Roschier Disputes Index **2024**

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

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ROSCHIER

Content

Foreword

Welcome to the seventh edition of the Roschier Disputes Index, our regular market survey focusing on prevailing practices and trends in dispute resolution among major corporates in the Nordics.

Our survey has traditionally explored the preferred dispute resolution methods, arbitration rules and substantive laws, the disputes the companies actually have in practice, and the best ways to manage these disputes. It also observes topical issues on the dispute resolution market. In the 2024 edition, we have included some new questions that address current issues affecting dispute resolution in the Nordics and globally, such as ESG and Russia's invasion of Ukraine.

The objective of the Roschier Disputes Index is to investigate and track developments in how the largest companies in the Nordic region view commercial dispute resolution and manage their disputes.

In this report, respondents from a total of 144 companies from Denmark, Finland, Norway and Sweden share their views and experiences in relation to key issues concerning commercial dispute resolution. We are grateful to all respondents for the time they took to contribute and we are proud of the consistently high response rate to our survey. This year, we are also pleased to be able to provide a 10-year comparison of results in certain sections of the Roschier Disputes Index – demonstrating the value of all the responses collected over the years and the longevity of the Index.

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.

We wish you an enlightening and informative read.

On behalf of the editorial team,

Annika Pynnä Lindskog
Nika Larkimo Husa
Roschier Dispute Resolution team

Methodology

The data for the 2024 Roschier Disputes Index was collected by Kantar Prospera, part of the Kantar group, which specializes in global market information and insight. Since 1985, Kantar 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 companies in Denmark, Finland, Norway and Sweden (based on turnover). A list of the 307 companies included in the survey is available on Roschier's website (www.roschier.com). A total of 144 companies responded to the survey, which corresponds to a 47% response rate.

Kantar Prospera conducted telephone interviews from May to September 2023 based on a questionnaire prepared by Roschier in cooperation with Kantar Prospera. All interviews were conducted on a confidential basis and the figures have been reported only in the aggregate.

For some questions, the results from the survey are also reported on a countrywide basis. Further, for certain questions, we have been able to compare the data aggregated in past editions of the Roschier Disputes Index during the last decade.

Overall findings

PART I—Preferences for dispute resolution mechanisms

▶ Arbitration remains the clearly preferred method of dispute resolution in the Nordics, with almost identical support throughout the last ten years.

64% of respondents prefer arbitration over litigation

▶ Norwegian respondents, however, continue to generally favor litigation over arbitration, with the popularity of litigation even at an all-time high since 2014.

▶ Nordic companies overall consider the non-public nature of proceedings, the expertise of arbitrators and an efficient procedure as the most relevant factors for preferring arbitration over litigation.

▶ Respondents make conscious choices between arbitration and litigation based on the circumstances of the case and their strategic goals.

▶ Factors related to experience and trust remain of paramount importance for Nordic companies when choosing both arbitration rules and applicable substantive laws.

PART II—Recent disputes

▶ Litigation retained its place as the most used method of dispute resolution among the respondents.

▶ According to respondents, most of their disputes over the past two years were domestic in nature.

For the first time since 2016, the total number of disputes decreased

▶ Nordic companies seem to have had limited exposure to interim measures or emergency arbitrator proceedings during the past 24 months.

PART III—Topical issues

▶ Many respondents continue to make use of digital tools that became more widely used in disputes during the COVID-19 pandemic (e.g. videoconference or similar facilities to take witness or expert evidence), but the jury is out on how beneficial Nordic companies perceive these and other tools to be.

46%

Companies responding that they had been involved in a hybrid/virtual hearing within the last 2 years

▶ Virtual and hybrid court and arbitration hearings are now well established in the Nordics, but companies have a strong preference for traditional in-person hearings or at least some element of in-person participation, with little inclination for virtual hearings.

▶ Alternative fee arrangements are used and considered by respondents to a greater degree than previously although still at a relatively low level. Third-party funding continues to attract modest interest among respondents.

▶ Nordic companies have little experience of ESG-related disputes as yet, despite the global trend indicating that these disputes are likely to increase in number.

▶ Russia's invasion of Ukraine has had a greater impact on companies in Finland and Sweden than those in Denmark and Norway, in terms of claims and disputes arising from an exit from Russia, from sanctions-related issues and from the impact of the war in general.

PART I—Preferences for dispute resolution mechanisms

Key findings

▶ Arbitration remains the preferred method of dispute resolution in the Nordics overall, with almost identical percentages of support for the past ten years. Norwegian companies, however, have preferred litigation since 2018 – with growing support.

▶ The non-public nature of proceedings retained its position as the most important factor for preferring arbitration, followed by the expertise of arbitrators, efficient proceedings and the finality of arbitral awards. In general, the results indicate that Nordic companies carefully choose between arbitration and litigation, considering the specific circumstances of the case and the companies' strategic goals – whether they are seeking publicity or not and whether they require a quick solution or even prefer lengthy proceedings as a deterrent.

▶ As in previous years, respondents prefer their domestic arbitration institutes. However, based on the most important factors of reputation and prior experience, companies from all Nordic countries also place considerable trust in the SCC and the ICC rules.

▶ Respondents make conscious choices with regard to the applicable substantive law. If their own domestic law is not an option, companies throughout the Nordics prefer Swedish law, followed by English law. Companies make their choice of law based on their familiarity with the relevant law, the appropriateness of the law for the contract, and a general preference for the civil law tradition. In turn, respondents seek to avoid unknown and unpredictable laws and many have a tendency to object to common law systems.

Preferred dispute resolution method: arbitration vs. litigation

Arbitration is by far the preferred dispute resolution method in the Nordics. This conclusion is as valid as it was ten years ago. Interestingly, the level of preference for arbitration has remained approximately the same with 61% of all respondents having favored arbitration in 2014 and 64% in 2024.

64% of respondents prefer arbitration over litigation

Fig. 1. Preferred dispute resolution method

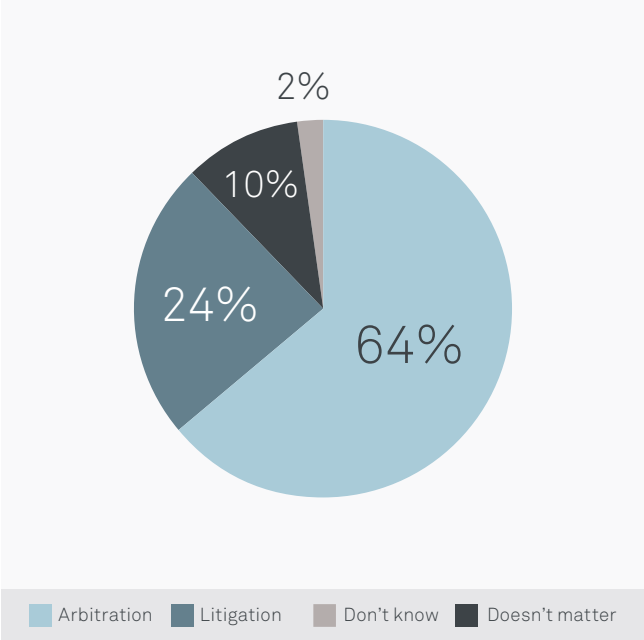


Fig. 2. Ten year preferences

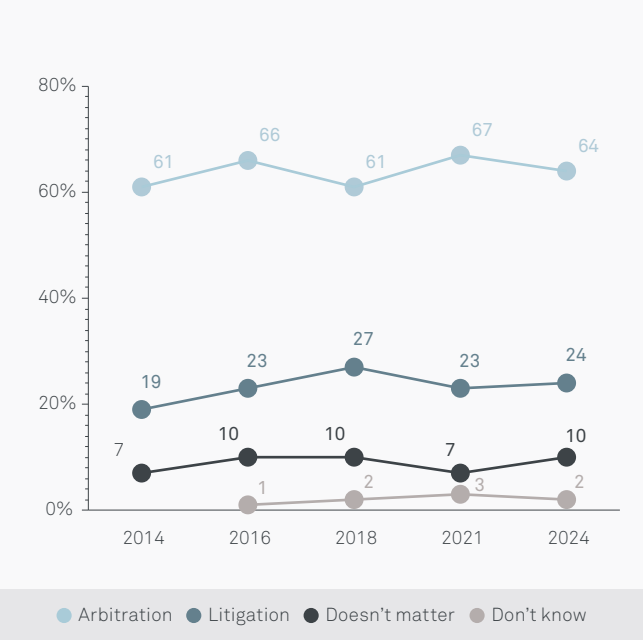
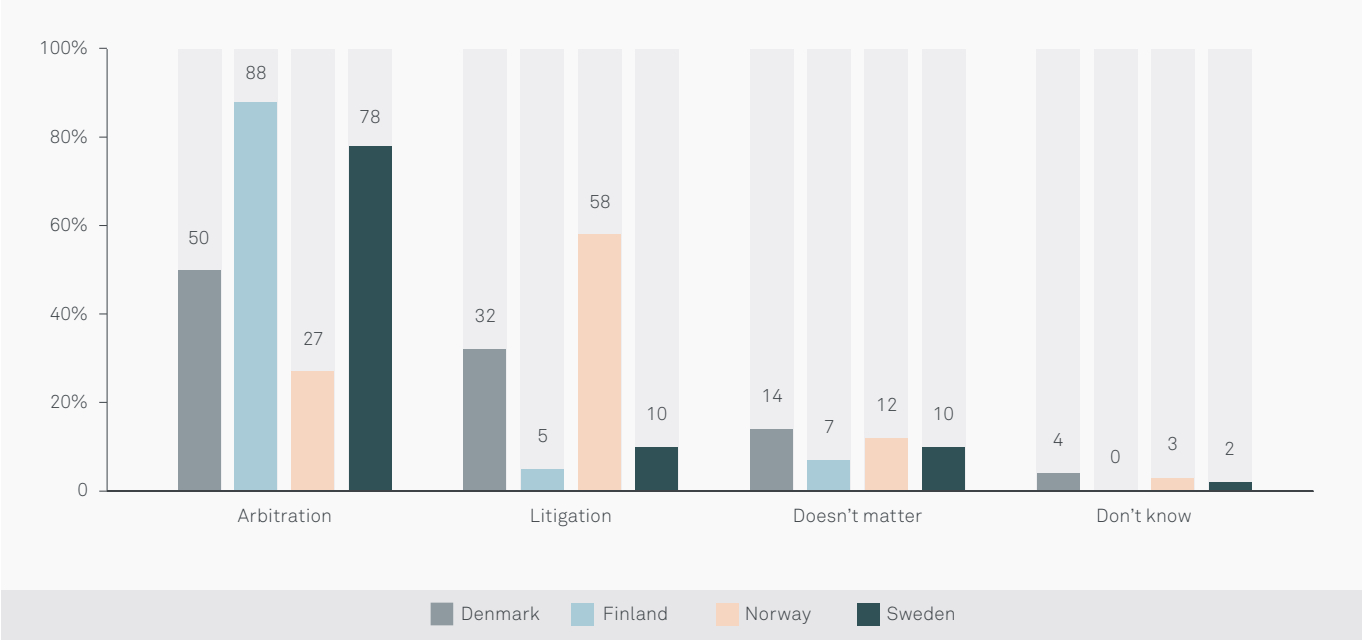


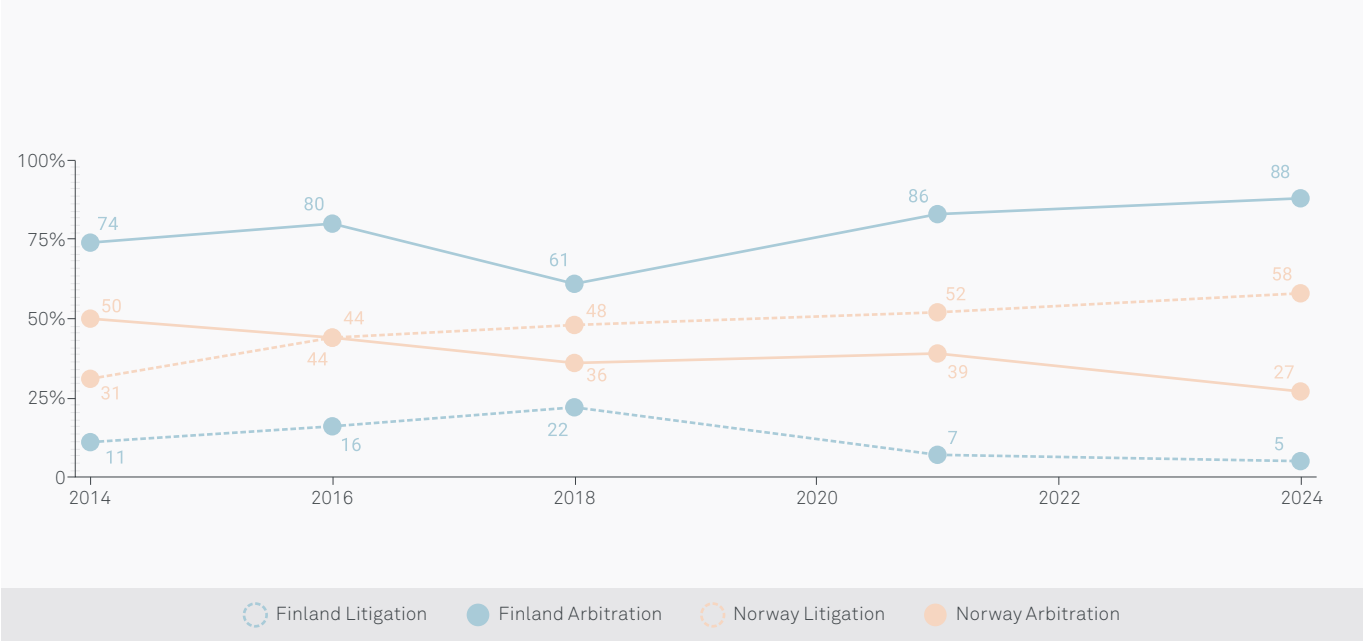
Fig. 3. National preferences for dispute resolution methods



Respondents without strong principled feelings about arbitration or litigation (having responded "doesn't matter") mentioned that they would choose between arbitration and litigation depending on the specifics of the contract. While smaller cases would typically go to the courts, flexible respondents show a preference for large and complex cases or cases requiring confidentiality to be handled by arbitral tribunals.

