EU lawyers practising in England and Wales.

1.3.1. Registered European Lawyers

There were around seven hundred RELs who operated on a permanent basis in England and Wales in 2018.[69] This signified 'maintaining a regular practice as a lawyer in the UK'[70], e.g.

[68] J. Lonbay, "Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union." *Fordham International Law Journal*. 33, (2010): 1629-1669, 1655.

[69] J. Hyde, "No-deal Brexit would halt European lawyer scheme overnight, says SRA," *Law Society Gazette,* 12 October 2018. Available at <https://www.lawgazette.co.uk/no-deal-brexit-would-halt-european-lawyer-scheme-overnight-says-sra/5067954.article>. Accessed 15 July 2019. There has been a steady increase in RELs. In 2008, there were in the region of 325 RELs in the UK (CCBE, "CCBE Lawyers' Statistics 2008". Available at https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statistics/EN_STAT_2008_Number_of_lawyers_in_European_countries.pdf> Accessed 17 July 2019), and this had risen to 581 RELs registered as solicitors and 12 registered as barristers in 2016 (Bar Council of England and Wales, "Response to the question from the House of Commons Justice Select Committee: What is the value that EU lawyers bring to this country, in particular to the City of London?" 20 July, 2016. Available at <https://www.parliament.uk/documents/commons-committees/Justice/Further-evidence-from-Bar-Council-of-England-and-Wales-on-legal-services-regulation.pdf> Accessed 17 July 2019). In 2010, it was estimated that just under 4,000 EU lawyers were registered outside their home jurisdiction (Lonbay, "Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union," 1642).

[70] Regulation 2.3(a)(iv), Solicitors' Regulation Authority (SRA) Practising Regulations 2011; SRA 2018, p.7; Bar Standards Board 2019, Section D.

working there two days a week or more.[71] They had to practise under their home professional titles[72] in order to ensure transparency for clients as to their legal training,[73] and could advise on the law of their home member state, on EU law, international law and on the law of the host member state.[74] They were entitled to provide the full range of legal services, including the right to provide reserved legal services and to work as sole practitioners. It may seem somewhat alarming that lawyers can carry out under their home country professional title all the activities of lawyers in the host State with no training in host state law, but this possibility already existed in some Member States before the Lawyers' Establishment Directive was adopted, and the aim of the Directive was to eliminate unfair distortions of competition between lawyers in the European Union.[75] For certain activities, there was an obligation to work in conjunction with a solicitor or barrister who has qualified in England and Wales, since some areas of practice, such as representing a client in court, completing land transfers and probate court forms, are reserved to lawyers with a home professional title,[76] and this was perceived as adding an element of protection for the consumer.

EU-qualified lawyers had to maintain their practising status/certificate in their home state in order to be able to register as a REL in the UK,[77] and then, in England and Wales, register with one of the lawyers' professional bodies, the Law Society of England and Wales or the Inns of Court and the General Council of the Bar of England and Wales.[78] They were then subject to the same Code of Conduct as home qualified solicitors and barristers.[79] They were thus subject to two professional codes of conduct, the code of their home state and their host state, in respect of all activities carried out in the host state, a phenomenon known as 'double deontology'.[80]

The European Communities (Lawyer's Practice) Regulations 2000, enabled a REL to be admitted to practise as a barrister or a solicitor after three years of regular and effective practice in England and Wales.[81] It was not mandatory to apply for registration as a solicitor or barrister, and a REL could practice in the UK under his or her home title for as long as he or

[71] SRA, SRA Renewals Registered European Lawyers (REL) Guide October 2018. Available at <https://www.sra.org.uk/globalassets/documents/mysra/registered-european-lawyers-guide.pdf?version=4a1abe> Accessed 2 November 2019, p. 3.
[72] Ss.6-7, The European Communities (Lawyer's Practice) Regulations 2000; Article 2, Directive 98/5/EC.
[73] Para (9) Directive 98/5/EC.
[74] S. 6, The European Communities (Lawyer's Practice) Regulations 2000; Article 5, Directive 98/5/EC.
[75] Katsirea, I. and Ruff, A. 'Free movement of law students and lawyers in the EU: a comparison of English, German and Greek legislation' 12 (3) *International Journal of the Legal Profession* (2005), pp. 367-406, p. 387.
[76] S. 6, 11-14 The European Communities (Lawyer's Practice) Regulations 2000; Article 5, Directive 98/5/EC.
[77] S. 16(2), The European Communities (Lawyer's Practice) Regulations 2000; Article 3(2) and para (12), Directive 98/5/EC.
[78] S. 4 and Appendix 2, The European Communities (Lawyer's Practice) Regulations 2000.
[79] S. 25, The European Communities (Lawyer's Practice) Regulations 2000. Article 6, Directive 98/5/EC.
[80] CCBE, "Guidelines for Bars and Law Societies on Free Movement of Lawyers within the European Union." 2016. Available at <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EU_LAWYERS/EUL_Guides___recommendations/EN_FML_2016_Guide.pdf > Accessed 25 July 2019, p.9.
[81] S. 29, The European Communities (Lawyer's Practice) Regulations 2000; Article 10(3), Directive 98/5/EC.

she wished. However, if an EU lawyer wished to become a solicitor or a barrister in less than three years, he or she had the option to qualify by sitting an aptitude test.[82]

From 1 January 2021, the REL regime has come to an end and RELs have lost their associated practice rights in England and Wales (except in relation to a defined group of Swiss lawyers since separate arrangements have been made between the UK government and Switzerland).

