Roschier Disputes Index **2018**

A biennial survey on facts and trends in international dispute resolution from a Nordic perspective

Prospera

BY KANTAR SIFO

ROSCHIER

Index

Foreword

Welcome to the Roschier Disputes Index, our biennial market survey focusing on prevailing practices and trends in dispute resolution in the Nordics.

The Roschier Disputes Index 2018 is the fifth edition of our survey. Our objectives are to investigate and track developments in how the largest companies in the Nordic region view commercial dispute resolution and manage their disputes. Since 2014, the survey has included companies from Denmark, Finland, Norway and Sweden. In this report, 143 in-house lawyers present their views and experiences in relation to key issues of commercial dispute resolution. We take pride in the consistently high response rate achieved by our survey.

The previous surveys of 2010, 2012, 2014 and 2016 all focused on the same or similar core questions, with the addition of certain new elements along the way. For the 2018 edition, however, we set out to do something different. We decided to prepare a special theme edition. The theme we chose was enforcement, an entirely new area of enquiry.

Therefore, this survey examines matters such as debt collection and asks whether non-payment is on the rise, and whether cross-border relationships are more vulnerable to debt collection problems. We also looked into the enforcement of arbitral awards and court judgments, both domestically and internationally, and the nature and extent of difficulties encountered at the enforcement stage. The survey further explores how proactive companies are in ensuring that they recover their debts. As a natural corollary, we also asked Nordic companies about their familiarity with and use of third party funding. In line with prior editions, we also charted Nordic companies' preferred dispute resolution methods.

Building on the positive experiences from the 2016 edition of the Roschier Disputes Index, we have again invited leading experts and users of dispute resolution services to comment on the results of the survey. These comments provide interesting perspectives to the data and the phenomena they reflect.

We wish to thank the following expert commentators for their excellent analysis and contribution to the report: Heidi Merikalla-Teir, Secretary General of the Arbitration Institute of the Finland Chamber of Commerce; Jens Rostock-Jensen, Partner at Kromann Reumert in Copenhagen; Leslie Perrin, Chairman of Calunius Capital in London; Professor Dr. Maxi Scherer, Full-time tenured Professor of Law at Queen Mary University of London, and Special Counsel at Wilmer Cutler Pickering Hale and Dorr in London.

We sincerely hope that the Roschier Disputes Index will continue to be a useful tool for management, general counsel, external counsel and anyone with a particular interest in dispute resolution in the Nordics.

Aapo Saarikivi
Eva Storskrubb
Gisela Knuts
Johan Sidklev
Petri Taivalkoski
Rikard Wikström-Hermansen

Methodology

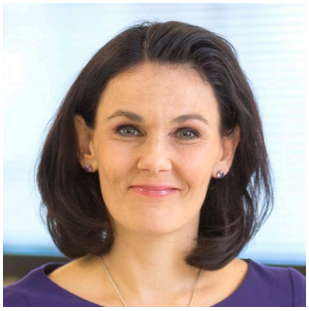
The data for the Roschier Disputes Index 2018 was collected by Kantar Sifo Prospera, part of the Kantar group, which specializes in global market information and insight. Since 1985, Kantar Sifo Prospera has regularly been carrying out surveys and client reviews targeting professionals in the Nordic financial markets.

The results reported in the Roschier Disputes Index are based on in-depth interviews with general counsel and in-house counsel from some of the largest organizations in Denmark, Finland, Norway and Sweden (based on turnover). A list of the 256 companies included in the survey is available on Roschier's website (www.roschier.com). A total of 143 companies participated in the survey, which corresponds to a 56% response rate.

Telephone interviews were conducted from September to December 2017 and were based on a questionnaire prepared by Roschier in cooperation with Kantor Sifo Prospera. All interviews were confidential and the figures have been reported only in the aggregate.

The results from the survey are reported for all interviewees as well as on a countrywide basis.

Expert commentators



Heidi Merikalla-Teir

Secretary General of the Arbitration Institute of the Finland Chamber of Commerce

Jens Rostock-Jensen

Partner at Kromann Reumert in Copenhagen

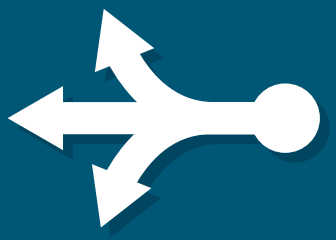
Leslie Perrin

Chairman of Calunius Capital in London

Maxi Scherer

Professor Dr. Maxi Scherer, full-time tenured Professor of Law at Queen Mary University of London, and Special Counsel at Wilmer Cutler Pickering Hale and Dorr in London

Overall findings



As in previous years, arbitration is the preferred method of dispute resolution overall. However, **significant differences** can be seen between the Nordic countries, and the preference for litigation has steadily increased.

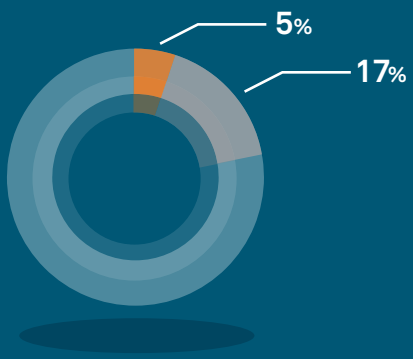
Enforceability and the location of a counterparty's assets are important factors for companies when choosing the method of dispute resolution.

For companies in the Nordic countries, **debt collection** does not appear to be a major problem and the number of debt collection matters remains stable. However there are signs that the market or climate is getting tougher.

For approximately **eight out of ten respondents**, the opposing party has abided by, or made payments voluntarily in accordance with, the judgment or award.

Time and money spent on enforcement can sometimes be an issue for Nordic companies. Enforcement in many non-EU jurisdictions is perceived as being particularly difficult.

The respondents report that they have **limited knowledge of third party funding**. Roughly 5% have used it in the past and 17% would consider using it in the future.



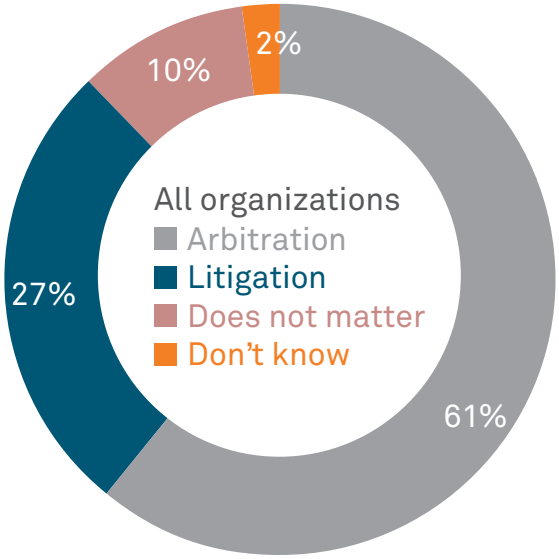
Key findings

- Arbitration is still the preferred method of dispute resolution. However, litigation has steadily increased in popularity, being most favored by Norwegian respondents.
- Finnish respondents reported a significant decrease in their preference for arbitration.
- Generally, enforceability is an important factor for companies when choosing the dispute resolution method.
- When drafting dispute resolution clauses, a majority of the respondents also consider where the counterparty's assets are located, i.e. the enforceability of a future judgment/award in practice.
- The overall number of disputes remains stable for Nordic companies.

PART I

Dispute resolution method and number of disputes

1.1 Preferred dispute resolution method



Overall, arbitration is still the preferred dispute resolution method in the Nordic region, with 61% stating that it is their preferred method, compared to 27% in favor of litigation. The number has decreased somewhat compared to the 2016 Index, in which 66% of the respondents reported arbitration as their preferred dispute resolution method.

Notably, the number of companies reporting that litigation is their preferred dispute resolution method continues to increase. The number has risen steadily from 19% in the 2014 Index, to 23% in the 2016 Index, and now settling at 27% in this year's Index.

"I am not surprised that arbitration comes out as the preferred dispute resolution method overall. I am surprised, however, about the increased popularity of litigation compared to arbitration. That is not necessarily my experience from an international perspective. To the contrary, I have seen an increase of cases in fields that were traditionally more reluctant towards arbitration, for instance, in banking and finance. Therefore, I do think this finding sets the Nordic region apart."