As in previous years, Norway remains the only country in the survey in which respondents favor litigation over arbitration. Over the past years, this trend has been growing and, correspondingly, the appetite for arbitration in Norway has steadily declined since 2014. The opposite is true for Finnish respondents: 11% of Finnish respondents preferred litigation in 2014—ten years later, however, only 5% of Finnish respondents still want to take their disputes to the courts.

Fig. 4. Opposite developments in Finland and Norway during the past ten years



"The drop in Finnish respondents' willingness to use litigation over the last decade coincides with consistent efforts to promote arbitration in Finland, coupled with increasingly overburdened and under-resourced local courts, especially following the COVID-19 pandemic."

Aapo Saarikivi, Partner, Roschier Helsinki

Only

5% of Finnish companies but

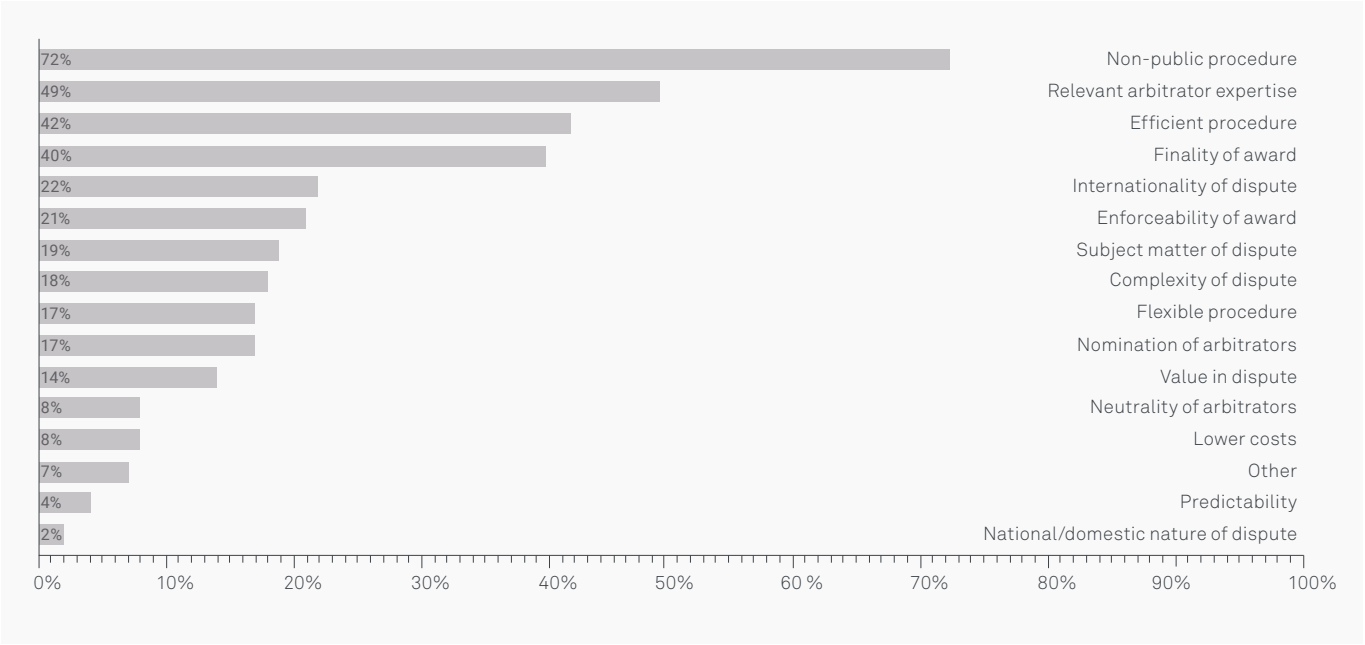
58% of Norwegian companies prefer litigation over arbitration

Most important factors for preferring arbitration

Overall results

Unlike prior editions of the Roschier Disputes Index, this year's results regarding the most important factors for preferring arbitration are not based on points allocated depending on the order of preference. Rather, we changed perspective and looked at which criteria were cited most often, regardless of the order of preference.

Fig. 5. Most important factors for preferring arbitration



The results confirm that the non-public nature of the proceedings, the relevant expertise of arbitrators, efficiency and the finality of arbitral awards rank among the top priorities throughout the years, regardless of the method of analysis. The most prominent change in the results is that the factor of costs, which ranked fourth in the previous edition (2021), currently appears to have only little relevance to respondents overall. The clear decline in costs as a factor when we changed the way in which responses are reported suggests that, where costs are a relevant factor, they are typically among the most decisive factors when choosing between arbitration and litigation.

"Arbitration is a barrier against trivial cases, it has a deterrent effect. It also has the ability to protect a collaborative relationship."

Quote from a respondent

Respondents generally preferring arbitration commented that they would agree to litigation in the following situations:

DK "For small contracts. Arbitration is expensive for smaller organizations. In addition, it is not necessary that the procedure is so fast."

FI "We would prefer litigation in situations in which we would be able to gain leverage from publicity of the litigation proceedings."

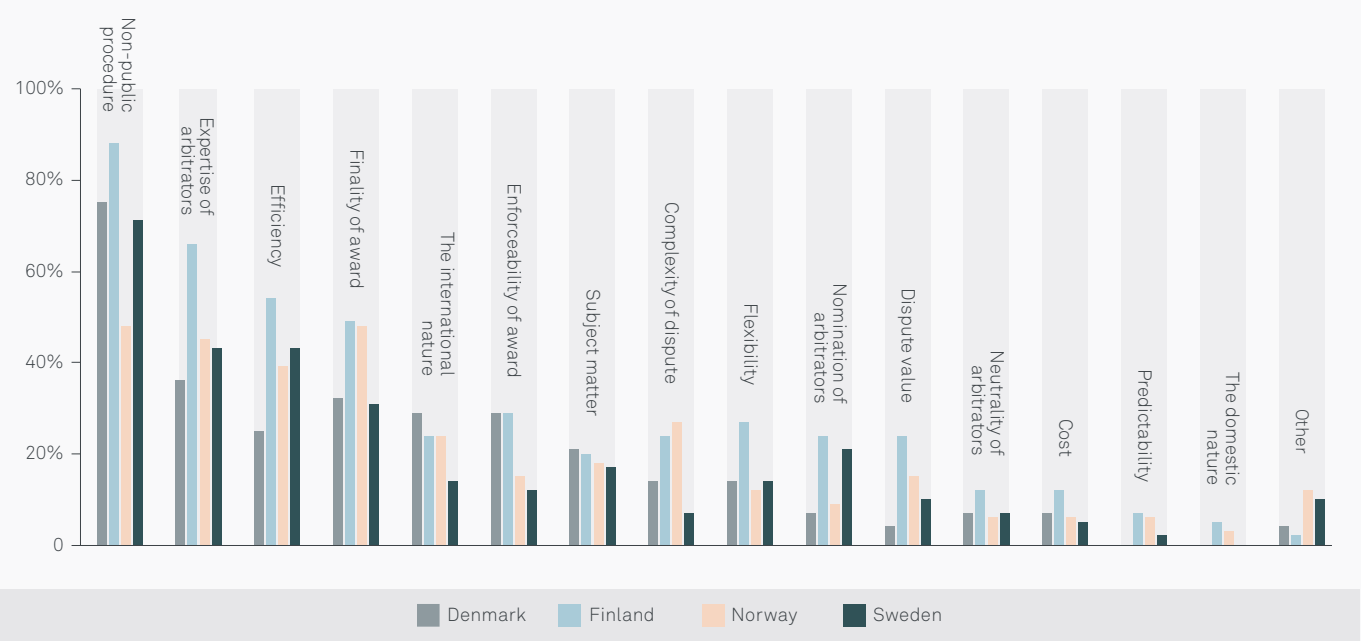
NO "Many public procurement processes have courts as dispute resolution."

SE "The enforceability. There are situations where I prefer court instead of arbitration because of the enforceability."

Country-specific factors for preferring arbitration

Looking at the most important factors for preferring arbitration in each country, the data reveals that the overall preferences match the country-specific preferences rather well. Interestingly, Finland and Sweden have a very similar order of priority for the surveyed factors, whereas Denmark and Norway have slightly different focuses.

Fig. 6. Country-specific factors for preferring arbitration

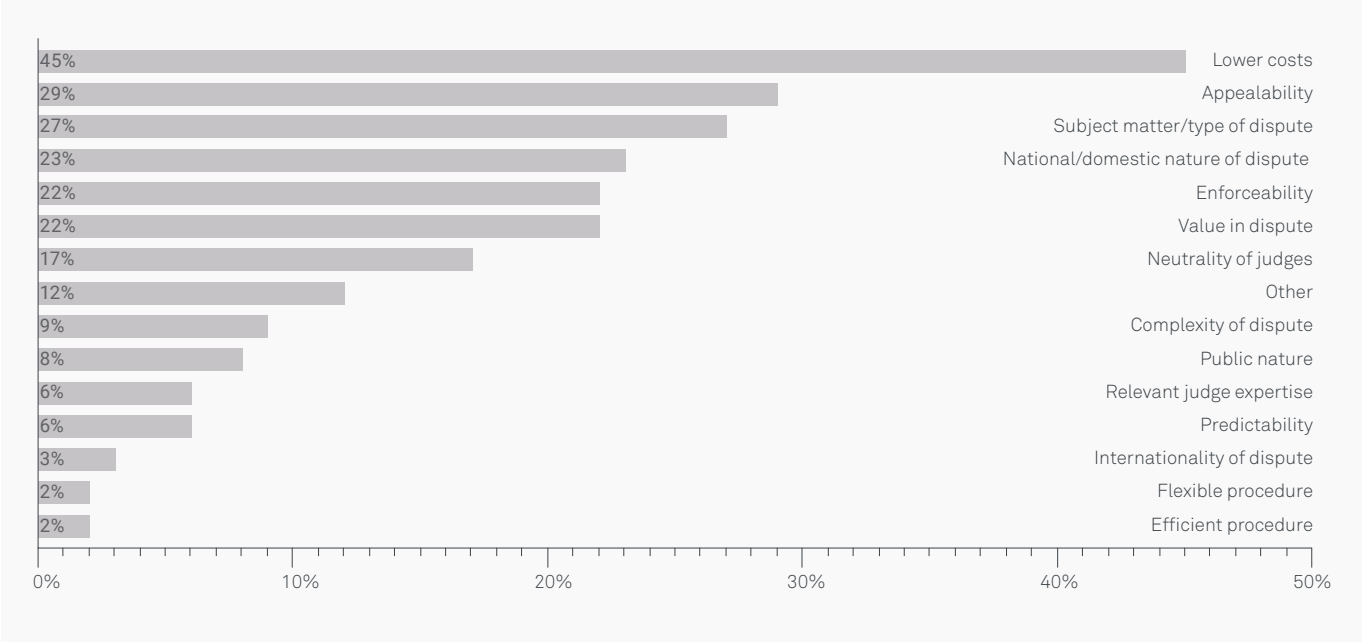


It is also worth noting that for Norwegian respondents who generally prefer litigation, the finality of an arbitral award and the non-public nature of the proceedings (i.e., two of the fundamental differences between arbitration and litigation) are on an equal footing with 48% each as the most decisive factor when choosing arbitration. This is interesting because, at the same time, the appealability of state court judgments is the second most important factor why Norwegians prefer litigation over arbitration.

