UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

EUFam's Project

PLANNING THE FUTURE OF CROSS-BORDER FAMILIES:
A PATH THROUGH COORDINATION – 'EUFAM'S'
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AIAF
ASSOCIAZIONE ITALIANA DEGLI AVVOCATI PER LA FAMIGLIA E PER I MINORI

In association with:

aeafa
ASOCIACION ESPAÑOLA DE ABOGADOS DE FAMILI

SSM
SCUOLA SUPERIORE DELLA MAGISTRATURA

Pravosudna akademija

Report on the outcomes of the online questionnaire

(drafted by the EUFam's team of the University of Verona:
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INTRODUCTION TO THE QUESTIONNAIRE

PRELIMINARY ACTIVITIES

Workstream 1 of the EU project "Planning the future of cross-border families: a path through coordination (EUFam's)" (JUST/2014/JCOO/AG/CIVI/7729) is aimed at identifying the difficulties experienced by national courts and practitioners in the application of the EU private international law instruments on family matters (namely Regulations no 2201/2003, 4/2009, 1259/2010, 650/2012). In order to assess such difficulties, a series of national exchange seminars has been organized in the second half of 2016 in Italy, Germany, Spain and Croatia where selected practitioners, judges and academics with specific knowledge on the above mentioned legal instruments took part and whose outcomes are collected in the four reports drafted by the organising partner[1].

Moreover, workstream 1 of the project envisages the creation and the continuous update of the database that collects and classifies the national case-law applying the above mentioned Regulations[2]. The database entries are provided by the partners of the project and, on the basis of the case-law classified up to 10 June 2016, the team of the University of Milan drafted the First Assessment Report.

As a follow-up of these activities, the University of Verona was assigned the additional task to draft a questionnaire addressed at various categories of legal professionals in order to assess on a wider scale and among a larger number of practitioners the difficulties encountered in the interpretation and application of the EU Regulations, also considering their interplay with the relevant Hague Conventions.

CONTENTS OF THE QUESTIONNAIRE

As to the contents, the questionnaire was composed of **44 questions**.

The first two questions were aimed at collecting statistical data on the background of the participants. Addressees were ensured that the participation to the questionnaire would remain confidential and its outcomes would be used for research purposes only. To this end, at the beginning of the questionnaire, they were only asked to indicate their country of location (question

[1] The reports were uploaded on the project website *www.eufams.unimi.it*.
[2] A public version of the database in Excel format is regularly uploaded on the project website.

no 1) and their profession (question no 2) in order to have a clearer picture of the background of the professionals who took part in the survey.

The other 42 questions (questions no 3-44) were divided into **6 different sections** related to the most important aspects of the application of the EU Regulations:

- matters relating to Jurisdiction (questions no 3-25);
- matters relating to Applicable Law (questions no 26-28);
- matters relating to Recognition and Enforcement (questions no 29-40);
- matters relating to Cooperation between Central Authorities (questions no 41-42);
- interrelations between EU Regulations and International Conventions (question no 43);
- residual application of domestic rules of private international law (question no 44).

The questions contained in any section were drafted and selected taking into account the critical issues arising from both the national exchange seminars and the case-law entries of the database, as highlighted in the reports mentioned in the previous paragraph.

A **multiple choice** answering system was provided with the possibility, in some cases, to specify the answer that had been given or make additional comments. Moreover, most of the questions envisaged the possibility to give more than one answer; therefore, the number of answers can in many cases actually be higher than the number of participants who actually replied to the question.

DISSEMINATION

Once drafted, the questionnaire was uploaded on the ***Surveymonkey*** **online platform**[3] by the team of the University of Milan, coordinator of the project, so that each partner could easily circulate it within their own networks. In fact, in order to ensure the questionnaire the widest dissemination possible, all partners were both asked to circulate it among all the participants in the various exchange seminars[4] and to send an **invitation e-mail** on a wider scale. The template of this e-mail was prepared by the University of Verona and, besides briefly describing the project and providing some practical instructions, it called academics, judges, legal practitioners, State officers and professionals pertaining to other relevant categories to fill it out. When sending the invitation e-

[3] The questionnaire was available at the following link: *https://it.surveymonkey.com/r/eufamsquestionnaire*.
[4] Without mentioning the project staff, according to the attendance sheets they were for the 36 Italian exchange seminar; 51 for the Spanish exchange seminar; 76 for German exchange seminar; 43 for Croatian exchange seminar.

mail, all partners were requested to add the address eufams@unimi.it in cc, so as to monitor as precisely as possible the number of associations and practitioners reached by the questionnaire.

The partners of the project started to circulate the questionnaire at the end of February and the final deadline was fixed on 7 April 2017 in order to make it possible to discuss its results during the International Exchange Seminar that will be held on 12 May 2017 at the Max Planck Institute of Luxembourg. From the data collected by means of the e-mail address eufams@unimi.it, the dissemination carried out by each partner can be reported as follows.

As to the Italian partners, AIAF (Italian Family Lawyers Association)[5] was charged with the dissemination to family lawyers; SSM (Italian Judicial Academy)[6] circulated the questionnaire through judges and the University of Verona through Italian academics of Private, International and European Union Law.

Moreover, in order to reach the highest number of participants possible, the University of Verona availed itself of the collaboration of other associations with which it had built previous collaborations, such as AIGA (Italian Association of Young Lawyers)[7], the Italian branch of AIJA (International Association of Young Lawyers)[8], the Lenford network (Italian association composed of lawyers committed to LGBT rights protection)[9]; CamMino (Association of Family and Children Rights)[10]; and the section of Verona of the National Observatory on Family Law[11]. The University of Milan also spread the questionnaire through AGAM (Association of Young Lawyers of Milan)[12] and ADGI (Italian Female Lawyers Association)[13], as well as other members of AIGA. Thanks to the University of Milan it was also possible to reach selected staff members of Slovakian and the Czech Ministries of Justice, as well as a member of the Czech academia.

As to the Spanish partners, the collaboration between the University of Valencia and AEAFA (Spanish Association of Family Lawyers)[14] made it possible to reach representatives of the Spanish academia and judiciary (Judicial Network on Family Law), as well as several national Bar

[5] In Italian, Associazione Italiana degli Avvocati per la famiglia e per i minori; see *http://www.aiaf-avvocati.it.*
[6] In Italian, Scuola Superiore della Magistratura; see *http://www.scuolamagistratura.it*.
[7] In Italian, Associazione Italiana Giovani Avvocati; see *http://www.aiga.it.*
[8] See *https://www.aija.org/en*.
[9] In Italian, Rete Lenford; see *http://www.retelenford.it*.
[10] In Italian, Camera Nazionale Avvocati per la Famiglia e i Minorenni; see *http://www.cammino.org*.
[11] In Italian, Osservatorio nazionale sul diritto di famiglia; see *http://www.osservatoriofamiglia.it*.
[12] In Italian, Associazione Giovani Avvocati Milano; see *http://www.agam-mi.it*.
[13] In Italian, Associazione Donne Giuriste Italia; see *http://www.adgi.eu*.
[14] In Spanish, Asociación Española de Abogados de Familia; see *http://www.aeafa.es*.

associations (i.e. the Bar of Valencia, Barcelona, Vigo, Pontevedra, Ferrol, Santiago de Compostela and A Coruña)[15]. The questionnaire was also circulated through the Spanish private international law blog *Conflictus Legum*[16] and through SCAF (Catalan Association of Family Lawyers)[17].

The University of Heidelberg spread the questionnaire among the German academia and to specialized associations of practitioners, such as the Scientific Association for Family Law[18], the New Association of Judges[19], DANSEF (German Association of Lawyers, Notaries and Tax Advisers for Family and Successions Law)[20], ISUV (Association for Maintenance and Family Law)[21], the Working Group on Family Law of the German Lawyers' Association[22], DGFT (German Association for Family Law)[23]. The questionnaire also circulated through the German judiciary – both county courts[24] and appellate courts[25] – and through DIJuF (German Institute for Child Assistance and Family Law)[26]. In addition, it was possible to reach the Federal Office for Justice[27].

Thanks to the contribution of the University of Osijek it was possible to reach Croatian practitioners (judges and lawyers), state officers as well as members of the Croatian, Bulgarian and Hungarian academia. In addition, the Croatian Judicial Academy[28] disseminated the questionnaire among the Croatian judges.

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[15] In Spanish, Ilustre Colegio de Abogados de Valencia, de Barcelona, de Vigo, de Pontevedra, de Ferrol, de A Coruña; see *http://www.icav.es*; *http://www.icab.cat*; *http://www.icavigo.org*; *http://www.icapontevedra.com*; *http://www.icaferrol.es*; *http://www.icacor.es*.
[16] See *http://conflictuslegum.blogspot.it*.
[17] In Catalan, Societat Catalana d'Advocats de Familia; see *http://www.scaf.cat.*
[18] In German, Wissenschaftliche Vereinigung für Familienrecht e.V. Bonn; see *https://www.wv-familienrecht.eu*.
[19] In German, Neue Richtervereinigung; see *https://www.neuerichter.de*.
[20] In German, Deutsche Anwalts-, Notar- und Steuerberatervereinigung für Erb- und Familienrecht e.V.; see *http://www.dansef.de*.
[21] In German, Interessenverband Unterhalt und Familienrecht; see *https://www.isuv.de*.
[22] In German, Arbeitsgemeinschaft Familienrecht des Deutschen Anwaltvereins; see *https://anwaltverein.de/de/mitgliedschaft/arbeitsgemeinschaften/familienrecht*.
[23] In German, Deutscher Familiengerichtstag; see *https://www.dfgt.de*.
[24] In German, Amtsgerichte. More precisely, it was sent to the following county courts: Karlsruhe, Stuttgart, Bamberg, München, Nürnberg, Pankow/Weißensee, Brandenburg a.d.H., Bremen, Hamburg-Mitte, Frankfurt a.M., Rostock, Celle, Düsseldorf, Hamm, Köln, Koblenz, Zweibrücken, Saarbrücken, Dresden, Naumburg, Schleswig, Jena. The invitation e-mail was sent to the address of the respective administrative offices, and not to judges directly.
[25] In German, Oberlandesgerichte. More precisely, it was sent to the following appellate courts: Karlsruhe, Stuttgart, Bamberg, München, Nürnberg, Brandenburgisches OLG, Hanseatisches OLG in Bremen, Hanseatisches OLG Hamburg, Frankfurt a.M., Rostock, Celle, Düsseldorf, Hamm, Köln, Koblenz, Pfälzisches OLG, Saarländisches OLG, Dresden, Naumburg, Schleswig-Holsteinisches OLG, Thüringer OLG. The invitation e-mail was sent to the address of the respective administrative offices, and not to judges directly.
[26] In German, Deutsches Institut für Jugendhilfe und Familienrecht; see *https://dijuf.de*.
[27] In German, Bundesamt für Justiz; see *https://www.bundesjustizamt.de*.
[28] In Croatian, Pravosudna akademija; *https://www.pak.hr*.

The Max Planck Institute of Luxembourg, besides contacting all the invited participants to the International Seminar and various Advocates General in Luxembourg, directed its dissemination towards four other EU Member States, namely Belgium, Bulgaria, Greece and France. As for the first country, it was possible to reach various lawyers and the Association for the rights of the foreigners[29]. As for the second country, the questionnaire was spread among members of the Supreme Bar Council[30], the Sofia Bar Association[31], the Supreme Judicial Council[32] and the Sofia City Court[33]. As for the third country, it circulated through the most relevant Bar Associations (i.e. the Bar of Athens, Piraeus, Thessaloniki, Heraklion, Patra and Larissa)[34], the official Association of Judges and Prosecutors of Greece and the three law faculties of the country (National and Kapodistrian University of Athens, Aristotle University of Thessaloniki, Democritus University of Thrace)[35], with particular emphasis on their respective Departments of Private International Law. Moreover, the questionnaire was sent to the Research Institute of Procedural Studies[36], the Greek Association of Civil Law Jurists[37] and Mr. Ioannis Ioannidis (former State Secretary for Justice, Transparency and Human Rights). Lastly, as regards France, it was possible to reach the law firms Alexandre Boiché Avocats[38] and CBBC Avocats[39], and the following specialised associations: the International Academy of Family Lawyers[40], the French Association of Youth and Family Judges and Magistrates[41] and the National Association of Lawyers and Practitioners Specialised in Patrimonial and Extrapatrimonial Family Law[42].

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[29] In French, L'Association pour le droit des étrangers; *http://www.adde.be*.
[30] In Bulgarian, Висш адвокатски съвет; *http://www.vas.bg/bg*.
[31] In Bulgarian, Софийска адвокатска колегия; *http://www.sak-sas.bg*.
[32] In Bulgarian, Висш съдебен съвет; *http://www.vss.justice.bg*.
[33] In Bulgarian, Софийски градски съд; *http://scc.bg/?page_id=5*.
[34] In Greek, Δικηγορικός Σύλλογος Αθηνών, *http://www.dsa.gr*; Δικηγορικός Σύλλογος Πειραιώς, *http://www.dspeiraia.gr*; Δικηγορικός Σύλλογος Θεσσαλονίκης, *https://www.dsth.gr*; Δικηγορικός Σύλλογος Ηρακλείου, *http://www.dsh.gr*; Δικηγορικός Σύλλογος Πατρών, *http://www.dspatras.gr*; Δικηγορικός Σύλλογος Λαρίσης, *http://www.dslar.gr*.
[35] In Greek, Εθνικό και Καποδιστριακό Πανεπιστήμιο Αθηνών, *http://en.law.uoa.gr*; Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης, *http://www.law.auth.gr/en*; Δημοκρίτειο Πανεπιστήμιο Θράκης, *http://law.duth.gr/index.en.shtml*.
[36] In Greek, Ερευνητικό Ινστιτούτο Δικονομικών Μελετών.
[37] In Greek, Ένωση Αστικολόγων; *http://www.enas.gr*.
[38] See *http://www.aboiche.com/accueil*.
[39] See *http://www.cbbc-avocats.com/cbbc*.
[40] See *https://www.iafl.com*.
[41] In French, Association Française des Magistrats de la Jeunesse et de la Famille; *http://www.afmjf.fr*.
[42] In French, Association nationale des avocats spécialistes et practiciens en droit de la famille*, des personnes et de leur patrimoine*; *http://www.avocatsdelafamille.org*.

The various partners also sent the questionnaire to specific legal practitioners and judges with whom they collaborate and who have a consolidated experience on family private international law.

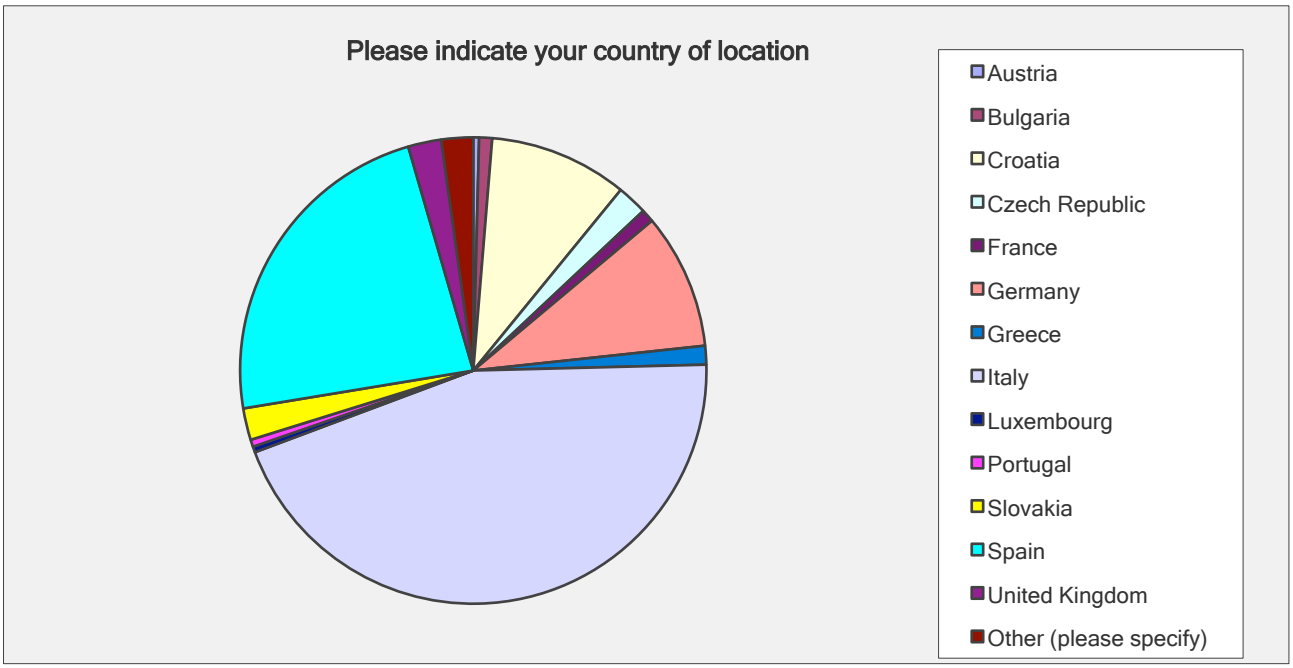
The questionnaire counted on **771 participants** from different Member States and of different professional backgrounds, as results from the data reported below.

Question no 1: *Please indicate your country of location*.

Three out of the 771 participants did not answer to this question. Among the 768 who did:

- 346 answered Italy (45,05%);
- 178 answered Spain (23,18%);
- 74 answered Croatia (9,63%);
- 70 answered Germany (9,11%);
- 17 answered Slovakia (2,21%);
- 16 answered Czech Republic (2,08%);
- 16 answered United Kingdom (2,08%);
- 10 answered Greece (1,30%);
- 7 answered Bulgaria (0,91%);
- 7 answered France (0,91%);
- 4 answered Portugal (0,52%);
- 3 answered Austria (0,39%);
- 3 answered Luxembourg (0,39%);
- 17 answered "other countries" (2,21%). When asked to specify, 6 participants indicated Belgium, 2 Hungary, 1 Poland, 1 Russia, 1 Switzerland, 1 the Netherlands, 1 Guernsey (13 in total[43]).

[43] To be more precise, among the 17 participants who indicated "other countries", 1 specified Italy, 2 Catalonia (Spain) and another indicated cumulatively Germany, Italy and Austria. Therefore, these last 4 participants should better be ascribed to the respective relevant country and the number of participants from "other countries" should be narrowed down to the 13 indicated.