Maxi Scherer on the result indicating an increased popularity of litigation compared to arbitration.

"Interestingly, Finnish respondents indicate a shift from a strong preference for arbitration in the 2014 and 2016 Index towards a more ambivalent approach to the choice between litigation and arbitration. Possibly, this could be the result of the internationally prevailing perception over recent years that arbitration has become increasingly costly, lengthy and proceduralized, which can erode the perceived advantages arbitration has traditionally had over litigation. On the other hand, statistics from FAI do not support this perception in Finland. The average duration of proceedings has gone down rather than up during the 2010s.

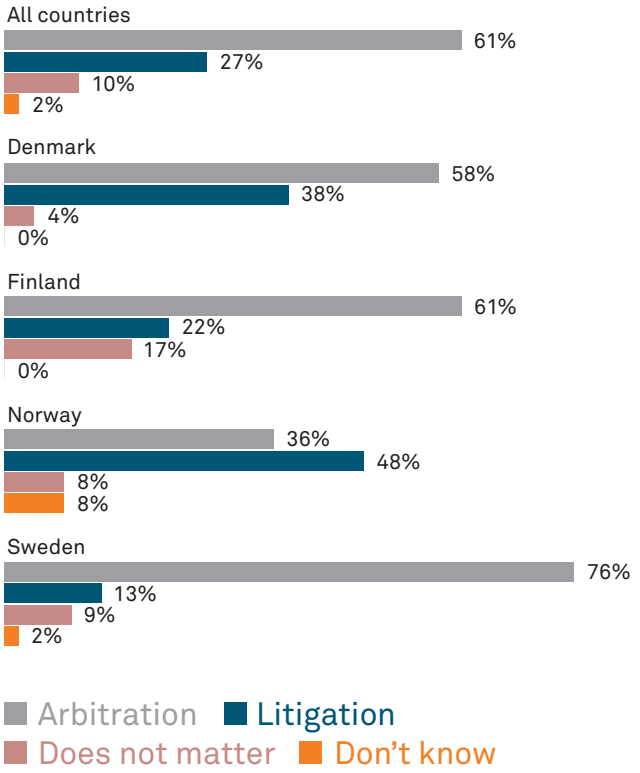
The most surprising feature for me is the increase in responses that it "does not matter" whether you choose arbitration or litigation."

Heidi Merikalla-Teir on possible reasons for Finnish respondents' results regarding preferred dispute resolution method.

"In Denmark, the starting point is still litigation in ordinary courts. Arbitration remains an exception. Sweden on the other hand has a long tradition of neutrality that contributed to making it attractive for international arbitration. Sweden has also developed an arbitration community and a pool of experienced arbitrators that the other Nordics do not have to the same extent.

I also think that because it is more common for Danish parties to litigate commercial disputes in ordinary courts, this enhances the competence of the courts and creates judicial precedent in commercial matters. In other countries, the judges might not have the same level of experience, leading parties to choose arbitration for more complicated matters."

Jens Rostock-Jensen on the results indicating a high preference for litigation in Denmark.



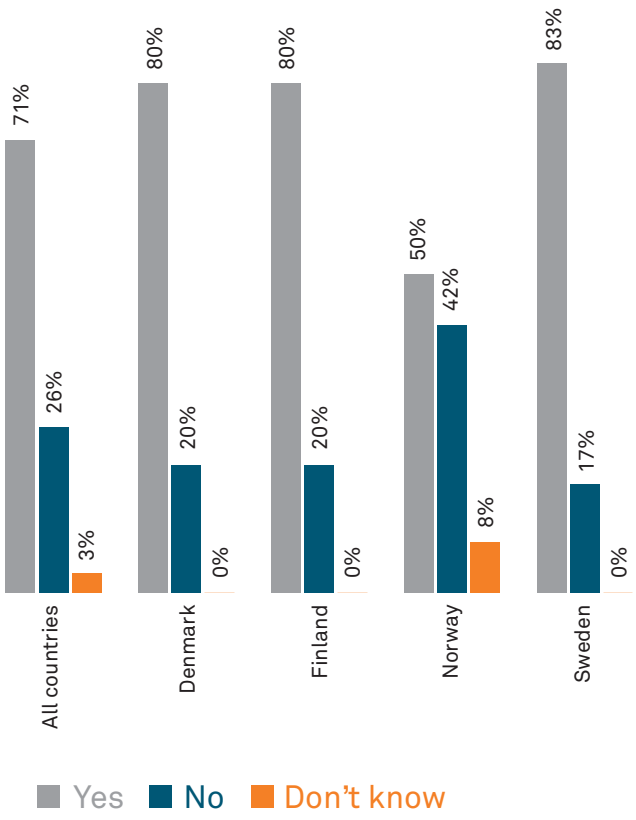
The data indicate that, as previously, litigation is more popular among Norwegian and Danish respondents, scoring 48% and 38% respectively. Swedish respondents, on the other hand, continue to show a rather low preference for litigation, with roughly one tenth stating that litigation is their choice of dispute resolution method.

Finnish respondents report a particularly marked decline in their preference for arbitration with the number dropping from 80% in the 2016 Index, to a mere 61%. In contrast, in Sweden, arbitration maintains its stable position as the preferred dispute resolution method with exactly the same support as in 2016, namely 76%. The Finnish position has also changed such that more respondents now are indifferent and respond "does not matter" (17%).

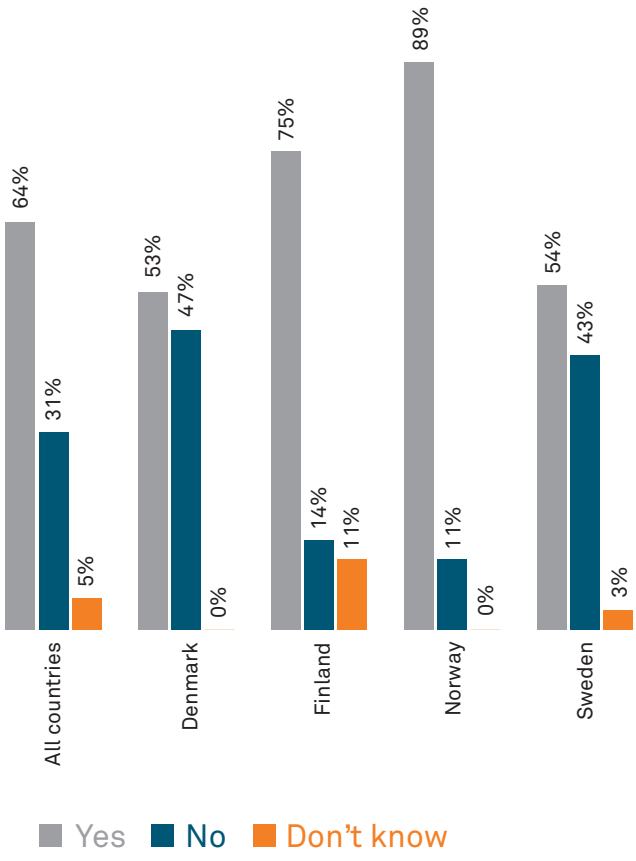
As in the 2016 Index, Norwegian respondent companies prefer arbitration to a lesser degree than the other Nordic countries, the figures showing that only 36% prefer arbitration. Norwegian respondents are now reporting an all-time high preference for litigation, and at the same time an all-time low preference for arbitration.

1.2 Influence of enforceability on the preferred dispute resolution method

Importance of enforceability for choice of litigation



Importance of enforceability for choice of arbitration



When asked if enforceability of a court judgment is an important factor in the preferred choice of litigation as a dispute resolution method, 71% of the respondents stated that it did. A significant majority of Swedish (83%), Danish (80%) and Finnish (80%) respondent companies indicate that enforceability of the judgment is an important factor. In contrast, for Norwegian companies enforceability does not influence their preference for litigation to the same extent (50%).