1.3.2. Exempt European Lawyers

EU legislation offered another possibility for the free movement of legal services within the EU, enabling lawyers to practise in another member state on a more temporary basis. This was represented in the UK under the status of the Exempt European Lawyer (EEL). If an EU lawyer did not intend to practise in the UK on a permanent basis, he or she was not eligible to register as a REL.

EELs were principally EEA/EU lawyers based entirely in offices outside of England and Wales. They were lawyers who were nationals of an EU member state, established in another member state and entitled to practise as a member of a profession specified in the Lawyers Establishment Directive. They were allowed to provide legal services in the UK which were otherwise reserved to UK lawyers, on an occasional basis, under the Lawyers Services Directive.[83] To be approved as an EEL, the SRA or BSB required sight of a certificate of attestation from the home Bar Association or Law Society[84] but would charge no fee as, unlike RELs, there was no registration necessary. In England and Wales, restricted practice areas included exercise of rights of audience in courts, conduct of litigation, reserved instrument activities, probate and notarial activities, and administration of oaths. In order to represent clients in legal proceedings before the UK courts, an EEL had work in conjunction with a lawyer who practiced before the judicial authority in question,[85] i.e. an Anglo-Welsh qualified lawyer. EELs were prohibited from carrying out reserved activities such as drawing up formal documents for obtaining title to administer estates of deceased persons, and the drafting of formal documents creating or transferring interests in land, as only certain groups of lawyers, regulated under the Legal Services Act 2007, may do this.[86] EELs practised under their home titles,[87] and, for out of court activities, were bound by the Code of professional conduct of their home state,[88] except where representing a client in legal proceedings, where he or she was bound by the Code of Conduct of the host state.[89] In the event of a conflict between home and host State professional rules, the host Member State's professional rules prevailed.[90]

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[82] S. 29(1), The European Communities (Lawyer's Practice) Regulations 2000. Para (3), Directive 98/5/EC; Article 14, Professional Qualifications Directive 2005/36 EC.
[83] Implemented in the UK in s. 4, European Communities (Services of Lawyers) Order 1978.
[84] Ss. 12-14, European Communities (Services of Lawyers) Order 1978; Article 7, Lawyers Services Directive 77/249;
[85] S. 5 European Communities (Services of Lawyers) Order 1978. Article 5 Lawyers Services Directive 77/249.
[86] S. 9, European Communities (Services of Lawyers) Order 1978. Article 1, Lawyers Services Directive 77/249.
[87] S. 11, European Communities (Services of Lawyers) Order 1978. Article 3, Lawyers Services Directive 77/249.
[88] Ss. 15-16, European Communities (Services of Lawyers) Order 1978. Article 4(4), Lawyers Services Directive 77/249.
[89] S. 15, European Communities (Services of Lawyers) Order 1978. Article 4(2), Lawyers Services Directive 77/249.
[90] CCBE, "Guidelines for Bars and Law Societies on Free Movement of Lawyers within the European Union." 9.

These EU directives also enabled UK lawyers to work in the EU. UK lawyers were able to attend to the cross-border needs of businesses and individuals from satellite offices in the EU and on a fly-in fly-out basis from their UK office, and this was a daily business practice for many firms.[91]

From 1 January 2021, the fly in/fly out practice rights of EU lawyers (with the exception of Swiss lawyers), have come to an end, and EELs may no longer be owners or managers of a law firm in England and Wales.

1.3.3. Registered Foreign Lawyers

There are similar possibilities for non-EU nationals wishing to practise in the UK. They may register with the regulatory bodies as Registered Foreign Lawyers (RFL) on condition that the profession of which they are a member is approved by the Law Society as appropriately regulated, and the Law Society may impose such conditions as it considers fit.[92] This will be dependent on bilateral agreements between the states. If approved by the Law Society, they may even practise without registering unless they are to be partners or managers in a law firm, but regardless of status – registered or not – they may not appear in open court under any circumstances, may not carry out reserved activities nor court-based immigration work unless supervised by an Anglo-Welsh qualified lawyer,[93] and will be regulated by the SRA or BSB. There are therefore some differences between the status of RFLs and RELs which may, in reality, be quite significant.

From 1 January 2021, this is the regime which will apply to EU lawyers wishing to practice in England and Wales.

[91] APPG, *The effect of Brexit on legal services*, 6.

[92] Schedule 14, Courts and Legal Services Act 1990.

[93] SRA, "Ethics Guidance: RFLs and practice with solicitors in England and Wales, "(2010). Available at <http://www.sra.org.uk/solicitors/code-of-conduct/guidance/rfls-and-practice-with-solicitors-in-england-and-wales.page.page> Accessed 25 July 2019.

PART TWO:

THE FREE MOVEMENT OF LEGAL SERVICES IN THE EAST AFRICAN COMMUNITY

The East African Community is often considered to be the most successful of the regional integration schemes on the African continent, having received the highest score for regional integration amongst the RECs on the Regional Integration Index of the United Nations Economic Commission for Africa.[94] Its integration process roadmap includes a customs union, a common market, monetary union and ultimately a political federation.[95]

However, although it may be one of the best-performing integration initiatives on the African continent, there is reason to wonder whether the free movement of legal services will ever be realised.