Most important factors for preferring litigation

Throughout the years, respondents have stated that lower costs and the possibility to appeal are the two most relevant factors for preferring litigation. The change in the way we reported the results in 2024 (looking at the factors cited most often by respondents, rather than the order of preference) has not affected their position as the most important two factors. The responses show that, in addition, the subject matter as well as the domestic nature of the dispute are relevant factors affecting respondents' preferences in favor of litigation.

Fig. 7. Most important factors for preferring litigation



"In some cases, the dispute may be of a principled nature and a public procedure may be preferable."

Quote from a respondent

In addition, one of the respondents mentioned that litigation may be a preferred choice in certain cases of a principled nature since the case would then be in the public realm. As a gesture of fairness, litigation might also be used if a counterparty is much smaller in size, as arbitration would be too costly for that party. Another respondent stated that they would resort to litigation in order to obtain interim measures and – of course – to enforce arbitral awards.

As in the 2021 edition, respondent companies generally preferring litigation noted that they would choose arbitration in confidential, high-value, cross-border disputes, where specific expertise is needed.

Cases in which respondents generally preferring litigation would nonetheless agree to arbitration are the following:

DK "When we choose arbitration, it is for special reasons such as confidentiality, expertise, complexity. Examples are IP and patent cases."

FI "In M&A we have some contracts that could lead to arbitration."

NO "In the case of a technically very difficult matter, arbitration may be an alternative."

SE "For example a complex dispute that needs decision makers who understand the area of law."

For Norwegian respondents, the most relevant factor for choosing litigation (after costs) was the appealability of a judgment from a national court. Considering that, for Norwegians, the finality of an arbitral award (together with the non-public nature of the proceedings) is the most important factor for choosing arbitration, the results indicate that the decisive issue for choosing between arbitration and litigation is the finality of arbitral awards vs. the appealability of judgments from national courts.

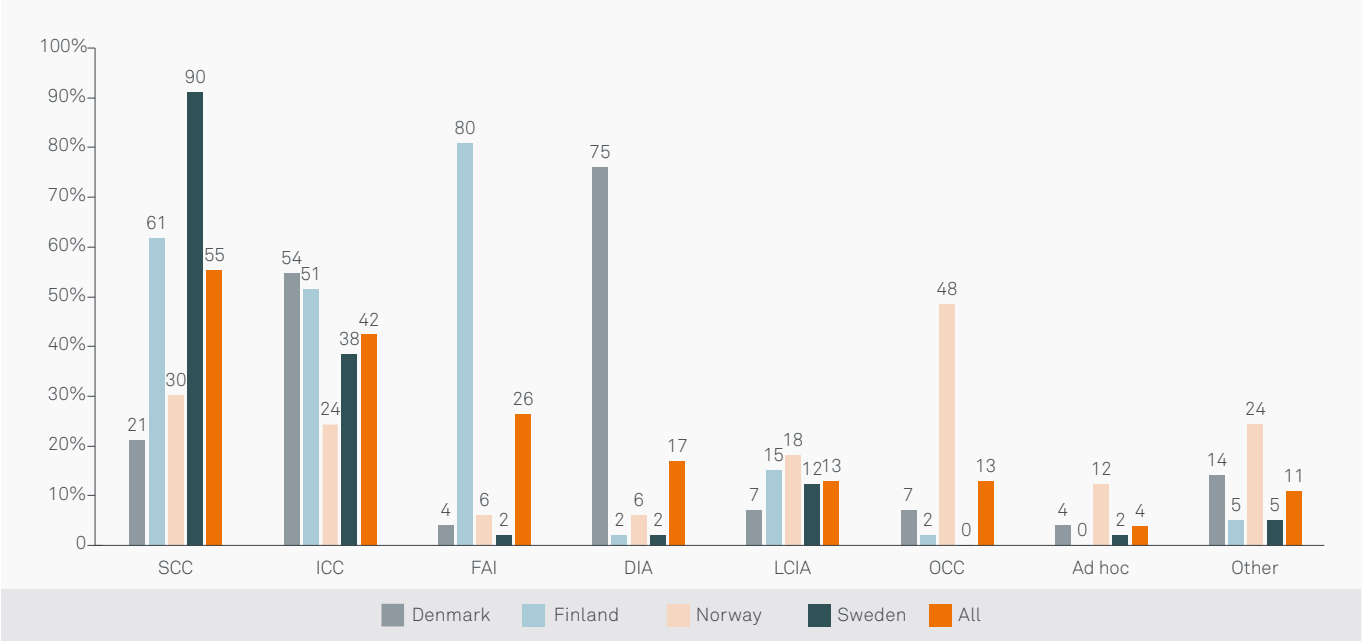
"The responses and open feedback strongly suggest that Nordic companies take a very nuanced approach to the method of dispute resolution, opting for what makes sense on a case-by-case basis."

Aapo Saarikivi, Partner, Roschier Helsinki

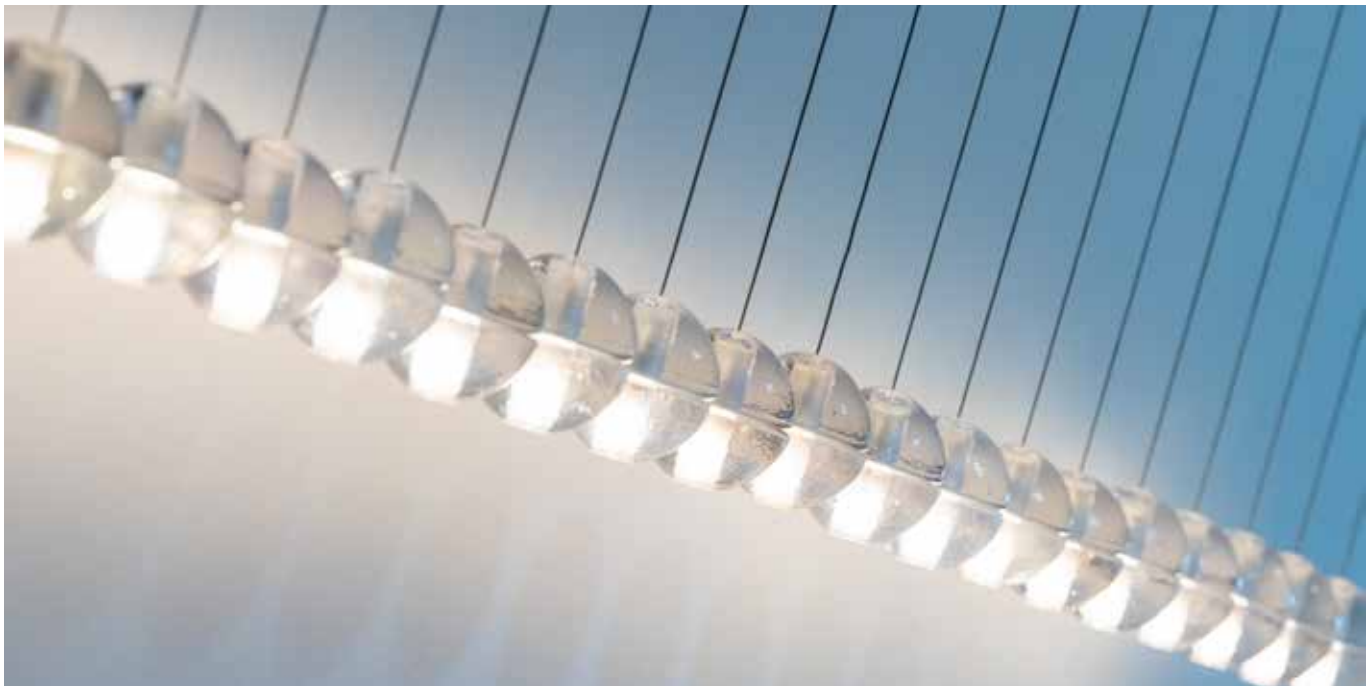
Preferred arbitration rules

As in previous years, respondents showed a high level of trust in their respective domestic arbitration institutes. In addition to these home rules, the SCC Rules and the ICC Rules again received the highest level of trust from the respondents in general, with a preference rate of 55% and 42%, respectively. Some respondents also named the SIAC Rules as another set of trusted and preferred arbitration rules.

Fig. 8. Preferred arbitration rules 2024



Respondents were allowed to select multiple answers.



55% of respondent companies prefer SCC arbitration

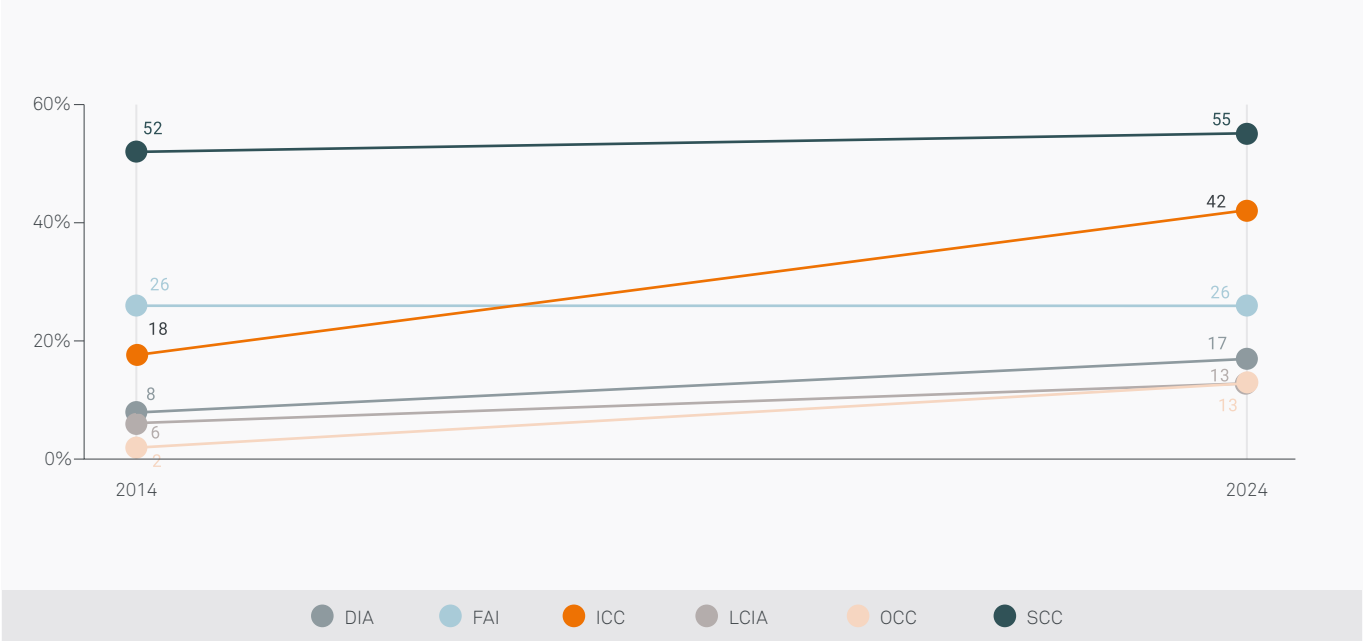
A ten-year comparison reveals clear trends with regard to preferred arbitration rules. On the one hand, the comparison shows the prominent position of the SCC and its arbitration rules in the Nordics. On the other hand, the comparison demonstrates that the ICC Rules have gained in trust and popularity amongst respondents in a remarkable way, rising from 18% in 2014 to 42% in 2024. As the 2018 edition of the RDI had a slightly different focus, we did not ask about preferred arbitration rules in that edition. Nevertheless, the trend is clear.

18 to 42%

Rising preference for ICC arbitration during the past ten years

Both the current survey and the ten-year comparison underline that respondents clearly prefer institutional arbitration over ad hoc proceedings. As in 2021, Norwegian respondents, however, demonstrate some taste for ad hoc proceedings, with 17% favoring ad hoc in 2021 and 12% in this year's edition.

Fig. 9. Preferred arbitration rules – a ten-year trend



Respondents were allowed to select multiple answers.

The most relevant factors for choosing certain arbitration rules remain the reputation of the institute and previous experience of these rules. Relevant factors for choosing certain arbitration rules also include the international or domestic nature of the contract and the arbitration legislation at the place of arbitration. To a lesser extent, neutrality, costs, the applicable substantive law and the right to appoint arbitrators are also relevant factors for choosing among different arbitration rules.