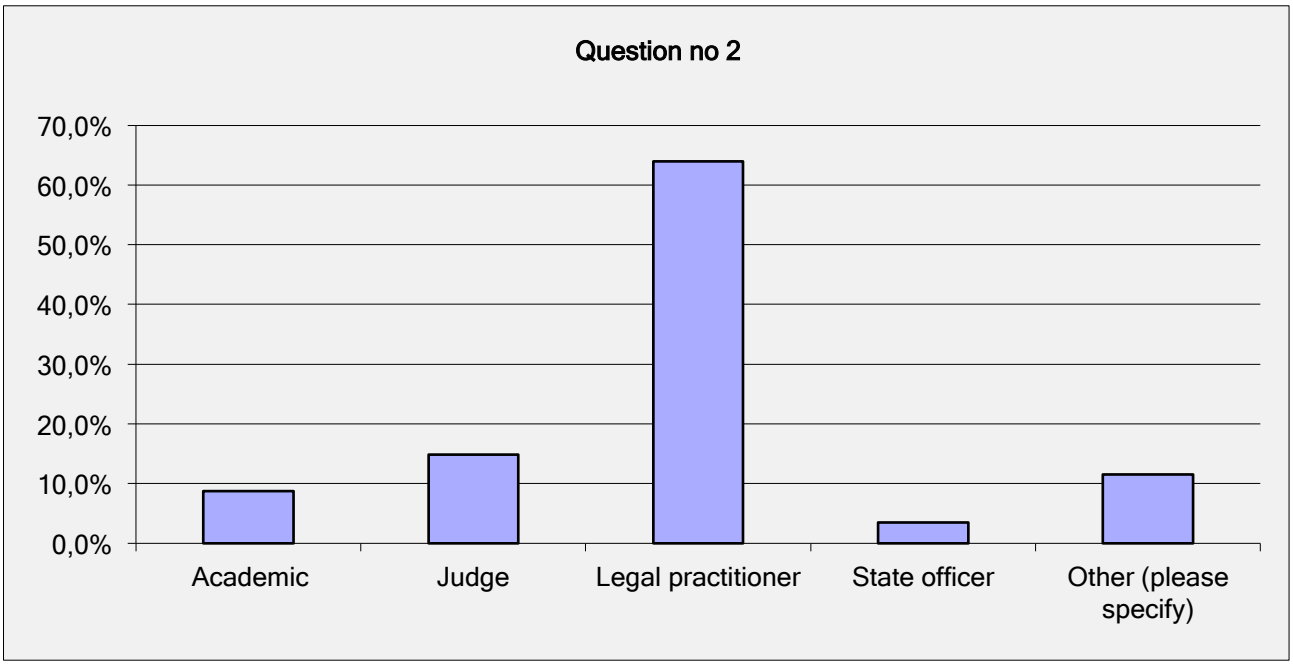
The participants therefore were mainly (but not only) coming from the Member States to which the partners of the project belong. Italy turned out to be the State that registered the highest participation, also because four out of 10 partners/associate partners of the project are Italian.

Question no 2: *Please indicate your profession*.

21 out of the 771 participants did not answer to this question. Among the 750 who did:

- 480 are legal practitioners (64%);
- 112 are judges (14,93%);
- 65 academics (8,67%);
- 26 State officers (3,47%);
- 86 ascribed themselves to other categories (11,47%). When asked to specify 1 participant declared to be teaching assistant, 1 mediator, 1 advisor/researcher, 4 social workers, 3 psychologists, 1 public notary, 1 junior researcher and 1 PhD[44].

[44] Once again, however, it is necessary to clarify that, when asked to specify their profession, 72 participants defined themselves as lawyers, barristers, attorneys, *avvocato* or *abogado*; 1 as judge, and 1 as Emeritus Professor. Therefore they could well be included in the legal practitioners, judges and academics categories respectively.



As to the profession, from the answers to the second question it is therefore possible to infer that the vast majority of participants are legal practitioners.

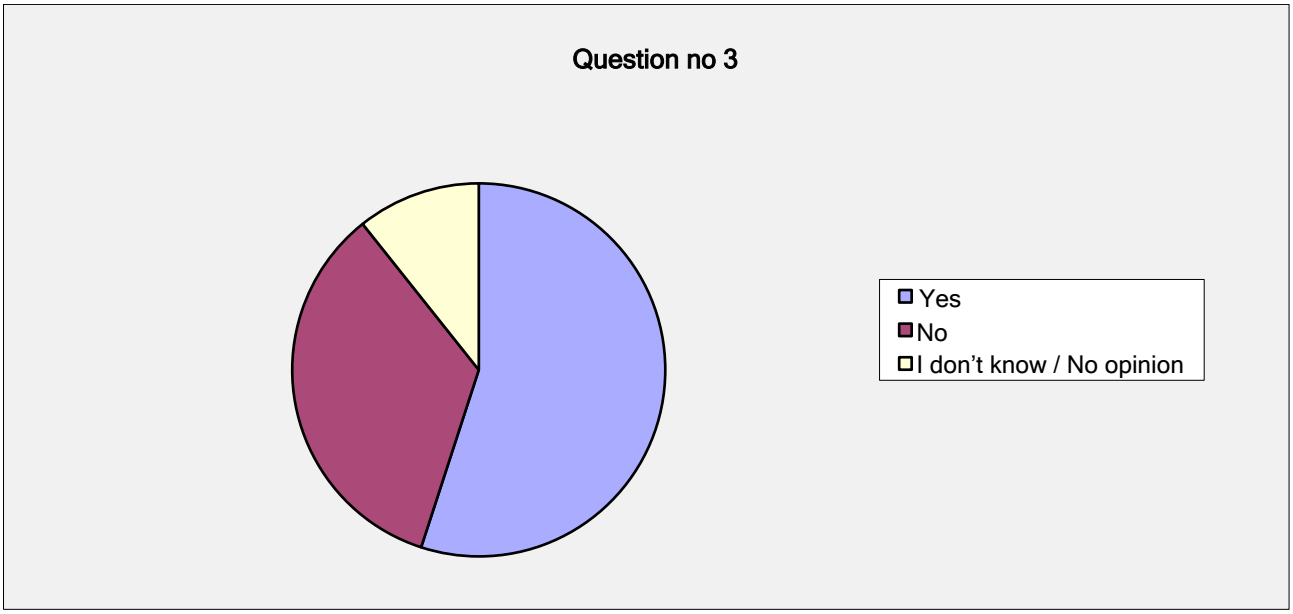
1. MATTERS RELATING TO JURISDICTION.

This was the widest of the six sections with 22 questions, whose outcomes are reported below.

Question no 3: *On the basis of your knowledge/experience, do you think that the current regime of jurisdiction in matrimonial matters (Art. 3 of Regulation No 2201/2003) is too claimant-friendly and favours the risk of forum shopping?*

631 participants out of 771 did not answer to this question. Among the 140 who did:

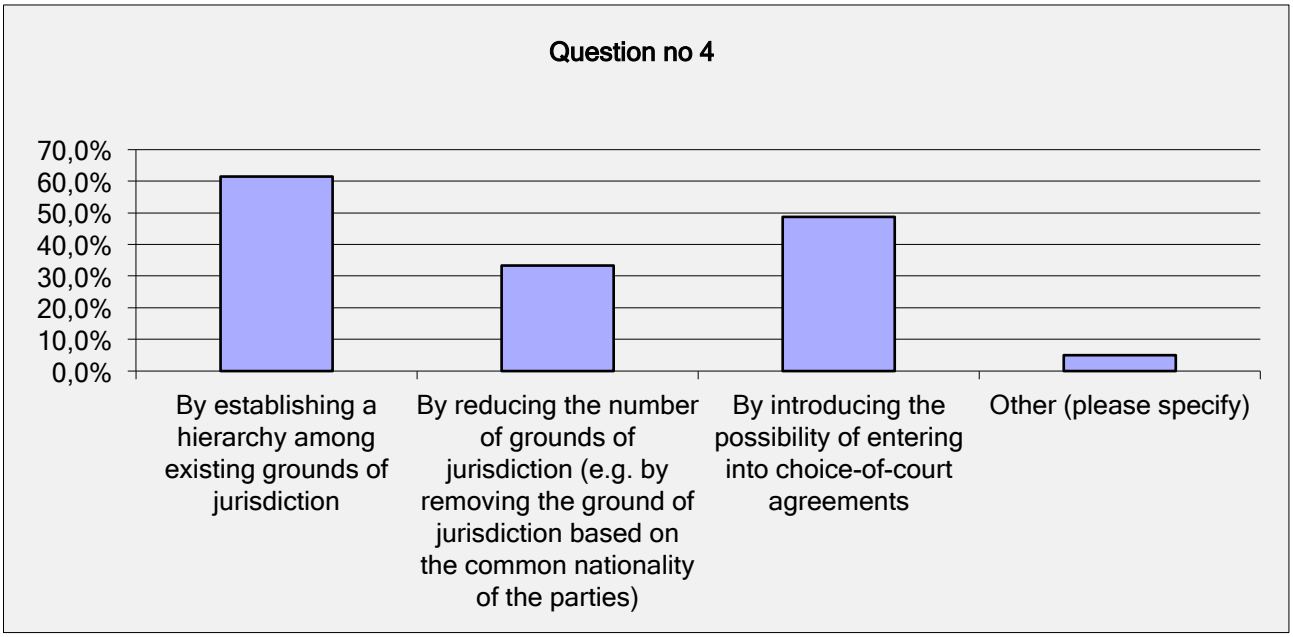
- 77 answered yes (55%);
- 48 answered no (34,29%);
- 15 had no opinion or did not know (10,71%).



Question no 4: *(If the answer to the previous question was in the positive), how could the provision be improved? (more than one answer is possible)*

693 participants out of 771 did not answer to this question. Among the 78[45] who did:

- 48 answered "by establishing a hierarchy among the existing grounds of jurisdiction (61,54%);
- 38 answered "by introducing the possibility of entering into choice-of-courts agreements" (48,72%);
- 26 answered "by reducing the number of grounds of jurisdiction (e.g. by removing the ground of jurisdiction based on the common nationality of the parties)" (33,33%);
- 4 answered "other" (5,13%). When asked to specify:
  - one participant suggested to eliminate the "first to lodge" rule;
  - one participant, not giving a different answer but only specifying one of the previous multiple answers, suggested that the hierarchy should be established between letter a) and b) of Art. 3 of the Regulation;
  - one participant pointed out that no changes are needed[46].



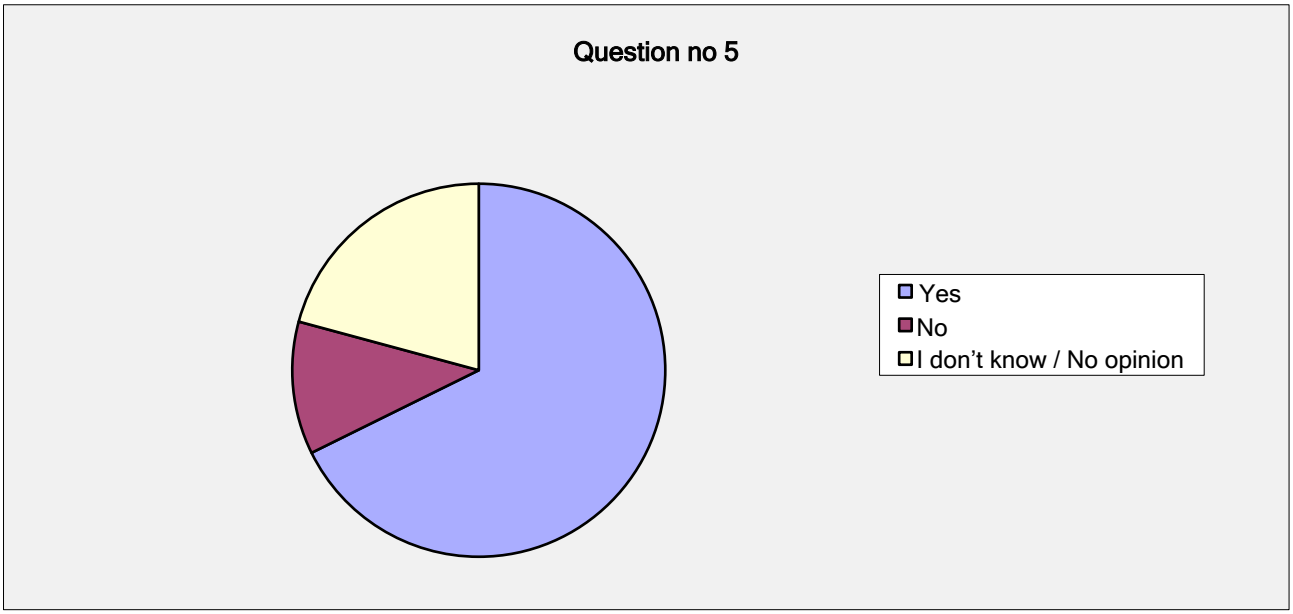
[45] It must be pointed out that this question implied a positive answer to question no 3, which nonetheless was given by 77 participants, not 78 as those who answered this one. Therefore, there might be one person who should not have answered to this question.

[46] This answer should imply a negative answer to question no 3, so this participant might be the additional one referred to in footnote no 45.

Question no 5: *Based on your knowledge/experience, are the rules on child abduction provided in Art. 11 of Regulation No 2201/2003 consistent with the 1980 Hague Convention on child abduction?*

641 participants out of 771 did not answer to this question. Among the 130 who did:

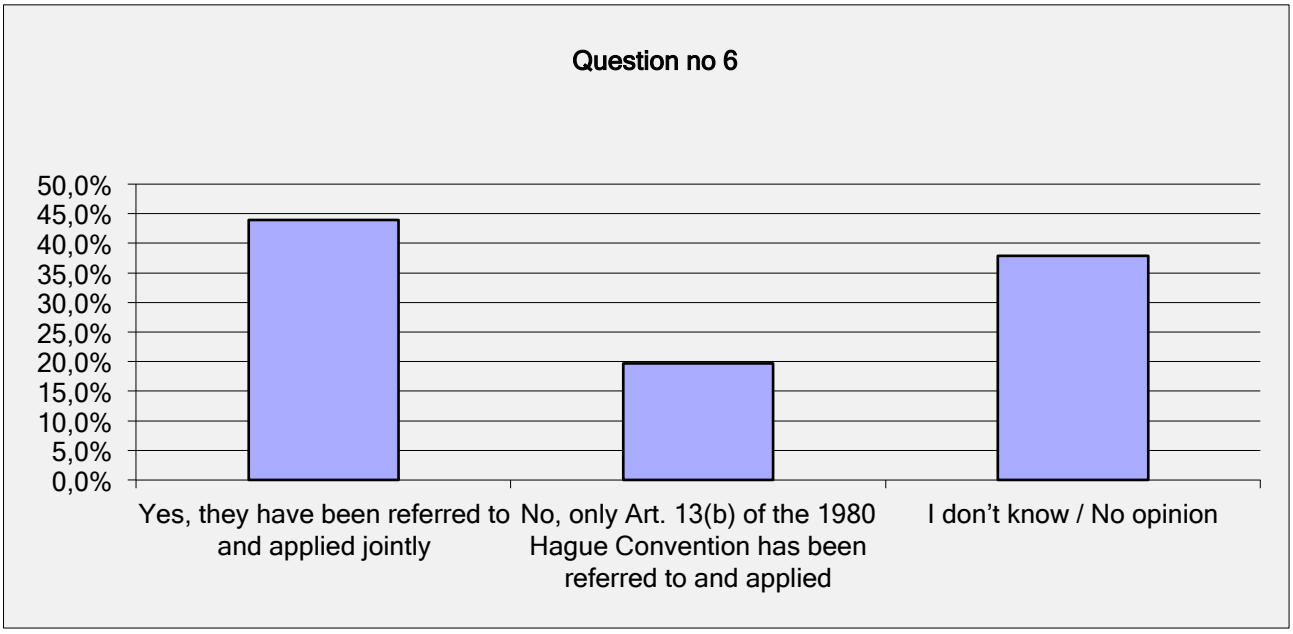
- 88 answered yes (67,69%);
- 27 had no opinion or did not know (20,77%);
- 15 answered no (11,54%).



Question no 6: *In intra-EU child abduction proceedings between Member States, the rule provided in Art. 11(4) of Regulation No 2201/2003 aims at reinforcing the effectiveness of the principle of immediate return of the child to the State of habitual residence by stating that a court cannot refuse to return a child on the basis of Art. 13(b) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his/her return. Based on your knowledge/experience, has Art. 11(4) been referred to and applied in conjunction with Art. 13(b) of the 1980 Hague Convention in practice? (more than one answer is possible in case you experienced different results in different cases)*

639 participants out of 771 did not answer to this question. Among the 132 who did:

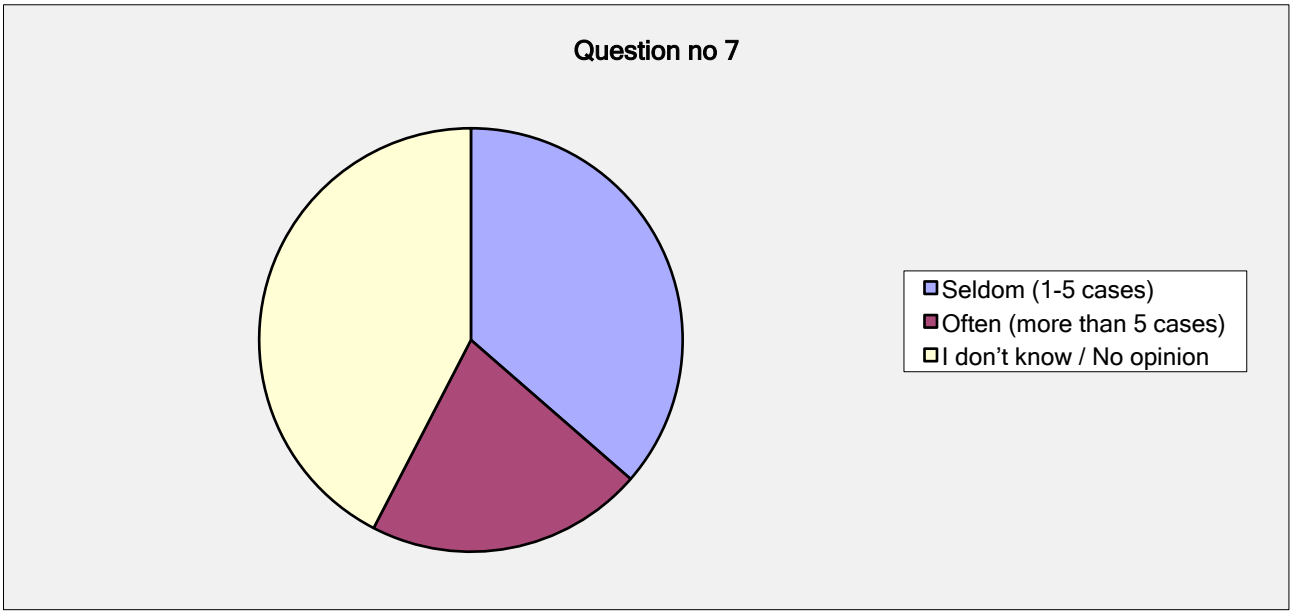
- 58 answered "yes, they have been referred to and applied jointly" (43,94%);
- 50 had no opinion or did not know (37,88%);
- 26 answered "no, only Art. 13(b) of the 1980 Hague Convention has been referred to and applied" (19,70%).



Question no 7: *Based on your knowledge/experience, since the Regulation No 2201/2003 became applicable (on 1 March 2005) how often has the specific procedure set forth in Art. 11(6-8) for non-return orders in accordance with Art. 13 of the 1980 Hague Convention been applied in practice?*

639 participants out of 771 did not answer to this question. Among the 132 who did:

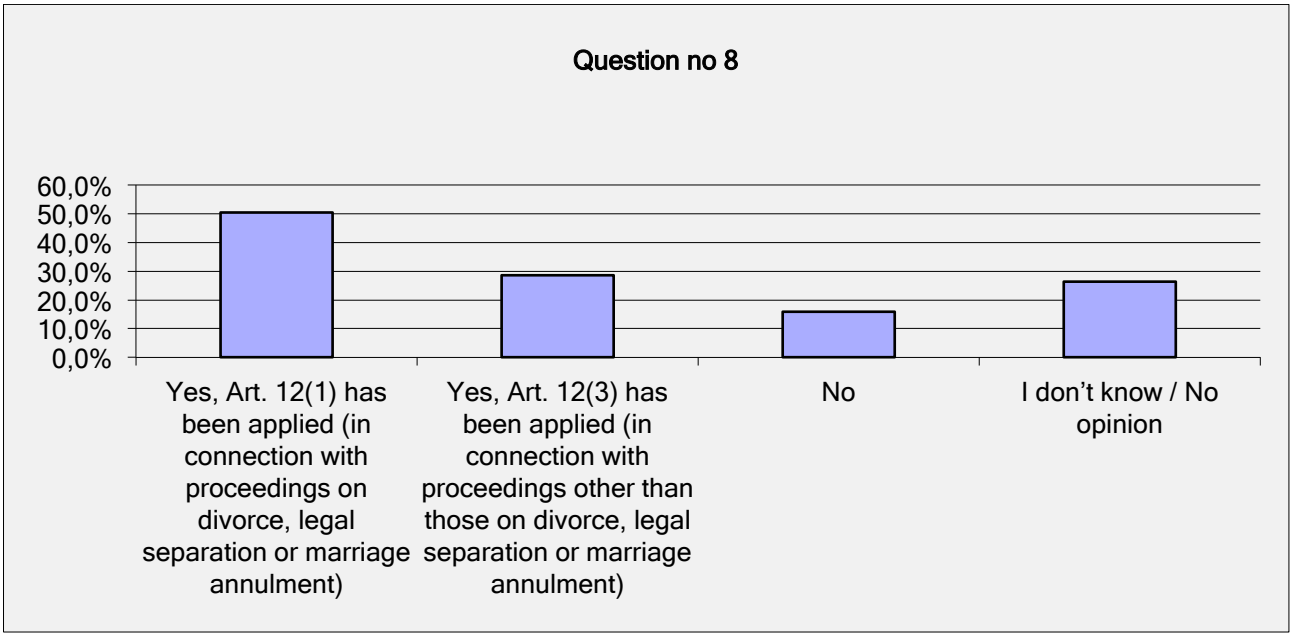
- 56 had no opinion or did not know (42,42%);
- 48 answered "seldom (1-5 cases)" (36,36%);
- 28 answered "often (more than 5 cases)" (21,21%).



