

## FAQ - Coronavirus impact on COST Actions Grants

### WHAT IS FORCE MAJEURE?

In the contractual relationship between the COST Association and Grant Holders, Force majeure is defined in Article 13 of the Action Grant Agreement as being an “*event or circumstance beyond its [i.e. the Grant Holder] reasonable control and occurring without its fault or negligence*”.

This provision mirrors the definition of Force majeure in the EU legal instruments under which COST operates; i.e. a Framework Programme Agreement under Horizon 2020 Regulation<sup>1</sup> dated 14 July 2014 (article 57) and Specific Grant Agreement 3, dated 24 April 2019 (currently in force) (article 20 which refers to FPA) which define Force majeure as follows:

“*Force majeure*’ means any situation or event that:

- prevents either party from fulfilling their obligations under the Agreement,
- was unforeseeable, exceptional situation and beyond the parties’ control,
- was not due to error or negligence on their part (or on the part of third parties involved in the action), and
- proves to be inevitable *in spite of exercising all due diligence*.

*The following cannot be invoked as force majeure:*

- *any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure,*
- *labour disputes or strikes, or*
- *financial difficulties.”*

Cases that can clearly be identified as Force majeure in connection with the coronavirus cases are:

- decisions of blockage of borders by a public authority vested with the authority to do so – e.g. border police...;
- prohibition to travel coming from “national authorities”;
- placing of an individual in quarantine...

By “national authorities”, one shall understand any official public authority vested with public authority. Are considered as falling within the category “official public authority” the States, national, regional or local authorities.

Will not be considered as falling within the category “official public authority” private entities as universities, institutions... even when they are funded with public money.

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<sup>1</sup> REGULATION (EU) No 1291/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC & REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for participation and dissemination in "Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)" and repealing Regulation (EC) No 1906/2006”.

Those institutions indeed are not vested with public authority.

Examples of cases that will be looked as force majeure are:

- Instructions from States to
  - o **prohibit public gatherings in some areas**  
see the examples of
    - the IT Government to prohibit any entry in or leaving from the so-called “red zone” (decree-law of 23 Feb and decision Prime Minister dated 1 March 2020) or;
    - the FR Government decision to prohibit meetings in some départements – Oise (communes of Creil, Crépy-en-Valois, Vaumoise, Lamorlaye et Lagny-le-Sec); Haute-Savoie (commune of la Balme) – as 5 March 2020 until new instruction).
  - o Prohibit educational trips (see decision IT Prime Minister 1 March 2020).

Note that those decisions – because they restrict freedom of movement – are made for a limited period of time. **Those instructions form the basis for a Force majeure case for the duration of their validity.**

**Will not qualify as force majeure:**

- **Recommendations not to gather people.**

## WHAT DOES THE APPLICATION OF FORCE MAJEURE ENTAIL ?

COST will, where Force majeure is demonstrated, cover **otherwise non-refundable amounts.**

I.e. concerned persons shall first seek refund of the considered amounts by other possible sources, such as application of the legislation on EU passengers rights, insurance cancellation....

COST therefore highly recommends that ALL participants to meetings due to take place in the weeks to come get their trips insured against cancellations.

Travel cancellation insurances costs are ALWAYS eligible to Grants.

It is also recommended that GH and local organisers take for any event to come cancellations insurances to cover the risk. LOS cancellation insurance is a temporary measure that is put in place for events organized until 30 April 2020. This measure can be revoked at all times.

## OVERVIEW OF THE DIFFERENT CASES

Applicable to all cases hereunder:

- Concerned persons shall **first seek refund** of the considered amounts **from other existing sources**, such as application of the legislation on EU passengers rights, insurance cancellation... before calling for “force majeure”.
- Anyone confronted with a case that could be considered force majeure shall **keep any probatory document** that can help the COST Association assess the case.

Recommendation applicable to any event / meeting / conference :

- Organisers are advised to cover the meetings expenses by a cancellation insurance if possible
- Organisers shall advise participants to upgrade if possible their transportation tickets to fully refundable tickets.

### 1. FLIGHT CANCELLATIONS DUE TO CORONAVIRUS

This applies in cases when

- Action participants have been denied boarding (case of persons being notified that they will not be admitted on board of a flight shall be handled the same way)
- Airline company cancelled flight;

Such cases are regulated by law and concerned people have rights:

- If flight is **within the EU** and is operated either by an EU or a non-EU airline
- If flight **arrives in the EU** from outside the EU and **is operated by an EU airline**
- If your flight **departs from the EU** to a non-EU country operated by an EU or a non-EU airline

→ EU passenger rights apply:

Participants confronted with flight cancellations / denial of boarding shall:


- Assess the case – website [https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index\\_en.htm](https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm) is there to support those assessments. Please consult.
- How to? Following questions should be raised and answered:
  - Flight was from where to where ?
    - o From EU to the EU or outside the EU → EU passengers rights apply → see (I) hereunder
    - o From outside the EU to the EU:
      - Operated by an EU airline → EU passengers rights apply → see (I) hereunder
      - Operated by a non-EU airline → EU passengers rights DO NOT APPLY → see (II) hereunder

Note that for flights with a stopover, the **portion of the flight shall be looked as individual flights** (rules above apply).

