

Name of the country: Norway

Transposition Act = Supplementary Agreement VIII Agreement of 31 January 2011 between LO and NHO on European Works Councils or equivalent forms of cooperation

*Note: Norway is not a member of the EU; however, Norway is closely related to the EU through the EEA Agreement. 4 As part of the EEA Agreement, a lot of EU law is implemented into Norwegian law. 5*

**1. Presence of legally based administrative or judicial conflict solving procedures for:**

		No	Yes	Unclear	brief explanation
A	SNB (including the pre-SNB phase, i.e. requesting the necessary information about the company, staff distribution, etc.)		Yes		It seems that the choice of conflict resolution mechanism is voluntary and to be determined in the EWC agreement, which seems to take precedence over the default option of referring a dispute to the Norwegian Dispute Resolution Board
B	EWC based on Art. 6 agreements		Yes		
C	EWC based on art. 13 agreement		Yes, separate one from other regular agreements: Disputes regarding the basis for or scope of agreements such as mentioned in the first subsection above [Art 13 agreements and their renewals, agreements signed between 2009-2011] may be referred to the Norwegian Dispute Resolution Board for decision pursuant to § 10, unless		



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			the parties to those agreements have not decided upon other mechanisms for settlement of disputes.		
D	EWC based on subsidiary requirements				

## 2. Litigation on different sets of rights: presence of national provisions

		No	Yes	Which authority (e.g., court) is competent <sup>1</sup>
A	Breaches against the provision of information to the SNB as per art. 4 (4) of Directive 2009/38/EC (information on the number of employees)/Failure to establish a SNB		Yes	the Norwegian Dispute Resolution Board, unless the parties to those agreements have decided upon other mechanisms for settlement of disputes
B	Operation of the EWC:breaches and compliance with the law (statutes), agreement or Subsidiary Requirements		Yes	
C	Challenging management on the use of confidentiality and secrecy/withholding information)		Yes	the Norwegian Dispute Resolution Board, unless the parties to those agreements have decided upon other mechanisms for settlement of disputes
E	Individual rights of the SNB/EWC members under national EWC legislation		Yes	the Norwegian Dispute Resolution Board, unless the parties to those agreements have decided upon other mechanisms for settlement of disputes
F	(Others to be filled in)			It seems that the choice of conflict resolution mechanism is voluntary and to be determined in the EWC agreement, which seems to take precedence over the default option of referring a dispute to the Norwegian Dispute Resolution Board

## 3. Capacity to act in court

		Brief explanation/ differences for 2A-2F above)
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<sup>1</sup> Material and geographical competence.



1	Who/which body can start a judicial procedure?	
2	What legal status (ius standi) is a requirement to start a judicial procedure? (legal personality, capacity to act in courts, other forms?)	Natural persons have the right to represent themselves in court proceedings. Employees may represent legal entities.
3	What is the legal status of the EWC (legal personality or other capacity to act in court)?	Unclear / none
4	In case of lacking capacity to act in court: how can it be circumvented (think of representation by trade unions)?	
5	Who represents the EWC in law?	
6	What is the capacity to act in court of joint type ('forum' or French-type) EWCs composed of both management and employees' representatives and can it be an obstacle?	Not mentioned in law

#### 4. Starting a procedure and timelines

		Brief explanation
1	Does the law set conditions as to how the EWC can take a valid decision on entering a judicial procedure? Think of voting, quorum, the necessity of a physical meeting to take a decision,...	No. But in case of e.g. signing an agreement it does: a special negotiating body's decision to conclude an agreement on consultation arrangements pursuant to § 3 must be adopted by a majority of its members. <sup>2</sup>
1.a	Does the law contain any requirements on the internal rules concerning question 1?	
2	How does one file a case in court? (Who, format, steps)	<p>A lawsuit before Norwegian courts is initiated by filing a statement of claim with the competent district court or conciliation board. The statement of claim must meet certain content requirements set forth in the Dispute Act. (Dispute Act Section 9-2.)</p> <p>Before an asset claim can be heard by the district court, it must be heard by a conciliation board unless the amount in dispute is at least 200,000 kroner and both parties have been represented by a lawyer. The procedure before the conciliation board shall assist the parties in achieving a simple, swift and inexpensive resolution of the case through mediation or judgment.</p> <p>However, the conciliation board may only pass judgment at the request of one of the parties if the case concerns</p>

<sup>2</sup> Art. 4 point h of the EWC Act.