In order to ascertain the potential implementation of the free movement of legal services, it is necessary to evaluate what the free movement of legal services in the EAC means, what the commitments of the Partner States are, how free movement of legal services is supposed to function and what the challenges are which need to be overcome in order for this to be achieved. This will be done through the prism of the Rwandan legislation.

2. Legal framework for the FOM legal services in the EAC

One of the specific objectives of the EAC Common Market, in order to accelerate economic growth and development of the Partner States, was to attain the free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital in general.[96] Accordingly, the Partner States (Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda of the EAC) have committed to liberalise the movement of services within the EAC, within their respective territories. Among the services they agreed to liberalise are legal services which were intended to enjoy full free movement rights within the community by the end of 2015.[97] This meant, for example, that a Rwandan lawyer should have been able to travel to provide legal advice or represent a client before a court in another EAC partner state.

This was to be implemented in four ways or Modes.[98] The first Mode relates to cross border supply, the supply of services from the territory of a Partner State into the territory of another

[94] United Nations Economic Commission for Africa (UNECA), "Africa Regional Integration Index Report 2016." Available at < https://www.uneca.org/sites/default/files/PublicationFiles/arii-report2016_en_web.pdf > Accessed 11 October 2019, p. 14.
[95] Preamble to the Treaty Establishing the East African Community, para 15.
[96] Art. 4(2)(a) and Art. 16 Protocol on the Establishment of the East African Community Common Market (Common Market Protocol); Art. 104 East African Community Treaty 1999.
[97] East African Community Common Market Schedule of Commitments on the Progressive Liberalisation of Services Annex V, November 2009.
[98] See East African Community Common Market Schedule of Commitments on the Progressive Liberalisation of Services Annex V, p. 80.

Partner State, meaning that for example a Kenyan lawyer based in Kenya should be able to provide legal services or legal advice to Rwandan clients in Rwanda without either party leaving their territory, so that there is a cross-border supply of legal advice and services. The second Mode concerns consumption abroad: the supply of services in the territory of a Partner State to service consumers from another partner state. A Rwandan client in Uganda should be able to receive legal services without any kind of discrimination and should be treated in the same way as a Ugandan.[99] The third Mode concerns the commercial presence of the service supplier in the territory of another partner state: for example, a Rwandan law firm should be able to establish itself in Burundi and provide legal services for clients within the territory of Burundi. The fourth Mode concerns the presence of a natural person in a partner state, where self-employed individual lawyers should be able to represent or assist their clients in the territory of another partner state.[100]

The liberalisation was to be progressive.[101] There are two main commitments: a standstill commitment, which means that, from the entry into force of the Common Market Protocol in 2010, it was agreed that no barriers to the free movement of services would be introduced. The second obligation from 2010 was that Partner States had to rollback, or remove, all barriers to the free movement of services.[102] A principle of variable geometry, which 'allows for progression in co-operation among a sub-group of members in a larger integration scheme in a variety of areas and at different speeds', was built into the EAC Treaty,[103] allowing Partner States to integrate at their own pace. These conditions also applied to the right of establishment.[104] For example, when the Common Market Protocol was signed, of the four Modes, Burundi did not impose any restrictions on cross-border supply (Mode I) or consumption of legal services by citizens of other Partner States (Mode II). With regard to commercial presence, however, Burundi maintained that it was not bound to accept the establishment of foreign law firms in Burundi (Mode III). With regard to Mode IV, Burundi would only allow individual lawyers from other Partner States to come and present cases in Burundi subject to the EAC Common Market (Free Movement of Workers) Regulations.[105] Compliance with the (Free Movement of Workers) Regulations, which are Annexes to the Common Market Protocol,[106] entails fulfilling a set of conditions which include requirements such as having a travel document or identity card, obtaining a work permit and special pass

[99] Art. 3 (2)(a) Common Market Protocol; Regulation 10(1) EAC Common Market (Right of Establishment) Regulations Annex III.

[100] These latter two Modes are regulated by the EAC Common Market (Right of Establishment) Regulations (Annex III).

[101] K. Gasthorn, "Freedom of Establishment and the Freedom to provide Services in the EAC," in *East African Community Law* eds Ugirashebuja, E., Ruhangisa, J.E., Ottervanger, T. and Cuyvers, A. (Leiden. Brill Nijhoff, 2017): 365-375, 372.

[102] Art 16 (5) Common Market Protocol.

[103] Art 1 EAC Treaty 1999.

[104] Art 13 (5) Common Market Protocol.

[105] See the East African Community Common Market Schedule of Commitments on the Progressive Liberalisation of Services Annex V, p 80.