In the words of the respondents—showcasing also their considerable international experience:

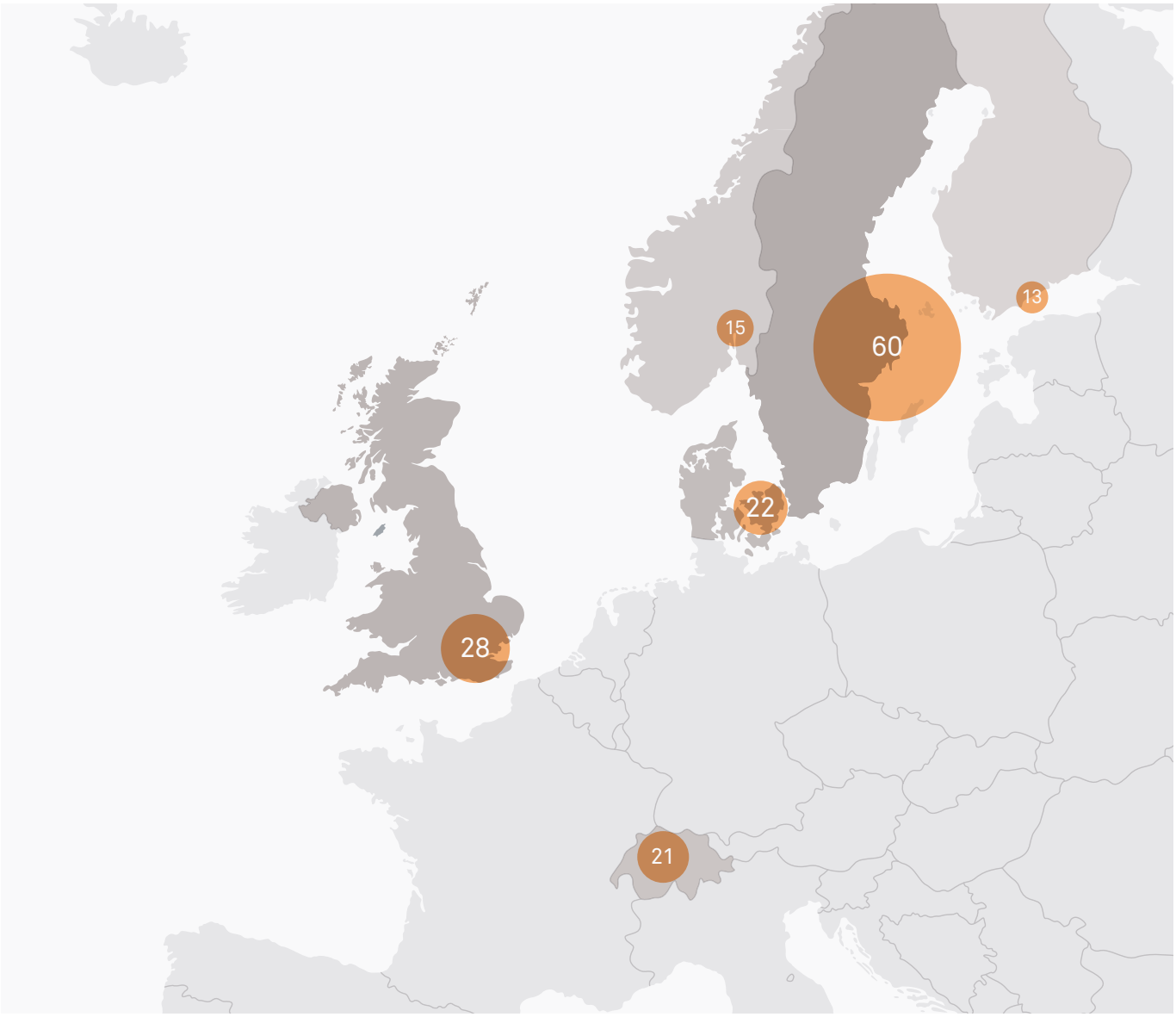
DK "Very positive experiences with DIA, very fit rules. ICC also very positive, but very costly."

FI "Have had a good experience with Singapore."

NO "Good experiences of Stockholm, also New York. Would not choose Russia or China."

SE "I would only choose Stockholm or ICC as I know them and as they are generally accepted by the other party. I would not choose otherwise as I myself lack knowledge and that it would not be neutral for the parties."

Fig. 10. Preferred place of arbitration when not possible to have proceedings in home jurisdictions



"The survey shows impressively that the SCC continues its position as the most trusted arbitration institution in the Nordics with high levels of support among respondents from all Nordic countries."

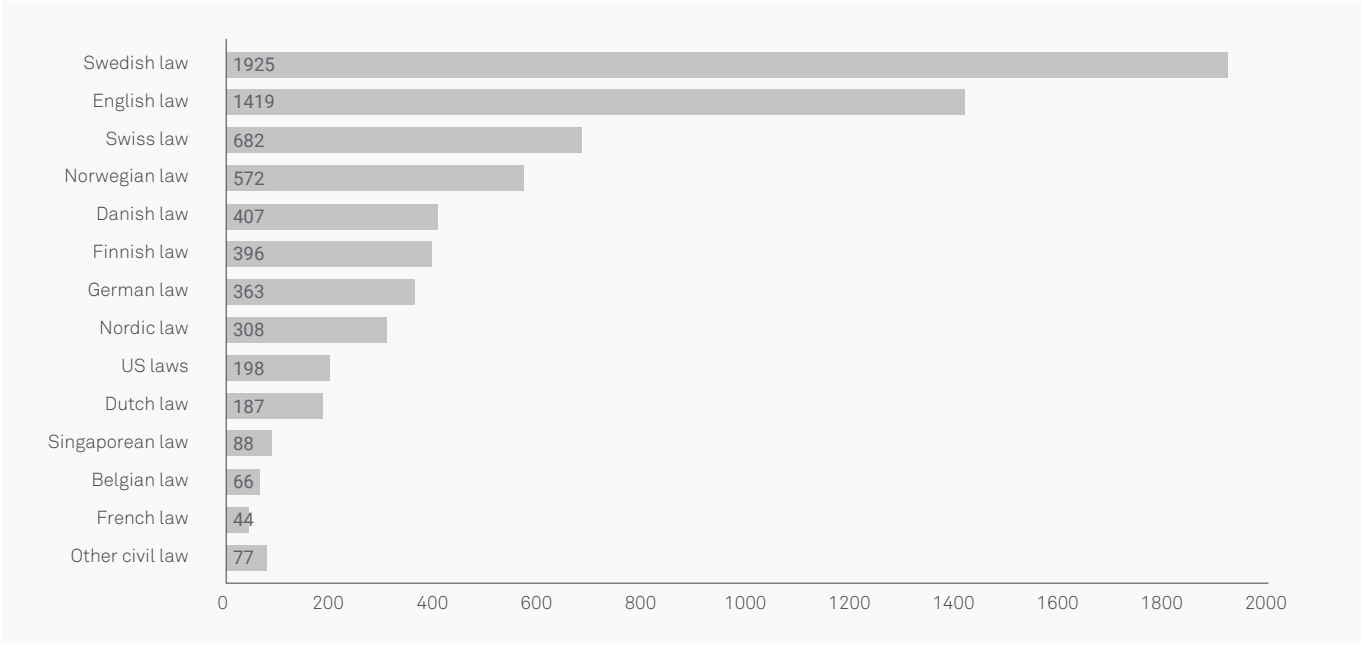
Johan Sidklev, Partner, Roschier Stockholm

For the first time, we also asked respondents if they had a preferred place of arbitration were it not possible to have the proceedings seated in their respective home jurisdictions. The responses show that Nordic companies generally prefer seats in European countries: 60% of all respondents prefer Stockholm as the place of arbitration abroad, followed by London (28%), Copenhagen (22%) and Switzerland (21%). Paris is considered a preferred place of arbitration only by 7% of respondents, Germany as a whole by 6%. Outside of Europe, Singapore (15%) is the preferred place of arbitration for Nordic companies, followed by New York (9%) and Hong Kong (2%). The responses also show that it is generally preferred to have the seat as close to the parties as possible for practical reasons. Some respondents seem to have less strong preferences and would rather decide based on the particularities of any given case.

Preferred foreign substantive law and most important factors for the preference

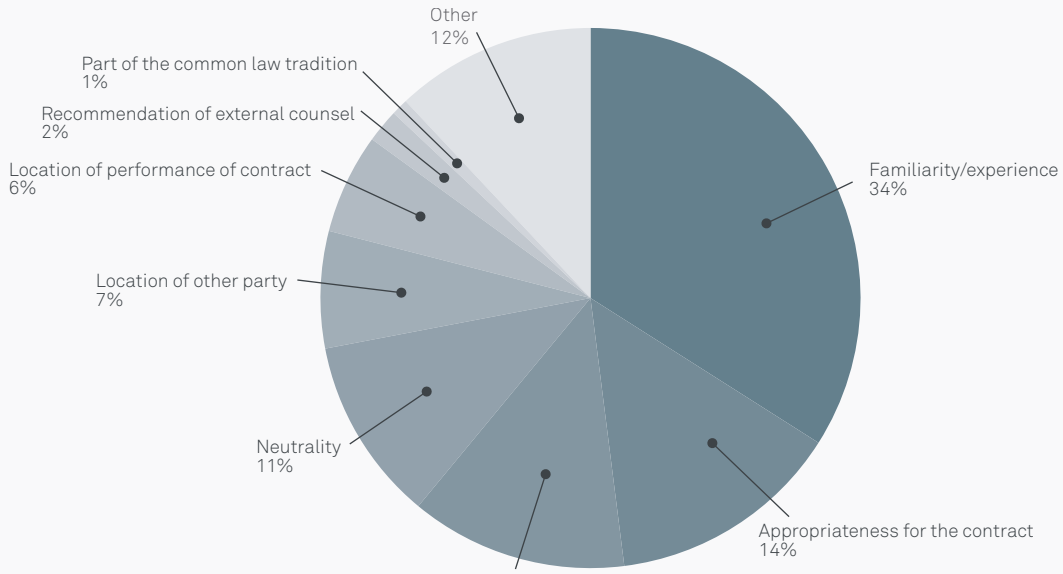
For this year's edition of the RDI, we also asked which substantive law respondents prefer in international contracts if they cannot choose their domestic law. Swedish law is the preferred choice of a foreign substantive law for companies in the Nordics if they cannot choose their domestic law. Swedish law has regained first place from English law, which ranked highest in 2021. English law this year ranks as a very clear second preference. Swiss law is now the preferred third option for respondents, with German law declining from its previous third place to seventh place, behind the other Nordic laws.

Fig. 11. Preferred foreign substantive laws



The preferences are given points based on importance, first, second and third choices being awarded 33, 22 and 11 points respectively.

Fig. 12. Most important factors in choice of foreign substantive law



With regard to relevant factors for choosing a certain substantive law, familiarity with and experience of the substantive law continue to be most relevant by a wide margin (34%). The appropriateness of a substantive law to the contract (14%) and the fact that this law is part of the civil law tradition (13%) share the second and third places with almost identical relevance. Recommendations by external counsel, on the other hand, were considered as the "most important factor" only by 2% of the respondents.

"A law that is conceptually similar to my own country, with similar thinking."

Quote from a respondent

Laws to avoid according to respondents

As in previous years, respondents showed a strong willingness to reject laws unacceptable to them. Overall, 73% of respondents would push back against certain laws. Danish respondents were most open to accepting also laws foreign to them, with only 49% of them reporting that they would not agree to certain substantive laws.

73% of respondents would fight for their chosen law

As reasons for pushing back against certain substantive laws, respondents specifically mentioned a lack of familiarity, unpredictability, and concerns regarding the comparability to their own substantive law or at least to European laws. Several respondents also mentioned that laws of the common law tradition would not be acceptable because of a lack of predictability and compatibility. For individual respondents, French law would be difficult to accept because of its perceived complexity and unfavorable rules in specific areas.

In the words of the respondents:

DK "Prefer to avoid substantive laws that are far from legal systems that we are familiar with."

FI "Common law is unpredictable."

NO "It becomes complicated and expensive to familiarize yourself with an unknown substantive law."

SE "Completely unknown legal systems would not be accepted as the outcome would be impossible to assess. Countries where the legal order is not reliable would not be accepted because predictability does not exist. Depending on the agreement, some countries may have unfavorable legal rules."

"The responses suggest that Nordic companies are willing to fight to apply the most appropriate law to their contract. Another interesting result of the survey is the seeming discrepancy between the strong preference for English law on the one side and the preference to avoid common law. One reason for this might simply be the de-facto dominance of English law in commercial contracts."

