

10.4 FORCE MAJEURE

Force majeure⁸⁸ is any unforeseeable exceptional situation or event beyond the partner's control, which prevents from fulfilling any or part of its obligations under the Specific Grant Agreement. The force majeure situation should not be attributable to error or negligence on partner's part or on the part of its implementing partners or contractors, and which proves to be inevitable in spite of exercising all due diligence.

10.4.1 HOW TO QUALIFY A SITUATION AS FORCE MAJEURE?

To determine whether a situation qualifies as force majeure, the partner must be able to answer to the questions posed in the table with 'yes' in all cases, with the exception of point 5 where the answer should be 'no'.

Conditions	Clarification	Required answer
1. Is the situation unforeseeable?	The partner does not know in advance that the situation will occur. <i>E.g.</i> peaks of rainy seasons would not qualify as force majeure, because they happen every year, and are therefore foreseeable.	YES
2. Is the situation exceptional (in the specific context)?	This situation is not likely to happen very often and it has exceptional/unusual characteristics (scope, impact and consequences). <i>E.g.</i> riots in a region affected by conflict are not considered exceptional, unless they reach a level of intensity which is higher than usual.	YES
3. Is the situation beyond the control of the party?	Acting diligently, the partner could not have done anything to prevent the situation to occur or to avoid the situation.	YES
4. Does the situation prevent the party from fulfilling any obligations under the Specific Grant Agreement or part of an obligation?	The situation has an impact on the ability of the partner to fulfill its obligations under the Specific Grant Agreement. <i>E.g.</i> the situation prevents the partner to implement the action in the agreed period.	YES
5. Did the situation happen because of an error or negligence of the partner (or its IP or contractor)?	The partner did not create the situation with its actions or contribute to the situation emerging. <i>E.g.</i> if the partner did not carry out a risk analysis and was therefore unaware of the potential risk factors, force majeure would not apply.	NO
6. Has the organisation carried out all due diligence?	The partner acted with care, efficiency, transparency and diligence, in line with the best practices in the field concerned.	YES

A) DUE DILIGENCE

⁸⁸ Article 13 of the General Conditions FPA NGO

The exact content of the due diligence⁸⁹ obligation will depend on the specific humanitarian context. (*E.g.* if the partner did not sufficiently secure its equipment and the equipment was stolen during riots or if the partner failed to communicate with ECHO to address the situation, force majeure would not apply.)

To comply with its due diligence obligation, the partners have to ensure that:

- All **supplies**, especially equipment, used for the implementation of the action are adequately protected from damage and, when possible and cost-effective, insured. When the partner has no insurance, it should explain what the reasons are for the absence of insurance (e.g. high risk, not possible to obtain one in a war zone, costs, etc.) and what its internal policies in absence of insurance are.
- The **staff** participating in the implementation of the action are adequately protected and when possible and cost-effective, insured. The partner should also have a sound and comprehensive security/safety policy, which is regularly updated. Staff is to be adequately trained on the content of the said policy and on security measures in general. The partner should have in place security assessment, protocols and procedures for the emergency evaluation of staff.
- **Back-up copies** of documents exist, stored securely on any appropriate medium, either on IT or on paper.

When assessing a possible situation of force majeure, ECHO will also consider what other precautionary/mitigation measures the partner has taken in the context.

10.4.2 WHAT IS NOT FORCE MAJEURE?

- Situations in which the performance of an obligation has simply become more difficult for reasons outside the reasons mentioned above.
- Situations which occurred due to neglect (e.g. loss of supporting documents due to insufficient archiving practices).
- Default of service, defect in equipment or material, delays in making them available (e.g. delays in custom services, container lost in the harbor).

10.4.3 CONSEQUENCES OF FORCE MAJEURE

The partner will notify ECHO without delay of a force majeure situation, providing information on the incident, the consequences on the action, the extent/size of the losses if any, and the general security context. The partner will not be held in breach of its obligations when the conditions explained above are met.

After analyses of the situation, the action may have to be **suspended** (see section 10.5), fully or partially, or **terminated** (section 10.6).

⁸⁹ Article 1 a) of the General Conditions FPA NGO