[106] There are six Annexes: Annex I: Free Movement of Persons Regulations; Annex II: Free Movement of Workers Regulations; Annex III: Right of Establishment Regulations; Annex IV: Right of Residence Regulations; Annex V: Schedule of Commitments on the Progressive Liberalisation of Services; Annex VI: Schedule on the Removal of Restrictions on the Free Movement of Capital. The purpose of the Regulations is to implement the provisions of the Protocol and to ensure that there is uniformity among the Partner States in the implementation of the Article and that to the extent possible, the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.

where necessary, being in possession of an employment contract, but benefitting from equal treatment with Burundian lawyers.[107]

In contrast, Rwanda has, since 2010, had no restriction in market access or national treatment for Modes I to III. This means that free movement of legal services across borders, freedom for citizens from Partner States to consume legal services in Rwanda and freedom of establishment are authorised in Rwanda, but self-employed lawyers from Partner States are subject to the Schedule of the EAC Common Market (Free Movement of Workers) Regulations (Annex V), which indicates timelines for the liberalisation of a number of services, including legal services. Whatever the situation, Partner States agreed that by 2015 they should have removed all barriers to free movement of services and establishment. As far as the national treatment principle was concerned, with regard to discriminating against citizens of other Partner States and favouring nationals, which is specifically prohibited by the Common Market Protocol,[108] both Burundi and Rwanda committed to remove all barriers by 2010. Annex V of the EAC Common Market Schedule of Commitments on the Progressive Liberalisation of Services shows that Partner States have all committed to the same aims, which means that by now legal services should be moving freely in the EAC, since there was a commitment to remove barriers by 2015 at the latest. However, this is not borne out by reality, when the free movement of services in the EAC is considered.

2.1. The long road to the Mutual Recognition Agreement

To foster the free movement of workers, including the self-employed such as lawyers, Partner States had to commit to mutual recognition of academic and professional qualifications awarded, experience obtained, requirements made, licences or certificates granted to individuals and to firms in other Partner States,[109] meaning that they committed, via the EAC Common Market Protocol, to recognise degree qualifications that citizens of the EAC obtained from the territories of other Partner States. This means that a lawyer obtaining a licence to practice in one partner state should have that licence recognised by another partner state.

Partner States also agreed to harmonise the curriculum of legal education, to review their examination systems, standards, certification of accreditation of secondary education, and training institutions, and this aim is expressed in Article 126 of the EAC Treaty of 1999:

> In order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty, the Partner States shall take steps to harmonise their legal training and certification; and shall encourage the standardisation of the judgements of courts within the Community.

This harmonisation is a long-term process and is still on-going.[110] But, unlike the EU where an arsenal of directives have been adopted to regulate the free movement of legal services as described above, so far there are no additional equivalent legal texts in force enacted by EAC organs to achieve this. The EAC Cross-Border Legal Practice Bill 2014, which provides for the

[107] Regulations 5, 6 and 12, EAC Common Market (Free Movement of Workers) Regulations.
[108] Art 3(2) Common Market Protocol.
[109] Art 11 and art 13(7), Common Market Protocol.
[110] This is also echoed in Article 11(1)(b) Common Market Protocol.

conduct and regulation of cross-border legal practice and requires Partner States to take steps to harmonise training and certification, has still to enter into force.[111] The delayed entry into force of the EAC Cross Border Legal Practice Bill 2014 is just another obstacle added to the lengthy discussion on the adoption of a Mutual Recognition Agreement (MRA) – whereby the qualifications granted in the home state will be recognised in the host state and vice versa – for the implementation of the free movement of legal services.

However, neither the Common Market Protocol nor the Treaty establishing the EAC have any clear mention of a requirement for a signature of an MRA for the implementation of the free movement of legal services. Certain countries such as Rwanda and Kenya have pressed for free movement of legal services, meeting reticence from other Partner States, who have refused to proceed without an MRA.[112] Partner States have now drafted EAC Common Market (Mutual Recognition of Academic and Professional Qualifications) Regulations 2011, which stipulate the process by which Common Market Protocol Article 11 on mutual recognition of academic and professional qualifications and experience would be implemented. Negotiating and signing of the MRA under Annex VI was to be undertaken by 'Competent Authorities', that is to say a Ministry, a department, office, institution or agency designated by a Partner State to carry out the functions required under these regulations. As a result, a process of negotiating mutual recognition agreements has commenced, which has been time-consuming and frustrating. Although the MRA is now drafted and should in principle allow advocates who meet the requirements set out in the mutual recognition agreement to make an application to a competent authority in a Partner State within which they do not practice and to be recognised as practising advocates of that Partner State, this has yet to be agreed by the EAC Council of Ministers and later by the Summit.[113]

Via the Common Market Protocol, Partner States also agreed to treat legal services and lawyers from other Partner States no less favourably than their own lawyers.[114] This means that if there are conditions to be met, both citizens from other EAC states and the nationals of the host country would be required to comply with them. However, the EAC Common Market Protocol went one step further, stating that it might be necessary for EAC states to accord different treatment to service suppliers from Partner States, if providing identical treatment to service suppliers from Partner States had the effect of placing them at a disadvantage in terms of competition with service suppliers of the home state.[115]

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[111] There does not appear to be significant progress on the ground in this area, and the EAC Cross Border Legal Practice Bill 2014 remains a project rather than a reality.

112 K. Agutamba, "Is cross-border legal practice really possible?" The New Times. 20 April, 2015. Available at <https://www.newtimes.co.rw/section/read/188004 > Accessed 31 October 2019.

