

Brexit and PIL - Belgian Supreme Court confirms the application of the 2005 Hague Convention to jurisdiction clauses designating UK courts concluded after 1 October 2015

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The United Kingdom deposited an instrument of accession to the Hague Convention of 30 June 2005 on Choice of Court Agreements (the “**Convention**”) on 28 September 2020. This instrument of accession became effective after the Brexit’s transition period, on 1 January 2021, and gained binding force within the UK legal order following the adoption of the Private International Law (Implementation of Agreements) Act 2020.

As many readers will be aware, a controversy exists regarding the temporal scope of the Convention. It applies to exclusive choice of court agreements concluded after its entry into force for the State of the chosen court and to disputes initiated after its entry into force for the State of the seized court. EU Member States have been bound by the Hague Convention since its approval by the European Union on 1 October 2015, but what about the UK after its withdrawal from the EU?

According to a first viewpoint, reflected in the UK’s instrument of accession, “*In accordance with Article 30 of the 2005 Hague Convention, the United Kingdom became bound by the Convention on 1 October 2015 by virtue of its membership of the European Union, which approved the Convention on that date.*”

Conversely, under a second viewpoint (apparently shared by the European Commission in its ‘Notice to stakeholders – Withdrawal of the United Kingdom and EU rules in the field of civil justice and private international law’ dated 27 August 2020, p. 9), the Convention could only apply after the United Kingdom’s ‘independent’ ratification, which occurred on 1 January 2021. If this second

perspective were accepted, jurisdiction agreements concluded before this date would not benefit from the mutual recognition system established by the Convention.

In a judgment (in French) dated 27 March 2025 (C.24.0012.F), the Belgian Supreme Court (*Court de Cassation/Hof van Cassatie*) ruled in favour of the first viewpoint, holding that *“The Hague Convention of 30 June 2005 has been applicable to the United Kingdom as a bound State, owing to the European Union’s approval of the Convention, from 1 October 2015 until 31 December 2020, and as a contracting party from 1 January 2021. The argument, in this regard, that the United Kingdom ceased to be bound by the Convention following its withdrawal from the European Union on 1 February 2020, is without legal basis.”*