Question no 8: *Based on your knowledge/experience, has the rule on prorogation of jurisdiction (Art. 12 of Regulation No 2201/2003) been referred to and applied in practice? (more than one answer is possible)*

638 participants out of 771 did not answer to this question. Among the 133 who did:

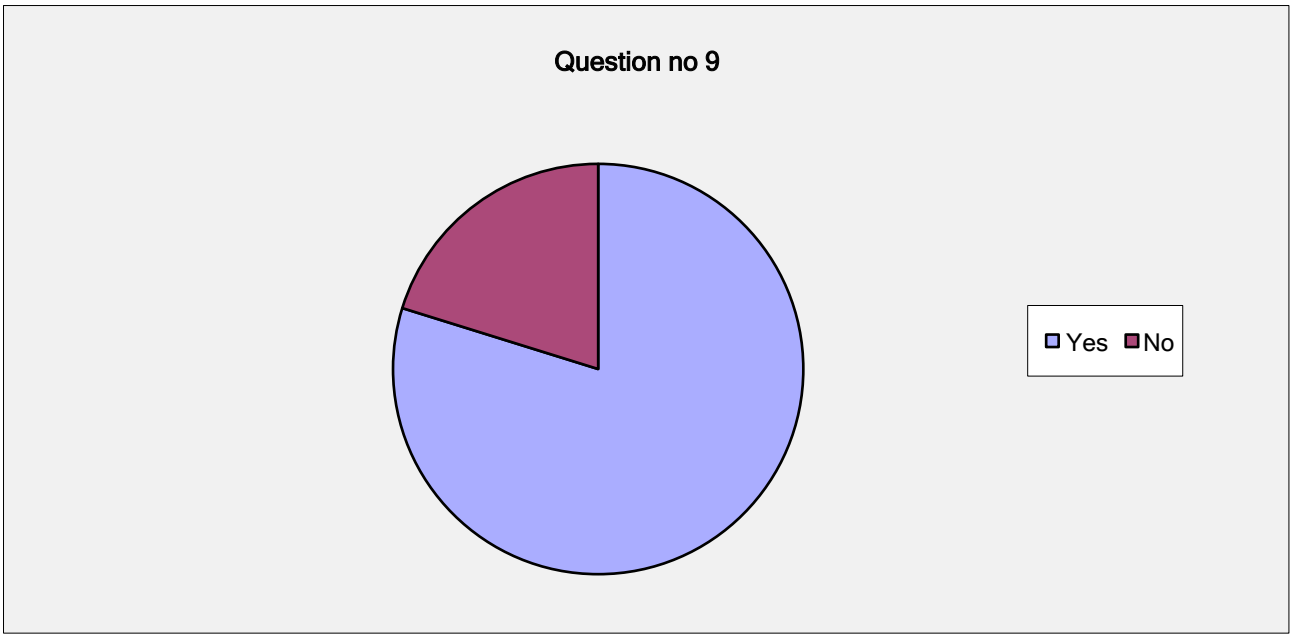
- 67 answered "yes, Art. 12(1) has been applied (in connection with proceedings on divorce, legal separation, marriage annulment" (50,38%);
- 38 answered "yes, Art. 12(3) has been applied (in connection with proceedings other than those on divorce, legal separation, marriage annulment" (28,57%);
- 35 had no opinion or did not know (26,32%);
- 21 answered no (15,79%).



Question no 9: *(If the answer to the previous question was in the positive), has Art. 12 been properly applied?*

687 participants out of 771 did not answer to this question. Among the 84[47] who did:

- 67 answered yes (79,76%);
- 17 answered no (20,24%).

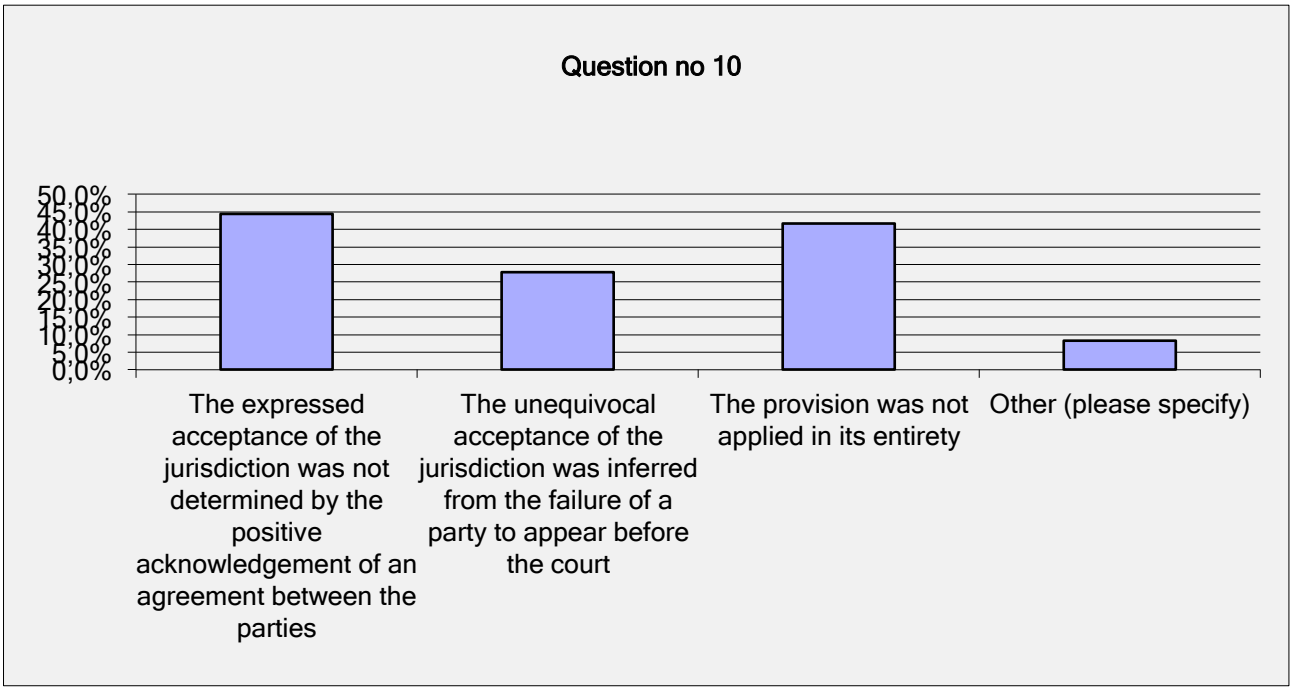


[47] It must be pointed out that the yes-answers to question no 8 were 105, and the same should have been the number of participants answering this question, instead they were only 84.

Question no 10: *(If the answer to the question no 8 was in the negative), which was the reason for the mis-application of the provision? (more than one answer is possible in case you experienced different results in different cases)*

735 participants out of 771 did not answer to this question. Among the 36[48] who did:

- 16 answered "the expressed acceptance of the jurisdiction was not determined by the positive acknowledgement of an agreement between the parties" (44,44%);
- 15 answered "the provision was not applied in its entirety" (41,67%);
- 10 answered "the unequivocal acceptance of the jurisdiction was inferred from the failure of a party to appear before the court" (27,78%);
- 3 answered "other" (8,33%). When asked to specify:
  - 1 participant underlined that the condition regarding the child's best interest is not assessed very often;
  - 1 participant generally underlined a scarce knowledge of EU legislation of domestic courts;
  - 1 last participant (presumably from the Czech Republic given its reference to Czech courts) also generally underlined that the conditions of Art. 12(1) are not dealt with.

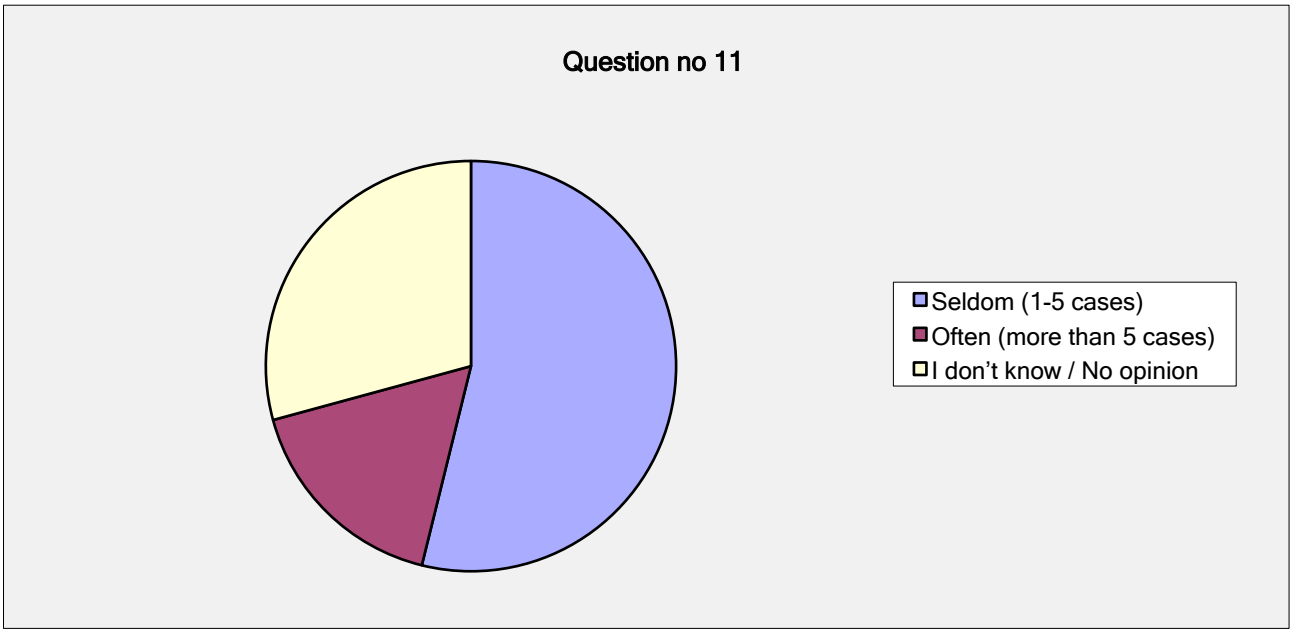


[48] It must be pointed out that the participants who answered no to question no 8 were 21, and the same should have been the number of participants answering this question, instead they were 36.

Question no 11: *In parental responsibility proceedings, Art. 15 of Regulation No 2201/2003 regulates the transfer of jurisdiction whenever the judicial authority of a different Member State appears to be more appropriate to adjudicate the case (forum conveniens). Based on your knowledge/experience, since the Regulation became applicable (on 1 March 2005) how often has this rule been referred to and applied in practical cases?*

641 participants out of 771 did not answer to this question. Among the 130 who did:

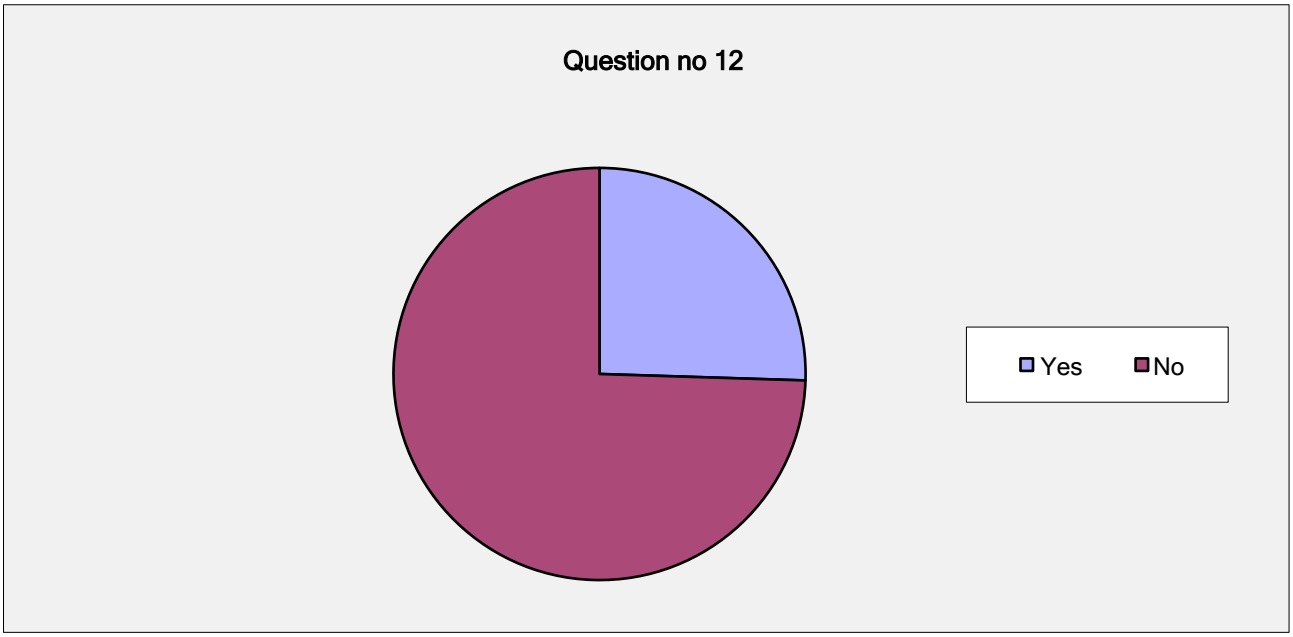
- 70 answered "seldom (1-5 cases)" (53,85%);
- 38 had no opinion or did not know (29,23%);
- 22 answered "often (more than 5 cases)" (16,92%).



Question no 12: *If you have any experience on cases of transfer of jurisdiction, has the rule at Art. 15(6), which grants courts the possibility to cooperate either directly or through central authorities, been applied? (e.g. exchanging or requesting information)*

677 participants out of 771 did not answer to this question. Among the 94 who did:

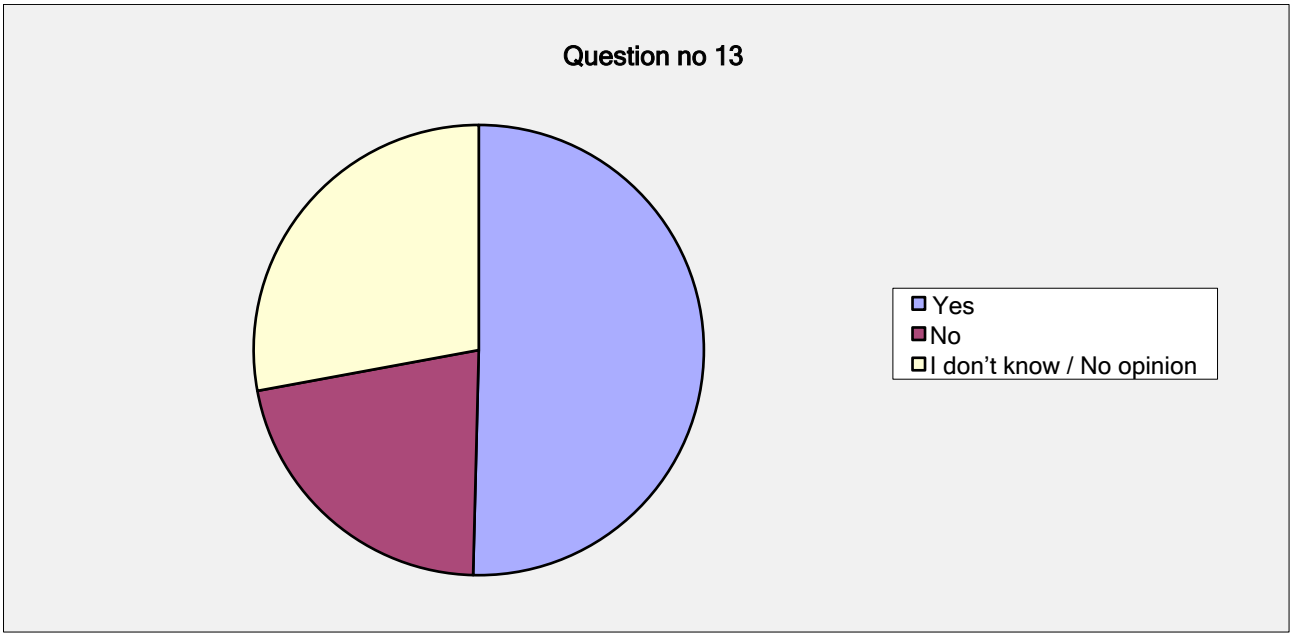
- 70 answered no (74,47%);
- 24 answered yes (25,53%). When asked to specify:
  - 9 participants stressed that domestic judges cooperate directly mainly through e-mails or liaison judges/offices or international judicial networks (one participant also referred to phone calls);
  - 5 participants indicated that the cooperation takes place mainly through Central Authorities, even though a sixth one, a judge from Spain, underlined that this means of cooperation proved to be ineffective;
  - 1 participant referred to a "rogatory commission".