[113] Despite support for the MRA from Ministries of Justice and Constitutional Affairs/Attorneys Generals, Judges, Law Societies, Bar Associations, and representative of the Ministries responsible for EAC Affairs of all Partner States at a meeting in August 2016 and at other subsequent meetings convened by the East African Law Society (EALS), the MRA remains unsigned. There appears to have been no further progress since a September 2017 meeting organised by the EALS and the EAC Secretariat, in which Attorneys General refused to sign the agreement amidst concerns about who the appropriate signatories for the MRA were, accompanied by fears that their states might be unable to deliver the required changes and that the national laws ensuring the implementation of the Common Market Protocol were not yet in place (EALS Institute).

[114] Art. 17, Common Market Protocol.

[115] Art. 17(2) Common Market Protocol.

The ongoing discussions for the adoption of an MRA in the EAC to operationalise the FOM of legal services is not new. The EU went through a similar path. However, the history of the EU bears testament to the fact that the Commission and the ECJ have played a paramount role in building the European legal framework. Given the slowness of relevant EAC organs to adopt the EAC Cross Border Legal Practice Bill, 2014 and the MRA, the East African Court of Justice could play a salutary role through a pro-integration interpretation by following in the footsteps of its European counterpart, if cases involving violations of the free movement of lawyers were brought under its consideration.[116]

2.2. Regulation of the practice of foreign lawyers in Rwanda

Despite the entry into force of the EAC Common Market Protocol in 2010, the law establishing the Bar Association in Rwanda (hereinafter RBA Law) lists being a Rwandan national as the first condition of eligibility to practice as a lawyer in Rwanda.[117] However, there are two possible routes for non-Rwandans to practice in Rwanda. The first possibility applies if there is a reciprocal agreement in place and the foreign advocate is a national of a state which also allows Rwandans to practice in that country subject to international agreements. This extends beyond Partner States of the EAC. In the case of reciprocal agreements, the President of the Rwanda Bar Association (RBA) has the power to authorise such a lawyer to practice in Rwanda upon the presentation of a recommendation from the President of Bar of the advocate's state of origin and of proof of the fulfilment of reciprocity requirement.[118] Lawyers thus authorised are entitled to practice in Rwanda only 'occasionally',[119] meaning that they are not considered as permanently settled in Rwanda.

The second route is open to nationals from a country that has concluded a regional integration agreement with Rwanda,[120] such as applies to lawyers from other EAC Partner States, who may wish to provide legal services in Rwanda.[121] The RBA Law subjects the practice of lawyers in this category to the provisions of the regional integration agreement concerned (for example, in the case of the EAC, the Common Market Protocol), but it does not provide further details.[122] There is no specific domestic legislation to implement the EAC Common Market protocol for the freedom of movement of legal services in Rwanda, and the RBA Law governs legal practice in Rwanda in general. Although Article 7 of the RBA Law authorises foreign lawyers to practice in Rwanda, it is unclear whether the Rwandan legislator had the implementation of the EAC Common Market Protocol in mind when the RBA Law was

[116] In *Patrick v Ministre des Affaires Culturelles*, an issue relating to the recognition by a EU member state of a qualification obtained in another member state was raised in a context where no directive on the mutual recognition of diplomas/qualification had been adopted (1977). The court found that 'the fact that those directives have not yet been issued does not entitle a Member State to deny the practical benefit of that freedom to a person subject to Community law.' *Patrick v Ministre des Affaires Culturelles* [1977] ECR 1199, para 17. The same reasoning was applied by the Court in the case of *Vlassopoulou,* relating to qualifications/diplomas to provide legal services.

[117] Art. 6(1°) Law No. 83/2013 of 11/09/2013 establishing the Bar Association in Rwanda and determining its organisation and functioning. This is a clear indication that the compliance with EAC law was not a concern of the lawmaker during the enactment of the RBA law.

[118] In 2019, a total of 50 lawyers from Belgium, France, UK, Cameroon, Mauritania, Ghana, Gambia and DRC were practicing in Rwanda pursuant to this provision.

[119] Art. 78 para 1 of Internal Rules and Regulations of Rwanda Bar Association.

[120] Art. 7 RBA Law.

[121] In 2019, a total of 42 lawyers from Burundi, Kenya and Uganda were on the list of the Rwanda Bar Association.

[122] Art. 7 para 2 RBA Law.

drafted, as this provision equally applies to lawyers from COMESA (Common Market for Eastern and Southern Africa) and ECCAS (Economic Community of Central African States) countries, for instance. In any event, unlike foreign lawyers from countries that do not have a regional integration agreement with Rwanda, lawyers from EAC Partner States 'enjoy the freedom to practice in case of need' and are not required to present a recommendation of the president of their home Bar, although they must obtain the approval of the President of the RBA to commence practice.[123]

It is worth mentioning that Rwanda and Kenya find themselves at odds with other EAC Partner States in pressing ahead and implementing the freedom of movement of legal services, despite the fact that the EAC Cross-Border Legal Practice Bill and the MRA have not yet been enacted. In principle, the applicability of supra-national norms at domestic level depends on whether the state concerned is monist or dualist. Although both Rwanda and Kenya are monist states,[124] signifying that international law is directly applicable in their national legal systems, this has little to do with their progress in the implementation of the freedom of movement of legal services.[125] In fact, pursuant to Article 8(4) of the EAC Treaty, community laws have precedence over Partner States' laws on matters pertaining to the implementation of the treaty provisions. Similarly, EAC laws have a direct effect into Partner States' legal orders.[126] Therefore, the legal systems of Partner States should not be an excuse for delaying the implementation of rights and freedoms enshrined in EAC instruments, although this appears to be the case in practice.

