

European Family Property Relations
Article-by-Article Commentary on EU Regulations
1103 and 1104/2016

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Editors



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Article 54 **Partial enforceability**

Manuela Giobbi

Regulation (EU) 2016/1103

Regulation (EU) 2016/1104

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them. (Same text)
2. An applicant may request a declaration of enforceability limited to parts of a decision.

Summary: I. Partial enforceability of a decision

I. Partial enforceability of a decision

Art 54 of Regulations 2016/1103 and 2016/1104¹ provides that a decision can be declared partially enforceable. In particular, this provision states that where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.

According to the provisions of Art 54, para 1, if the judge verifies that not all the matters of the application based on which the decision was given can be declared enforceable, he shall proceed *ex officio* with the

¹ Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes [2016] OJ L183/1; Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships [2016] OJ L183/30.

declaration of partial enforceability. It does not appear from the wording of the provision that the court can take a decision of a discretionary nature. The judge to whom the request is submitted therefore has an ‘obligation’ to limit enforceability exclusively to the parts to which it can actually be granted.

Art 54, para 2 also allows the party to request a declaration of enforceability limited to parts of a decision. In this case, it is the same applicant party that limits the request for enforceability to some specific items that have been the subject of the request² and which in any case meet the parameters indicated in Art 37 of the Twin Regulations. By limiting the request for enforceability to only some parts of the decision, the party can prevent the judge from issuing a provision of total denial. According to the provisions of Art 37, for example, in no case could decisions manifestly contrary to public policy be recognised. Nor could the enforceability of parts of the decision be recognised if these contain discriminating elements against one of the spouses or partners.³

The partial declaration of enforceability may also depend on the fact that the same decision concerns some matters included in the scope of the 2016/1103 and 2016/1104 Regulations, and others that fall within a different regulatory framework. Some problems also stem from the need for the various matters of the decision to be separable from each other and are not interdependent so that the judge can proceed with the declaration of partial enforceability.⁴ In the event that the parts of the decision are closely connected, the existence of a reason for denial of enforceability will affect the entirety of the provision. According to what is indicated in Recital 64 of Regulation 2016/1103 and Recital 63 of Regulation 2016/1104, the recognition and enforcement of a decision on matrimonial property regime or on the property consequences of a registered partnership should not in any way imply the recognition of the marriage or the registered partnership which

² In this regard, see P. Bruno, *I Regolamenti europei sui regimi patrimoniali dei coniugi e delle unioni registrate* (Milan: Giuffrè Francis Lefebvre, 2019), 281.

³ On this point, see P. Bruno, n 2 above, 281.

⁴ On the subject, see I. Pretelli, ‘Article 54’, in A. Bonomi and P. Wautelet eds, *Le droit européen des relations patrimoniales de couple. Commentaire des Règlements (EU) 2016/1103 et 2016/1104* (Brussels: Bruylant, 2021), 1197.

gave rise to the decision.⁵ Therefore, it seems that the partial enforceability of the decision can be declared by the judge even where the parts are interdependent.

The Court of Justice⁶ also specified that when the same decision has ruled both on property relations and maintenance obligations, the judge called to rule on enforceability is required to distinguish between the various aspects by referring to each specific case. A decision can therefore be partially enforced as long as it is based on the assessment of the factual aspects of the various parts of which it is composed.

⁵ G. Cuniberti, 'Article 54. Partial Enforceability', in P. Franzina and I. Viarengo eds, *The EU Regulation on the Property Regimes of International Couples: A Commentary*, (Cheltenham: Edward Elgar, 2020), 420-421.

⁶ See Case C-220/95 *Van den Boogaard v Laumen*, Judgment of 27 February 1997, paras 21 and 22, available at www.curia.europa.eu (last visited 30 June 2021).