**I. EU passengers rights apply → [https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index\\_en.htm#cancellation](https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm#cancellation)**

Quote from EU website

“If your flight is cancelled you have the right to reimbursement, re-routing or return, as well as the right to assistance and a right to compensation.”

Compensation is due if you were informed less than 14 days prior to the scheduled departure date. **The airline has the obligation to prove if and when you were personally informed that the flight was cancelled.** If this is not the case you can contact your national authority  for further assistance. However, **compensation is not due** if the carrier can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. The airline has to prove this by providing, for example, extracts from logbooks or incident reports. The air carrier should give this evidence to the relevant national enforcement body as well as to the passengers concerned in line with national provisions on access to documents.

### Compensation - cancellation

Amount in EUR	Distance
250	1 500 km or less
400	More than 1 500 km within the EU and all other flights between 1 500 and 3 500 km
600	More than 3 500 km

If your flight is cancelled, the airline must offer you, on a one off basis, a choice between:

- the reimbursement of your ticket and, if you have a connecting flight, a return flight to the airport of departure at the earliest opportunity
- re-routing to your final destination at the earliest opportunity or,
- re-routing at a later date at your convenience under comparable transport conditions, subject to the availability of seats.

As soon as you have chosen one of these three options, you no longer have rights in relation to the other two options. However, the airline carrier may still have to provide compensation

- if you choose to have your ticket reimbursed – the compensation will depend on the type of flight
- if you choose re-routing – compensation will depend on the type of flight and the delay in reaching your final destination, past the original scheduled arrival time.

➔ Where EU passengers rights apply, concerned persons shall be invited:

- to opt for one of the options (re-route, reimburse):
  - re-route should be preferred so that person can participate to the meeting,
  - if not possible, reimbursement shall be sought.

Air companies might try to invoke extraordinary circumstances to avoid reimbursing the flight.

#### **For information,**


*Quote EU website:*

examples of events defined as extraordinary circumstances are **air traffic management decisions, political instability, adverse weather conditions and security risks.**

Situations which are **not considered** as extraordinary circumstances include:

- most **technical problems** which come to light during aircraft maintenance or are caused by failure to maintain an aircraft
- collision of mobile boarding stairs with an aircraft

Any **strike** that affects the operation of the airline may be considered as extraordinary circumstances. However, to be exempted from paying compensation, the **airline must prove** that: i) there is a link between the extraordinary

circumstances and the delay or the cancellation, and ii) the delay or cancellation could not have been avoided even if all reasonable measures had been taken. If the airline does not provide you with a satisfactory explanation, **you can contact your national authority**  **for further assistance. → Please refer people to their national authority first!**

UNQUOTE

- where participation in the meeting proves impossible (see above), cancel the hotel
  - o most hotels do not charge anything until two days before cancellation.
  - o Hotel costs that cannot be avoided:
    - Should be supported via air company cancellation compensation;
    - If compensation does not cover all costs / there is no compensation, we shall based on a file assess the force majeure (most probably, it will be the case)

UNQUOTE

## II. **Where EU passengers rights do not apply:**

- The person shall cancel the hotel:
  - o most hotels do not charge anything until two days before cancellation;
  - o For hotel costs that cannot be avoided, we shall, based on a file, assess the force majeure (most probably, it will be the case).
- The person should seeK with his/her institution what the applicable law is **in order to get reimbursement / compensation from the air company**. The absolutely non-refundable amount could – based on a file - be covered by force majeure.

## 2. A MEETING IS PLANNED IN THE WEEKS TO COME – SHALL WE CANCEL OR NOT?

There is an assessment to be made by MC (supported by Grant Holder and Local Organiser).

The assessment shall be made based on the following elements:

- Where is the meeting planned?
  - A zone under official public (see above for clarification) instruction not to gather people:
    - NO: see NO cases hereunder
    - YES → When is the meeting planned?
      - During the period of validity of the prohibition?
        - NO: see NO cases hereunder
        - YES → Yes case hereunder

As of 5 March 2020 until 15 March 2020 – all meetings due to take place in Universities or other scholar institutions in IT (following decision IT Prime Minister as of 4 March 2020) are looked at as falling under YES case.

### 1. **YES case:**

Cancel meeting, seek other possible refunds, the non-refundable amounts will be covered by COST under Force Majeure.