During their period of practice in Rwanda, foreign lawyers in both categories outlined above are subject to a double deontology, like RELs in England and Wales, and must pay annual contributions to the RBA, pro rata for the number of months they intend to practice in Rwanda.[127] Contrary to the situation in the EU, the legal landscape for the regulation of the free movement of legal services in the EAC is in an embryonic phase. With regard to Rwanda, there are still many uncertainties, such as whether a certain type of service is exclusively reserved to Rwandan lawyers, whether foreign lawyers should practise under their home country title in Rwanda, whether some areas are subject to practice in conjunction with Rwandan lawyers. It may be that if the EAC adopts directives that clearly follow the EU approach and address these issues, it would help build the confidence of the legal fraternity in the integration process. Nature abhorring a vacuum, it may be that it is the lack of legal instruments regulating specific aspects of this free movement that nurtures reluctance in some Partner States' constituencies, and causes difficulties in implementing the Common Market Protocol in Rwanda.

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[123] Art. 78 para 2 of the Internal Rules and Regulations of Rwanda Bar Association.

[124] See Art. 168 of the Constitution of Rwanda as modified in 2015, and Art. 2(6) of the Constitution of Kenya (2010). Kenya was traditionally a dualist country until the advent of the Constitution of 2010. L. Franceschi and PLO Lumumba. *The Constitution of Kenya: A Commentary* (2nd edition, Strathmore University Press 2019): 77.

[125] Both countries appear to be pro-integration and are therefore fast-tracking the implementation of EAC laws based on the principle of variable geometry. For more discussion on the application of the principle of variable geometry in EAC, see M. Binda, "Legal Framework of the EAC," in *East African Community Law* eds Ugirashebuja, E., Ruhangisa, J.E., Ottervanger, T. and Cuyvers, A. (Leiden. Brill Nijhoff, 2017): 103-118, 106.

[126] M. Binda, *Good Governance and Foreign Direct Investment: A Legal Contribution to a Balanced Economic Development in the East African Community*, PhD Thesis, Utrecht University, (2015): 184. <https://dspace.library.uu.nl/handle/1874/318087> Accessed 26 June 2020.

[127] Art. 78 para 4 of Internal Rules and Regulations of Rwanda Bar Association.

2.3. Structural/practical challenges to the FOM of legal services in the EAC

The challenges of implementing the EAC Common Market Protocol and validating the MRA are not the only impediments to free movement of legal services in the EAC. Of particular note is the resistance of professional bodies in some Partner States, and it is actually the professional bodies, Law Associations or Bar Associations in some Partner States which could be responsible for delaying the implementation of the Common Market Protocol and introducing the idea of the MRA.

A further issue in the EAC relates to language barriers. In Rwanda, court proceedings take place in Kinyarwanda;[128] in Tanzania, in Kiswahili; in Kenya in English or Kiswahili. Even if the movement of legal services were realised in law, there could still be considerable challenges for a Rwandan lawyer to present a case before a Kenyan court, for example. However, it should not be forgotten that legal services are not limited to presenting cases before court. They are in fact far more likely to involve giving legal advice to companies and individual clients from their practices. Depending on the circumstances of each individual case, there may not necessarily be a language barrier, or indeed, the presence of a lawyer who masters other languages could be a commercial advantage which extends the pool of potential clients.

The slow rate of harmonisation also presents challenges. In the EAC, the average duration for delivering a law degree is four years, but this is not universal. In some East African countries, there is no internal standardisation regarding the length of the law degree programme. Law schools may offer three-or four-year degree programmes. In Rwanda, for instance some private universities deliver a bachelor's degree in Law after a three-year programme; while at the public university, the University of Rwanda, it will take students four years to obtain a law degree. This suggests that Partner States may have to harmonise their undergraduate programmes internally before they harmonise them with other Partner States, and then determine between Partner States whether a postgraduate professional qualification in legal practice is also a requirement.

Furthermore, the Partner States of the EAC do not all espouse the same legal systems. Uganda, Kenya and Tanzania are largely common law countries; Burundi is a civil law country; Rwanda has a hybrid legal system; South Sudan has a dual system consisting of statutory and customary law. This has led to complications. In Uganda, for instance, lawyers from non-common law countries were not recognised. Some progress has been made in this area, as is demonstrated in the recent case of Tony Katungi, where a Ugandan law graduate, who had passed his Bar training course in Kenya and been admitted to the Kenyan Bar, was refused admission to the Ugandan Bar without supervised training. Subsequently, the Ugandan High Court held that he had in fact satisfied all the statutory requirements to enable him enrol as an Advocate of the High Court of Uganda. Both Uganda and Kenya are common law jurisdictions, however, in the judgment, the Court specifically referred to the harmonisation of national laws within the EAC regarding the legal professions:

> Uganda as a Partner State is enjoined to harmonize the national laws in respect of the legal profession. Uganda as a member country signed the East African Community

[128] See for instance Art. 203 of the Law No. 027/2019 of 19/09/2019 relating to criminal procedure. Although the same provision allows the use of other official languages (French, English, and Kiswahili) in court proceedings, Kinyarwanda is by far the most commonly used language.