Shirin Saif, Partner, Roschier Stockholm

PART II—Recent disputes

Key findings

- While arbitration remained the preferred method of dispute resolution, litigation retained its place as the most used method among the respondents. Norwegian companies, however, not only prefer litigation, but they also stand out in their use of litigation over arbitration.

- Further, the majority of the respondents' disputes were domestic. This finding contrasts with the trend observed since 2014, which has shown an annual increase in cross-border disputes.

- Similar to previous years, the settlement rates for disputes settled before a judgment or arbitral award was rendered remained quite high in three out of four countries, with Sweden on top with the highest settlement rate. Denmark holds the lowest settlement rate of the four countries.

- Nordic companies reported only limited exposure to interim measures or emergency arbitrator proceedings during the past 24 months, which may suggest a lack of familiarity with these measures.

Number of disputes

Respondents experienced a mean of 12 and a median of three non-consumer disputes valued at over EUR 100,000 in the last 24 months, with the highest numbers in Sweden and Norway. With the exception of Sweden, respondents in all countries surveyed saw a decrease in the number of disputes since 2021. This is the first time in nearly a decade that respondents reported a decrease in the number of disputes, as between 2016 and 2021 the results indicated a slow increase in the number of disputes.

The majority of the respondents, 53%, predicts that the number of disputes will remain the same over the next 12 months, while 24% of the respondents expect an increase, and less than 10% expect a decrease. The rest of the respondents, 16%, were not certain how they expect the number to evolve. Many respondents predicted that the number of future disputes would likely be influenced by, among other things, the current global economic and political climate.

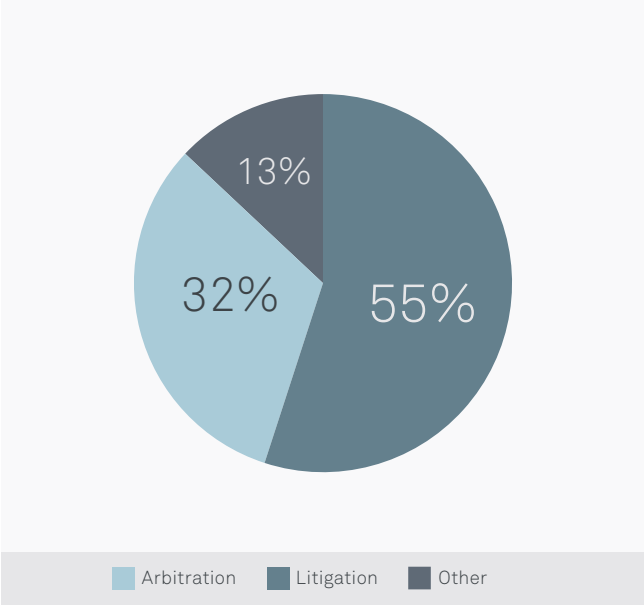
"The Covid-19 pandemic and the current unstable market may explain the decrease in the number of disputes in this year's survey. However, as has been seen in the past, the number of disputes tends to increase again after periods of crisis."

Laila Sivonen, Partner, Roschier Helsinki

Use of dispute resolution methods

While arbitration is clearly the preferred dispute resolution method (64%), as discussed in Part 1 of this survey, litigation retains its place as the most used dispute resolution method in practice with an overall share of 55%, while the share of arbitration is 32%. Compared to 2021, the results show that the share of the respondents' recent disputes ending up in litigation has remained stable, while there has been a small shift from arbitration to other dispute resolution methods, which increased their share from 7% in 2021 to 13% in the 2024 Index.

Fig. 13. Distribution of larger disputes during the last three years between litigation, arbitration and ADR

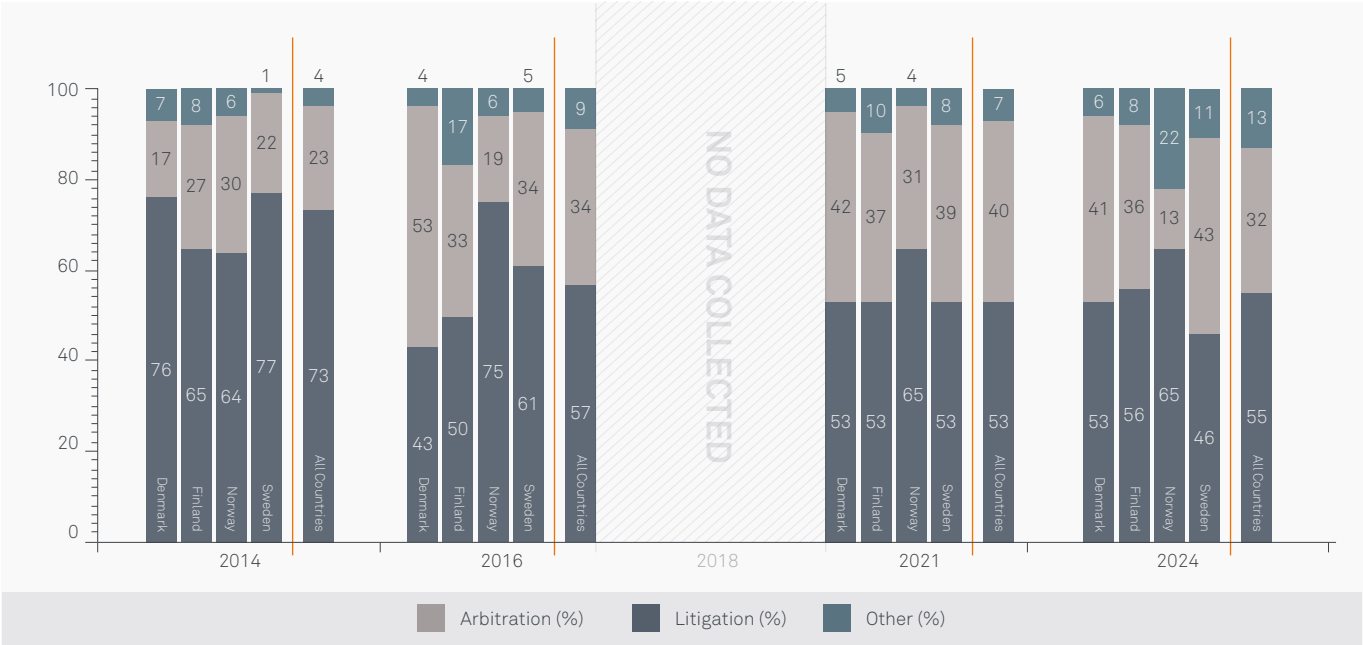


While arbitration is clearly the preferred dispute resolution method among respondents, litigation retains its place as the most used method in practice.

Although litigation is the most used dispute resolution method in practice in all countries surveyed, Norway stands out in that litigation and other dispute resolution methods have a clearly pronounced position compared to the other countries, where arbitration is more frequently used. Denmark and Finland are similar in that litigation is the most common form of dispute resolution and arbitration comes a close second. In Sweden, litigation and arbitration are about equally used, and other dispute resolution methods have the second strongest foothold after Norway.

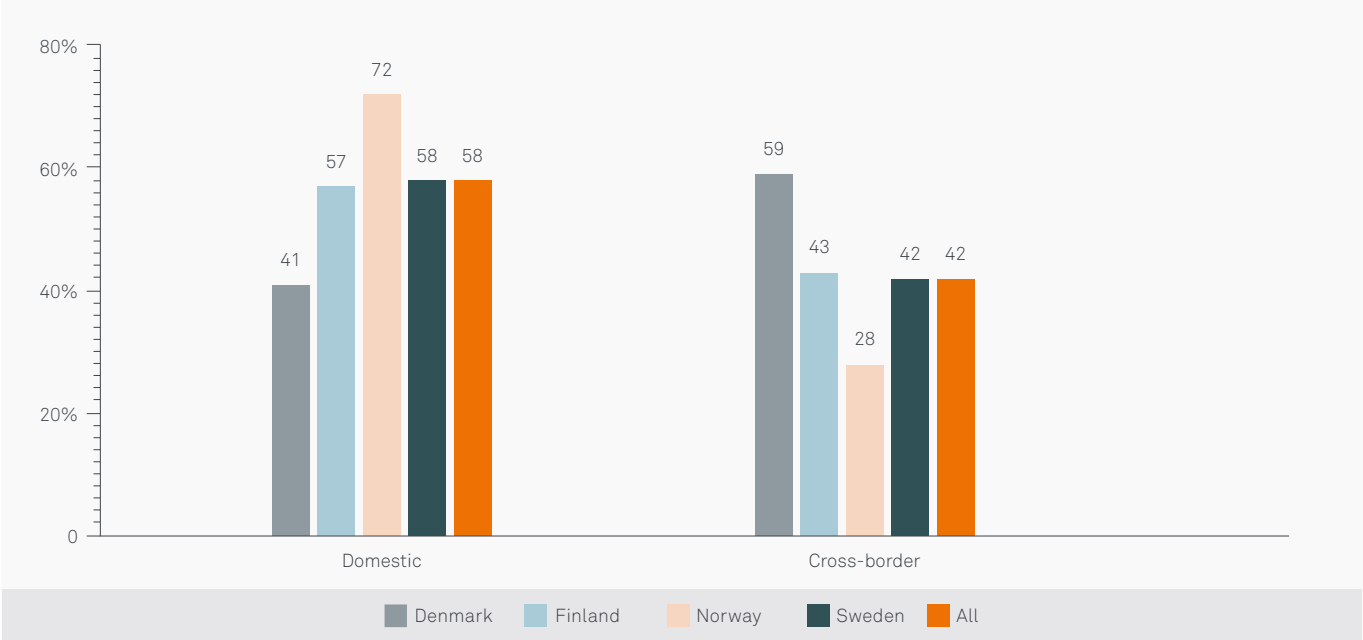
Comparing the survey results over a 10-year period, while the share of litigation peaked in 2014 at 73%, since 2016 litigation has accounted for a smaller but stable majority of actual disputes at just over 50%. Meanwhile, the share of disputes ending up in arbitration increased steadily between 2014 (23%) and 2021 (40%), but has now seen a decline, with the share of arbitration in this survey (32%) approximating the share in 2016 (34%). As for other dispute resolution methods, including mediation, there has been a marked increase since 2014 (4%), with respondents to the current survey reporting that 13% of their recent disputes have been or are being resolved through alternative means.

Fig. 14. Share of disputes ending in litigation, arbitration or another dispute resolution mechanism between 2014 and 2024



Nature of the disputes

Fig. 15. What portion or percentage of your company's larger disputes during the last 24 months has had (or has) parties from different countries?

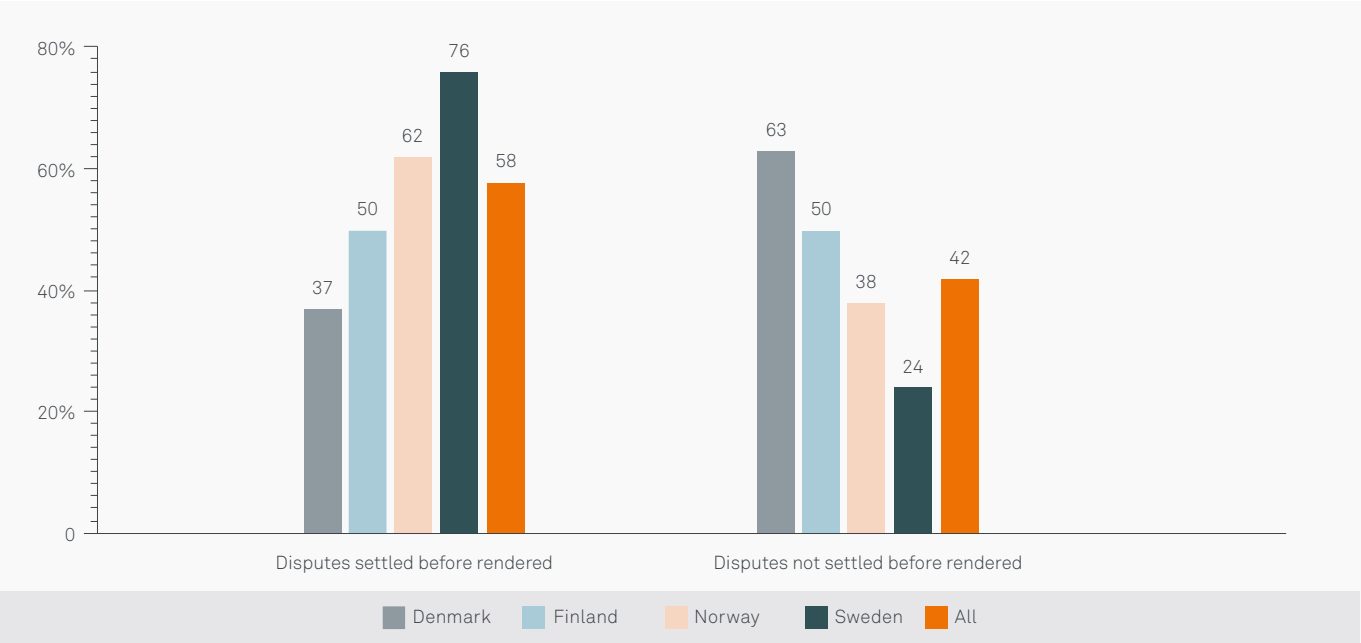


Between 2014 and 2021, the responses indicated an increase in the share of cross-border disputes, and in 2021, for the first time, they accounted for the majority of disputes in all countries represented in the survey. A dispute is considered cross-border if the parties are not domiciled in the same country.