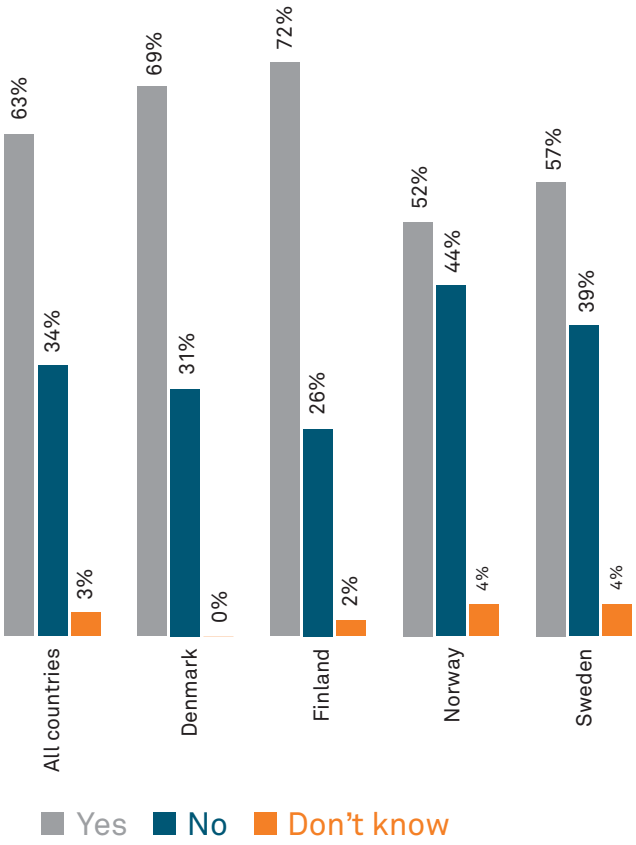
The importance of enforceability of the award as a factor in the preference for arbitration is somewhat lower than for litigation, with 64% of the respondents reporting that it is an important factor in their choice. What stands out is that 89% of Norwegian companies report that enforceability of the award is an important factor when selecting arbitration as a preferred dispute resolution method, as opposed to 50% of Norwegian companies when selecting litigation.

The Norwegian response is also contrary to the responses of the other Nordic countries in that their respondents consider enforcement a less important factor when choosing litigation than when choosing arbitration.

The variations in the results between countries and dispute resolution method are interesting and can potentially be linked to or coupled with the variations with respect to the preferred dispute resolution method. Norwegian companies show a preference for litigation, but the response to the questions on enforcement may indicate that when they have concerns about enforceability, arbitration may nonetheless be the preferred dispute resolution method.

Overall, however, the results show that enforceability of both judgments and awards is an important factor in the choice of dispute resolution method. The issue of enforcement and, in particular, how companies experience enforcement in practice is further analyzed below (see Part III of the report).

1.3 Location of the counterparty's assets and choice of dispute resolution method



A majority of the respondents, 63%, state that they take into account the location of a counterparty's assets when drafting their dispute resolution clauses. In light of the above findings, this may indicate that if the counterparty's assets are located in a jurisdiction where enforcement could prove to be difficult, the respondents will spend more time assessing which dispute resolution method would be most appropriate in order to secure a possible future enforcement.

Finnish and Danish companies report higher numbers, 72% and 69% respectively, compared to 57% of Swedish companies and 52% of Norwegian companies.

1.4 Number of pending B2B disputes

In this year's Index, the respondents were asked how many B2B disputes valued at over EUR 100,000 their company has experienced in the past few years.

Overall, there are no significant variations from the results of previous years, 2016 and 2014. On the contrary, the number of disputes or rate in general appears to be fairly stable for Nordic companies. However, Danish and Norwegian companies on average experienced more disputes than in 2014 and 2016. In contrast, the Finnish and Swedish figures show a modest decline in the number of B2B disputes.

B2B dispute = A claim has been made by either party against a counterparty. However, it is sufficient that a "claim letter" has been sent or other measures have been taken to put the counterparty on notice of a claim that is disputed. Formal proceedings need not be instituted for the matter to be defined as a "dispute".

Key findings

- Debt collection does not appear to be a major problem for Nordic companies. However, they cannot ignore the issue and must resort to debt collection measures on a regular basis.
- Overall, Nordic companies do not perceive an increase in the frequency of late- or non-payment when the debtor is based abroad.
- When the debtor is foreign, local debt collection procedures will often have to be used. This may complicate matters for companies that do not have a presence or subsidiary in the that foreign jurisdiction.
- Nordic companies overall detect no significant trends, and debt collection matters appear to be stable, but there are signs that the market or climate is getting tougher.
- Third party asset tracing does not appear to be used often by Nordic companies.

PART II
Debt collection

2.1 Frequency in debt collection measures

2,55 / 5,00

Frequency in debt collection measures in all countries

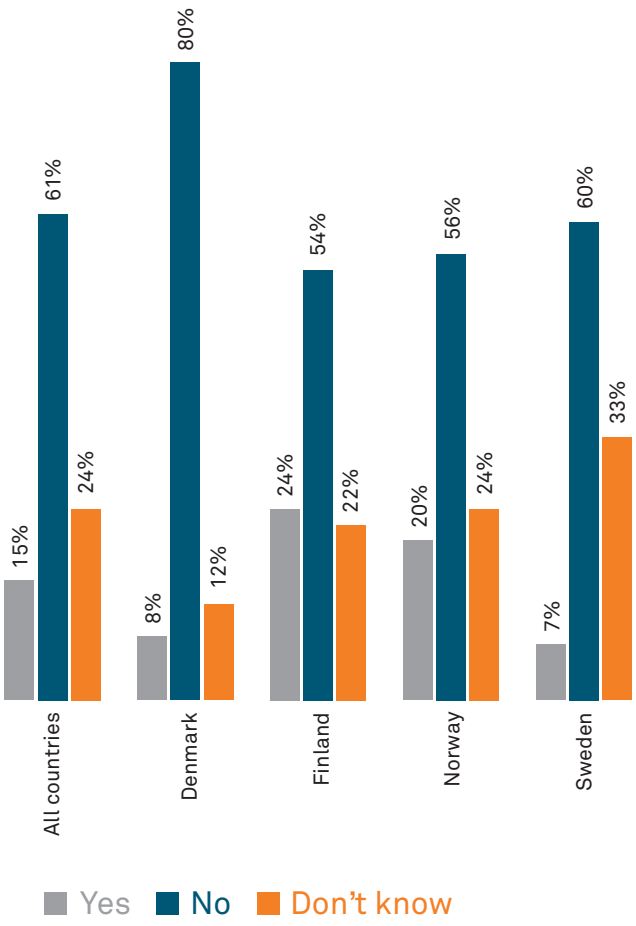
The frequency is measured on a scale of 1-5, where 5 represents "very often" and 1 respectively represents "never".

The respondents report a midway result between "very often" and "never" with respect to how often their organization resorts to debt collection measures in B2B-matters due to late-payment or non-payment of debts.

The data in this respect appear to confirm that debt collection is neither a negligible nor a major problem for Nordic companies.

"The term "debt collection measures" includes measures taken via debt collection companies, courts, enforcement authorities and bailiffs."

2.2 Increase in late or non-payments



In response to the question of whether the respondents have experienced an increase in late or non-payment during the past few years, there appear to be some differences between the Nordic countries. 24% of Finnish respondents and 20% of Norwegian respondents stated that there had been an increase as opposed to 8% and 7% of respondents in Denmark and Sweden, respectively. Overall, however, 61% of all respondents stated that they had not noticed an increase and another 24% did not know.

When asked to elaborate on whether an identified increase is connected to any specific type of situation, a number of respondents indicated that the increase is due to a more competitive market and general market developments.

Respondents on whether the increase of late- or non-payment of debts is connected to any specific type of situation.