> Common Market Protocol (EAC CMP) and undertook to provide free legal practice by 2015. Although we may have some varied academic routes and professional qualification requirements and owing to quality assurance or protectionist reasons, access to a number of professions including law is regulated. Uganda is bound to open up the space for workers through the East African Integration or devise a better approach to allow Free Movement of Workers in order to be compliant with the EAC Common Market Protocol. [129]

This progress is echoed in the case of Kenyan Francis Muiruri Kimangi, who studied law in Uganda and was admitted to practise in Rwanda, yet had been denied enrolment with the Kenyan Bar. Kenyan Justice Weldon Korir determined that the Kenyan Advocates Act 2012[130] created a special category of persons eligible for admission to the Roll of Advocates: any person who is an advocate of the High Courts of Uganda, Rwanda, Burundi and Tanzania, and that to refuse enrolment contradicted the vision of the EAC.[131] However, this apparent development in the Tony Katungi and Francis Muiruri Kimangi cases is sporadic and must be contrasted by the recent decision by the Ugandan High Court preventing Andrew Bataamwe from enrolling as an Advocate of the High Court of Uganda on the ground that he 'undertook his Post Graduate Bar Course in Rwanda, which is not a common law jurisdiction.'[132] This decision a couple of months after the Katungi case and by the same court divides the community into common law and civil law states and confirms Partner States' reluctance to implement the Common Market Protocol provisions related to the liberalisation of legal services within the EAC. This apparent groping in the darkness reveals the need for guidelines – most probably via decisions from the East African Court of Justice – to foster uniform implementation of EAC law with regard to the free movement of legal services in the EAC.

[129] *Katungi Tony vs Attorney General* (Misc. Cause No.204 of 2017) [2019] UGHCCD 1 (25 January 2019), para 44.
[130] S. 13(1)(d), Advocates Act 2012.
[131] The East African, 'Lawyer trained in Uganda allowed to practise in Kenya'. *The Daily Monitor*. 3 August, 2019. Available at <https://www.monitor.co.ug/News/National/Lawyer-trained-in-Uganda-allowed-to-practise-in-Kenya/688334-5221558-111g1qw/index.html> Accessed 1 November 2019.
[132] *Andrew Bataamwe vs Attorney General* (Misc. Cause No. 280 of 2019) (13 May 2020).

Conclusion

These concerns are, of course, not peculiar to the EAC, and each REC, due to its different contexts, must approach the challenges in its own peculiar manner. The EU has also had to confront the issues of different legal systems across its territory,[133] a large number of different languages, and different routes to qualification in slightly differing legal professions. These issues have been dealt with by requiring lawyers to register with the professional bodies in the home and host states as appropriate, and being subject to the Codes of Conduct and potential disciplinary proceedings if they exceed their levels of competence. However, the EAC has adopted a different approach to that of the EU regarding the recognition of academic and professional qualifications and proposes going further by harmonising legal education across Member States.[134] Advocates eligible to practise in one member state would then automatically be eligible to practice in all. This has raised practical considerations and concerns about oversight of competence, which have yet to be overcome.[135]

Other apprehensions exist, such as the potential flooding of a market with lawyers from Partner States and a need to 'share the cake' between more competitors. However, the EU model tends to demonstrate that liberalising the legal services market leads to an increased offer with new markets opening up and greater possibilities for lawyers and law firms to expand their work: an ever-growing cake, like a cornucopia, to share. Rwanda and Kenya have already opened up their legal services market to some extent and could be benefitting from this. As of November 2019, ninety-two foreign lawyers are registered as practicing in Rwanda, forty-three per cent being from EAC Partner States.[136] This is progress, since in 2010, there were virtually no foreign professionals practising in any of the states,[137] and only Rwanda and Kenya allowed legal practitioners from Partner States to practice within their borders.[138] Certainly, it would seem that an expansion in legal services providers in the EAC could be accommodated if not welcomed. In 2011, there were approximately 280 solicitors per 100,000 people in England and Wales[139] as compared to approximately five per 100,000 in Rwanda and Uganda, nineteen per 100,000 in Kenya and two per 100,000 in Tanzania in

[133] Only England and Wales, Northern Ireland, Ireland and Gibraltar have common law systems; Cyprus and Malta are mixed; the remaining states have civil law systems.

[134] Article 166 TFEU specifically excludes harmonisation of laws and regulations of the EU Member States with regard to vocational training policy.

[135] European states took steps to confront similar concerns via the Bologna Process, which established the European Higher Education Area (EHEA) in 2010. The EHEA through its 48 Member States ensures the mutual recognition of qualifications and learning periods abroad completed at other universities, implements a system of quality assurance and aims to increase staff and student mobility and facilitate employability.

[136] Records from the Executive Secretary of RBA.

[137] N. Dihel,, Fernandes, A.M., and Mattoo, A., "Developing Professional Services in Africa Through Regional Integration." 15 September 2010. Available at <http://siteresources.worldbank.org/INTPREMNET/Resources/EP32.pdf> Accessed 2 November 2019, p. 27.

[138] The East African, Legal practice far from integration. 13 July, 2009. Available at https://www.theeastafrican.co.ke/news/2558-622446-view-printVersion-4ft75c/index.html Accessed 2 November 2019.