Question no 13: *Do you think a provision similar to Art. 15 would prove helpful if extended to matrimonial matters? (e.g. in the case of same-sex spouses married abroad but citizens of and habitually resident in a Member State under whose law same-sex marriage is not recognised)*

642 participants out of 771 did not answer to this question. Among the 129 who did:

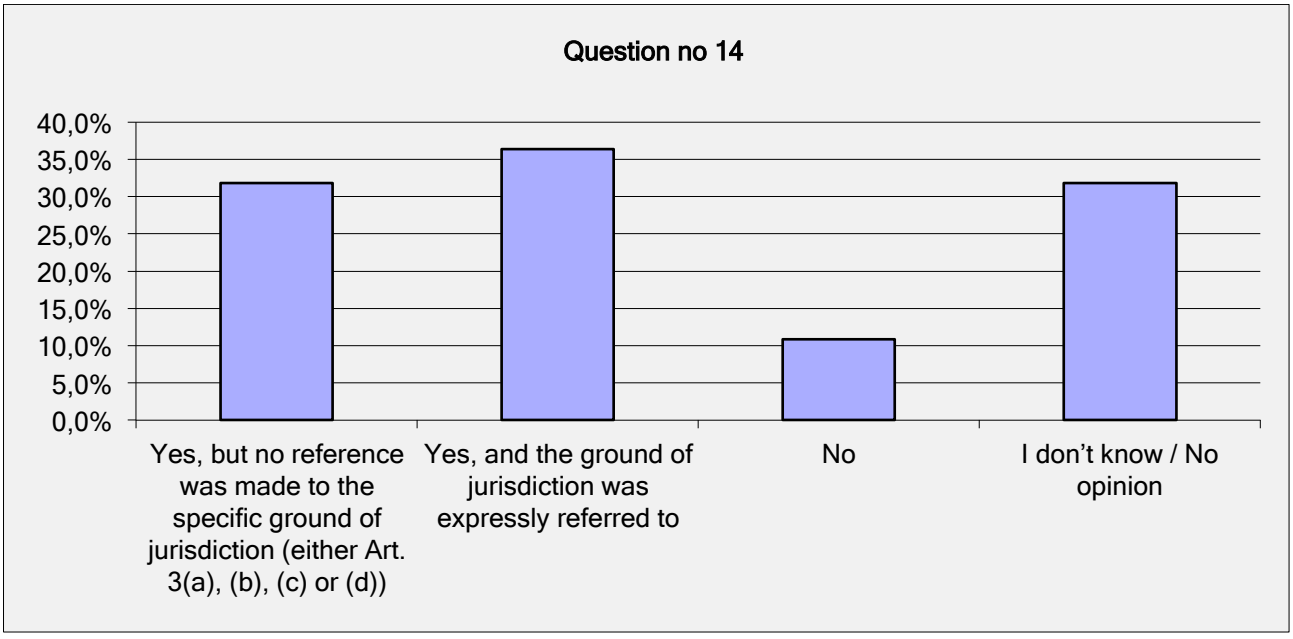
- 65 answered yes (50,39%). When asked to exemplify:
  - 6 participants expressed that it could be helpful in the case like that indicated in the question;
  - 1 participant argued that a choice-of-court provision would prove to be more helpful;
  - despite giving a positive answer, 1 participant is sceptical about the fact that a transfer of jurisdiction in a case like the one exemplified in the question could imply a sort of recognition of same-sex marriages in States whose legal order does not recognize them and, rather than a transfer of jurisdiction, opts for a prorogation of jurisdiction;
  - 1 participant would rather call for an amendment of Art. 7 of Brussels IIa Regulation so that so that Member States courts can revert to their national law should the foreign court not hear the case even though it had jurisdiction;
  - 1 participant that a such a provision would match with Art. 10 of Rome III Regulation.
- 36 had no opinion or did not know (27,91%);
- 28 answered no (21,71%).



Question no 14: *Based on your knowledge/experience, since Regulation No 4/2009 became applicable (on 18 June 2011) have the alternative grounds of jurisdiction provided at Art. 3 of such Regulation been properly referred to and applied in practice? (more than one answer is possible in case you experienced different results in different cases)*

642 participants out of 771 did not answer to this question. Among the 129 who did:

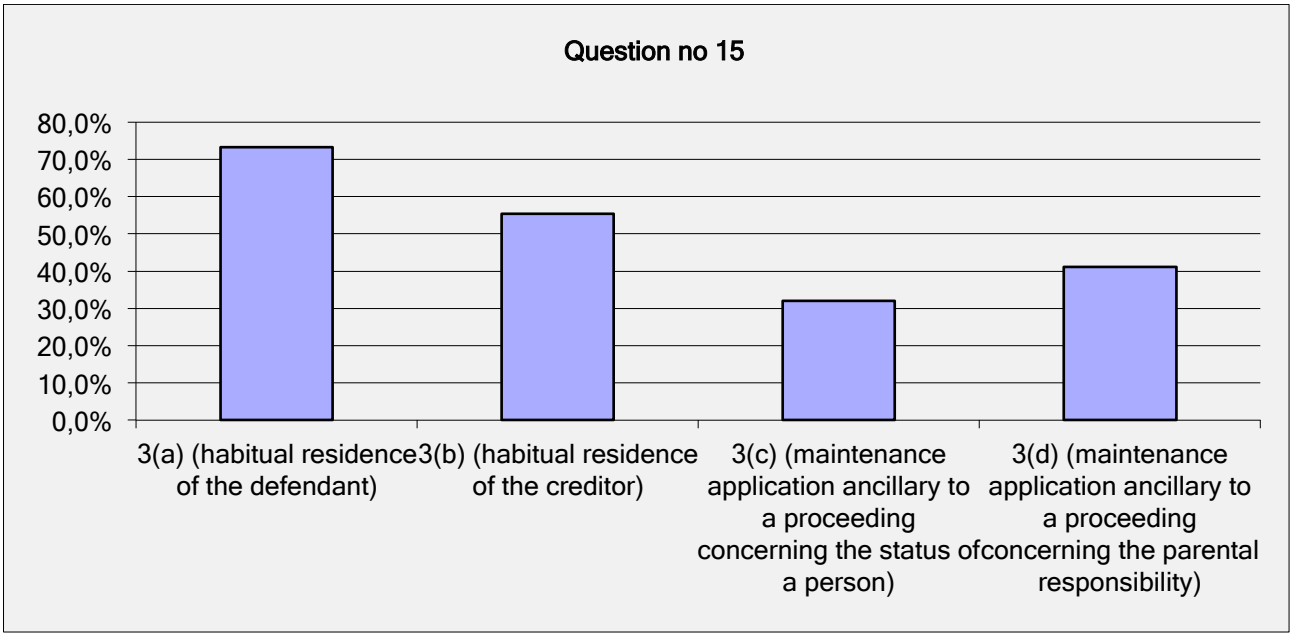
- 47 answered "Yes, and the ground of jurisdiction was expressly referred to" (36,43%);
- 41 answered "Yes, but no reference was made to the specific ground of jurisdiction (either Art. 3(a), (b), (c) or (d))" (31,78%);
- 41 had no opinion or did not know (31,78%);
- 14 answered no (10,85%).



Question no 15: *(If the answer to the previous question was in the positive, and the ground of jurisdiction was expressly referred to), which ground of jurisdiction was referred to? (more than one answer is possible in case you experienced different results in different cases)*

715 participants out of 771 did not answer to this question. Among the 56 who did:

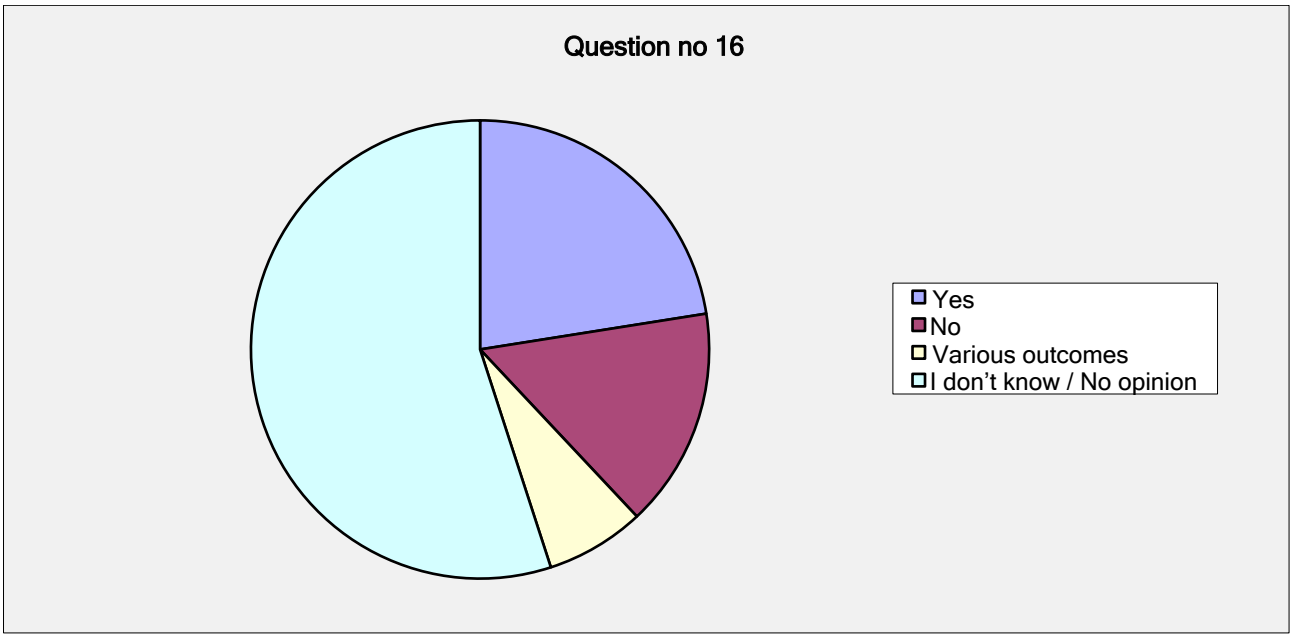
- 41 answered "3(a) (habitual residence of the defendant)" (73,21%);
- 31 answered "3(b) (habitual residence of the creditor)" (55,36%);
- 23 answered "3(d) (maintenance application ancillary to a proceeding concerning the parental responsibility)" (41,07%);
- 18 answered "3(c) (maintenance application ancillary to a proceeding concerning the status of a person)" (32,14%).



Question no 16: *In its judgment of 16 July 2015 (case C-184/14), the Court of Justice of the European Union clarified the interplay between Art. 3(c) and Art. 3(d) of Regulation No 4/2009. In particular, it held that when a court of a Member State is seised in a case involving the separation or dissolution of a marital link between the parents of a minor child, and at the same time a court of another Member State is seised in a case regarding parental responsibility relating to that same child, the application relating to maintenance concerning that child is considered ancillary only to the proceedings concerning parental responsibility within the meaning of Art. 3(d). Based on your knowledge/experience, have national courts been so far compliant with the CJEU ruling on the interplay between Art. 3(c) and Art. 3(d)?*

642 participants out of 771 did not answer to this question. Among the 129 who did:

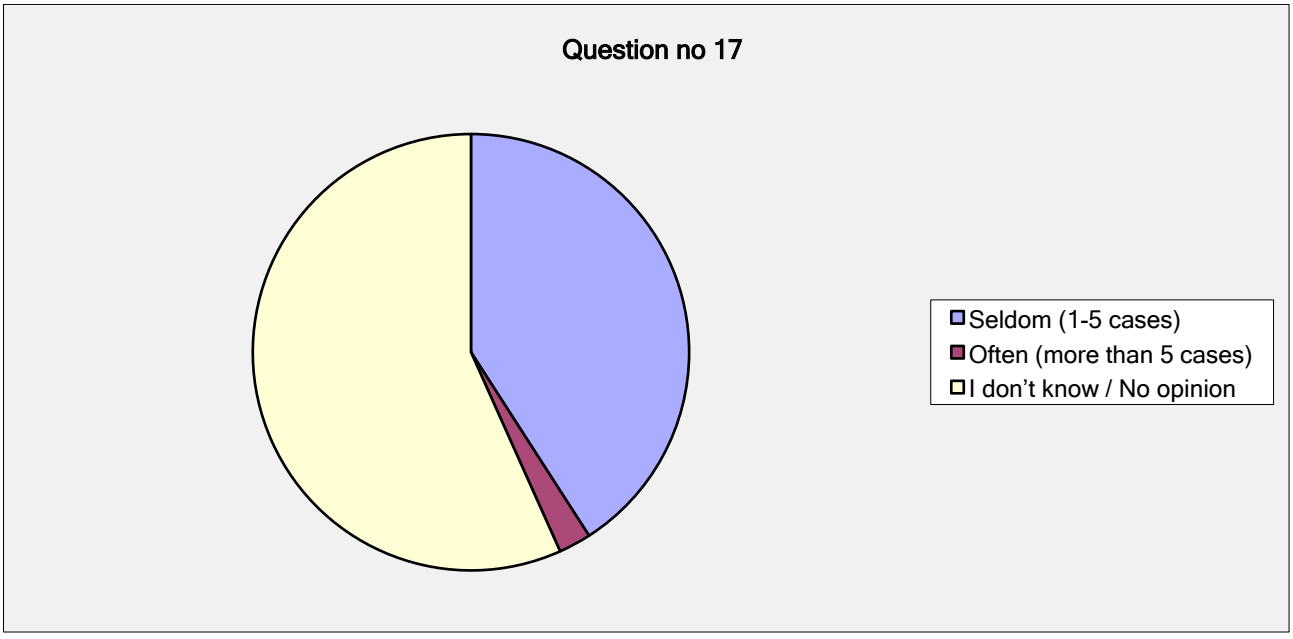
- 71 had no opinion or did not know (55,04%);
- 29 answered yes (22,48%);
- 20 answered no (15,50%) and 9 answered "various outcomes" (6,98%). When asked to exemplify:
  - 2 participants argued that this case was the only one where such a question arose and that the domestic courts have not been called to deal with the interplay of such provisions;
  - 1 participant generally argued that Spanish courts are not aware of the ECJ case-law.



Question no 17: *In maintenance proceedings, Art. 7 of Regulation No 4/2009 establishes the rule on forum necessitatis according to which, shouldn't the courts of any Member State have jurisdiction pursuant to the Regulation, the courts of a Member State may, on an exceptional basis, hear the case if the proceeding cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected. Based on your knowledge/experience, since the Regulation became applicable (on 18 June 2011) how often has this rule been referred to and applied in practical cases?*

644 participants out of 771 did not answer to this question. Among the 127 who did:

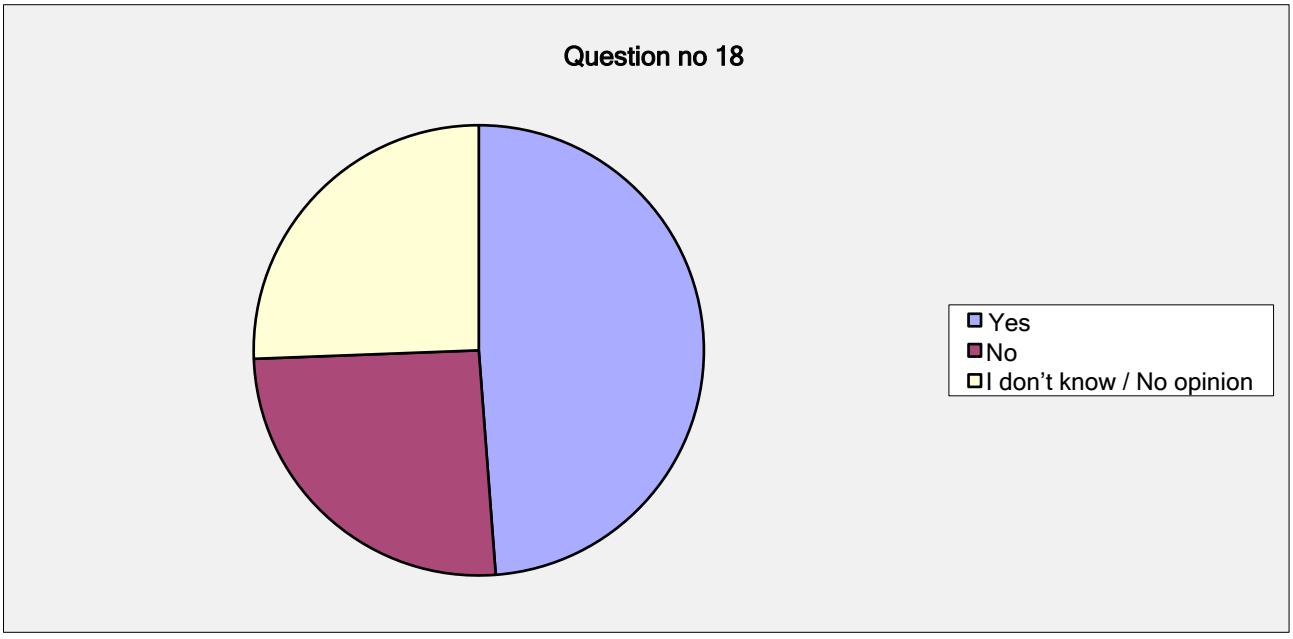
- 72 had no opinion or did not know (56,69%);
- 52 answered "Seldom (1-5 cases)" (40,94%);
- 3 answered "Often (more than 5 cases)" (2,36%).



Question no 18: *Based on your knowledge/experience, do you think that a provision regulating forum necessitatis in the context of Regulation No 2201/2003 would prove helpful to ensure that a court of a Member State has jurisdiction over proceedings that cannot reasonably be brought or conducted in a third State?*

642 participants out of 771 did not answer to this question. Among the 129 who did:

- 63 answered yes (48,84%). When asked to exemplify:
  - 4 participants argued that this could be better than present Art. 7 of Brussels IIa Regulation, which could be replaced because maintaining both could ingenerate confusion about their interplay or hierarchy;
  - 1 participant argued that such a provision should be used as a last resort following the application of the residual jurisdiction provision of Art. 7 of Brussels IIa Regulation;
  - 1 participant suggested that a forum necessitatis could be used for same-sex marriages;
  - 1 participant suggested that a forum necessitatis could be used should the third State be hit by sudden events.
- 33 answered no (25,58%);
- 33 had no opinion or did not know (25,58%).



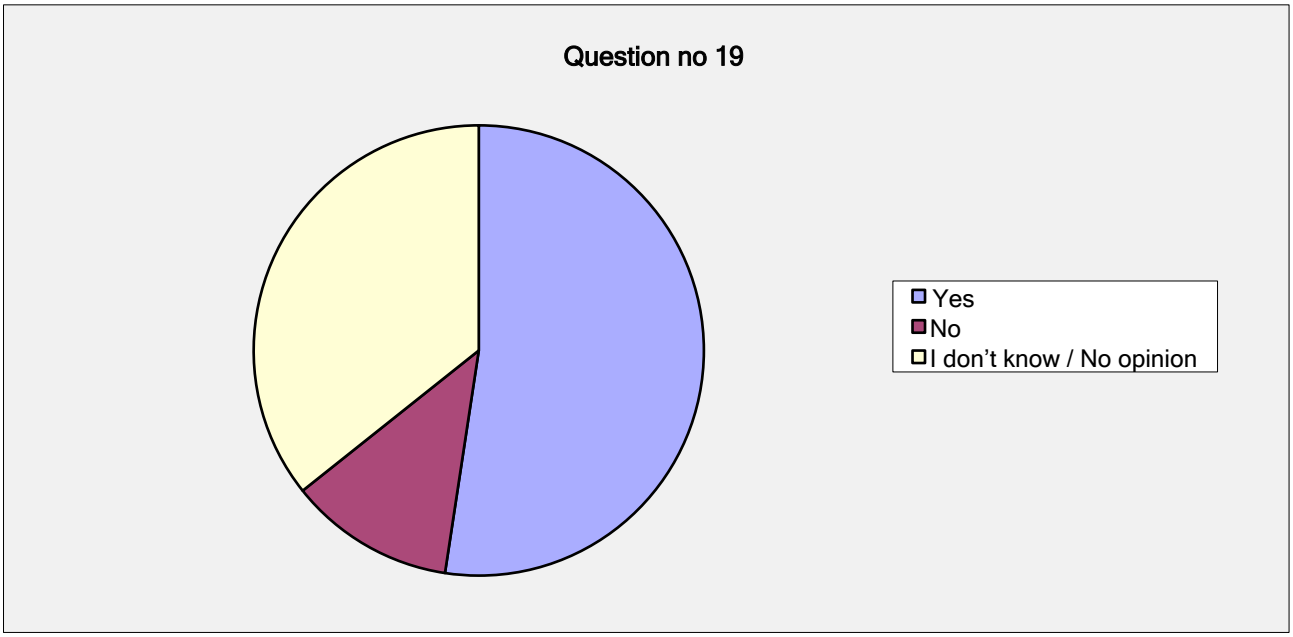
Question no 19: *Do you consider the measures provided by Regulation No 4/2009 sufficient to ensure the effective recovery of maintenance claims in cross-border situations and eventually facilitate the free movement of persons within the European Union as stated by Recital 45 of the Regulation?*

645 participants out of 771 did not answer to this question. Among the 126 who did:

- 66 answered yes (52,38%);
- 45 had no opinion or did not know (35,71%);
- 15 answered no (11,90%).