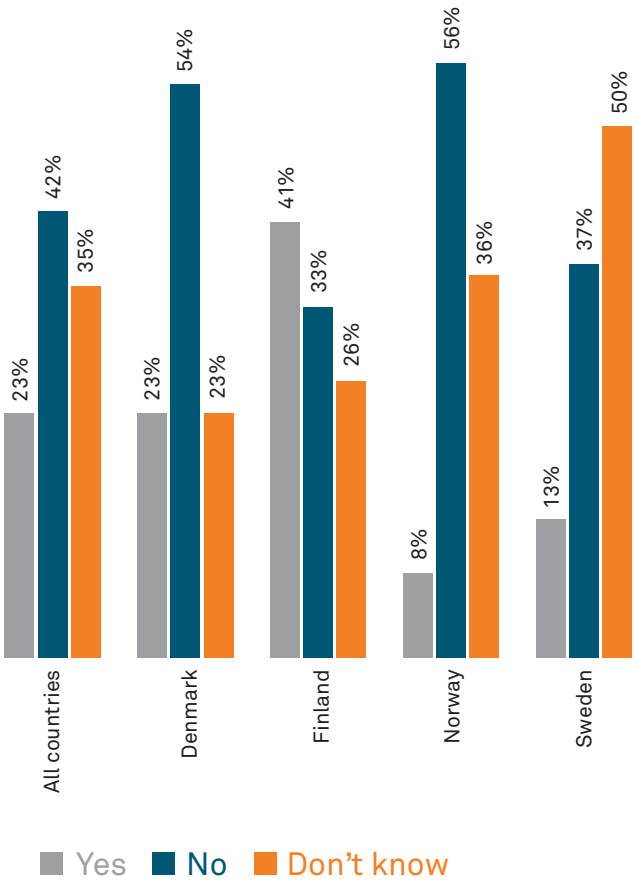
"We operate in a "soft market", a very pressured market - Customers are under pressure and come up with various requests, for example, to set up new payment plans, divide payments, renegotiate terms, reclaim more easily, etc. Everyone saves, cynically driven."

"In all cases it was subterfuge – The real reason was that the customer had no money and could not pay."

"We see an increase in requests for longer payment terms, even before the product is sold. Greater pressure when it comes to payments and customers are asking for longer payment terms."

"Increase generally, related to slowdown abroad in key markets such as the Middle-East and China."

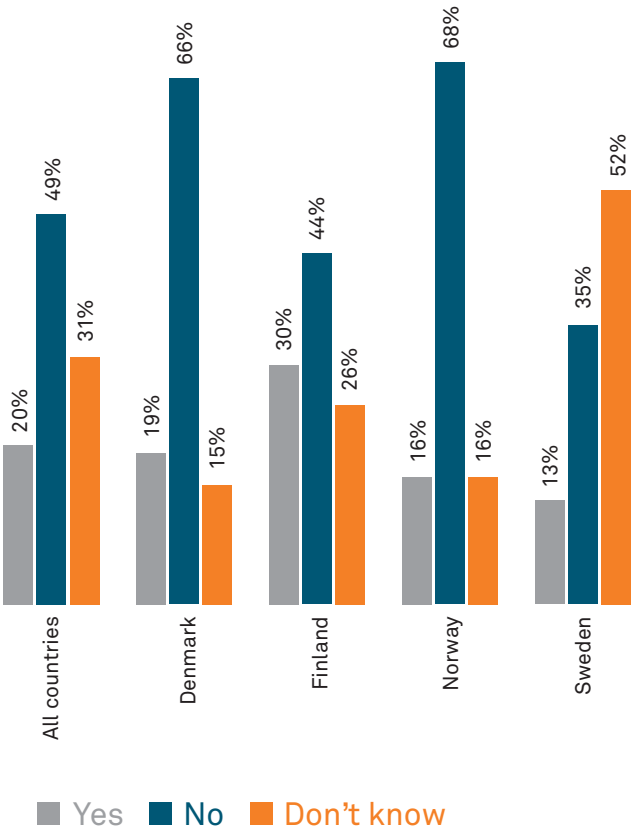
2.3 Frequency when the debtor is based abroad



When asked if the frequency of late or non-payment increases if the debtor is based abroad, the data indicate distinctive differences between the Nordic countries. Among Norwegian companies, only 8% state that the frequency increases when the debtor is based abroad. Swedish companies report a slightly higher number of 13%, whereas Danish and Finnish companies experience a higher rate of late or non-payment by their foreign-based debtors, reporting 23% and 41% respectively.

Overall, the figures still suggest that the frequency of late or non-payment does not increase if the debtor is based abroad, with 23% of all respondents noting an increase, while 42% do not. On a country basis, the exception is Finland where the majority of respondents noted an increase.

2.4 Debt collection measures abroad



With 49% responding in the negative, the responses indicate that in most situations the respondent companies do not take any special collection measures when the debtor is based abroad. The number of respondents stating that no special collection measures are taken when the debtor is based abroad is in a similar range for Finnish (44%) and Swedish (35%) companies. The numbers reported by Norwegian and Danish companies are more distinct, with 68% and 66% of the respondents respectively stating that no special measures are taken.

Notably, the highest number of respondents reporting that they do take special collection measures are Finnish, 30%, compared to only 13% for Swedish respondents.

Examples given by respondents of the special collection measures that they take abroad include the use of local debt collection agencies and local collection methods. Companies that have a presence in the country in which the debtor is based state that they will let their local offices or subsidiaries take charge of the debt collection.

Respondent about special debt collection measures taken if the debtor is based abroad.

"Local collection methods, such as local debt collection - It is our strength in that we exist and have colleagues everywhere in many countries."

In many situations, the required debt collection measures depend on the specific client and the country in which the debtor is located. The examples given by the respondents indicate that in certain countries, special debt collection measures are taken, whereas in others not.

Respondents about special debt collection measures taken if the debtor is based abroad.

"We have a more detailed system to evaluate the customers' financial situation on forehand to avoid this type of situations."

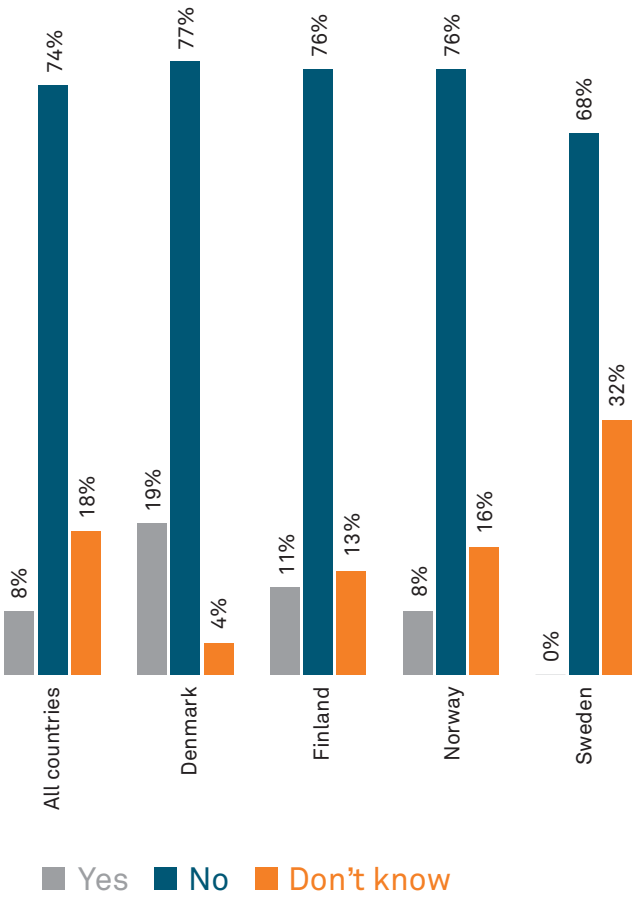
"Measures will be defined and chosen in each case depending on jurisdiction and the character of the debtor."

"It varies from case to case – Lawyers and international debt collection companies."

"Finnish respondents seem to pay attention to debt collection and to know their rights. This might reflect the mentality that it is deemed important to perform as promised, but also to hold onto one's dues."

Heidi Merikalla-Teir on debt collection in relation to the reported Finnish results.

2.5 Trends



In general, companies in the Nordic countries stated that they do not detect any new trends with respect to approaches to debt collection or enforcement, with a clear majority of all respondents (74%) stating that no such trends are noticeable.

Respondents stating that their company has noticed new trends on the market gave various examples of this, including a general reluctance of companies when it comes to paying their debts, a harsher climate on the market and enforcement issues in the wake of Brexit. On the other hand, some respondents mentioned that the trend is for companies not to pursue debts and that smaller debts are written off.

