

4. DOES NATIONAL CASE LAW OR LEGAL DOCTRINE PROVIDE ORIENTATIONS IN THIS FIELD, ESPECIALLY WITH RESPECT TO STRIKES AFFECTING OR WITHIN FINANCIAL SECTOR UNDERTAKINGS?

ITALY	<ul style="list-style-type: none"> It might be stated that should the bank not comply with their obligations, due to an “outside” strike, their responsibility is excluded due to causes of force majeure, meanwhile in case that their non-compliance is due to their employees’ strike, the bank may be considered accountable for, in case that, based upon the actual verification, it is possible to demonstrate that the bank was indeed in a position to comply with its obligations, such as paying a check, notwithstanding the absence of a part of their employees.
DENMARK	<ul style="list-style-type: none"> It is not possible from the rules of law or the legislative history to derive anything established regarding the status of industrial conflicts as events of force majeure. However, it is provided in the legislative history to section 2 of the Danish Sale of Goods Act that strikes belong under the circumstances that may constitute force majeure. Furthermore, there should be made a point of the cause of the conflict. Strikes/boycotts that have their source in external relations will basically be regarded as events of force majeure. On the other side, strikes/boycotts that have their source in their own internal affairs will hardly be regarded as events of force majeure.
FINLAND	<ul style="list-style-type: none"> No case law exists considering a strike as an event of force majeure regarding financial sector undertakings. In legal doctrine a status of a strike as a possible event of force majeure is unestablished. However, according to Finnish law, illegal strikes amount to force majeure much irrespective of the subjective guilt of the employer. Also, a legal strike may usually constitute a force majeure situation. Due to judicial uncertainty a strike is usually defined as an event of force majeure in general terms of service agreements regarding provision of financial services.
SWEDEN	<ul style="list-style-type: none"> No
PORTUGAL	<ul style="list-style-type: none"> The major part of the Portuguese legal doctrine does not consider a strike as an event of force majeure. Force majeure is comprised in art 790 of the Portuguese Civil Code. This article sets forth that an obligation is terminated when it is impossible to comply with it, provided that the debtor is not liable for such impossibility. Further, art 792 establishes that, when such impossibility is temporary, the debtor will not be responsible for the delay and therefore no compensation is deemed to be paid by him to the creditor. In both cases – definitive or temporary impossibility - such impossibility must be external, unforeseen and beyond the control of the debtor.
GREECE	<ul style="list-style-type: none"> According to the prevalent doctrine and the most important cases law, strike does not in principle constitute a force majeure event, as it is a common, thus not unforeseeable, albeit the most drastic, means of industrial conflict in democratic societies. Only wild strikes and strikes that break out without any prior notice or announcement by any source of information (including the mass media) may be considered as force majeure events, provided that the prevention, as well as the limitation of their harmful consequences on the normal operation of the undertaking are objectively impossible to achieve under the specific circumstances, even if extraordinary care is exercised.
THE NETHERLANDS	<ul style="list-style-type: none"> There is hardly any recent case law on the question whether an obligor who failed in the performance of his obligations vis-à-vis his obligee as a consequence of a strike, is required to repair the damage which the obligee suffers therefrom, on the basis of the provisions of the Dutch Civil Code (DCC) pertaining to consequences of non-performance of an obligation. Legal doctrine provides little orientation on this subject. See below under Answer 5. Pursuant to Section 6:74(I) DCC, every failure in performance of an obligation shall require the obligor to repair the damage that the obligee suffers therefrom, unless the failure is not attributable to the obligor. Section 6:75 DCC provides that a failure in performance cannot be attributed to the obligor if it is neither due to his fault nor for his account pursuant to the law, a judicial (legal) act or generally accepted principles. Section 6:76 DCC states that where, in the performance of an obligation, the obligor uses the services of other persons, he is responsible for their conduct as if it was his own.
SPAIN	<ul style="list-style-type: none"> According to the Tribunal Supremo, may be considered force majeure an event joining the following characteristics: it has to be 1) unpredictable, 2) unavoidable, 3) not due to the debtor’s behaviour, 4) able to make the obligation impossible to be executed, 5) cause of the breach. The Tribunal Supremo valued rarely a strike as a case of force majeure. As regards the doctrine, it should be underlined that it is mainly focused towards a clear definition of subjective and objective impossibility of performing an obligation (see, among the others, Albadalejo and Díez Picazo).
FRANCE	<ul style="list-style-type: none"> No particular case law or legal doctrine relating to a situation where a strike had affected the financial sector is known.
GERMANY	<ul style="list-style-type: none"> The question has especially been discussed in the fields of impossibility to perform, default, travel-contracts and in the area of standardised business conditions. Generally there is no distinction between strikes affecting manufacturing (the delivering of goods) or services. Also, there are no special rules governing strike in the financial sector. There is some discussion on the question whether strike can be considered force majeure. But generally speaking, a strike will not constitute force majeure under German Law.