Perhaps surprisingly, responses to the 2024 survey suggest a decline in cross-border disputes, as the overall share of cross-border disputes (42%) has fallen below the 2014 figures, meaning that the majority of disputes in the last two years have been reported by the respondents as being domestic. However, the results vary significantly among the countries surveyed: Danish respondents still reported a clear majority of international disputes (59%), while Norway tops the list with a clear majority of domestic disputes (72%).

Settlements

Fig. 16. What portion or percentage of your company's larger disputes during the last 24 months has been settled before a judgment or an arbitral award is rendered?



Respondents reported that 58% of their disputes in the past 24 months were settled before a judgment or an arbitral award was rendered. For three out of four countries (Finland, Norway and Sweden), the respondent companies managed to settle a majority of their cases. Denmark and Sweden stand out with the lowest (37%) and highest (76%) settlement rates respectively.

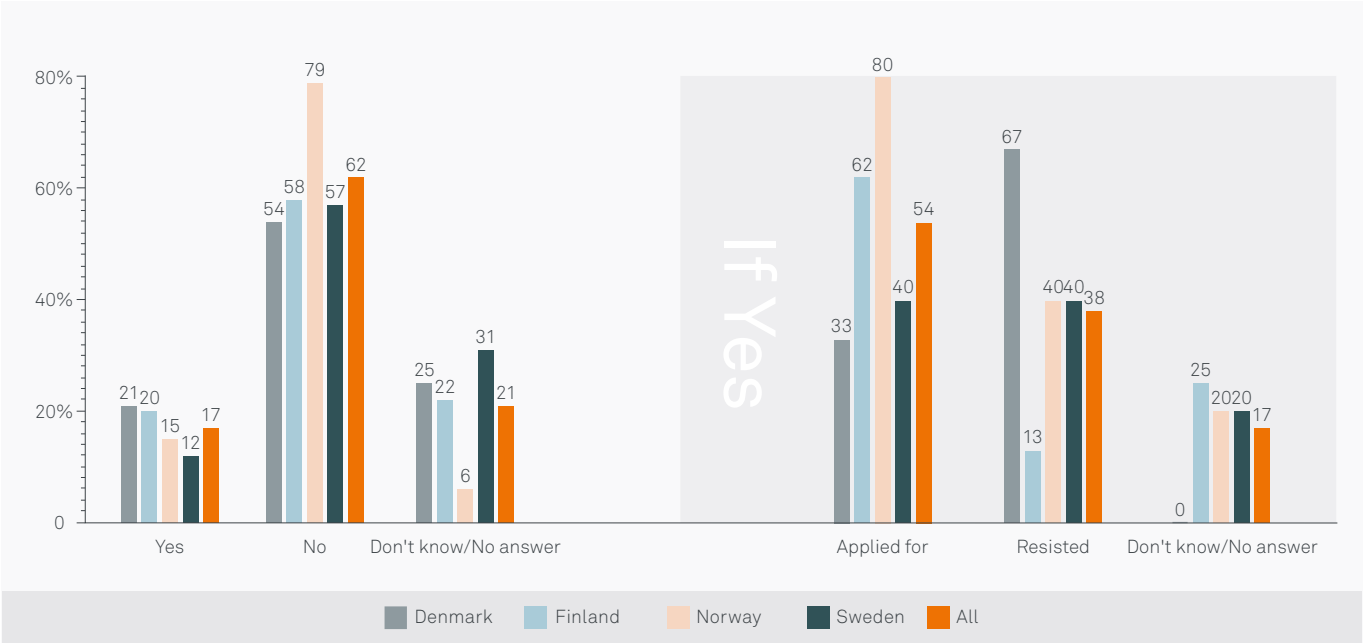
In three out of four countries (Finland, Norway and Sweden), the respondent companies managed to settle a majority of their cases.

Historically, the share of disputes reported as settled before a judgment or award was at its highest in 2014, at 72%, but has remained at around 50% since then, with a gradual increase each year (51% in 2016, 54% in 2018 and 58% in 2021).

Danish responses indicated a sharp decrease in settlement rates from 83% in 2014 to 37% in 2024, while Sweden has retained a high settlement rate each year, at around 70%. Finland and Norwegian companies have both reported a stable rate of around 50-60%, but both have experienced a slight decrease since 2014.

Interim measures and emergency arbitrator proceedings

Fig. 17. Has your company applied for or resisted interim measures (courts) during the past 24 months?



The majority of all respondents (62%) had not applied for or resisted interim measures in the past 24 months. The results were similar across the countries surveyed. Of the respondents who had been involved in interim measures in the past 24 months, the majority had acted as the applicant. The relatively high rate of respondents not answering or stating that they do not know also seems to suggest relative unfamiliarity with interim measures among Nordic companies.

Only 2% of the respondents said they had been involved in emergency arbitrator proceedings (in Sweden and Norway). Thus, emergency arbitrator proceedings remained largely unused by the companies surveyed.

"The limited use of interim measures and emergency arbitrator proceedings among the companies surveyed may simply be due to a lack of situations requiring such measures in the relevant period, but the results may also indicate that the availability of such measures is not always recognized or that they are perceived as complex."

Carl Persson, Partner, Roschier Stockholm

PART III—Topical issues

Key findings

▶ The use of certain digital tools in disputes, such as videoconferencing or similar facilities to take witness or expert evidence, which became more commonplace out of necessity during the COVID-19 pandemic, remains fairly prevalent. However, it remains to be seen how beneficial Nordic companies ultimately perceive these tools to be, and the use of other digital aids for disputes remains at a low level.

▶ Virtual and hybrid court and arbitration hearings have become an established alternative to in-person hearings in the Nordics, no doubt driven by the restrictions caused by the COVID-19 pandemic. Nonetheless, respondents indicated that they have a strong preference for traditional in-person hearings or at least some element of in-person participation.

▶ Experience of and interest in alternative fee arrangements among Nordic companies remains relatively low, with 26% of companies reporting that they have used or would consider using such arrangements. However, this is an increase on 2014, when only 12% of companies stated that they had used or considered using alternatives.

▶ Third-party funding continues to attract a low level of interest among the companies surveyed.

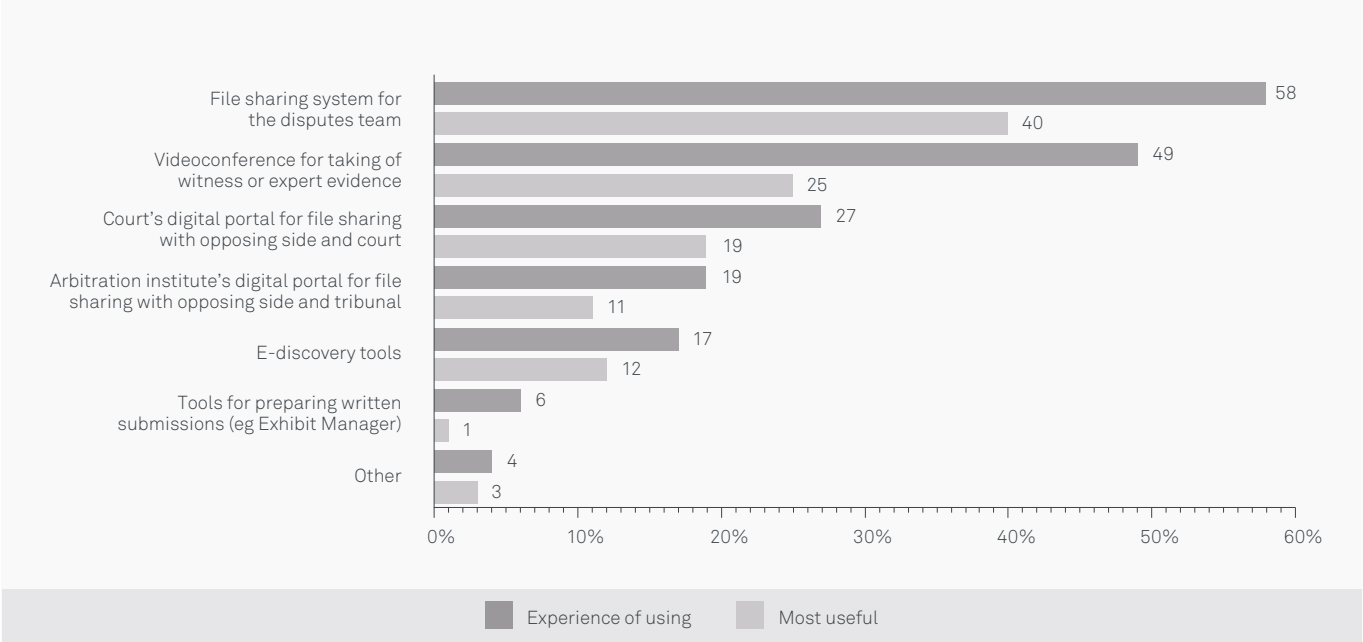
▶ Nordic companies have little experience of ESG-related disputes, despite a general expectation globally that an increase in ESG-related company policies and statutory and contractual obligations will lead to a rise in potential disputes.

▶ Russia's invasion of Ukraine has had a greater impact on companies in Finland and Sweden than those in Denmark and Norway, in terms of claims and disputes arising from an exit from Russia, from sanctions-related issues and from the impact of the war in general.

Digital environments in dispute resolution

The employment of digital tools in legal proceedings or in preparation for legal proceedings has generally increased among the Nordic companies surveyed since the last Roschier Disputes Index was compiled three years ago, when the restrictions caused by the COVID-19 pandemic required the legal community to embrace new technological solutions. File-sharing systems within the disputes team (whether at the companies themselves or at the law firms they use) remain popular (58%), as do videoconference facilities or similar tools to take witness or expert evidence remotely (49%). These are also the digital aids the respondents find most useful.

Fig. 18. Experience of using digital tools in disputes

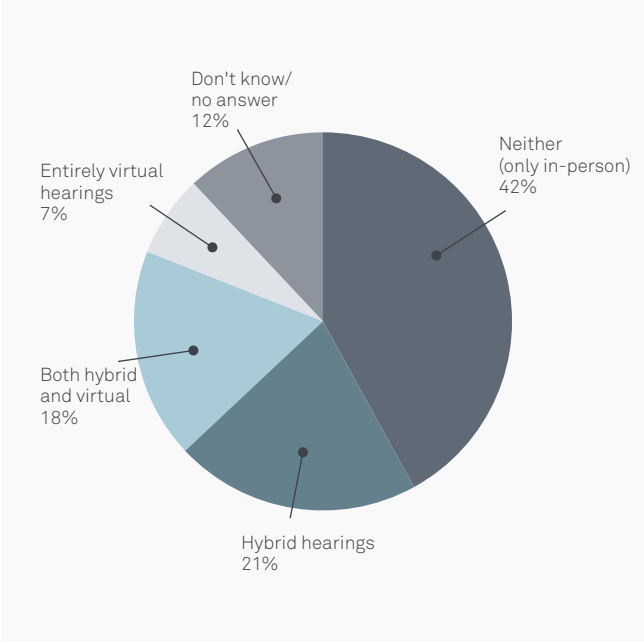


The use of digital portals at the courts or arbitration institutes in order to share files with the opposing party and the court/tribunal has also risen somewhat, but still remains fairly low, and the companies participating in the survey appear to have little experience of using other digital aids, such as e-discovery tools and Exhibit Manager.

"We engage law firms in disputes and then we always use their systems and digital tools."