When asked to exemplify, there were reasons on both sides:

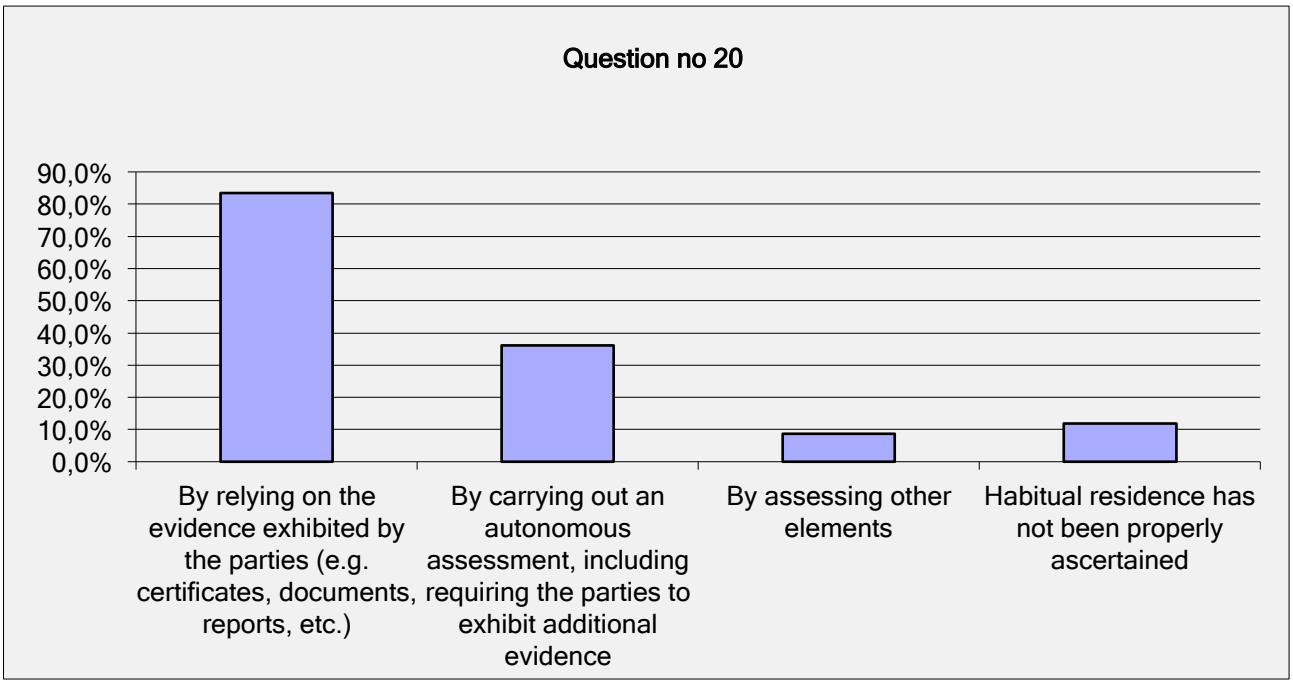
- according to 8 participants the Maintenance Regulation is a good instrument which made recovery claims easier and more effective, even though some criticism can be raised in relation to recognition and enforcement;
- 1 participant argued that the recognition model of Arts. 17-22 should be extend to other EU regulations on family law;
- according to 2 participants, the Regulation did not significantly improve the situation in comparison to the previous international conventions also because its effectiveness mostly depends on the well-functioning of the Central Authorities, which in many cases cannot count on enough resources and staff.



Question no 20: *In family law proceedings, based on your knowledge/experience, how has the actual habitual residence of a party (spouses, children) been ascertained in practice? (more than one answer is possible)*

644 participants out of 771 did not answer to this question. Among the 127 who did:

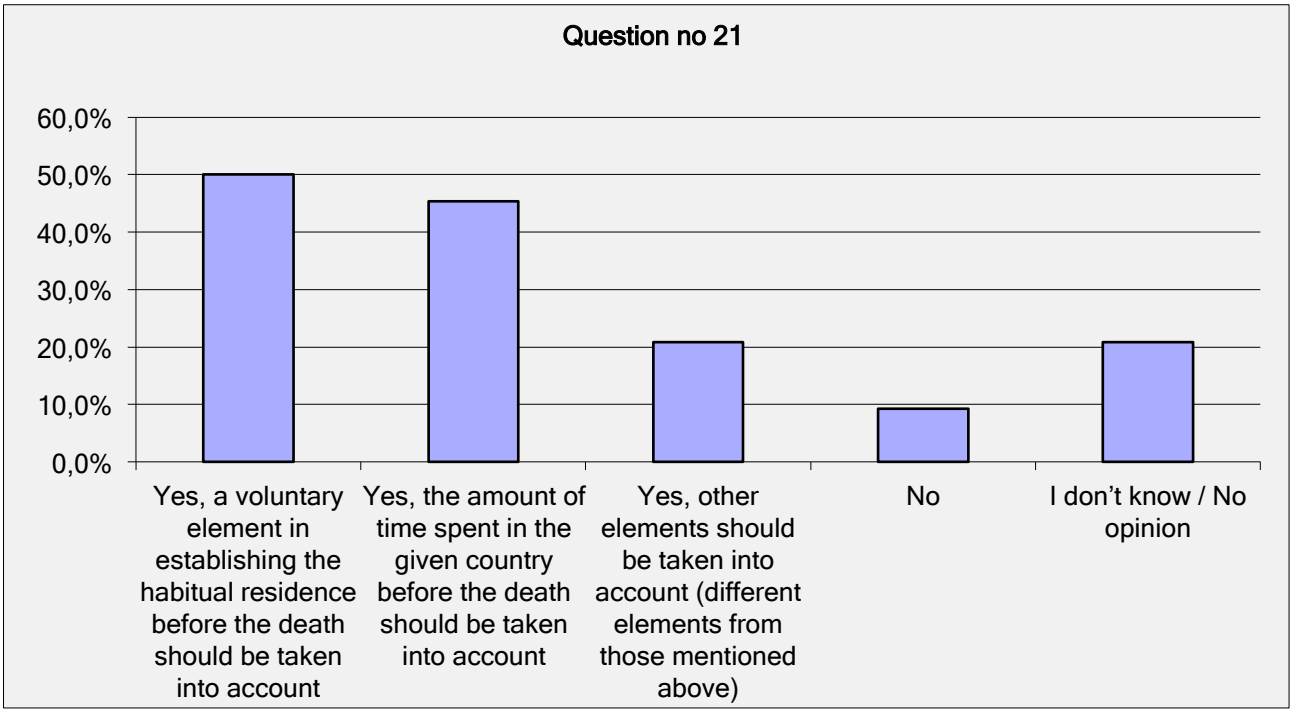
- 106 answered "By relying on the evidence exhibited by the parties (e.g. certificates, documents, reports, etc.)" (83,46%);
- 46 answered "By carrying out an autonomous assessment, including requiring the parties to exhibit additional evidence" (36,22%);
- 15 answered that "Habitual residence has not been properly ascertained" (11,81%);
- 11 answered "By assessing other elements" (8,66%). When asked to exemplify 2 participants indicated: declarations of the parties if they agree on it; statement of parents, wishes of children, criteria contained in both national and ECJ case-law such as language spoken, working place, school environment, sport activities; the conclusions of other courts concerning the same person.



Question no 21: *Based on your knowledge/experience, would the notion of habitual residence require a specific interpretation under Regulation No 650/2012? (e.g. where an elderly person was moved by potential heirs to another country at the sole purpose of establishing jurisdiction and applicable law) (more than one answer is possible)*

641 participants out of 771 did not answer to this question. Among the 130 who did:

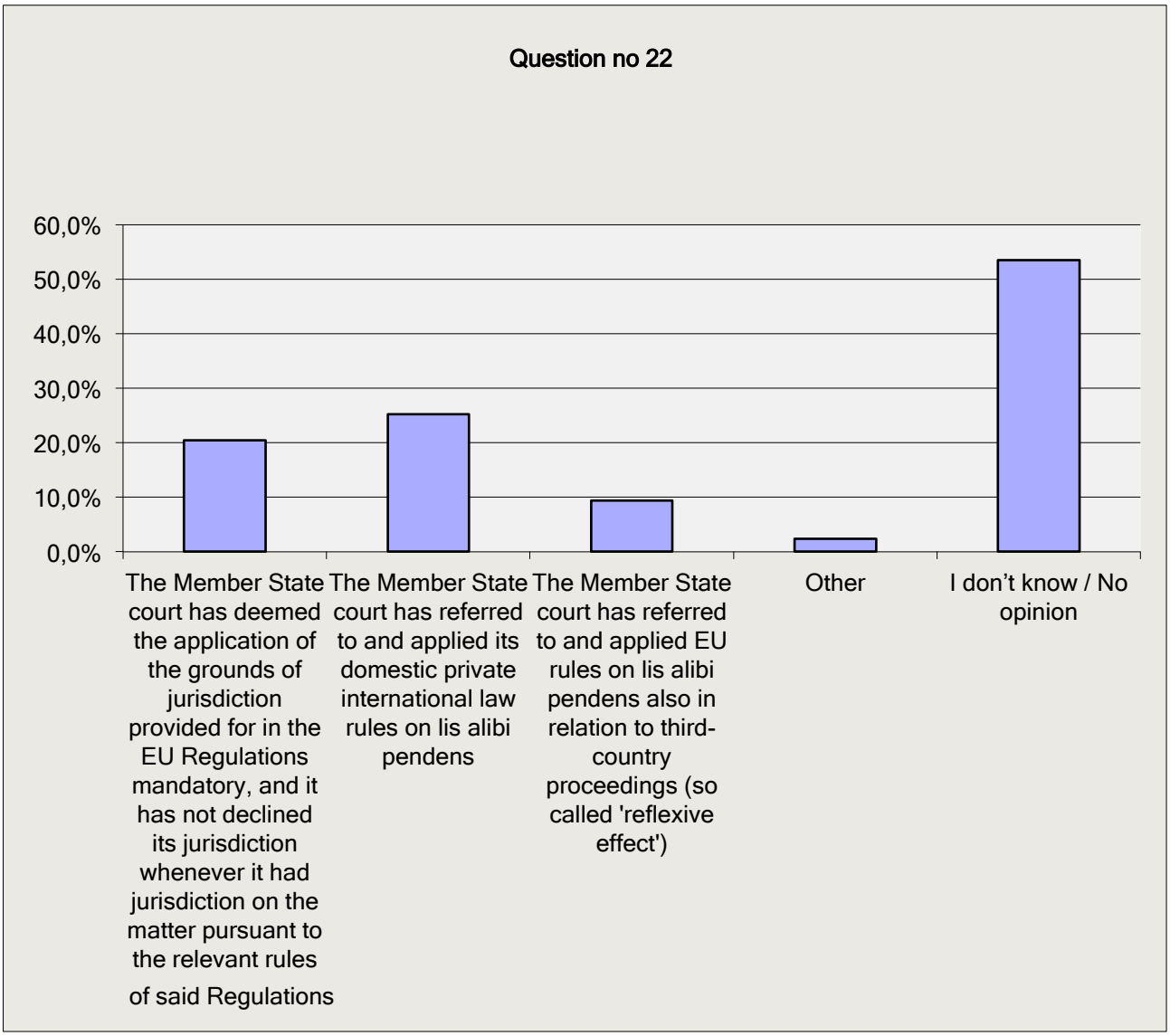
- 65 answered "Yes, a voluntary element in establishing the habitual residence before the death should be taken into account" (50%);
- 59 answered "Yes, the amount of time spent in the given country before the death should be taken into account" (45,38%);
- 27 answered "Yes, other elements should be taken into account (different elements from those mentioned above)" (20,77%). When asked to exemplify 10 participants indicated: social and family relations, nationality of the person, duration and reasons of the residence, reasons for the change of residence, location of assets, intention and voluntary elements of the deceased, all the circumstances of the case (moreover, among these 10, 1 participant referred to the 2000 Hague Convention on the Protection of Adults).
- 27 had no opinion or did not know (20,77%);
- 12 answered no (9,23%).



Question no 22: *Regarding lis alibi pendens, based on your knowledge/experience, how has the issue of coordination of proceedings on the same (or connected) matter pending before a non-Member State court been assessed and ruled upon in practice (lacking any express provision in the EU Regulations on family matters)? (more than one answer is possible in case you experienced different results in different cases)*

644 participants out of 771 did not answer to this question. Among the 127 who did:

- 68 had no opinion or did not know (53,54%);
- 32 answered that "The Member State court has referred to and applied its domestic private international law rules on lis alibi pendens" (25,20%);
- 26 answered that "The Member State court has deemed the application of the grounds of jurisdiction provided for in the EU Regulations mandatory, and it has not declined its jurisdiction whenever it had jurisdiction on the matter pursuant to the relevant rules of said Regulations" (20,47%);
- 12 answered that "The Member State court has referred to and applied EU rules on lis alibi pendens also in relation to third-country proceedings (so called 'reflexive effect')" (9,45%);
- 3 answered "other" (2,36%), even though 1 of these 3 who exemplified its answer could have been ascribed to the second indent.


Question no 22
60,0%
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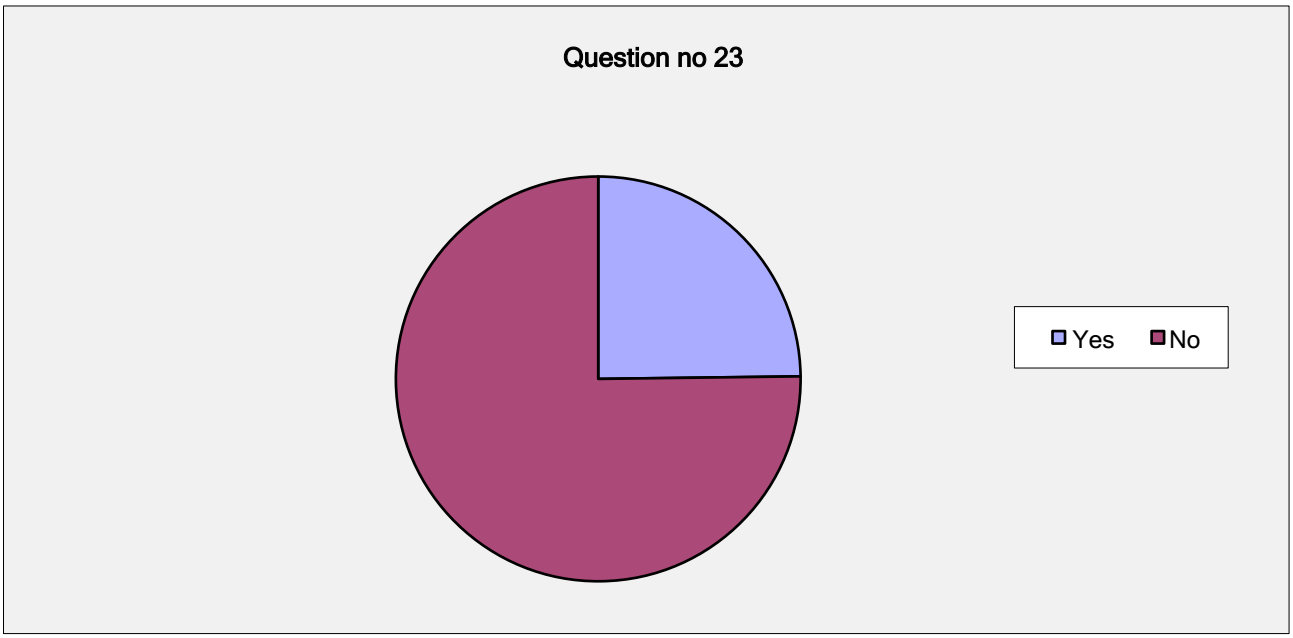
The Member State court has deemed the application of the grounds of jurisdiction provided for in the EU Regulations mandatory, and it has not declined its jurisdiction whenever it had jurisdiction on the matter pursuant to the relevant rules of said Regulations
The Member State court has referred to and applied its domestic private international law rules on lis alibi pendens
The Member State court has referred to and applied EU rules on lis alibi pendens also in relation to third-country proceedings (so called 'reflexive effect')
Other
I don't know / No opinion

Question no 23: *Regarding choice of court agreements under Art. 4 of Regulation No 4/2009, based on your knowledge/experience, have the parties to a maintenance proceedings ever agreed on the jurisdiction of a specific Member State/court?*

658 participants out of 771 did not answer to this question. Among the 113 who did:

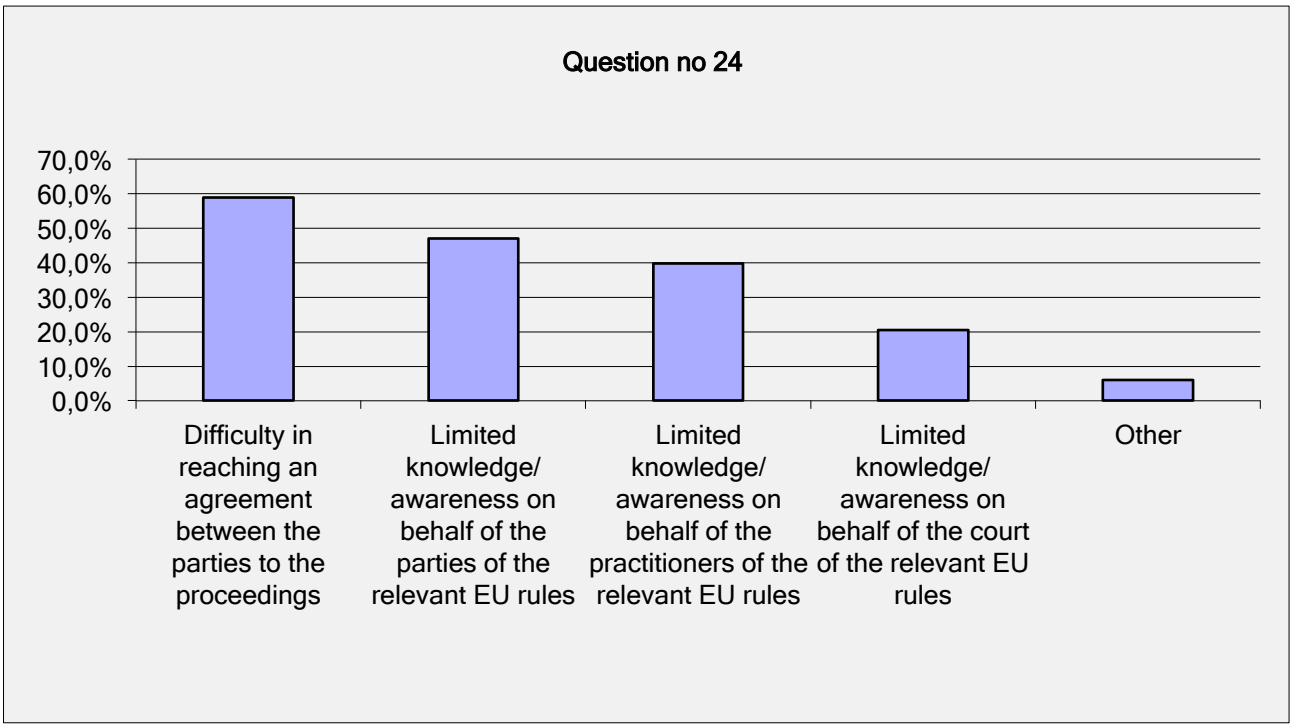
- 85 answered no (75,22%)
- 28 answered yes (24,78%). When asked to exemplify 7 participants indicated that it happened by means of pre-marital or post-marital agreements or that the choice is made in the documents submitted by the parties during the proceedings.