		<p>an asset claim and the amount in dispute is less than 200,000 kroner. Judgments of the conciliation board may be appealed to a district court within one month of the conciliation board's judgment.<sup>3</sup></p> <p>Depending on the circumstances of the case and amount in dispute, the procedure will follow either the small claims track or the normal procedure. The small claims procedure encompasses all cases where the amount in dispute is less than 250,000 kroner.</p> <p>After receipt of the statement of defence, the court will schedule a preparatory meeting. During the preparatory meeting, important procedural questions and dates are clarified, including the time of the main hearing and whether a judicial mediation meeting should be scheduled. The main hearing shall be scheduled not more than six months after the receipt of the statement of claim unless special circumstances necessitate this.<sup>4</sup></p>
3	What is the deadline to start a judicial procedure?	none
4	Are there other relevant deadlines in the judicial procedure?	Judgments of the conciliation board may be appealed to a district court within one month of the conciliation board's judgment.
5	What is the role of out of court settlements once a case has been filed?	<p>In case of Art. 13 agreements/EWCs the Norwegian Dispute Resolution Board is the only possible route for dispute resolution.<sup>5</sup></p> <p>At each stage of the case, the courts shall consider the possibility of a full or partial amicable settlement to the legal dispute through mediation or judicial mediation unless the nature of the case or other circumstances suggest otherwise.<sup>22</sup> Judicial mediation is court-assisted mediation where a judge or a court-appointed expert acts as mediator. This service is quite often used by parties, particularly in commercial disputes.<sup>6</sup></p>
6	How long does a judicial procedure typically take?	
7	Is an injunction or a summary procedure possible?	

## 5. Costs

	Brief explanation
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<sup>3</sup> <https://thelawreviews.co.uk/title/the-dispute-resolution-review/norway#footnote-025-backlink>

<sup>4</sup> <https://thelawreviews.co.uk/title/the-dispute-resolution-review/norway#footnote-025-backlink>

<sup>5</sup> Art. 11 of the EWC Act

<sup>6</sup> <https://thelawreviews.co.uk/title/the-dispute-resolution-review/norway#footnote-025-backlink>



1	What are the court fees for a judicial procedure?	<p>Generally, litigants will have to fund their own litigation or do so by means of insurance. There is an Act on Legal Aid<sup>35</sup> that gives the right to free (or partly free) legal assistance in certain cases. However, the criteria are strict (e.g., (very) low income).<sup>7</sup></p> <p>In case of Arbitration: Chapter 8 of the NAA (Sections 39 to 41) have regulations regarding the determination of costs to the arbitration tribunal (Section 39), the allocation of the determined costs to the arbitration tribunal and the parties' case costs between the parties (Section 40) and provisions regarding security for costs (Section 41). Such provisions are not found in the Model Law.</p> <p>According to Section 39, the arbitration tribunal determines its own remuneration and expenses to be covered if nothing else has been agreed between the arbitral tribunal and the parties.</p> <p>The parties are jointly liable for the costs to the arbitration tribunal<sup>42</sup> but, upon request from one of the parties, the arbitration tribunal can divide the costs of the arbitration tribunal between the parties as the arbitration tribunal finds appropriate.<sup>43</sup> According to NAA Section 41, the arbitration tribunal can demand that the parties provide security for the costs of the arbitration tribunal, if the opposite has not been agreed between the arbitration tribunal and the parties.</p> <p>Upon request from one of the parties, the arbitration tribunal can decide that the other party must cover all or part of the costs of the opposing party to the extent the arbitration tribunal finds this appropriate.<sup>8</sup></p>
2	Is legal representation by a lawyer required in a judicial procedure?	<p>Natural persons have the right to represent themselves in court proceedings. Employees may represent legal entities. Beyond this, the main rule is that only lawyers and authorised assistant lawyers may act as counsel in legal proceedings.</p>

<sup>7</sup> <https://thelawreviews.co.uk/title/the-dispute-resolution-review/norway#footnote-025-backlink>

<sup>8</sup> <https://thelawreviews.co.uk/title/the-dispute-resolution-review/norway#footnote-025-backlink>



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		<p>If a party who is not represented by counsel is unable to present the case in a comprehensible manner, the court may order the party to engage legal counsel.</p> <p>A foreign lawyer may act as counsel if the court finds no objections to this in view of the nature of the case and other circumstances.</p>
3	Who pays the costs for:	The management is responsible for arranging and bearing the cost of the negotiations, including providing interpreters and the necessary translations of documents, and also for implementing and financing the permanent consultation arrangements agreed upon between the parties, cf. § 6, 6. <sup>9</sup>
	- Legal expert	
	- Court fees	
	- Other costs (travel/interpretation)	
4	Does a EWC normally have an independent budget and/or an own bank account under a given national legislation?	No
5	Can the EWC be sentenced to pay the costs of the other party in the judicial procedure?	
6	Can the EWC <i>members</i> be sentenced to pay the costs of the other party in the judicial procedure?	