Quote from a respondent

Fig. 19. Involvement in hybrid/virtual court or arbitration hearings in the last 24 months



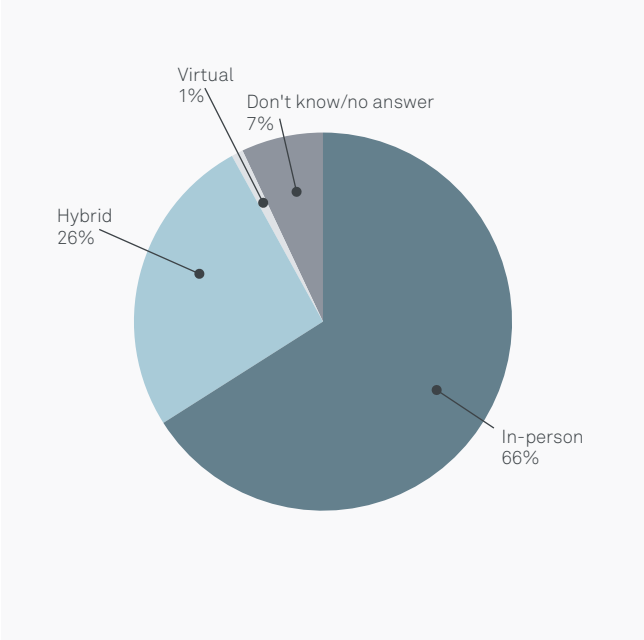
New questions for the 2024 Index relating to the digital environment concerned the respondents' use of and preference for virtual or hybrid hearings in litigation and/or arbitration proceedings, as alternatives to in-person only hearings. Virtual hearing rooms have become more commonplace as a result of adaptations made in response to the COVID-19 pandemic.

Just under half (46%) of respondents in all countries answered that they had been involved within the last two years in a hybrid (i.e. a mix of in-person and virtual) or solely virtual hearing, with slightly fewer (42%) stating that they had not experienced any hearings with a virtual element. Therefore, the virtual or semi-virtual format does appear to have become an established alternative in the Nordics.

However, interestingly, a clear majority of respondents (66%) would still prefer hearings to be held in-person only, and only 1% would choose virtual only, with a quarter opting for a hybrid format. Therefore, the overwhelming preferred choice of hearing format among participants is the traditional in-person hearing or at least some element of in-person participation.

Since these were new questions, it is not possible to establish any trend in the use and popularity of virtual and hybrid court and arbitration hearings in the Nordics, particularly since the COVID-19 pandemic. But it will be interesting to follow this up in future surveys to see whether the trend is upwards or downwards.

Fig. 20. Preferred hearing format



92%

The clear preferred choice of hearing format is traditional in-person or hybrid (as opposed to virtual only)

"The responses suggest that hearings with a virtual element are an option being widely used in the Nordics. However, the respondents overwhelmingly preferred hearings to be held with some form of in-person element, which is likely due to the perceived benefits of personal contact."

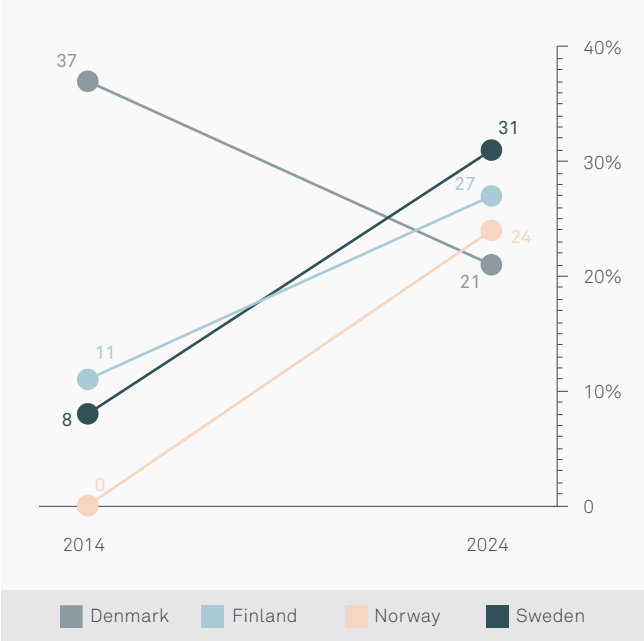
Johan Sidklev, Partner, Roschier Stockholm

Funding and fee arrangements

Alternative fee arrangements, such as success fees, are to some extent used or at least regarded as an option by Nordic companies. Across all countries, 26% of the respondents in the 2024 Index answered that they had considered using or had used alternatives, and there is little variance between countries.

This represents a greater interest among Nordic companies in alternative fee arrangements since the 2014 Index was produced, when only 12% of all companies had experienced or considered using such arrangements. As can be seen in the line graph, interest has increased in Finland, Norway and Sweden, with only Denmark having experienced a decline.

Fig. 21. General upward trend: Percentage of respondents answering that they had considered using or had used alternative fee arrangements

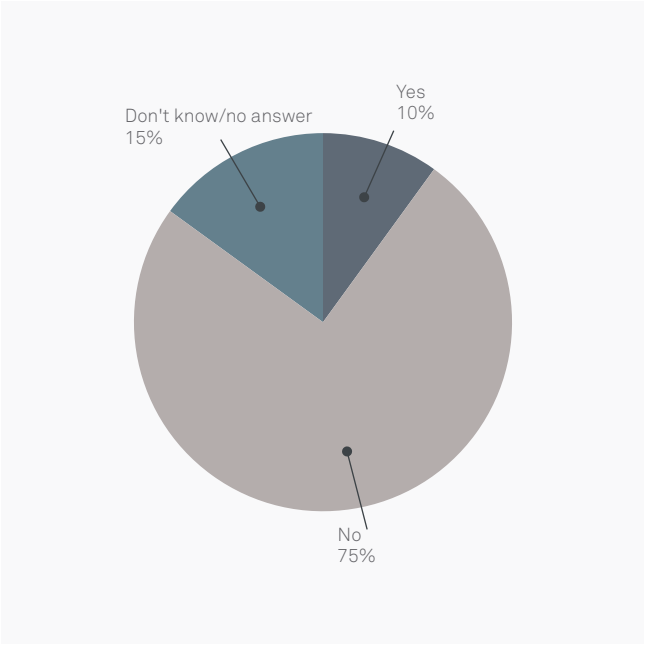


26%

Companies reporting in 2024 that they had used or considered using alternative fee arrangements

Nordic companies have little experience of or interest in third-party funding, which can be used, for example, to finance the cost of litigation/arbitration or enforcement proceedings. Only 10% of all companies stated that they had used or considered using third-party funding, with Danish respondents (18%) appearing to be more open to this than respondents from other countries.

Fig. 22. Have you considered using or used third-party funding?



Furthermore, based on the results of the Index surveys since 2014, use of or interest in third-party funding has not increased among large companies in any of the Nordic countries in the past ten years.

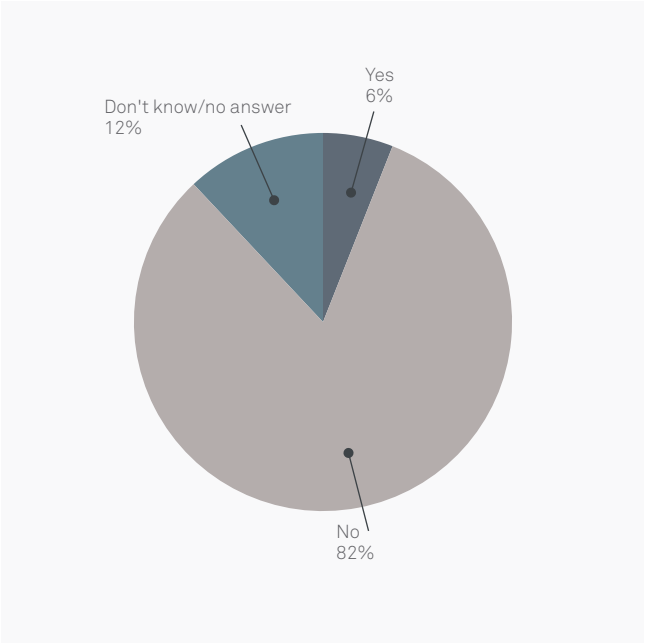
"Our survey results suggest that third-party funding still appears to attract a low level of interest in the Nordics, despite its increased popularity among companies globally to manage risk and costs in their disputes, and the growth in the number of third-party funders."

Carl Persson, Partner, Roschier Stockholm

ESG disputes

The Nordic organizations that were asked whether they had been involved in any environmental, social and governance (ESG) related disputes (which is new to the 2024 Index) overwhelmingly answered that they had not. Envisaged here is a wide array of different types of disputes with ESG components, such as contractual disputes on ESG obligations, climate change disputes, supply chain ESG disputes and greenwashing claims.

Fig. 23. Has your company been involved in any ESG-related disputes?



It appears that, in spite of greater attention to sustainability and a general global trend towards an increase in ESG-related litigation and arbitration, this phenomenon has not yet taken hold on the Nordic disputes scene. It will be interesting to see how this area develops in the future.

6% Only a small percentage of companies reported that they had been involved in ESG-related disputes

"ESG-related disputes could be a phenomenon to watch out for in the future, but currently this does not appear to be a trend in the Nordics. It will be interesting to see whether this area develops and which types of ESG claims are of local concern."

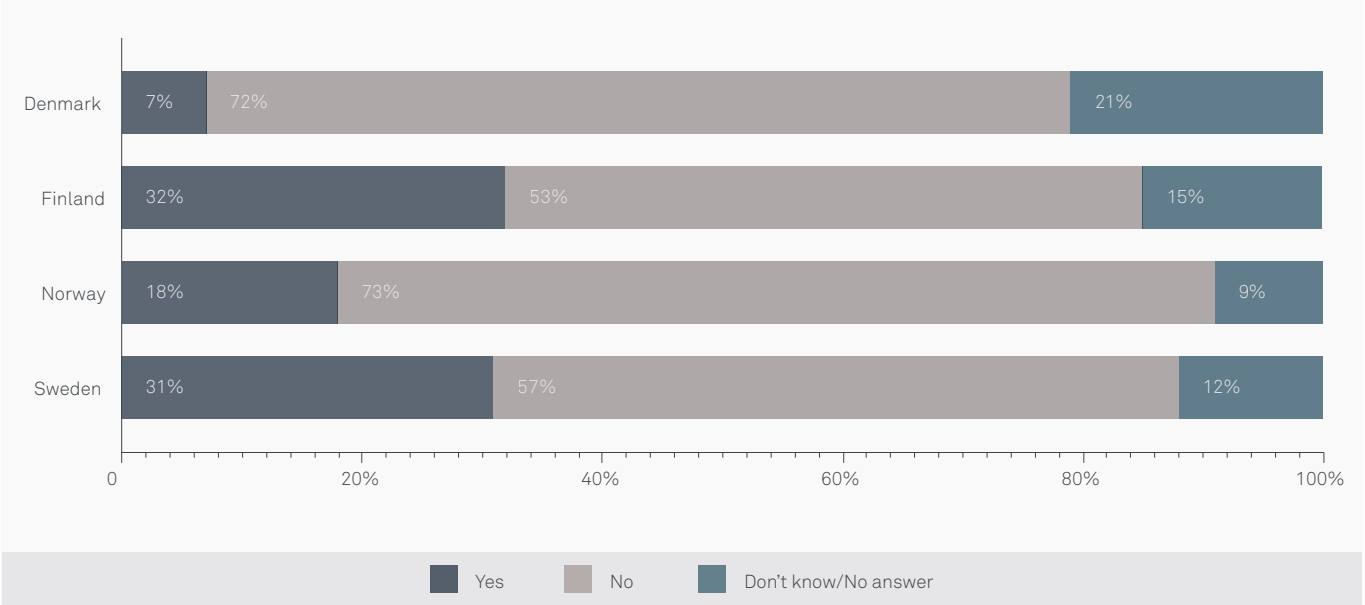
Laila Sivonen, Partner, Roschier Helsinki

Russia's invasion of Ukraine

Based on the results, it appears that Russia's invasion of Ukraine some two years ago has impacted companies' disputes in some countries in the Nordics more than in others. Companies in Finland and Sweden were more likely to have been affected than those in Denmark and Norway. This was the case whether in terms of claims or disputes arising from a company's exit from Russia, disputes relating to trade sanctions against Russia and Belarus, or some form of impact on a company's disputes in general.

There are various reasons why disputes in Finland and Sweden have been impacted more than in Denmark and Norway. These include the former countries' proximity to Russia, the greater extent of companies from those countries operating in Russia, and the nature of their involvement in Russia (since they often own major assets in strategic industries in Russia rather than merely conducting sales via a local distributor).

Fig. 24. Has Russia's invasion of Ukraine had an impact on your company's disputes?



The results of our survey indicate that Russia's invasion of Ukraine has affected disputes in Finland and Sweden more than in Denmark and Norway. However, the majority of respondents in all countries answered that their disputes had been unaffected by the war.