### 2. **NO cases:**

Meeting is planned in

- A zone **close to** a zone under official public (see above for clarification) instruction not to gather people
- A zone under official public (see above for clarification) instruction not to gather people **BUT not in the (currently know) period of validity of the prohibition**
- Any other place in [COST Members](#) territory.

→ Force majeure does not apply at this stage.

→ MC have different options:

1. **Decide to modify or cancel the meeting** → this is not a Force majeure case. **The expenses linked to that modified or cancelled event are not eligible under the Grant.**

MC that decide to make a decision of cancellation or postponement of an activity are informed that

- Under its legal framework, COST may not carry over activities and unspent funds from one grant period to the next one.<sup>2</sup>

Therefore the postponed event shall take place during the same GP (i.e. before 30 April at the latest).

- Any such decision shall in all cases be accompanied by a full risk assessment conducted by the Local Organiser following the recommendations of the WHO, make decisions at the reporting before making such decision. (<https://www.who.int/publications-detail/public-health-for-mass-gatherings-key-considerations>)

2. **Recommended option** - Wait to see whether the zone where the meeting shall take place falls in a zone under official public (see above for clarification) instruction not to gather people **AND** the meeting is planned during the period of validity of that decision:

- In the meantime, participants shall be encouraged to take travel insurance or refundable transport tickets (costs are in all cases eligible under the Grant);
- If possible, the Local Organiser is encouraged to get insurance for costs of the event (costs covered by the Grant)

Should then the meeting be cancelled due to extension of the zone OR extension of duration of validity of the public decision, then force majeure will apply (see

3. **Second recommended option** - Seek for nearby location

To be preferably sought for meetings planned :

- in a zone close to a zone under official public decision instruction not to gather people
- at a time nearby the end date of validity of the abovementioned decision

The Grant can be used to cover limited extra costs for moving the meeting to a nearby place. The purpose is to limit costs. Recommendations are:

- To look for alternative place nearby
- If needed, book alternative place, bus to move concerned persons...
- In the meantime, participants shall be encouraged to take travel insurance or refundable flights (costs are covered by the Grant);
- If possible, the Local Organiser is encouraged to get insurance for costs of the event (costs covered by the Grant).

In cases 2 and 3, the GH are requested to document the case as much as possible:

- Insurances taken (or if refused, proofs of those refuses);
- Emails for booking alternative places...

### 3. A MEETING WAS PLANNED IN THE WEEKS TO COME AND THE LOCAL ORGANISER CANCELLED THE MEETING

The reasoning applicable in 2 is applicable here to determine whether the Force majeure applies to the taken decision.

I.e. the meeting was planned in

- A zone under official public (see above for clarification) instruction not to gather people:
  - NO: see NO cases in 2
  - YES → When is the meeting planned?

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<sup>2</sup> AGA article 6 – eligibility of expenses, sub item 6.3. “Any expenses linked to an activity carried outside of the Grant period mentioned in Article 3.1 are not eligible for reimbursement”.

During the period of validity of the prohibition?

- NO: see NO cases in 2
- YES → Yes case in 2
- A zone under official public recommendation (see above for clarification) not to gather people: **Recommendation is NOT an instruction → Force majeure does not apply at this stage.**  
Recommendation to seek for nearby location (see is applicable to limit the costs. Above, No cases, recommendation 3).

Note that will fall under No case any kind of cancellation arguments such as:

- **Recommendation** by an official public authority not to gather people,
- Local Organiser institute decreed that no staff members can participate in group events....

The GH are requested to document the case as much as possible:

- full risk assessment conducted by the Local Organiser following the recommendations of the WHO, make decisions at the reporting before making such decision. (<https://www.who.int/publications-detail/public-health-for-mass-gatherings-key-considerations>);
- Mails sent to find alternative solutions...

#### 4. PARTICIPANTS CANCEL THEIR PARTICIPATION TO MEETINGS

The decision of a Participant to cancel its participation to a meeting amounts to a unilateral decision. The expenses of that Participant are not eligible under the Grant. The Participant or its institution of affiliation depending on the case shall cover the non-refundable amounts.

Special cases:

1. The Participant claims that he / she cancels because of an interdiction from its institution of affiliation to travel → This is not a case for force majeure. **The expenses linked to that cancellation are not eligible under the Grant and shall be covered by the institution of affiliation**
2. The Participant claims to be prohibited to travel because of a requisition / order from official public authorities (this can apply to medical or paramedical professions, firemen...)
  - The person claiming this element as a ground for cancellation shall bring any supportive document in this regard;
  - If supported by official document, this element is a valid ground for Force majeure. The non-refundable amounts (transport / hotel) shall be covered by the Grant under Force majeure.
3. The Participant claims to not participate because of a medical certificate attesting the person is not fit to travel
  - The person claiming this element as a ground for cancellation shall bring any supportive document in this regard;
  - If supported by official document, this element is a valid ground for Force majeure. The non-refundable amounts (transport / hotel) shall be covered by the Grant under Force majeure.
4. The Participant claims to not participate to a meeting because he / she lives or works in a high risk of infection zone (for the moment, the Northern Italy provinces of Emilia Romagna, Lombardy and Veneto regions and in the provinces of Pesaro and Urbino and Savona & the French communes of Oise, Haute-Savoie, Morbihan et Grand-Est) and does not want to run the risk to be a factor for transmission of the virus.  
Whilst this is not a case per se of Force majeure, COST recommends the concerned persons to seek advice to his/her medical practitioner. If medical practitioner considers that the person should not travel, the person can be covered by a medical certificate. In such case, classical approach for such cases shall be followed (i.e. the person seeks derogation to the GH).
5. The Participant claims to not participate because the person was informed that he / she would be put in quarantine when entering back from the country where the COST event takes place:
  - The person claiming this element as a ground for cancellation shall bring any supportive document in this regard;
  - The situation does not fall as such under Force majeure but an assessment on a case-by-case basis will be made by COST.





## 6. CANCELLED EVENT / CONFERENCE ORGANISED BY THIRD PARTIES

This case applies to

- Action Dissemination events where an Action participant was due to participate as a speaker and the event is cancelled;
- ITC Conference Grant where the Conference is cancelled.

Because the cancellation of the event/conference is *beyond* the Grant Holder *reasonable control and occurring without its fault or negligence*, the non-refundable amounts will be covered by COST under Force majeure.

**Please note that a Local Organiser acting on behalf of a GH is NOT a third party – see 3. above**

### What to do in practice?

Refund shall first be sought to the Conference / event organiser on top of the other possibly mentioned sources.

The ITC Conference Grant applicant/participant in the Dissemination meeting must provide to the COST Association and the GH:

- an official document of the Host University/Event organising institute confirming the cancellation;
- a copy of all the travel and accommodation expenses;
- a statement from the travel agency that the travel expenses are non-refundable;
- a statement from the accommodation provider that the accommodation expenses are non-refundable.

Following receipt of a derogation approval from the COST Association, the Grant Holder must cancel the ITC Conference Grant in e-COST and encode the actual non-refundable expenses incurred by the applicant under OERSA along with the proof of event cancellation.

For cancelled Dissemination meetings, the participants submits a claim in e-COST and uploads the derogation approval and the actual non-refundable expenses incurred.

## 7. STSM / TRAINING SCHOOLS CANCELLED

This case applies to STSM / Training School cancelled because of a decision from

- An Official authority to cancel any educational trip on the territory where the Host Institution is situated during the period where the STSM / Training School should have been taking place;
- The Host Institution that decides to be closed for a certain duration rendering the STSM impossible at those dates.

This is in all cases the case for persons having a STSMs planned in Italy until 15th March

Because the cancellation of the event/conference is *beyond* the Grant Holder *reasonable control and occurring without its fault or negligence*, the non-refundable amounts will be eligible under the grant under Force majeure, i.e. persons being in that situation can request the reimbursement of their incurred expenses (non refundable amounts) because the cancellation by the Host University in Italy of the STSM constitutes a case of force majeure.

### **What to do in practice?**

The applicant must provide the COST Association and the GH:

- an official document of the Host University that refers to the decision to close the premises or, if the STSM was to take place in Italy, the decision of the Prime Minister (see Italian Prime Minister Decree dated 1 March 2020 or any replacing decision - [www.salute.gov.it/nuovocoronavirus](http://www.salute.gov.it/nuovocoronavirus));
- a copy of all the travel and accommodation expenses;
- a statement from the travel agency that the travel expenses are non-refundable;
- a statement from the accommodation provider that the accommodation expenses are non-refundable.

Following receipt of a derogation approval from the COST Association, the Grant Holder must cancel the STSM in e-COST and encode the actual non-refundable expenses incurred by the applicant under OERSA along with the proof of event cancellation.

### **8. CAN WE CARRY-OVER UNSPENT FUNDS DUE TO THE CORONAVIRUS SITUATION?**

The COST Association is fully dependent and bound to the contractual agreement with the European Commission. Following enquiry to apply a clause of force majeure on our own contract in order to suspend activities (including those of COST Actions during the Coronavirus outbreak), we have not received a definite answer.

As stated in the AGA article 6 – eligibility of expenses, sub item 6.3. “Any expenses linked to an activity carried outside of the Grant period mentioned in Article 3.1 are not eligible for reimbursement”. Therefore, it is not possible to carry over activities and unspent funds from one period to the next.

Please note that if the cancelled/postponed event is included in the workplan of the next GP, the budget for such event will be subject to prior approval by COST, and depending on the budget available in the new grant period.