

2. ARE THERE ANY NATIONAL LEGAL PROVISIONS, WHICH EXPRESSLY PROVIDE THAT A STRIKE OR ANY OTHER RELATED SOCIAL CONFLICT MAY BE CONSIDERED UNDER CERTAIN CIRCUMSTANCES AS AN EVENT OF FORCE MAJEURE?

ITALY	<ul style="list-style-type: none"> ▪ The only regulations that, though indirectly, put the right to strike on a par with force majeure, are incorporated in the Ministry of Treasure Decree 16 December 1998 whereby 'the bank is held harmless in case of any strike by their employees or any external subjects whom they resort to, as well as in any other causes of force majeure'. From the literal contents of such regulations, it comes out that the strike, both by the bank's employees, and any external collaborators of theirs, is put on a par with the force majeure either to exclude or to limit their responsibility towards the counterparty.
DENMARK	<ul style="list-style-type: none"> ▪ No
FINLAND	<p>No specific rules regarding strike as force majeure exists in written law in Finland. In statutory rules there are some general definitions regarding force majeure events. These rules are contained in:</p> <ul style="list-style-type: none"> ▪ Act on promissory notes 7 § (Velkakirjalaki 1947/622) ▪ Credit transfer act 20 § (Tilisiirtolaki 1999/821) ▪ Act on interests (Korkolaki 1982/633) ▪ Act on negotiable promissory notes, 54 § (Vekselilaki 1932/242) ▪ Act on cheques, 48 § (Shekkilaki 1932/244) ▪ In Finnish statutory law, a strike is particularly mentioned as an event of force majeure only in a decision of Ministry of trade and industry regarding public supplies section 11.1. (KTMp - 1993/417)
SWEDEN	<ul style="list-style-type: none"> ▪ No
PORTUGAL	<ul style="list-style-type: none"> ▪ No
GREECE	<ul style="list-style-type: none"> ▪ No
THE NETHERLANDS	<ul style="list-style-type: none"> ▪ No
SPAIN	<ul style="list-style-type: none"> ▪ There is no rule that expressly defines strikes or any other related social conflict as an event of force majeure. Such evaluation has to be carried out case by case, considering the provision set forth under Article 1105 of the Spanish Civil Code. It provides that "[...] nobody may respond, during the execution of the obligation, of not predictable or not avoidable (when expected) facts".
FRANCE	<ul style="list-style-type: none"> ▪ There is no legal status expressly providing that a strike may be an event of force majeure. Traditionally, case law has defined force majeure as an event having the following characteristics: unforeseeable, irresistible and external (imprévisible, irrésistible et extérieur). See about the point: Cass. 1st civ., 31 may 1989, no 87-17.236, Resp. civ. Et assur. 1989, no 255; Cass. 1st civ., 16 may 1977, no 75-14.575, Bull. civ. I, no 229; Cass. soc., 11 jan. 2000, no 97-18.215. ▪ Nevertheless, as a rule, a strike does not automatically exempt a company of its obligations, except if the circumstances or the movement by its extend, exceed the context of the company. For an illustration of this principle, see: Cass. 1st civ., 24 jan. 1995, no 92-18.227 where EDF is not responsible for the electricity cut because of a strike, the external character of the event is the result of its capability to affect all the public and nationalised industries. ▪ The Court, however, seems to attach a great importance to the irresistible character to determine if the event could be considered a force majeure event. The irresistible character could be the main factor or attribute of a force majeure event. The assessment of the irresistible character by the Court is usually <i>in abstracto</i>, in reference to a normal person exercising reasonable care. However, the Court could exceptionally consider personal factors in they judgement of the event.
GERMANY	<ul style="list-style-type: none"> ▪ No