## 6. Sanctions

		Brief explanation
	How is a breach of law classified?	No classification
1	What are the sanctions for breaches of EWC laws?	None indicated
2	Can the court rule to stop or reverse the companies' decision-making?	
3	Whom should fines be paid to?	
4	Can a member of management be held personally liable (personal vs. corporate liability)?	
5	Can individual EWC members be sentenced to pay fines or be subject to other sanctions?	
6	Can the EWC collectively be sentenced to pay fines or be subject to other sanctions?	

<sup>9</sup> Art. 3 of the eEWC Act.



## 7. Out of court settlements

		Brief explanation
1.	<p>In general, are alternative conflict resolutions available in a given country can out of court settlements be reached once a case has been filed? Does it happen in practice?</p>	<p>Yes, in case of Art. 13 agreements/EWCs the Norwegian Dispute Resolution Board is the only possible route for dispute resolution.</p> <p>Although most disputes are settled in the ordinary courts, both arbitration and mediation are common methods of settling disputes in Norway.</p> <p>Arbitration has traditionally been mostly ad hoc arbitration. However, this might be on the brink of changing. The Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce has revitalised its rules to make them more attractive, and at the end of 2017 a new arbitration institute, the Nordic Offshore &amp; Maritime Arbitration Association (NOMA), was established. The main purpose of NOMA is to facilitate international arbitration in the Nordic countries, and it has already been used in several cases.</p> <p>Mediation is offered by all courts but can also be arranged privately outside of court.</p> <p><b>Arbitration</b></p> <p>All arbitration that takes place in Norway – both domestic and international – is governed by the Norwegian Arbitration Act (NAA).<sup>41</sup> The NAA is based on the UNCITRAL Model Law and applies to all types of cases, small and large, professional parties and consumers.</p> <p>Since the NAA applies also to all domestic arbitration cases, the build-up and content of the NAA is somewhat different from the Model Law. Hence, the NAA is more detailed than the Model Law. Some issues that can be highlighted are as follows.</p> <p>NAA Section 10 has provisions regarding the arbitration agreement. It does not require the arbitration agreement to be in writing, although this is most common. According to NAA Section 10 Second Paragraph, an assignment of a contract also includes assignment of an arbitration clause if the opposite has not been agreed by the parties.</p> <p><b>Mediation</b></p>



		<p>There has been quite a lot of focus on mediation in recent years in Norway. All courts offer in-court mediation, which is regulated by the Dispute Act Chapter 8. However, it is up to the parties if they want to accept in-court mediation. A substantial number of disputes are mediated in the courts each year, especially at the district court level. Out of the disputes that are mediated in court, a high percentage are resolved during the mediation process or shortly thereafter. Mediation in court is led by a judge who acts as a mediator. The parties are free to leave the mediation at any point in time. If the dispute is not resolved through the in-court mediation, the case will be handed over to another judge for adjudication. There is full confidentiality of everything that has been said in the mediation, so the new judge who will decide the case does not receive any information on what the parties' positions have been in the mediation process.</p> <p>The Dispute Act also has rules in Chapter 7 on out of court mediation, which the parties can agree to follow if they prefer. It is also possible for parties to have a private mediation without following the rules set out in the Dispute Act Chapter 7. There has been an increase in private mediations over the past few years, particularly in large construction disputes. The Norwegian Bar Association has recently established a certification programme for mediators.</p>
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## 8. Resources for EWCs

		Brief explanation
1.	Can unions provide legal support or financing for litigation?	Yes: During the negotiations the parties can, upon request, obtain advice and guidance from their organisations whenever these exist. The same applies if doubt regarding the scope of the agreement arises after the agreement is made. <sup>10</sup>
2.	What other resources are available in terms of legal support to EWCs and/or EWC members in your country (e.g., Arbeiterkammer, legal support centres)	arbitration institute, the Nordic Offshore & Maritime Arbitration Association (NOMA)

<sup>10</sup> Art. 4 point g of the EWC Act.

