

Insights

MIND THE GAP: WHAT THE HAGUE 2019 CONVENTION MEANS FOR CROSS-BORDER ENFORCEMENT OF ENGLISH JUDGMENTS

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When clients sign a contract, they want confidence: confidence that if a dispute arises, the agreed forum for resolving it will be respected, and that any judgment obtained will be enforceable across borders without unnecessary hurdles. This is crucial in international commercial contracts, where parties often operate in different jurisdictions.

The UK's departure from the EU has brought significant changes to its legislative framework, particularly in the area of cross-border recognition and enforcement of judgments. Prior to Brexit, the UK was part of a harmonised EU framework under the Brussels (Recast) Regulation, which provided clear rules on jurisdiction and recognition and enforcement of judgments in civil and commercial matters between the EU Member States. Following Brexit, the UK lost access to that framework, which was replaced by a patchwork of rules and uncertainty, particularly around enforcement of non-exclusive jurisdiction clauses and judgments given pursuant to those clauses.

THE POST-BREXIT LANDSCAPE

While the Hague Convention on Choice of Court Agreements 2005 ("**Hague 2005**") stepped in to address some jurisdictional issues, it left a gap regarding the enforcement of judgments, especially those arising from non-exclusive or asymmetric jurisdiction clauses common in commercial and financial contracts. Hague 2005 applies to exclusive jurisdiction clauses between contracting states, ensuring that courts respect the parties' choice of forum and enforce resulting judgments.

Where Hague 2005 doesn't apply, jurisdiction and enforcement are governed by common law. This introduces complexity and unpredictability. For example, English courts may decline jurisdiction even if a party is domiciled in England, depending on factors like appropriate forum or parallel proceedings abroad. Enforcement of English judgments in EU Member States became more difficult, especially where the underlying jurisdiction clause was non-exclusive or asymmetric.

THE HAGUE 2019 CONVENTION

The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 2019 ("**Hague 2019**"), which came into force in the UK on 1 July 2025, seeks to address this gap by streamlining the process for the mutual recognition and enforcement of judgments between contracting states.

As of now, the Hague 2019 Convention has been ratified by the European Union (excluding Denmark), the United Kingdom, Ukraine, and Uruguay. In 2026, the convention will come into force in Albania, Andorra and Montenegro.

This means that English courts' judgments can now be more easily enforced in most EU Member States, even when based on non-exclusive or asymmetric jurisdiction clauses. Importantly, Hague 2019 applies only to judgments given in proceedings commenced after its entry into force in the UK, that is post-1 July 2025.

WHAT HAS CHANGED AND WHAT HASN'T

ENFORCEMENT OF JURISDICTION AGREEMENTS

The distinction between jurisdiction and enforcement remains fundamental. Hague 2019 does not alter the regime governing jurisdiction and the enforcement of jurisdiction agreements, which continues to be determined by the type of jurisdiction clause in the contract and the relevant legal framework.

If a contract includes an exclusive jurisdiction clause in favour of a contracting state, the Hague 2005 Convention applies. This means courts in other contracting states will generally decline jurisdiction in favour of the designated forum. By contrast, non-exclusive and asymmetric clauses are outside the scope of Hague 2005, leaving jurisdiction to be determined under common law principles - creating greater uncertainty and complexity. The Hague 2019 Convention has not altered this position.

- **Exclusive jurisdiction clauses:** These nominate a single forum to hear disputes and are covered by Hague 2005. Courts in contracting states must respect the clause and decline jurisdiction if proceedings are brought elsewhere.
- **Non-exclusive clauses:** Not covered by Hague 2005. These allow parties to bring proceedings in nominated or other competent courts, providing greater flexibility but less certainty.
- **Asymmetric clauses:** Not covered by Hague 2005. These provide exclusivity for one party and non-exclusivity for the other, and are often preferred by lenders in finance agreements.

ENFORCEMENT OF JUDGMENTS

This is where Hague 2019 makes a difference. It provides a framework for mutual recognition and enforcement of judgments in civil and commercial matters, including those arising from non-exclusive and asymmetric jurisdiction clauses. Prior to Hague 2019, the enforcement in the EU of English judgments arising from non-exclusive or asymmetric jurisdiction clauses was uncertain.

- **Scope:** Hague 2019 applies to civil and commercial judgments given in proceedings commenced after 1 July 2025, but does not extend to areas like family law, insolvency, defamation, intellectual property. It does not cover arbitration.
- **Eligibility:** A judgment is eligible for enforcement if it meets one of the criteria listed in Article 5, such as the defendant being habitually resident in the state of origin or having expressly consented to jurisdiction.
- **Recognition and enforcement:** Judgments from a court of a state of origin must be recognised and enforced in a requested state, subject only to the limited grounds for refusal specified in the Article 7. Judgments will be recognised only if they have effect in the state of origin and will be enforceable only if they are enforceable in the state of origin. Recognition or enforcement may be postponed or refused if the judgment is subject to review in the state of origin or if the time limit for seeking ordinary review has not yet expired.
- **Grounds for refusal:** These are limited to specific circumstances, such as improper service, fraud, incompatibility with public policy, or inconsistency with earlier judgments.
- **No review of merits:** Courts in the requested state cannot re-examine the substance of the judgment.
- **Procedure:** Applications for recognition or enforcement must be accompanied by certified copies of the judgment and, if necessary, certified translations. The process is governed by the law of the requested state, which must act “expeditiously.”

PRACTICAL IMPLICATIONS AND TAKEAWAYS

The Hague 2019 significantly enhances the enforceability of English judgments abroad, particularly those arising from non-exclusive or asymmetric jurisdiction clauses. For clients, the Hague 2019 Convention restores a level of predictability and confidence in cross-border enforcement that was lost post-Brexit. It means that:

- Judgments from English courts based on non-exclusive or asymmetric clauses are now more likely to be enforced in EU Member States and other signatories.
- Parties can rely on a clearer framework for enforcement, reducing the risk of costly and time-consuming litigation abroad.

- While jurisdictional uncertainty remains for non-exclusive and asymmetric clauses, the enforcement landscape is now more favourable.

Parties seeking maximum certainty in cross-border enforcement are best advised to use exclusive jurisdiction clauses, which benefit from the established regime under Hague 2005. Where flexibility is required, and non-exclusive or asymmetric clauses are preferred, Hague 2019 offers a more reliable path to enforcement than was previously available. The parties, however, should be aware of the potential complexities and draft such clauses with care, avoiding standard "boilerplate" language.

The Hague 2019 Convention is a welcome development. It fills a critical gap left by Hague 2005 and Brexit. While the framework is not identical to the pre-Brexit regime under the Brussels (Recast) Regulation, it is a significant improvement. It is a step forward, but we are still not quite back to where we were. Some uncertainty persists, particularly regarding the exercise of discretion by EU Member State courts in enforcing English judgments. Parties should continue to monitor developments and seek tailored advice when drafting jurisdiction clauses in cross-border contracts.

RELATED CAPABILITIES

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- International Arbitration
- Litigation & Dispute Resolution

MEET THE TEAM



Irina Tuca

Associate, London

irina.tuca@bclplaw.com

[+44 \(0\) 20 3400 4062](tel:+442034004062)



Agnieszka Bidzinska

Associate, London

[agnieszka.bidzinska@bclplaw.co](mailto:agnieszka.bidzinska@bclplaw.com)

[m](mailto:agnieszka.bidzinska@bclplaw.com)

[+44 \(0\) 20 3400 3377](tel:+442034003377)



Victoria Clark

Knowledge & Innovation Counsel,
London

victoria.clark@bclplaw.com

+44 (0) 20 3400 3095

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