Question no 24: *(If the answer to the previous question was 'no'), could you indicate the reasons for that? (more than one answer is possible)*

688 participants out of 771 did not answer to this question. Among the 83[49] who did:

- 49 answered "Difficulty in reaching an agreement between the parties to the proceedings" (59,04%);
- 39 answered "Limited knowledge/awareness on behalf of the parties of the relevant EU rules" (46,99%);
- 33 answered "Limited knowledge/awareness on behalf of the practitioners of the relevant EU rules" (39,76%);
- 17 answered "Limited knowledge/awareness on behalf of the court of the relevant EU rules" (20,48%);
- 5 answered "other" (6,02%). When asked to exemplify 2 participants indicated: the limited scope of application of Art. 4, which does not apply to maintenance obligations towards a child under the age of 18; the rush to the court.

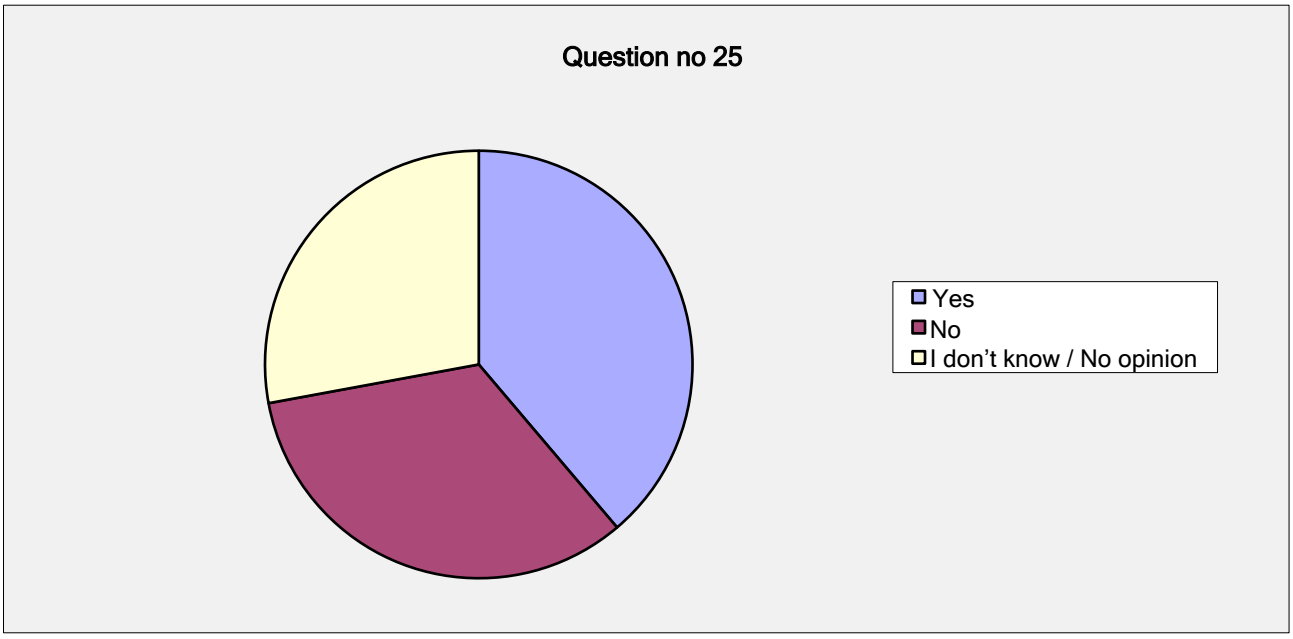


[49] It must be pointed out that the participants who answered "no" to question no 23 were 85, and the same should have been the number of participants that should have answered this question, whereas they were 83.

Question no 25: *Do you consider jurisdiction rules to create incentives for abusive litigation tactics under the current EU PIL framework in family law matters?*

642 participants out of 771 did not answer to this question. Among the 129 who did:

- 50 answered yes (38,76%). When asked to exemplify 13 participants indicated that high number of alternative grounds of jurisdiction of Brussels IIa Regulation and the lis pendens rules are an incentive to forum shopping and forum running and favour the economically stronger party; the limited application of Rome III Regulation which does not counterbalance the forum shopping made it possible by Brussels IIa Regulations in family matters.
- 43 answered no (33,33%);
- 36 had no opinion or did not know (27,91%).



Conclusions of the section "Matters relating to Jurisdiction"

This section appears to be the one that registered the highest awareness between the practitioners participating in the survey who, as general trends and shared opinions, underlined:

- the need of establishing a hierarchy between the grounds of jurisdiction in matrimonial matters in order to reduce the risk of forum shopping. In fact, according to questions no 3 (which is the one that registered the highest response rate) and no 25, the present system is too claimant-friendly and creates incentives for abusive litigation (questions no 3, 4 and 25);

- a higher degree of uncertainty (also in the light of the number of no-opinion answers) arises within child abduction proceedings rather than matrimonial matters, especially in relation to the interplay between the Brussels IIa Regulation and the 1980 Hague Convention. In general practitioners appear to be less familiar with the provisions of the Regulation on child abduction also given the more limited number of cases they had the chance to deal with (questions no 6-7);
- a positive feedback is registered in relation to the prorogation of jurisdiction rule laid down in Art. 12 of Brussels IIa Regulation, both taking into account the number of cases dealt with by the participants and its proper application given by national courts. In the limited number of cases of mis-application of the provision (very few given that question no 10 is the one that registered least answers), the main cause had to be found in the interpretation of the unequivocal acceptance of the parties to the prorogation of jurisdiction (questions no 8-10);
- very few cases were registered on the transfer of jurisdiction of Art. 15 and it was pointed out that the cooperation mechanisms between courts laid down in Art. 15(6) were rarely applied. Besides the vast majority of the participants who answered question no 13 agreed on the possibility of extending Art. 15 to matrimonial matters for the case of same-sex spouses married abroad but citizens of and habitually resident in a Member State under whose law same-sex marriage is not recognised (questions no 11-13);
- a good feedback is registered also in relation to the effectiveness of recovery descending from the Maintenance Regulation and in relation to proper application of its grounds of jurisdiction, with the most referred to being Art. 3(a) (questions no 14-15 and 19);
- the ECJ case *A v B*, C-184/14 and the forum necessitatis of Art. 7 appear to have a very limited practical relevance, even though some participants said that a provision similar to Art. 7 of the Maintenance Regulation could be also introduced in the Brussels IIa Regulation replacing the residual jurisdiction rule (Art. 7 of Regulation 2201/2003) (questions no 16-18);
- as to the way of ascertaining the habitual residence, the most frequent way is the evidence exhibited by the parties directly or upon request of the judge. Besides, with specific reference to Regulation 650/2012, particular consideration should be paid to the intention of the deceased (question no 21);

- as to the lis alibi pendens with third States, many participants did not have a specific opinion on the matter. The majority of those who answered said that in these cases domestic courts either applied their national p.i.l. rules to determine the jurisdiction or directly retained their jurisdiction on the basis of the Brussels IIa Regulation without considering the proceedings pending in the non-Member State (question no 22);
- very limited recourse to choice-of-court agreements mainly due to the limited knowledge of this legal tool and the difficulty of reaching an agreement between separating/divorcing partners (questions no 23-24).

2. MATTERS RELATING TO APPLICABLE LAW.

This section was made up of 3 questions, whose outcomes are reported below.

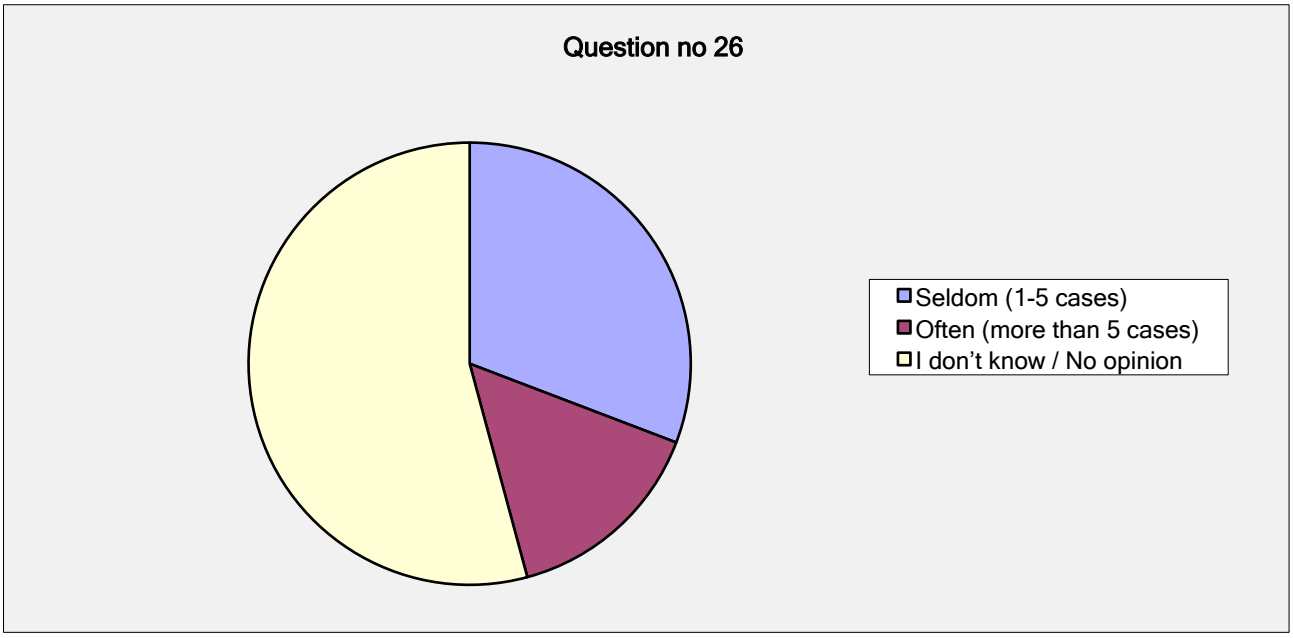
Question no 26: *Based on your knowledge/experience, since Regulation No 1259/2010 became applicable (on 21 June 2012) how often have choice-of-law agreements been reached during the course of the proceedings pursuant to Art. 5(3) of the Regulation?*

651 participants out of 771 did not answer to this question. Among the 120 who did:

- 65 had no opinion or did not know (54,17%);
- 37 answered "Seldom (1-5 cases)" (30,83%);
- 18 answered "Often (more than 5 cases)" (15%).

When asked on how the parties were encouraged to reach the choice-of-law agreement in these cases (e.g. voluntarily, upon the judge's request, etc.):

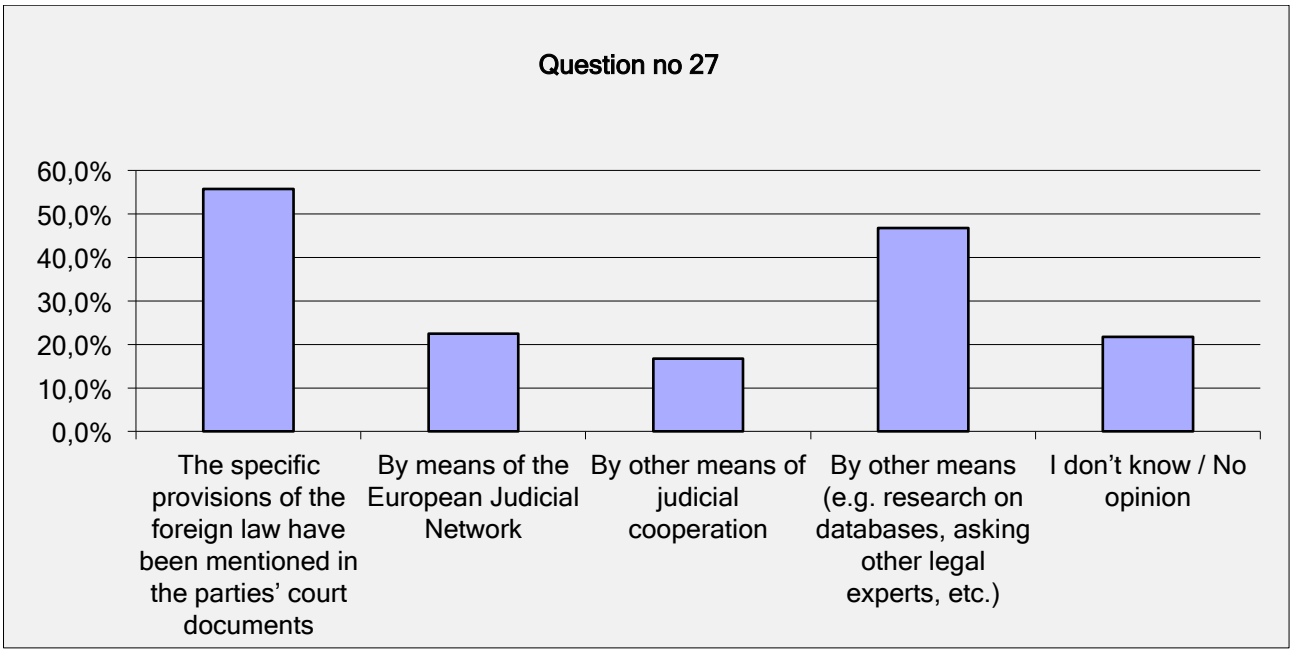
- 18 participants indicated that the agreement was made during the proceedings voluntarily or upon the judge's request almost in equal part;
- 2 participants indicated that the agreement was made by means of pre-nuptial agreements;
- 1 participant indicated that it also occurred upon the lawyer's encouragement and through family mediation.



Question no 27: *In family law proceedings, based on your knowledge/experience, how has the court ascertained the substantial provisions of the foreign law (especially those of third States) applicable in the specific case? (more than one answer is possible)*

651 participants out of 771 did not answer to this question. Among the 120 who did:

- 67 answered that "The specific provisions of the foreign law have been mentioned in the parties' court documents" (55,83%);
- 56 answered "By other means" (46,67%). When asked to exemplify:
  - 8 indicated by means of databases/research on the Internet;
  - 5 indicated by means of a legal expert/counsellor of the relevant country;
  - 2 indicated the legal literature;
  - 1 referred to the translations of the foreign law exhibited by the parties;
  - with specific reference to the English legal system, 1 indicated the support of expert evidence while another one specified that English courts dot not generally apply the foreign law.
- 27 answered "By means of the European Judicial Network" (22,50%);
- 26 had no opinion or did not know (21,67%);
- 20 answered "By other means of judicial cooperation" (16,67%).



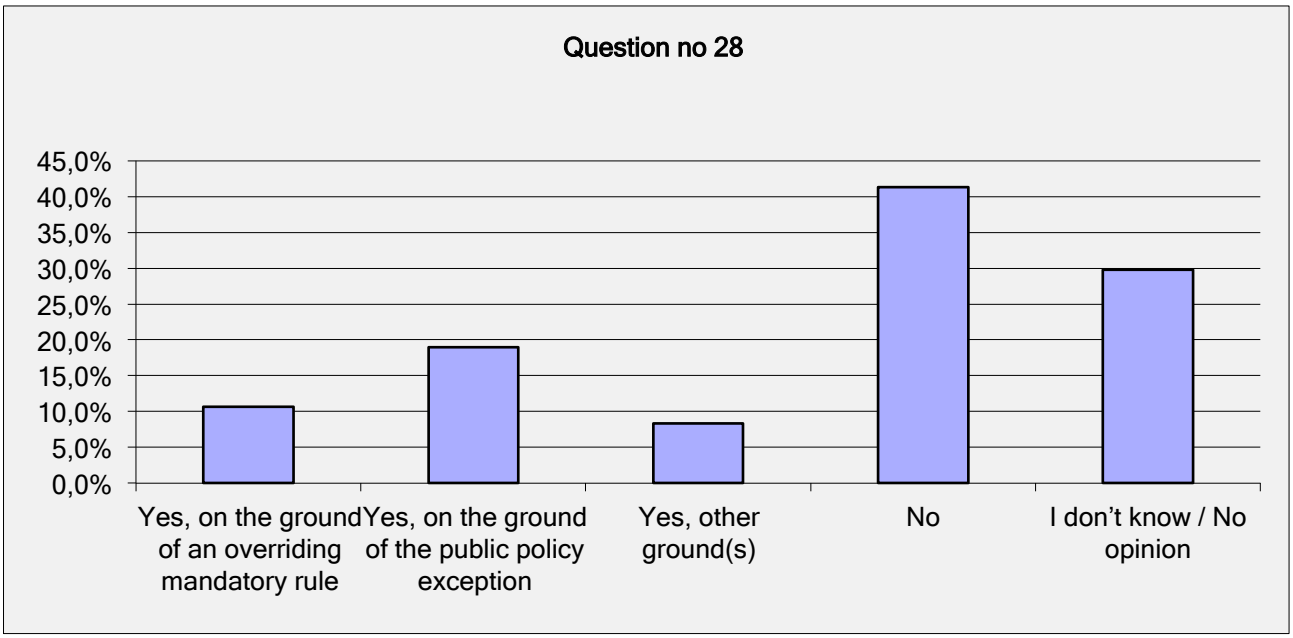
Question no 28: *In family law proceedings, based on your knowledge/experience, has the application of a foreign law been refused by the competent court? (more than one answer is possible)*

650 participants out of 771 did not answer to this question. Among the 121 who did:

- 50 answered no (41,32%);
- 36 had no opinion or did not know (29,75%);
- 23 answered "Yes, on the ground of the public policy exception" (19,01%);
- 13 answered "Yes, on the ground of an overriding mandatory rule" (10,74%);
- 10 answered "Yes, other ground(s)" (8,26%).

When asked to exemplify, participants who gave a yes-answer indicated that:

- unless EU Regulations establish otherwise, English courts apply the lex fori (4);
- the refusal to apply a foreign law can derive by the lack of evidence by the parties or the fact that the law could not be established (6);
- the foreign law is discriminatory (e.g. sharia) (4).



Conclusions of the section "Matters relating to Applicable Law"

From the collected data, conclusions may be summarized as follows:

- very limited impact of Art. 5 of Rome III Regulation on choice-of-law agreements (question no 26);
- as to the mechanisms for ascertaining the foreign law, half of the participants who answered referred to the documents of the parties and the other half to other means (mainly databases/Internet and legal experts) (questions no 27);
- normally the application of the foreign law is not refused by the competent court, even though when it happens it is mainly due to the public policy exception (question no 28).

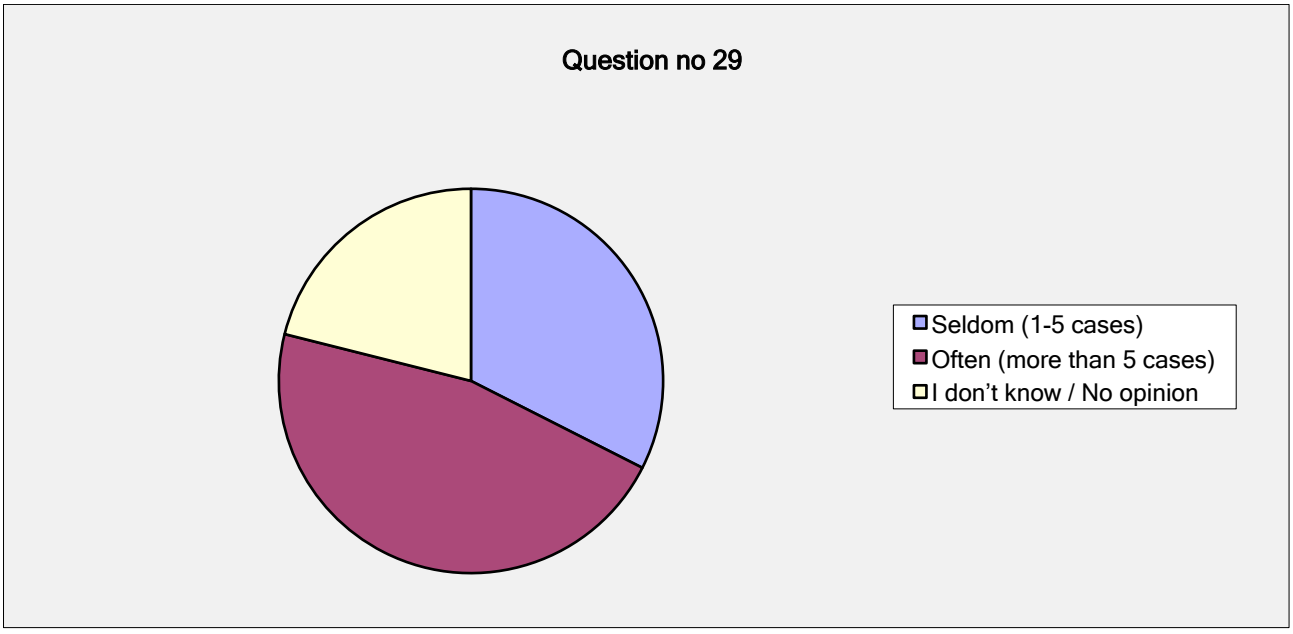
3. MATTERS RELATING TO RECOGNITION AND ENFORCEMENT.