Respondents regarding the rise of new trends with respect debt collection or enforcement approaches.

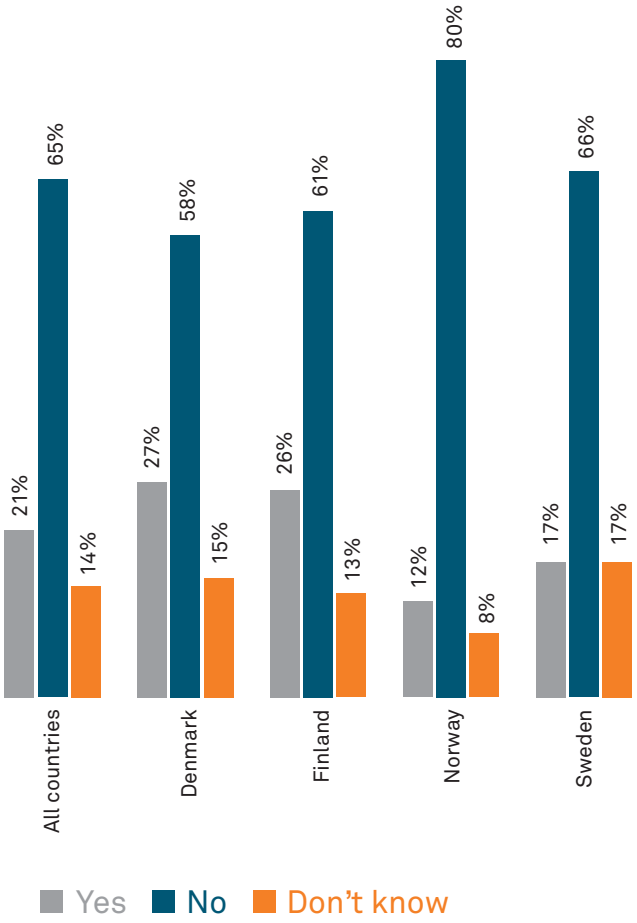
"A helicopter perspective that has to do with Brexit - Previously, the standard was to settle disputes with London, but now there is an uncertainty about enforcement. Right now, definitely not London."

"A more aggressive approach – 'Cash is king' and therefore late-payments are not accepted and companies start debt collection earlier nowadays."

"It has become more difficult to get paid – More and more people are trying not to pay. Sometimes they make up errors that do not exist, in other cases they just don't pay."

"Definitely a trend not pursuing debts – It would usually be a last resort for us."

2.6 Use of third parties to identify or trace assets



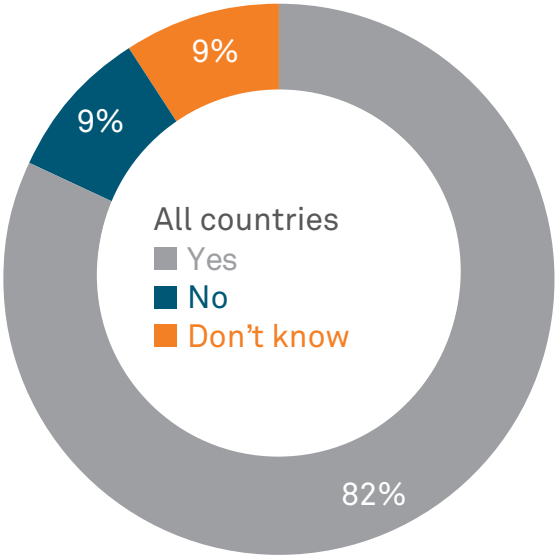
Among the respondent companies in the Nordic countries, a majority (65%) state that their organization has not used third parties to identify or trace an opposing party's assets. Danish (27%) and Finnish (26%) respondents report the highest usage, whereas the lowest usage (12%) was reported by Norwegian respondents.

Key findings

- For approximately eight out of ten respondents, the opposing party has abided by or made payments voluntarily in accordance with the judgment or award.
- Therefore, Nordic companies do not experience enforcement problems very often if they are successful in arbitration or litigation.
- However, it is acknowledged that enforcement proceedings may sometimes be cumbersome in terms of the time and cost expended.
- Enforcement abroad, particularly in certain non-EU jurisdictions, is considered more difficult than domestic enforcement.
- A variety of proactive steps to secure enforcement are taken by Nordic companies, with interim measures being used more commonly by Finnish and Swedish respondents.

PART III
Enforcement

3.1 Voluntary payment in accordance with the judgment or award



When asked if the opposing party has normally abided by, or made payment voluntarily in accordance with, the judgment or award in cases where their company has been successful, a total of 82% of the respondents answered in the affirmative. This finding indicates that, in a vast majority of cases, the opposing party will abide by, or make payment voluntarily in accordance with, the award or judgment.

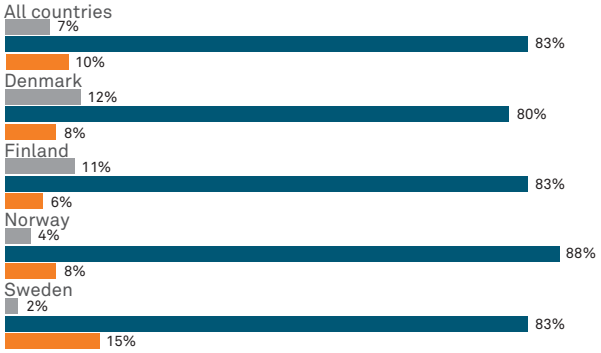
Norwegian respondents report the highest number, with 90% stating that in cases in which the companies have been successful, the opposing party has voluntarily abided or made payments in accordance with the award/judgment.

"The finding is definitely in line with my experience from an international perspective. The large majority of awards are voluntarily performed, at least in commercial arbitration. However, the awards that are subject to enforcement or annulment proceedings, despite being merely a fraction of all arbitration awards overall, often get reported. Thus, we may have a somewhat distorted impression of the number of such cases."

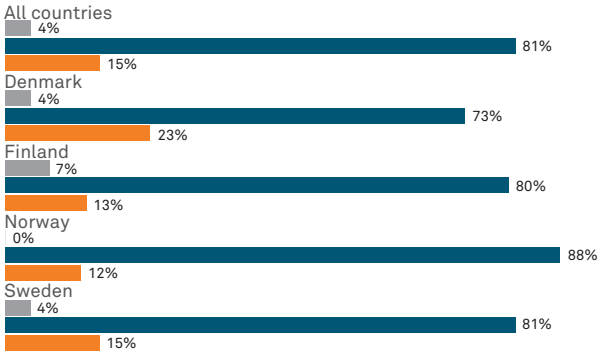
Maxi Scherer regarding voluntary payment and performance of awards and judgments.