Examples of types of disputes encountered by respondents

- Delays/cancellations relating to deliveries of goods and services
- Increases in costs of materials imposed by suppliers despite previously agreed prices
- Interpretation of force majeure clauses
- Sanctions-related issues
- Exit from Russia

The majority of respondents in all countries answered that their company had exited Russia or limited its operations relating to Russia due to the war. Some may not have had any to begin with. In terms of variation between countries, the only outlier was Norway, with only just under half of the companies questioned stating that they had made such changes.

59%

The majority of respondents in the Nordics answered that their company had exited or limited its operations relating to Russia due to the war in Ukraine

Fig. 25. Has your company exited Russia or limited its operations relating to Russia due to the war in Ukraine?

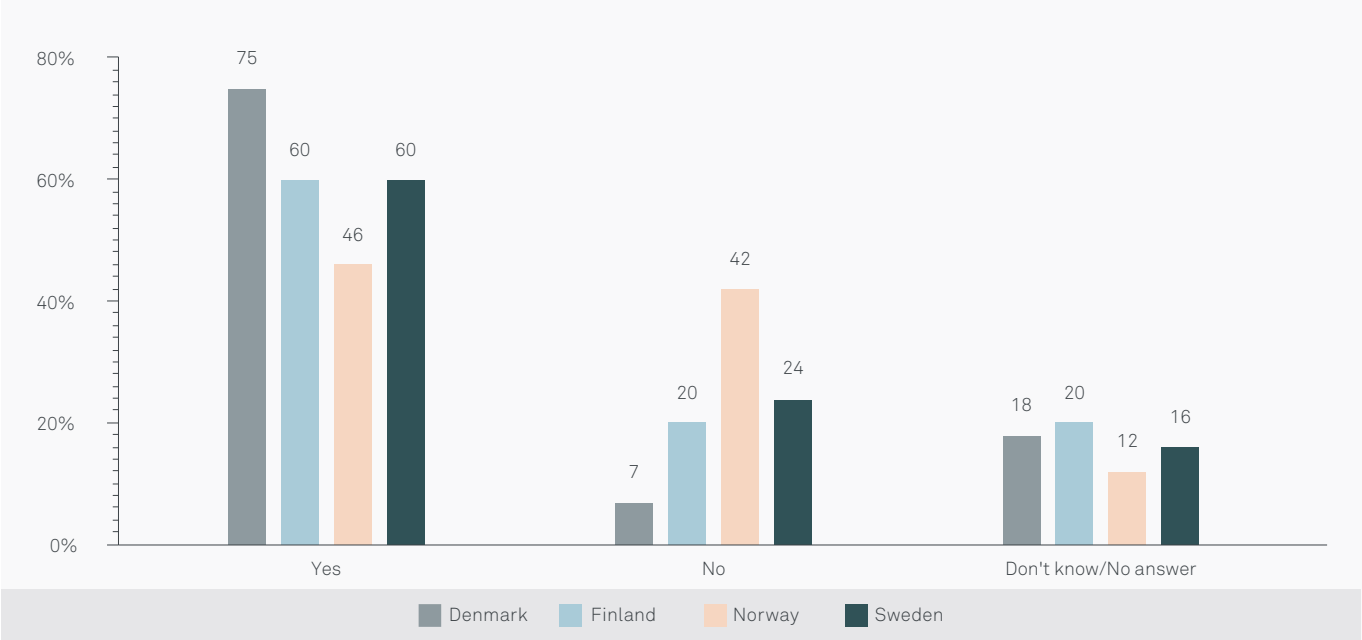
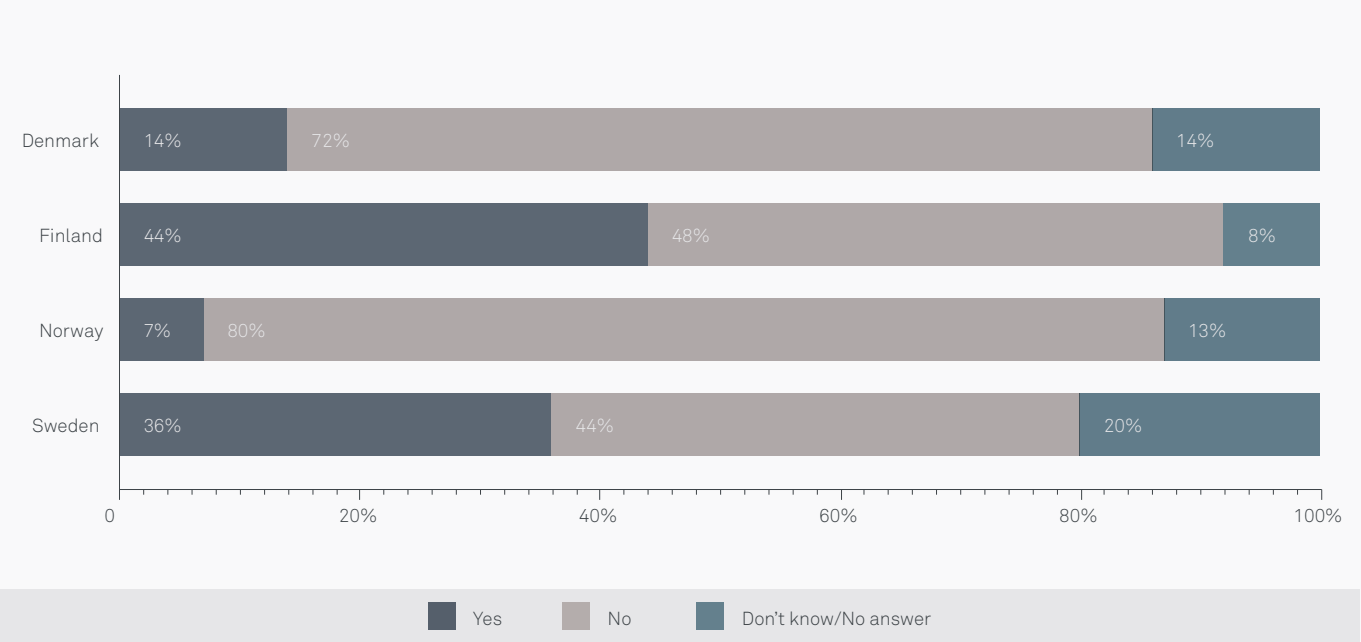


Fig. 26. If yes, is this giving rise to disputes or claims?

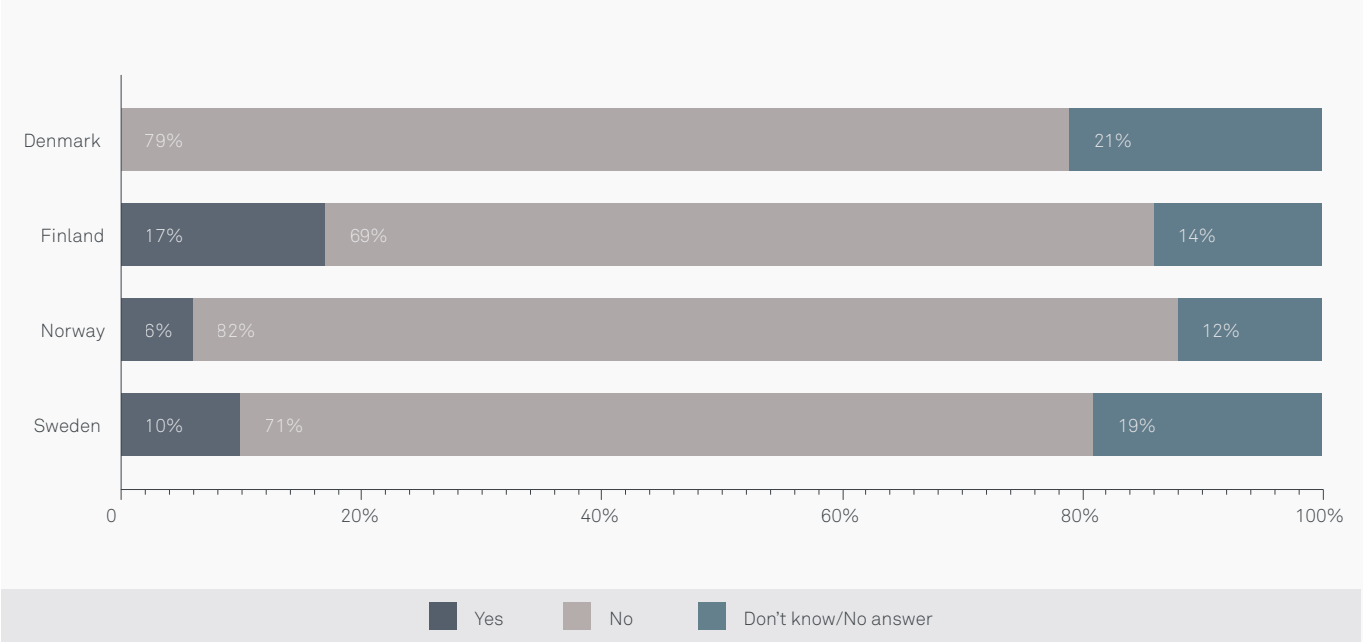


Due to the large number of Nordic companies that have wound down or reduced their operations in Russia, claims and disputes have inevitably resulted. However, based on the answers from the respondents, the experience of exiting companies has been mixed. Companies in Finland (44%) and Sweden (36%) were much more likely to have experienced such disputes or claims, with only 14% of Danish companies and 7% of Norwegian companies affected.

"The responses do not surprise me. A number of our Finland and Sweden-based clients have experienced contract-related claims and disputes arising from their recent exit from Russia, including those with a significant presence in the country."

Shirin Saif, Partner, Roschier Stockholm

Fig. 27. Has your company been involved in disputes relating to sanctions against Russia and Belarus and/or Russian counter-sanction measures?



So far, only a relatively small proportion of Nordic companies have been involved in disputes arising from sanctions against Russia and Belarus and/or Russian counter-sanction measures. The number of companies affected by sanctions-related disputes was much lower than the number affected by exit-related disputes. In the case of sanctions as well, a higher proportion of companies affected are located in Finland and Sweden.

"As the war, sanctions and counter-sanctions reach their second birthday, with no end in sight, sanctions-related disputes continue to affect Nordic companies. Larger disputes take time, and not all companies have been able to exit, despite attempts to do so. The level of recovery from exits is low and declining, mainly due to counter-sanctions. Sanctions may also have been used as an excuse to avoid performance. Nordic companies have also seen Russian courts take up their cases in violation of arbitration clauses. All these issues provide fertile ground for disputes."

Paula Airas, Counsel, Roschier Helsinki

Dispute Resolution at Roschier

When you need assistance or expert advice in international arbitration or complex court cases, our Dispute Resolution team is at your service. One of our key strengths is our ability to utilize the broad and deep knowledge within our firm in a number of specific areas, such as energy, infrastructure, competition, M&A, insolvency and ICT.

As one of the leading dispute resolution practices in the Nordics, we represent companies in domestic and international litigation and arbitration, frequently managing disputes and advising on a wide range of high-profile white collar crime cases and related civil claims. Other important areas of our expertise include strategic advice and legal risk and liability management.

We can help you prevent, contain and settle disputes whenever this is in your best interest. We take a particular interest in the development of cost-efficient dispute resolution mechanisms, such as various forms of ADR, and regularly serve as arbitrators and mediators in both international and domestic disputes. We are also actively involved in academic writing, teaching and lawmaking.

As a firm, Roschier is active in developing and analyzing the field of dispute resolution. We also organize the Roschier Arbitration Forum, an annual event that brings together practitioners, academics and end-users of arbitration and is an established event in the Nordic arbitration calendar.

Main contacts

Aapo Saarikivi
Partner, Helsinki

Johan Sidklev
Partner, Stockholm

Shirin Saif
Partner, Stockholm

Carl Persson
Partner, Stockholm

Laila Sivonen
Partner, Helsinki

Paula Airas
Counsel, Helsinki

Universe of respondents

4 countries represented in the survey

144 participating companies

47% response rate

307 companies included in the survey

Companies interviewed

28 Denmark

41 Finland

33 Norway

42 Sweden

Visit roschier.com to see the companies included in the survey's universe

Roschier is one of the leading law firms in the Nordic region. The firm is well known for its excellent track record of advising on demanding international business law assignments, large-scale transactions and major disputes. Roschier's offices are located in Helsinki and Stockholm. The firm's clients include leading domestic and international corporations, financial service and insurance institutions, investors, growth and other private companies with international operations, as well as governmental authorities.

Kantar Prospera has since 1985 carried out regular surveys and client reviews targeting professional players in the Nordic financial markets. Clients include banks, brokerage houses, asset managers and other suppliers of services such as commercial law firms and stock exchanges. Kantar Prospera is part of the Kantar group, which is specialized in global market information and insight.