This section was made up of 12 questions, whose outcomes are reported below.

Question no 29: *Based on your knowledge/experience, since Regulation No 2201/2003 became applicable (on 1 March 2005) how often have you encountered cases regarding recognition and enforcement of a foreign decision?*

657 participants out of 771 did not answer to this question. Among the 114 who did:

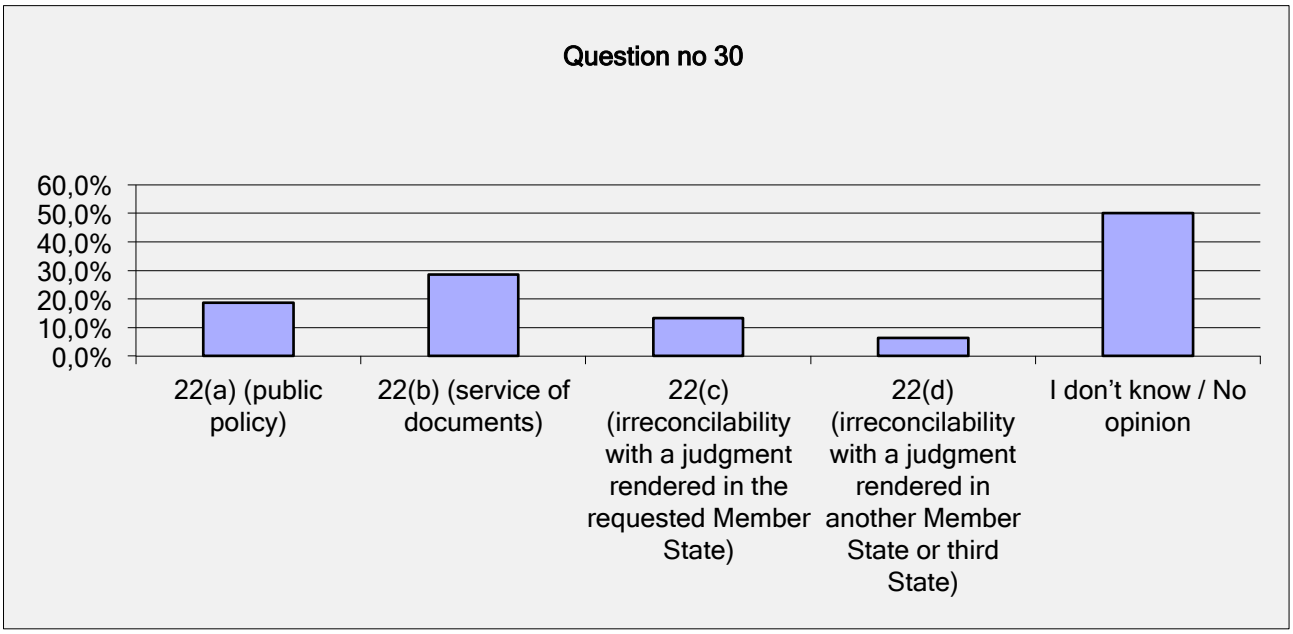
- 53 answered "Often (more than 5 cases)" (46,49%);
- 37 answered "Seldom (1-5 cases)" (32,46%);
- 24 had no opinion or did not know (21,05%).



Question no 30: *Based on your knowledge/experience, which ground of non-recognition provided in Art. 22 of Regulation No 2201/2003 (decisions on matrimonial matters) has been more frequently referred to and applied in practice? (more than one answer is possible)*

659 participants out of 771 did not answer to this question. Among the 112 who did:

- 56 had no opinion or did not know (50%);
- 32 answered "22(b) (service of documents)" (28,57%);
- 21 answered "22(a) (public policy)" (18,75%);
- 15 answered "22(c) (irreconcilability with a judgment rendered in the requested Member State)" (13,39%);
- 7 answered "22(d) (irreconcilability with a judgment rendered in another Member State or third State)" (6,25%).



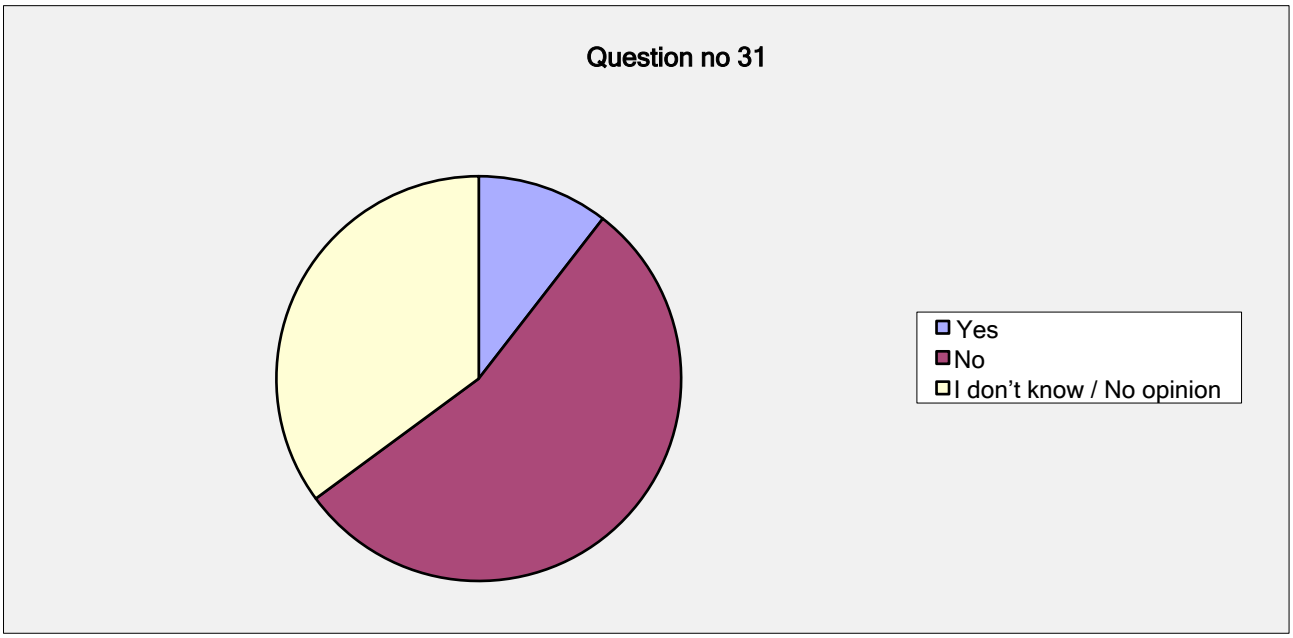
Question no 31: *Based on your knowledge/experience, do you think that the public policy exception has been applied too extensively in practical cases, thus jeopardising mutual trust among Member States?*

657 participants out of 771 did not answer to this question. Among the 114 who did:

- 62 answered no (54,39%);
- 40 had no opinion or did not know (35,09%);
- 12 answered yes (10,53%).

When asked to exemplify:

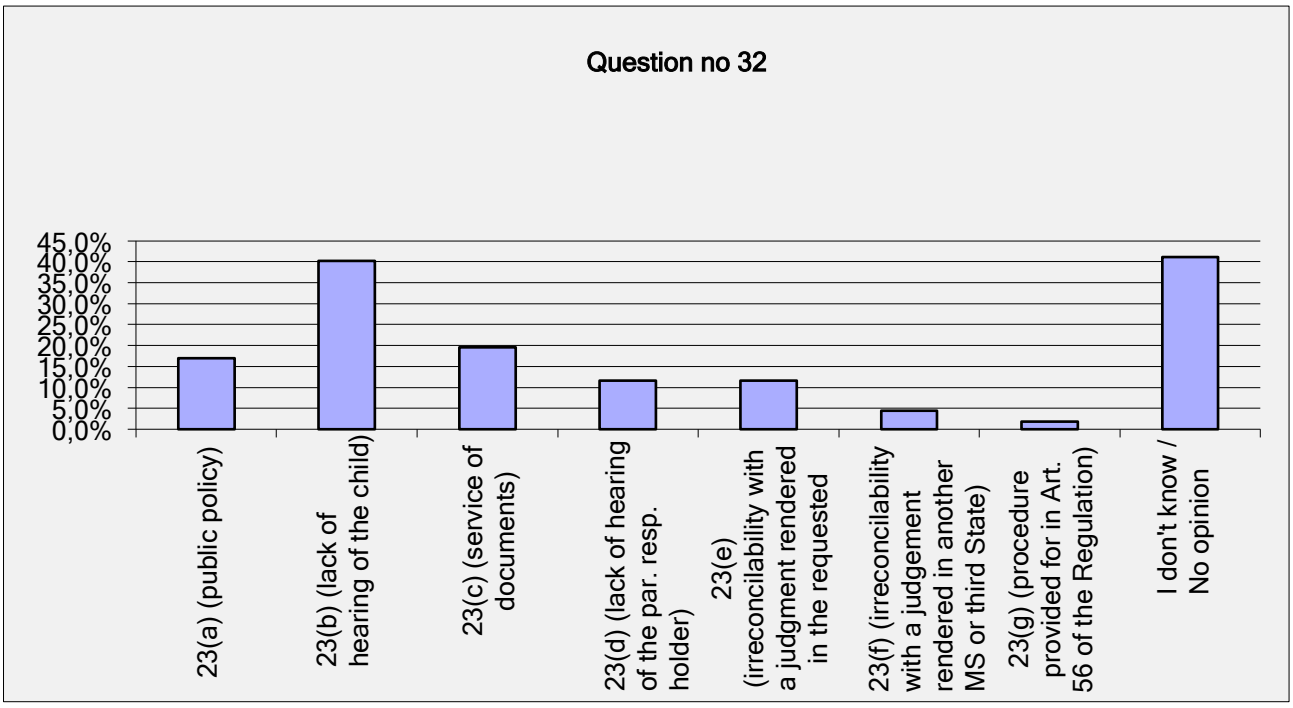
- some participants who answered 'yes' specified that a broad interpretation of the public policy exemption takes place especially when children are involved (2);
- some participants who answered 'no' specified that: it is becoming increasingly important to refer to the "international notion of public policy" (1), thus allowing a broad recognition/enforcement of foreign decisions; in practice Art. 22 plays a very limited role (1); the public policy exception is applied in a strict way (2).



Question no 32: *Based on your knowledge/experience, which ground of non-recognition provided in Art. 23 of Regulation No 2201/2003 (decisions on parental responsibility) has been more frequently referred to and applied in practice? (more than one answer is possible)*

659 participants out of 771 did not answer to this question. Among the 112 who did:

- 46 had no opinion or did not know (41,07%);
- 45 answered "23(b) (lack of hearing of the child)" (40,18%);
- 22 answered "23(c) (service of documents)" (19,64%);
- 19 answered "23(a) (public policy)" (16,96%);
- 13 answered "23(d) (lack of hearing of the parental responsibility holder)" (11,61%);
- 13 answered "23(e) (irreconcilability with a judgment rendered in the requested Member State)" (11,61%);
- 5 answered "23(f) (irreconcilability with a judgment rendered in another Member State or third State)" (4,46%);
- 2 answered "23(g) (procedure provided for in Art. 56 of the Regulation)" (1,79%).



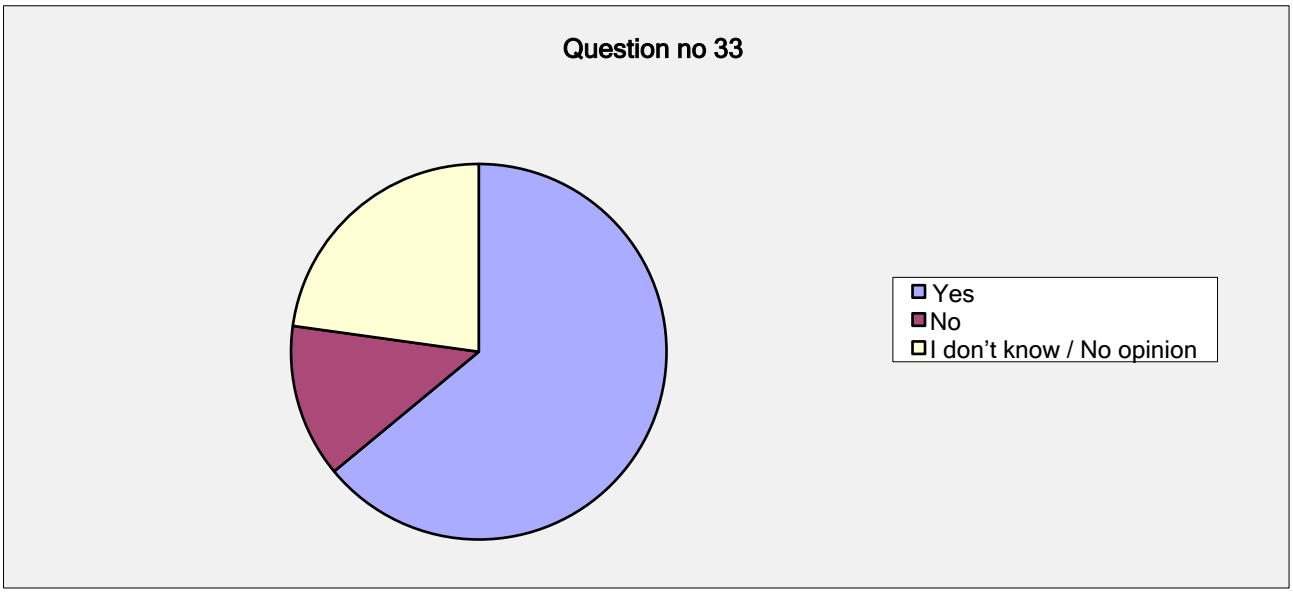
Question no 33: *With regard to the hearing of the child, do you think that a higher degree of harmonisation at the EU level would prove useful in order to minimise the recourse to the ground of non-recognition provided in Art. 23(b)?*

657 participants out of 771 did not answer to this question. Among the 114 who did:

- 73 answered yes (64,04%);
- 26 had no opinion or did not know (22,81%);
- 15 answered no (13,16%).

When asked to exemplify:

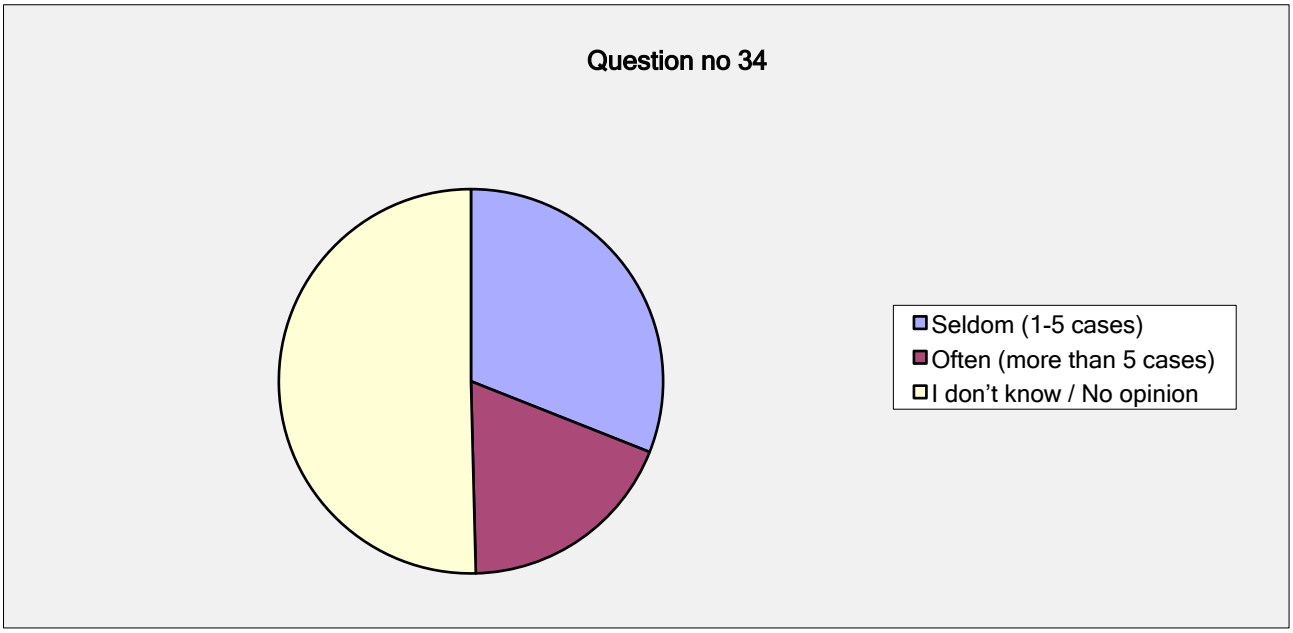
- some participants who answered 'yes' specified that: in order to increase mutual trust and facilitate the circulations of decisions between Member States, it is necessary to define common standards on the minimum child's age for the hearing, on the exceptions from the hearing, and on the hearing procedure in order to guarantee the protection of the child (14); the hearing should be mandatory, at least for children from 10 years old on (4); it is sensible to set common standards provided that the judge is given the possibility to evaluate the specific circumstances of the single case at hand (1); when children are bilingual, experts of both countries should participate in the hearing (1);
- some participants who answered 'no' specified that: it is not realistic to achieve a higher standard of harmonisation on this aspect (1); the reference to the EU Charter of Nice of Fundamental Rights and the UN Convention on the Rights of the Child is sufficient as the Recast proposal indeed specifies (1).