3.2 Difficulties in enforcing judgments and awards

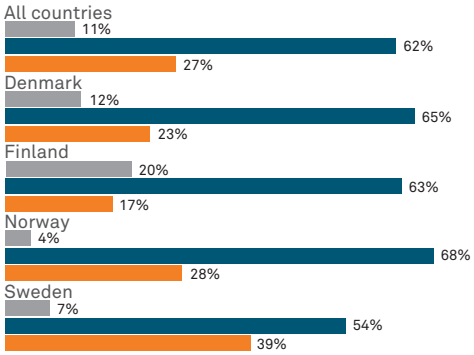
Court judgments domestically



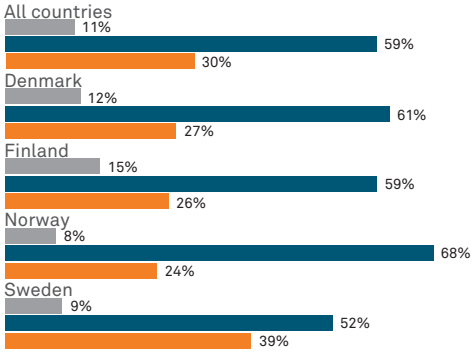
Arbitral awards domestically



Court judgments abroad



Arbitral awards abroad



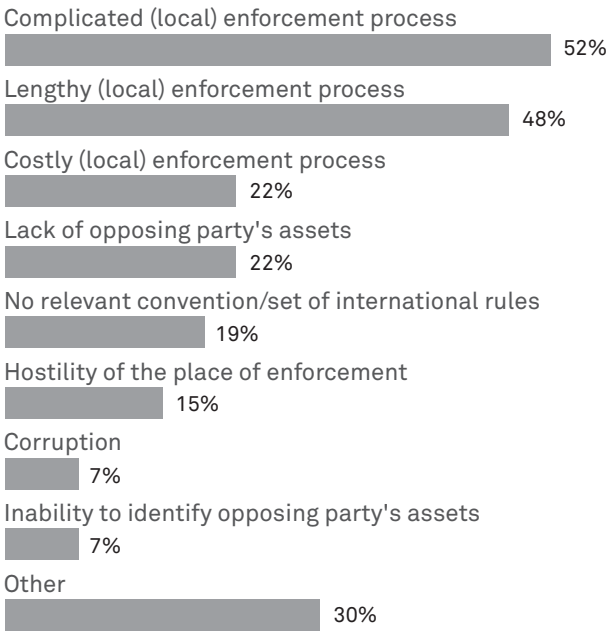
Yes No Don't know

A clear majority of the respondents have not experienced difficulties in enforcing court judgments or arbitral awards domestically. There are no significant differences between the Nordic countries.

However, a slightly higher number of respondents from all Nordic countries answered in the affirmative when asked if their organization has experienced difficulties in enforcing court judgments (11%) or arbitral awards (11%) abroad. However, there is no marked increase when compared to the numbers for domestic enforcement.

The fairly low rates of experience among Nordic companies in difficult enforcement cases is unsurprising given that counterparties of Nordic companies most often pay voluntarily pursuant to a judgment/award (as reported on page 17). However, as can be seen further below, Nordic companies also at times experience difficulties in enforcement.

3.3 Reasons for difficulties in enforcing judgments and awards



Percentage points for the reasons for the enforcement difficulties, reported by respondents stating that they have experienced difficulties in enforcement.

A majority of the respondents seem to agree that complicated, lengthy and costly local enforcement procedures are the main reasons for difficulties when trying to enforce court judgments or arbitral awards. A number of respondents also state the opposing party's lack of assets as a factor that can cause difficulties in enforcement.

Furthermore, several respondents state that bureaucratic challenges and unreliable local courts can make the enforcement process slow and arduous.

Instruments for cross-border enforcement

Brussels I Regulation
The main EU legal instrument on international jurisdiction and enforcement of judgments in civil and commercial matters.

A court judgment given in one EU Member State is enforceable in the other EU Member States.

Lugano Convention
The Lugano Convention applies between the EU Member States, Norway, Iceland and Switzerland.

A judgment given in one Contracting State is enforceable in another Contracting State.

New York Convention
At the time of writing, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York in 1958 has 157 Contracting States.

The Convention requires each Contracting State to enforce arbitral awards rendered in other Contracting States in their jurisdiction.

Hague Choice of Court Convention
At the time of writing, the Convention of 20 June 2005 on Choice of Court Agreements applies to the EU Member States (except Denmark), Mexico and Singapore. Other countries may join the Convention. China signed the Convention in 2017 and is expected to ratify it in due course, after which it would also apply to China.

A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement is enforceable in other Contracting States.

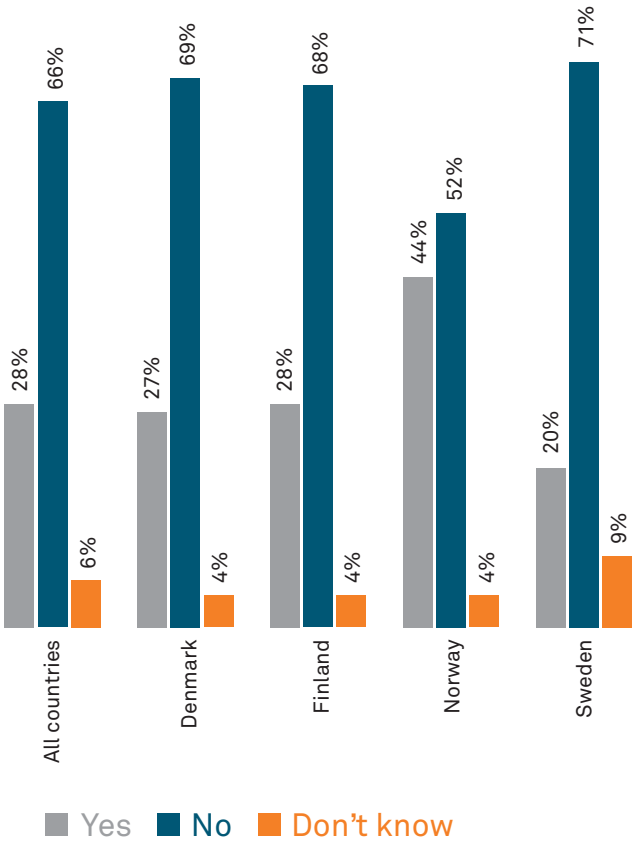
Note that the instruments may set out certain formal requirements and procedures in order for enforcement to be granted in the state of enforcement. The obligation to enforce may also be limited by specific grounds for refusal of enforcement.

Examples of reasons for difficulties in enforcing judgments and awards.

"Unreliable local courts – Local courts that are not objective, but favor the company in their own country. Verdicts or arbitration cases awarded in another country are not accepted."

"Some countries may think that a European verdict is contrary to their policies."

3.4 Time and/or cost of enforcement



Overall, the respondents do not perceive the time and/or cost of enforcement to be a problem for their organization.

The responses for Norway differ from those of the other countries, showing a significantly higher number of respondents stating that time and costs can be problematic. The Norwegian respondents mentioned, inter alia, that enforcement proceedings can often take several years, expend a lot of resources and escalate in cost along the way.

Other respondents emphasize that the time and money spent focusing on enforcement proceedings, instead of the company's day-to-day business, causes problems in their organization. One reoccurring issue expressed by the respondents is that minor debts are often not worth pursuing because of the time and cost that will have to be spent on the enforcement process.

Respondents on types of problems relating to the time and cost of enforcement.

"The cost of defocus – The internal cost of having focus brought from core operation to enforcement."

"Yes, it is clear that it takes up a lot of time, especially when you have to chase up small debts. It is sometimes costlier to bring it in than what the debt itself is worth."

"We have a lot of invoices with small amounts outstanding and it actually sums up to quite a lot. It is an issue for us, it takes a long time, the costs are high but there is no better way to collect the money."

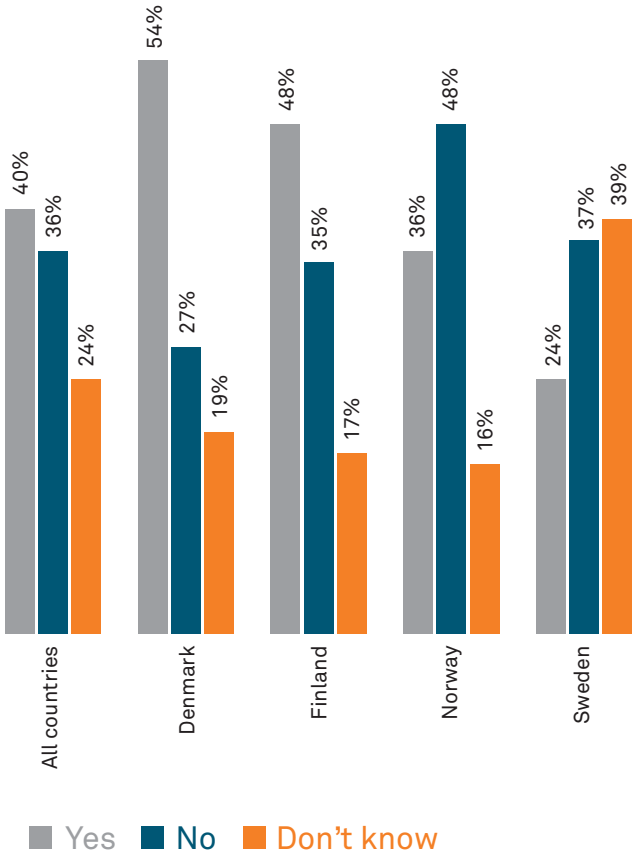
Taken as a whole, the main theme of the answers given by the respondents is simply that the administrative costs, legal expenses and other costs force companies to allocate resources to an often lengthy and time-consuming enforcement process.