[139] Based on SRA figures. SRA, "Population of Solicitors in England and Wales." 2019. Available at <https://www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics/data/population_solicitors/> Accessed 2 November 2019.

2009.[140] According to a report compiled for the World Bank in 2010, the legal sector in East African states is dominated by small firms, which cannot meet the demand for large and complex projects, a fact which policy makers have recognised, acknowledging the need to develop legal services,[141] and this is relevant to the successful evolution of cross-border trade. For example, an East African business seeking to establish itself in a different partner state, or a multinational East African firm expanding further will not necessarily be able to use the services of its own in-house legal team nor local legal advisers if that particular partner state has not implemented the freedom of movement provisions of the Common Market Protocol. This is a crucial restriction at a time when, according to the United Nations Economic Commission for Africa's (UNECA) Economic Report on Africa for 2019, regional integration is an imperative for Africa in the fight against poverty. East Africa is the fastest growing REC in Africa, with growth rising from 6.1 per cent in 2017 to 6.2 per cent in 2018, and enhanced regional integration through the RECs as well as the African Continental Free Trade Area offers the possibility of considerable economic growth across East Africa.[142] A case study into trade in Kenya carried out by Dihel et al found that 'more than half of Kenyan service exporters have clients in Tanzania and/or in Uganda and one third have clients in Rwanda' and concluded that 'regional markets are important for exports of accounting, architecture, engineering, insurance, and legal services'. [143] Further case studies by Dihel and Goswami[144] 'demonstrate that entrepreneurs are able to circumvent formal barriers to cross-border trade in services and that there is substantial demand for services imports, suggesting that liberalization and services trade facilitation – to remove the need for bribes and more generally lower transactions costs and the ability of incumbent services industries (e.g. professional associations) to restrict foreign entry – has great potential to both expand trade further and increase welfare (the gains from trade).'[145] Fears of aggressive competition which will lead to less legal work are likely to be unfounded.

Large sectors of Law will remain domestic, and knowledge of local practices and language and nuance will play a paramount role in the choice of lawyer, particularly for private clients or for small local businesses. Furthermore, enhanced economic growth is also vital in enabling

[140] N. Dihel, Fernandes, A.M., Mattoo, A. and Strychacz, N., "Reform and Regional Integration of Professional Services in East Africa The World Bank." September 2010. Available at <http://siteresources.worldbank.org/INTPREMNET/Resources/EP32.pdf> Accessed 2 November 2019, p. 2.

[141] Dihel et al, "Developing Professional Services in Africa Through Regional Integration," 1-2.

[142] United Nations Economic Commission for Africa (UNECA) "Fiscal Policy for Financing Sustainable Development in Africa. Economic Report on Africa 2019." Available at <http://repository.uneca.org/bitstream/handle/10855/41804/b11928190.pdf?sequence=1> Accessed 2 November 2019, pp. 6 and 13.

[143] N. Dihel, A. Fernandes, R. Gicho, J. Kashangaki and N. Strychcz. "Becoming a Global Exporter of Business Services? The Case of Kenya." In *Exporting Services: A Developing Country Perspective,* A. Goswami, A. Mattoo and S. Sáez (eds.), (World Bank 2012): 237-69, 248.

[144] N. Dihel, and A. Goswami (eds.) *From Hair Stylists and Teachers to Accountants and Doctors - The Unexplored Potential of Trade in Services in Africa* (World Bank 2016).

[145] B. Hoekman, "Integrating African Services Markets in Regional Integration in Africa," proceedings of the 20th Senior Policy Seminar, Nairobi: African Economic Research Consortium, 2018. Available at <https://www.eui.eu/DepartmentsAndCentres/RobertSchumanCentre/Africa-Platform/Publications> Accessed 2 November 2019, p. 7.

African states to meet the UN's sustainable development goals, which aim 'to leave no one behind' as countries develop.[146]

For the UK, much still remains to be determined with regard to the free movement of legal services in the future. UK lawyers working in the EU under UK qualifications will fall under regulations for non-EU lawyers and will no longer benefit from the automatic recognition of their qualifications. The Law Society of England and Wales predicted that leaving the EU with no deal would likely lead to a loss of legal services turnover of £3.5 billion (nearly 10%) and of 10,000 jobs. The Law Society points out that the UK will be negotiating legal market access with 31 different regulatory regimes (EU, EFTA, EEA), with different levels of restrictions placed on third country lawyers.[147] EU lawyers wishing to practice in the UK will have to apply through the RFL route, but may see their practice areas restricted.

As English and Welsh lawyers face their post Brexit future, they may well be looking on with some envy at their East African counterparts, for whom the free movement of legal services still remains a possibility, even if clouded with uncertainty and some suspicion in certain quarters.

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[146] See UN Sustainable Development Goals Knowledge Platform, "Helping governments and stakeholders make the SDGs a reality." Available at < https://sustainabledevelopment.un.org/> Accessed 2 November 2019.
[147] The Law Society of England and Wales, *The UK-EU future partnership – legal services sector.* 1 August 2019. Available at <https://www.lawsociety.org.uk/policy-campaigns/articles/uk-eu-future-partnership-legal-services/> Accessed 3 November 2019, p. 2.

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