

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

20 May 2025

Case Document No. 5

**Norwegian Association of Small & Medium Enterprises (SMB Norge) v. Norway
Complaint No. 238/2024**

**REPLY FROM THE GOVERNMENT TO SMB NORGE'S
RESPONSE ON THE MERITS**

Registered at the Secretariat on 19 May 2025



ATTORNEY GENERAL FOR CIVIL AFFAIRS

The European Committee of Social Rights

OSLO, 19.5.2025

Reply to SMB Norge's Response by the Kingdom of Norway

represented by Ida Thue, advocate, and as agent, Kaija Bjelland, advocate, in

**Complaint No. 238/2024 SMB Norwegian Association of Small & Medium
Enterprises (SMB Norge) v. Norge**

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- (1) Reference is made to the response of the Norwegian Association of Small & Medium Enterprises (SMB Norge) of 19 February 2025 and the Executive Secretary's letter of 7 April 2025, whereby the Government was invited to submit a reply by 19 May 2025.
- (2) Norwegian legislation grants certain rights to the most representative trade unions. This is in accordance with Article 5 of the Charter, which allows domestic law to restrict participation in various consultations and collective bargaining procedures to representative trade unions.
- (3) Section 14-12, second paragraph of the WEA permits derogations from statutory provisions through collective agreements. Such semi-dispositive legislation is not unique to Norway. It is compatible with the right to organise under Article 5 of the Charter.
- (4) The requirement that the enterprise has a collective agreement with a trade union that has nomination rights (trade unions with more than 10,000 members) is not, as claimed by the complainant, supposed to encourage employees to join large trade unions. The requirement shall prevent employees from being pressured into accepting an agreement. This objective is described in the Government's written observations, paragraph 14.
- (5) The complainant's submission that small enterprises cannot enter into agreements for hiring is incorrect. Any enterprise, regardless of size and regardless of whether it is a member of an employer organization or not, may enter into agreements for hiring, provided that they are bound by a collective agreement with a trade union with more than 10 000 members.

- (6) It is not correct that the possibility to enter into agreements for hiring in is reserved for the elected representative from the larger unions, see the Government's written observations, paragraph 16. Section 14-12, second paragraph refers to "the elected representatives who collectively represent a majority of the employees in the category of workers to be hired", and the Minister of Labour and Social Inclusion has stated that the term is not limited to persons organized in traditional trade unions, see Document No. 15:1266 (2022-2023):

"According to the provision, enterprises bound by a collective agreement entered into with a trade union with nomination rights under the Labour Disputes Act can enter into a written agreement for temporary hiring. It is a condition that the agreement is made between the employer and the elected representatives who collectively represent a majority of the category of workers to be hired. The requirement that the elected representative must represent a majority of the category of workers to be hired does not imply that at least 50 percent of the same category of workers must be organized in a trade union. The concept of elected representatives in the Working Environment Act is not narrowly understood as only representatives of employees who are organized in traditional trade unions; it can also refer to elected representatives of employees without organizational affiliation." (office translation)

Annex 1: Document No. 15:1266 (2022-2023) (in Norwegian)

- (7) The elected representatives are not obliged to enter into an agreement for hiring, and they do not have to justify their choice not to enter into an agreement. This is not unique to the Working Environment Act § 14-12, second paragraph, but is a feature of all semi-dispositive legislation. The elected representatives may say no to an agreement or set conditions for an agreement provided the conditions are compatible with Norwegian law, see the Ministry of Labour and Social Inclusion's response letter to NHO SH (Annex 2 to the response), and the legislation referred to in the Government's written observations, section 2.3.

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Oslo, 19. May 2025

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