Respondents on types of problems relating to the time and cost of enforcement.

"The longer it takes, the higher the costs."

"Cost is always a problem!"

3.5 Enforcement difficulties in certain countries



Enforcement has proven to be more onerous in certain countries, according to 40% of the respondents. There are variations in this respect between the countries. Danish (54%) and Finish (48%) respondents experience difficulties in enforcement abroad more often than Norwegian (36%) and (in particular) Swedish (24%) respondents.

When asked which specific region or country the respondents perceive as being difficult, the most frequently named regions are in Asia (especially India, Indonesia and China) and Eastern Europe (Russia, Poland and Ukraine in particular). The Middle East, South America and Africa are also mentioned as generally being more difficult.

Respondents regarding in which specific regions/ countries enforcement is perceived as being difficult.

"Only really Russia – The problem more or less comes down to local bureaucracy."

"Southeast Europe – Difficulties to understand formalities, time spent on the procedure, insecurity around what happens at the end of the dispute."

In general, respondents report that they experience more difficulties in countries outside of Europe. Many express that they have concerns about unpredictability, inefficiency, bureaucracy, corruption and a general lack of knowledge about the relevant country's legal system. This indicates that companies perceive it to be less problematic to enforce an award or a judgment in jurisdictions in which the culture and the legal system is easier for the respondent to understand.

Hence, the difficulties in enforcement in specific countries may often relate to the formal procedures required under relevant international enforcement instruments (see fact box on page 19) and in particular to local application and practices encountered in relation to such procedures. In the EU, the Brussels I Regulation now provides for a system of direct enforcement, which has removed many features of such intermediate procedures.

Respondents regarding in which specific regions/ countries enforcement is perceived as being difficult.

"The further from the Nordics, the more difficult it is to understand – The 'country risk' may be higher."

"Outside Europe – Lack of knowledge as well as cultural issues."

The difficulties in enforcement in specific countries may also relate to the non-availability of relevant international enforcement instruments (see fact box on page 19). Some respondents point out the fact that some countries are not parties to certain conventions on enforcement, inevitably making enforcement more difficult and cumbersome, if at all possible, in those countries.

Respondents regarding in which specific regions/ countries enforcement is perceived as being difficult.

"Any countries which are not part of enforcement conventions, or have inefficient legal systems. It could be Africa, China or South America."

"China: They do not accept foreign arbitration when both are Chinese parties. Taiwan: They have not ratified the New York Convention."

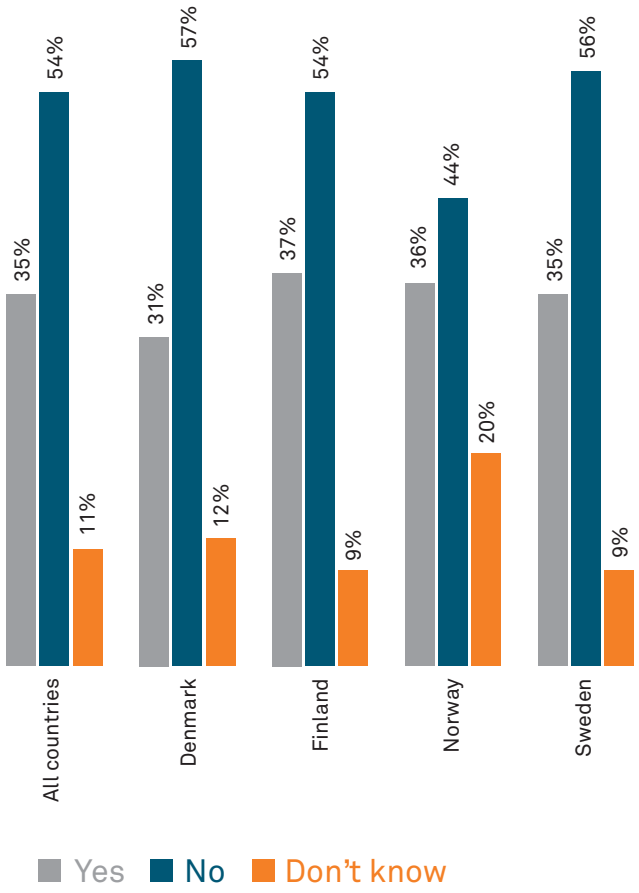
"The enforceability of an award is an important factor when choosing international arbitration. The same is true for international litigation, but with an important distinction: For intra-European disputes the circulation and enforcement of judgments is straightforward thanks to the specific regimes in the EU; the same is not necessarily true when dealing with extra-European judgements. This leads to an interesting question from a UK perspective in the current Brexit debate. If the EU system of circulation of judgments is not maintained post-Brexit in the UK, and therefore enforcement of judgments becomes more difficult, I suspect that arbitration might become even more attractive in the years to come."

Maxi Scherer on issues in relation to enforcement abroad.

"Finnish companies appear to experience more difficulties in enforcing judgments and awards. This is perhaps surprising, considering that all Nordic jurisdictions have export-driven businesses operating all around the world. The open answers do suggest that Finnish respondents are experiencing difficulties especially in Russia, which of course will likely be a bigger trading partner for Finnish companies."

Heidi Merikalla-Teir regarding Finnish respondents' experience of enforcement difficulties in certain countries.

3.6 Proactive steps to secure enforcement



Roughly one third of all respondents have taken steps to secure assets or performance in advance of potential future enforcement. Interestingly, approximately half of the respondents state that their company has not taken any proactive steps to secure assets.

One of the most common examples of proactive steps taken by the respondent companies is sequestration of assets. Furthermore, it is more common among Finnish and Swedish respondents to apply for interim measures as a means to secure the enforcement in connection with litigation or arbitration. This may indicate that Finnish and Swedish legislation or courts are more generous in granting interim relief.

Many respondents also mention bank guarantees or parent company guarantees and requests for advance payment as examples of steps taken to secure assets or performance in advance. Other respondents also state that they carry out a more in-depth examination of a customer's financial situation before entering into a contract with them.

Respondents on advance steps taken to secure assets or performance.

"We have made them give us an on-demand guarantee issued by a bank."

"We have applied for and obtained sequestration of assets."

"Advance payment bonds – Guarantees from parent company relating to subsidiaries."

"We have stopped deliveries and sales. We contacted an agent to discern property where ownership has not been transferred. We also terminate the agreement."

"In general, I do not think that enforcement is a big problem in many cases. However, my perception is also that companies take more action in relation to proactive measures."

Jens Rostock-Jensen regarding enforceability and pro-active measures.

PART IV

Third party funding

4.1 Familiarity with third party funding

1,63 / 5,00

Familiarity with third party funding in all countries

The familiarity is measured on a scale of 1-5, where 5 represents "Very familiar" and 1 is "Not at all familiar".

Respondent companies from all of the Nordic countries report a low level of familiarity with third party funding in connection with litigation or arbitration. The data indicate that Danish respondents are slightly more familiar with third party funding than respondents from the other Nordic countries, although still reporting a number on the lower spectrum of the scale.

"Everywhere you go litigation funding is rather a new phenomenon and people have to get used to it. However, the results are perhaps different from what they would be in say, England. There is a difference of legal tradition and approach. So for instance in London it is immensely expensive to get justice in the courts, or in arbitration. This creates a good inducement for people to try to lay off their financial risk by using litigation funding.

I don't think it's the in-house lawyers, the general counsel of companies, that are the people inside businesses who get attracted to litigation funding. I think it is the CFOs, the finance directors, that want to find a way of managing the financial risk of litigation. To be frank, in-house lawyers, general counsel, tend to be very conservative and may fear losing control."

