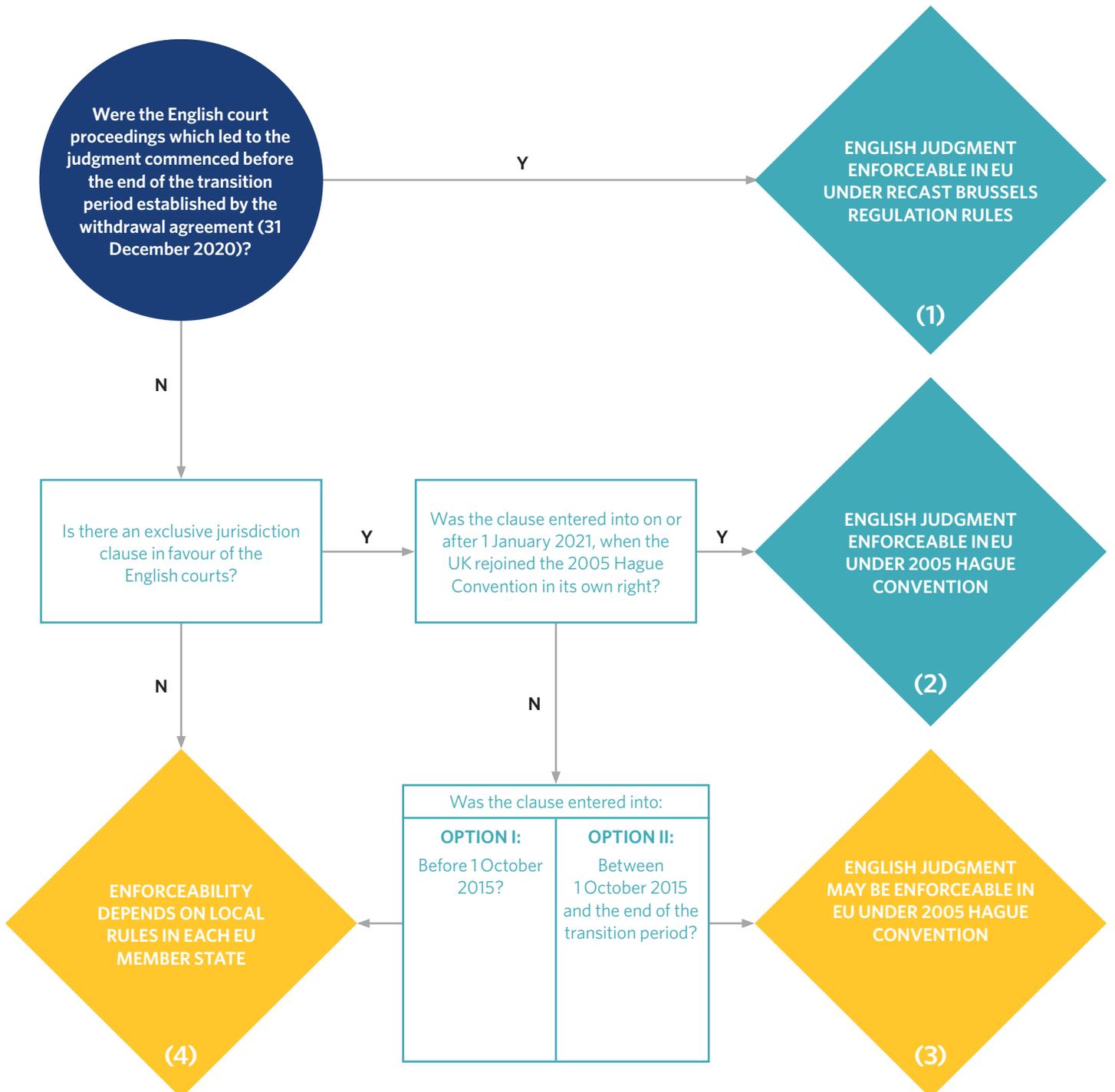




# Will an English judgment be enforceable in the EU from 1 January 2021 if the UK does not re-accede to the Lugano Convention?



## Will an English judgment be enforceable in the EU from 1 January 2021?

This decision tree has been prepared as a quick reference guide to help determine whether an English court judgment will be enforced in EU member states from 1 January 2021 onwards, if the UK does not accede to the 2007 Lugano Convention. (The UK submitted its application to accede in April 2020, but the EU's consent has not to date been forthcoming.)

It is necessarily a simplification of complex issues and should be read with reference to the notes set out below.

### 1 English judgment enforceable in EU under Recast Brussels Regulation rules

The withdrawal agreement between the UK and the EU dated 19 October 2019 provides (at article 67) that the rules on both jurisdiction and enforcement of judgments under the recast Brussels Regulation (Regulation 1215/2012) will apply where proceedings are commenced before the end of the transition period established by the agreement (31 December 2020).

Accordingly, if the English court proceedings which led to the judgment were commenced before the end of the transition period, then the judgment will be enforceable in the EU under the recast Brussels Regulation (subject to limited exceptions).

### 2 English judgment enforceable in EU under Hague

The UK was a party to the 2005 Hague Convention on Choice of Court Agreements by virtue of its EU membership. That came to an end when the UK left the EU on 31 January 2020 but, pursuant to the withdrawal agreement, it was agreed that the UK would

be treated as an EU member state for the purposes of international agreements, including Hague, until the end of the transition period. The UK has re-acceded to the Convention in its own right with effect from 1 January 2021.

Hague applies only where there is an exclusive jurisdiction agreement in favour of a contracting state's courts, and only where that clause was entered into after the Convention came into force for the chosen state. It also does not apply to consumer or employment contracts or to certain other matters for example relating to land or certain intellectual property rights. Where Hague applies, a judgment will be enforceable (subject to limited exceptions) in the other contracting states, which includes all EU member states.

Accordingly, subject to those exceptions, if the English court's judgment was given pursuant to an exclusive English jurisdiction clause that was entered into on or after 1 January 2021, then the judgment will be enforceable in the EU under Hague.

### 3 English judgment may be enforceable in EU under Hague

As noted above, the 2005 Hague Convention on Choice of Court Agreements applies only where there is an exclusive jurisdiction agreement in favour of a contracting state's courts which was entered into after the Convention came into force for the chosen state.

Hague came into force for the UK as an EU member state on 1 October 2015. However, as noted above, that came to an end on Brexit, though the UK was treated as an EU member state for the purposes of the Convention until the end of the transition period. In these circumstances, there is some uncertainty over whether other contracting states will apply Hague rules where an exclusive English jurisdiction clause was agreed before the UK re-joined Hague in its own right, even if the

clause was agreed when the UK was party to Hague by virtue of EU membership (ie between 1 October 2015 and 31 December 2020). It is difficult to see why the earlier date should not be the relevant one, but the European Commission has taken the opposite view (although that is not binding on the courts that will decide this question in future).

### 4 Enforceability depends on local rules in each EU member state

If there is no applicable agreement or convention on enforcement of judgments, then each EU member state will apply its own domestic rules to questions of jurisdiction and enforcement.

There are old bilateral treaties between the UK and a number of EU member states but, as these were expressly superseded by the Brussels Convention and the original and recast Brussels Regulations, it is not at all clear whether they apply post-Brexit. In any event most (but not necessarily all) EU member states will enforce foreign judgments even without a specific reciprocal regime, although the type of judgment enforced may be more limited and the procedures involved more time consuming and costly.