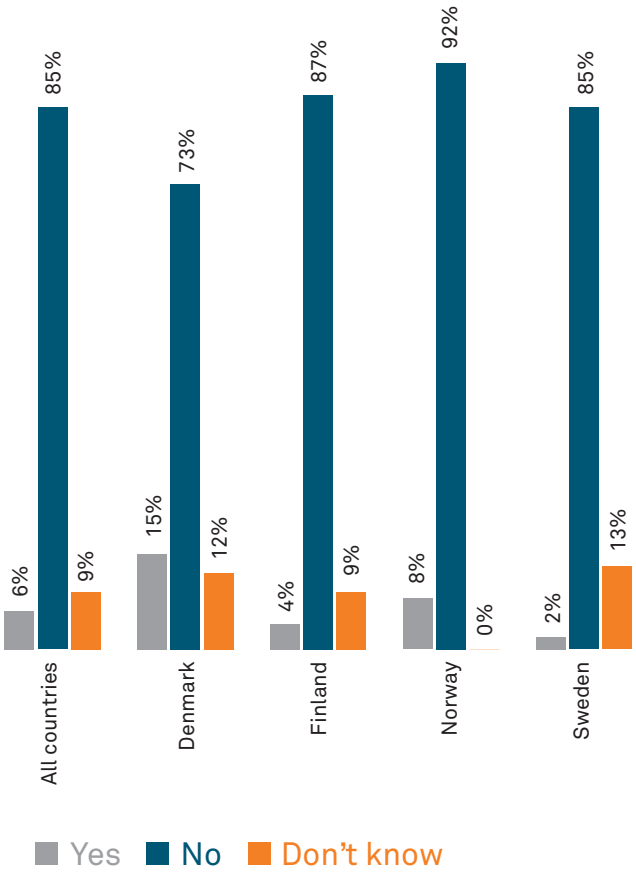
Leslie Perrin on the potential reasons for the low level of familiarity among respondents.

Key findings

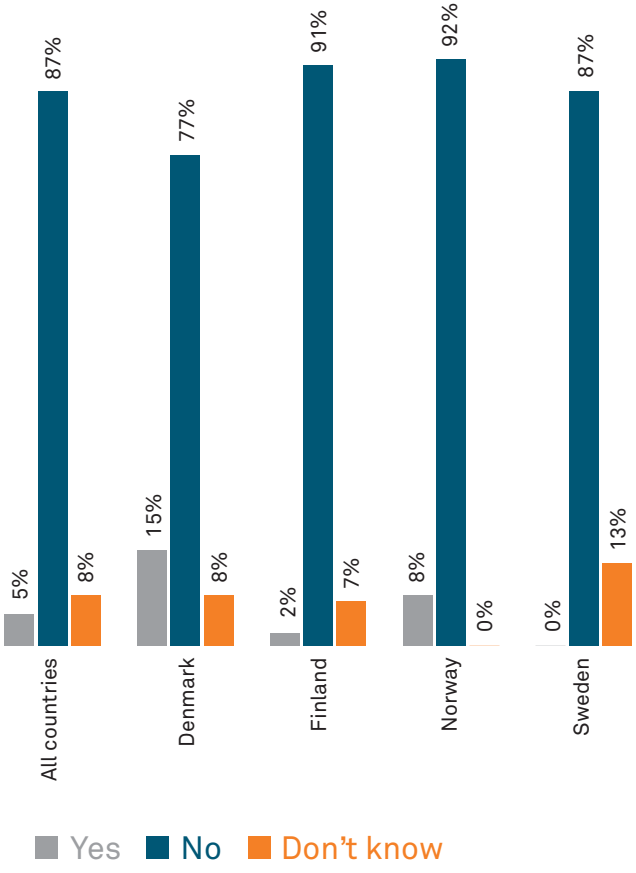
- Nordic companies appear to have a limited knowledge of third party funding.
- Third party funding is still not widely used and a fairly small percentage of Nordic companies would consider using funding schemes in the future.
- The Danish dispute resolution market appears to be most open to third party funding among the Nordic markets.
- Companies that are aware of third party funding opportunities find them to be cost-efficient and convenient.

4.2 Use of third party funding

Financing costs of litigation/arbitration procedure



Financing costs of enforcement procedure



The respondents have not used third party funding to a very high degree in financing the cost of litigation or arbitration. Nevertheless, also in this respect Danish respondents differ from the other respondents, with 15% answering in the affirmative, compared to Norwegian (8%), Finnish (4%) and Swedish (2%) respondents. When asked if the respondent company has used third party funding in financing costs of enforcement procedures, the numbers are even lower.

"The difference with respect to Denmark may be because it is the most connected of the Nordic countries to mainland Europe, and particularly Germany. There may be an influence from Germany, which was an early adopter of litigation funding. So, the result is not so surprising I think."

Leslie Perrin on the differences in responses per jurisdiction.

4.3 Reasons for using third party funding

The number one reason for using third party funding reported by the respondents is that it is more cost-effective or more convenient to sell on the claim. Lack of liquidity to fund the proceedings is also mentioned as a reason for using third party funding. Additionally, the responses reflect that third party funding is understood by the respondents in a broad sense of the concept, including various types of cost-sharing mechanisms.

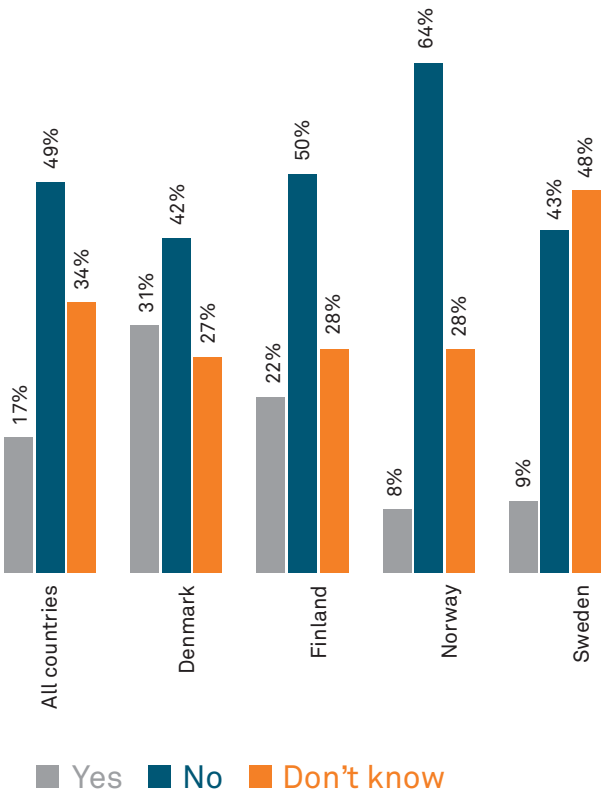
Respondent regarding reasons for using third party funding

"Risk sharing with the law firm – If we win, the Agency receives a high compensation, otherwise the compensation is lower."

"One reason may be the many class action cases that emerged in the wake of the financial crisis in Denmark. In such cases the claimants often need to seek some form of external funding. To my understanding, Denmark has seen more big class actions than the other Nordic countries."

Jens Rostock-Jensen on possible reasons for third party funding being more popular among Danish respondents.

4.4 Use of third party funding in the future



A reccurring theme is that Danish respondents seem to have more experience of third party funding. This finding is further made evident by the total of 31% Danish respondents stating that they would consider using third party funding in the future. The lower numbers reported by Norwegian (8%) and Swedish (9%) respondents indicate that they are more resistant to the idea of using third party funding in the future.

"Litigation funders want big cases, 10 million EUR would be the minimum. Such big cases are few and far between. However, there appears to be most Nordic potential in connection with arbitration at the Stockholm Chamber of Commerce that brings international business to Sweden for its dispute resolution.

Another example of big cases is competition litigation. We are familiar with the national courts in Finland in competition cases. We had a very good experience of the Finnish courts because the judges seemed prepared to make decisive decisions. We would not hesitate to fund a case in Finland if we had the opportunity again"

Leslie Perrin on the future prospects in the Nordic market for third party funding.

Universe of organizations

4

countries represented in the survey

143

participating organizations

256

companies included in the survey's universe

Companies interviewed

Denmark	26
Finland	46
Norway	25
Sweden	46

56%

response rate

Visit www.roschier.com to see a list of the organizations included in the survey's universe.

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