Question no 34: *Based on your knowledge/experience, since Regulation No 2201/2003 became applicable (on 1 March 2005) how often has enforcement been granted in presence of a certified judgment issued according to Art. 41 of the Regulation?*

658 participants out of 771 did not answer to this question. Among the 113 who did:

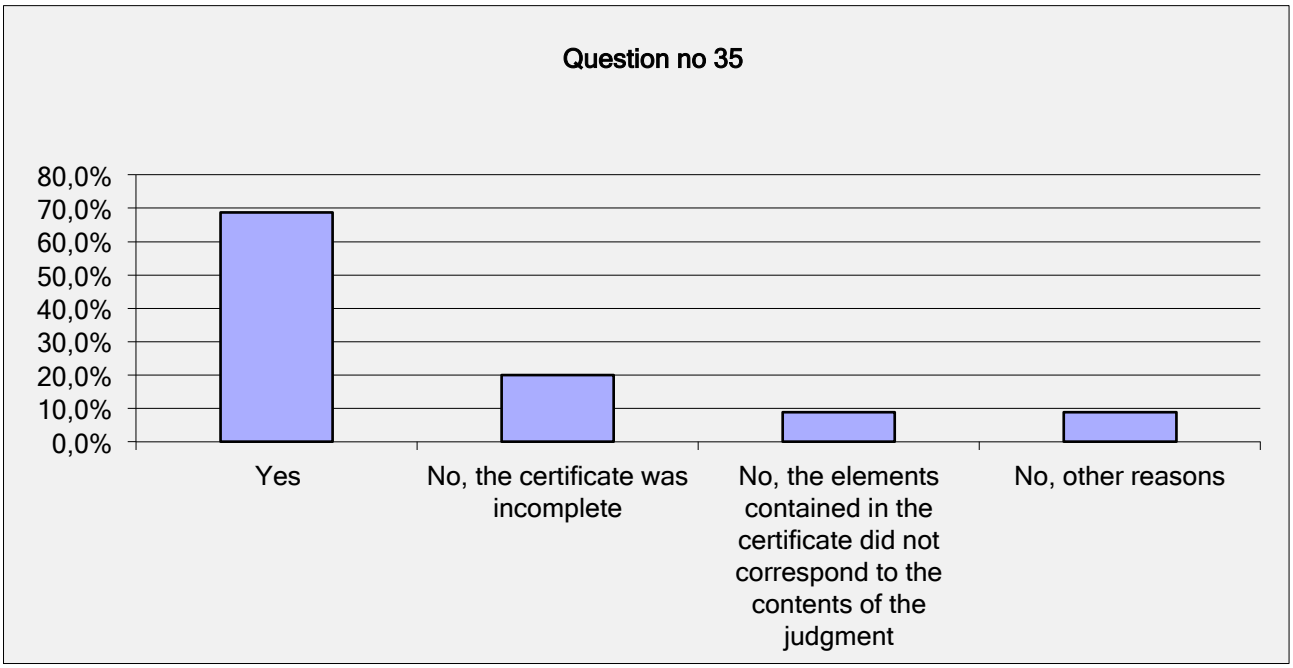
- 57 had no opinion or did not know (50,44%);
- 35 answered "Seldom (1-5 cases)" (30,97%);
- 21 answered "Often (more than 5 cases)" (18,58%).



Question no 35: *Based on your knowledge/experience, was the certificate properly filled out using the standard form provided in Annex III of Regulation No 2201/2003? (more than one answer is possible)*

691 participants out of 771 did not answer to this question. Among the 80 who did:

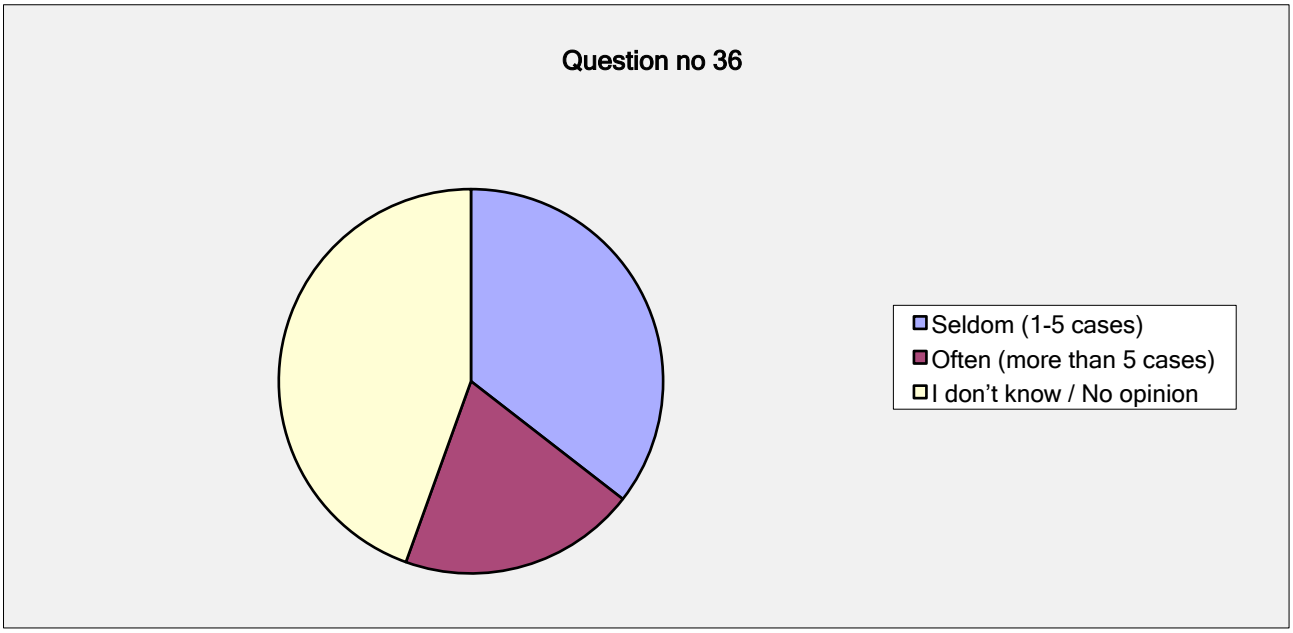
- 55 answered yes (68,75%);
- 16 answered "No, the certificate was incomplete" (20%);
- 7 answered "No, the elements contained in the certificate did not correspond to the contents of the judgment" (8,75%);
- 7 answered "No, other reasons" (8,75%). When asked to exemplify, these 7 participants actually underlined that did not encountered cases regarding the subject matter of the question.



Question no 36: *Based on your knowledge/experience, since Regulation No 2201/2003 became applicable (on 1 March 2005) how often has the enforcement been granted in presence of a certified judgment issued according to its Art. 42?*

661 participants out of 771 did not answer to this question. Among the 110 who did:

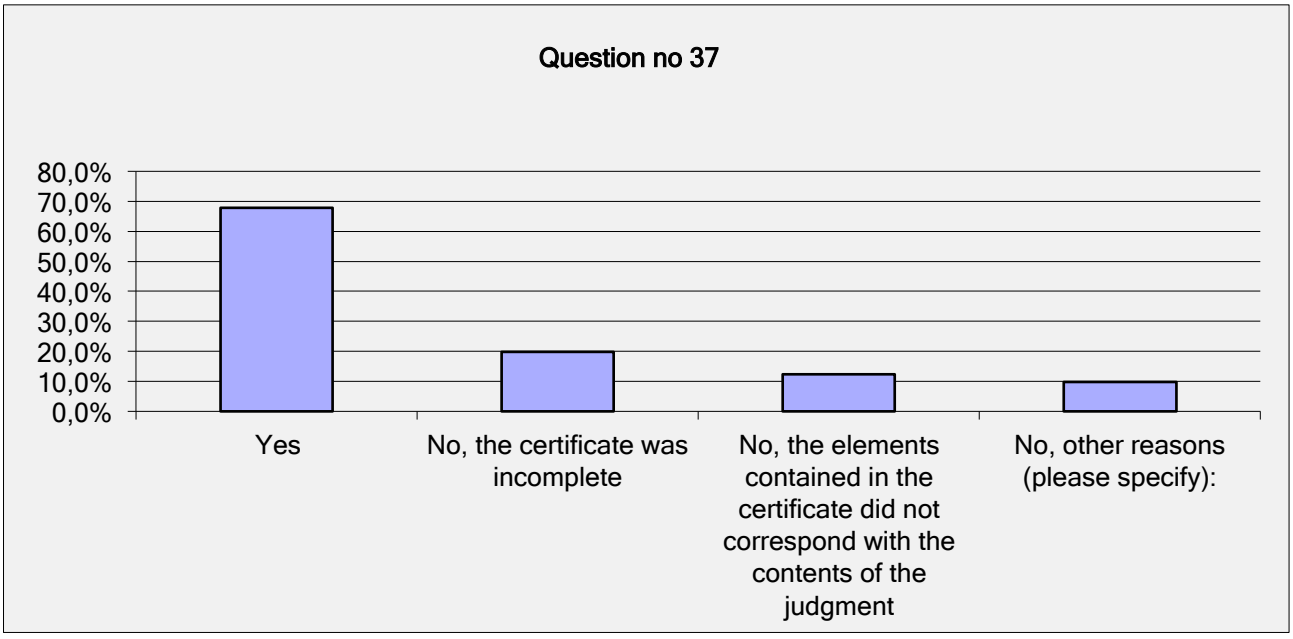
- 49 had no opinion or did not know (44,55%);
- 39 answered "Seldom (1-5 cases)" (35,45%);
- 22 answered "Often (more than 5 cases)" (20%).



Question no 37: *Based on your knowledge/experience, was the certificate properly filled out using*
the standard form provided in Annex IV of Regulation No 2201/2003? (more than one answer is possible)

690 participants out of 771 did not answer to this question. Among the 81 who did:

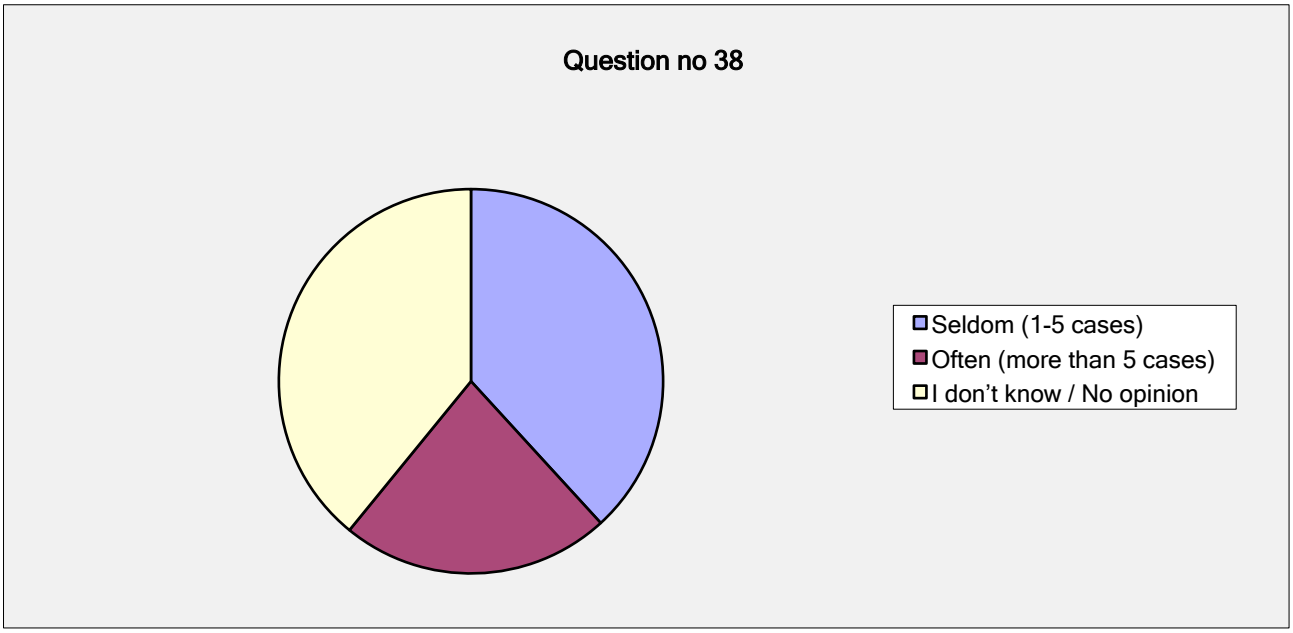
- 55 answered yes (67,90%);
- 16 answered "No, the certificate was incomplete" (19,75%);
- 10 answered "No, the elements contained in the certificate did not correspond with the contents of the judgment" (12,35%);
- 8 answered "No, other reasons" (9,88%). When asked to exemplify, these 8 participants actually underlined that did not encountered cases regarding the subject matter of the question.



Question no 38: *Based on your knowledge/experience, since Regulation No 4/2009 became applicable (on 18 June 2011) how often have you encountered cases regarding recognition and enforcement of a foreign decision that falls within the scope of such Regulation?*

661 participants out of 771 did not answer to this question. Among the 110 who did:

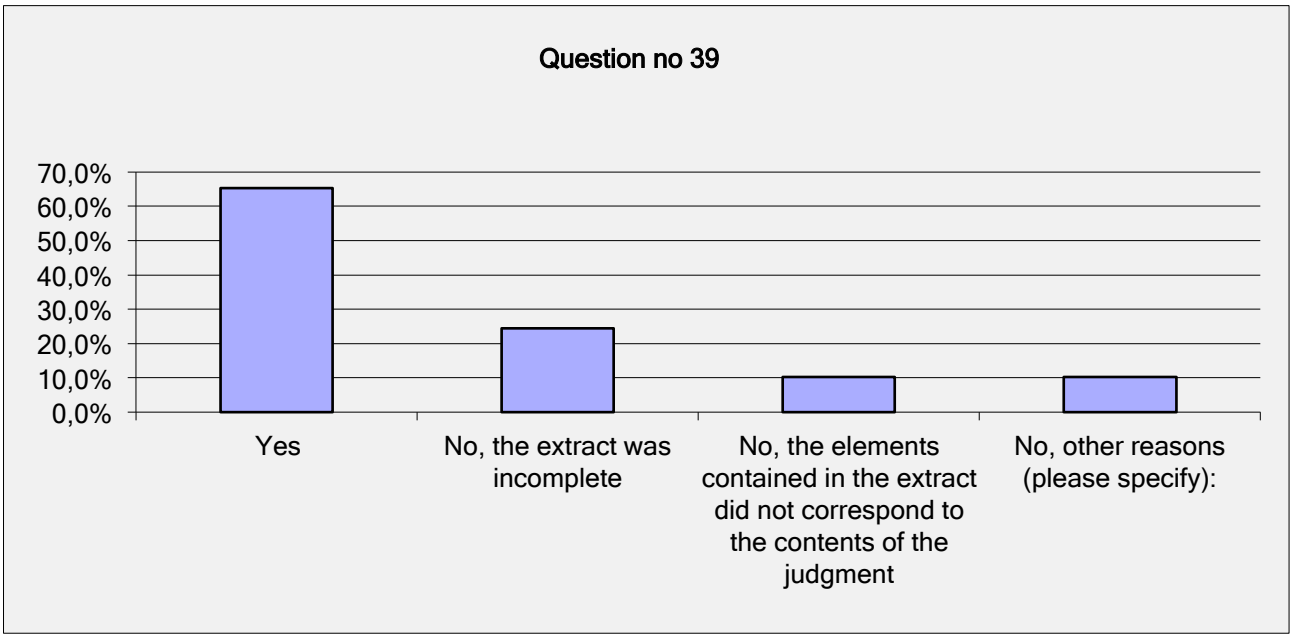
- 43 had no opinion or did not know (39,09%);
- 42 answered "Seldom (1-5 cases)" (38,18%);
- 25 answered "Often (more than 5 cases)" (22,73%).



Question no 39: *Based on your knowledge/experience, was the extract from the decision properly filled out using the standard forms provided in the Annexes of Regulation No 4/2009?(more than one answer is possible)*

693 participants out of 771 did not answer to this question. Among the 78 who did:

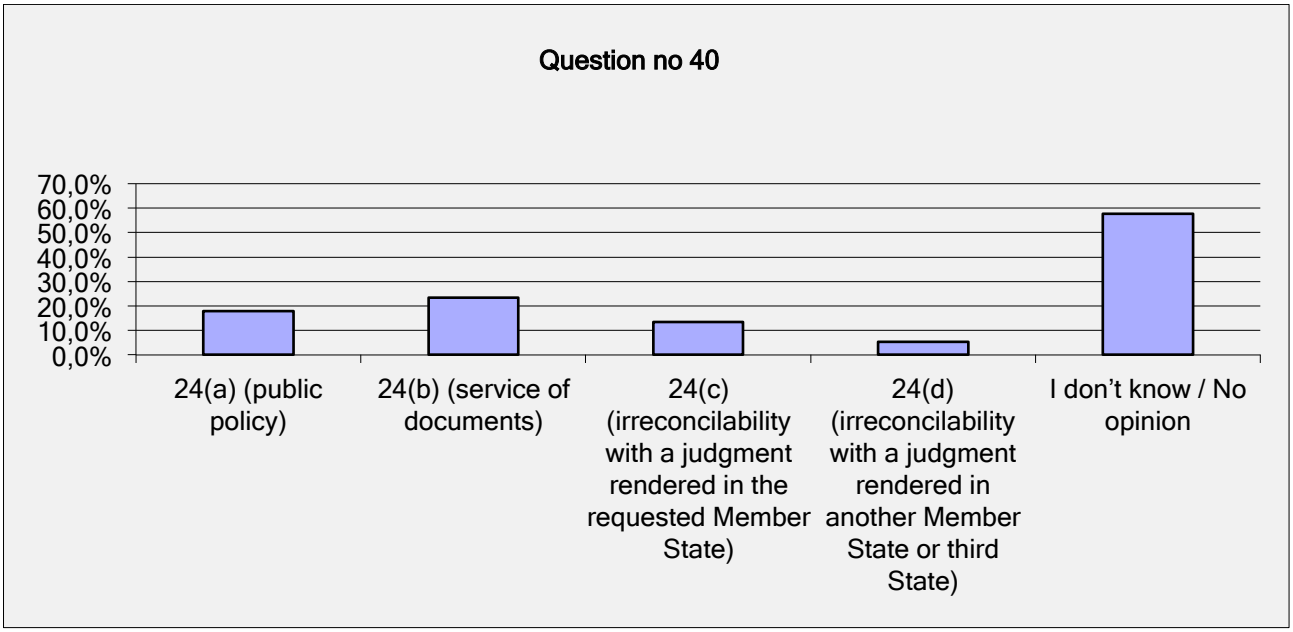
- 51 answered yes (65,38%);
- 19 answered "No, the extract was incomplete" (24,36%);
- 8 answered "No, the elements contained in the extract did not correspond to the contents of the judgment" (10,26%);
- 8 answered "No, other reasons" (10,26%). When asked to exemplify, 6 out of these 8 participants actually underlined that did not encountered cases regarding the subject matter question.



Question no 40: *Based on your knowledge/experience, which ground of non-recognition provided for in Art. 24 of Regulation No 4/2009 has been more frequently referred to and applied in practical cases? (more than one answer is possible)*

660 participants out of 771 did not answer to this question. Among the 111 who did:

- 64 had no opinion or did not know (57,66%);
- 26 answered "24(b) (service of documents)" (23,42%);
- 20 answered "24(a) (public policy)" (18,02%);
- 15 answered "24(c) (irreconcilability with a judgment rendered in the requested Member State)" (13,51%);
- 6 answered "24(d) (irreconcilability with a judgment rendered in another Member State or third State)" (5,41%).



Conclusions of the section "Matters relating Recognition and Enforcement"

From the collected data, conclusions may be summarized as follows:

- half of the participants who answered encountered more than 5 cases of recognition/enforcement of a foreign decision. In matrimonial matters cases the most referred to grounds of non-recognition are those related to the service of documents and the public policy exception. In this regard, public policy exception is generally considered not to have

been applied too extensively. In parental responsibility cases the most referred to ground of non-recognition is that related to the hearing of the child (questions no 29-32);

- as to the hearing of the child, there is a very large agreement on the need of creating common standards in order to increase the mutual trust between Member States (question no 33);
- high uncertainty in relation to enforcement of certified decisions issued according to Art. 41 of Brussels IIa Regulation, whose standard form however is generally deemed properly filled in by those who expressed to have come across practical cases. Less uncertainty in relation to enforcement of certified decisions issued according to Art. 42 of Brussels IIa Regulation, whose standard form is also generally deemed properly filled in (questions no 34-37);
- not many cases of recognition/enforcement of decisions falling within the scope of application of the Maintenance Regulation, whose standard form however is generally deemed properly filled in by those who expressed to have come across practical cases. The most referred to grounds of non-recognition are those related to the service of documents and the public policy exception, even though there is in general a very limited awareness on these aspects (questions no 38-40).

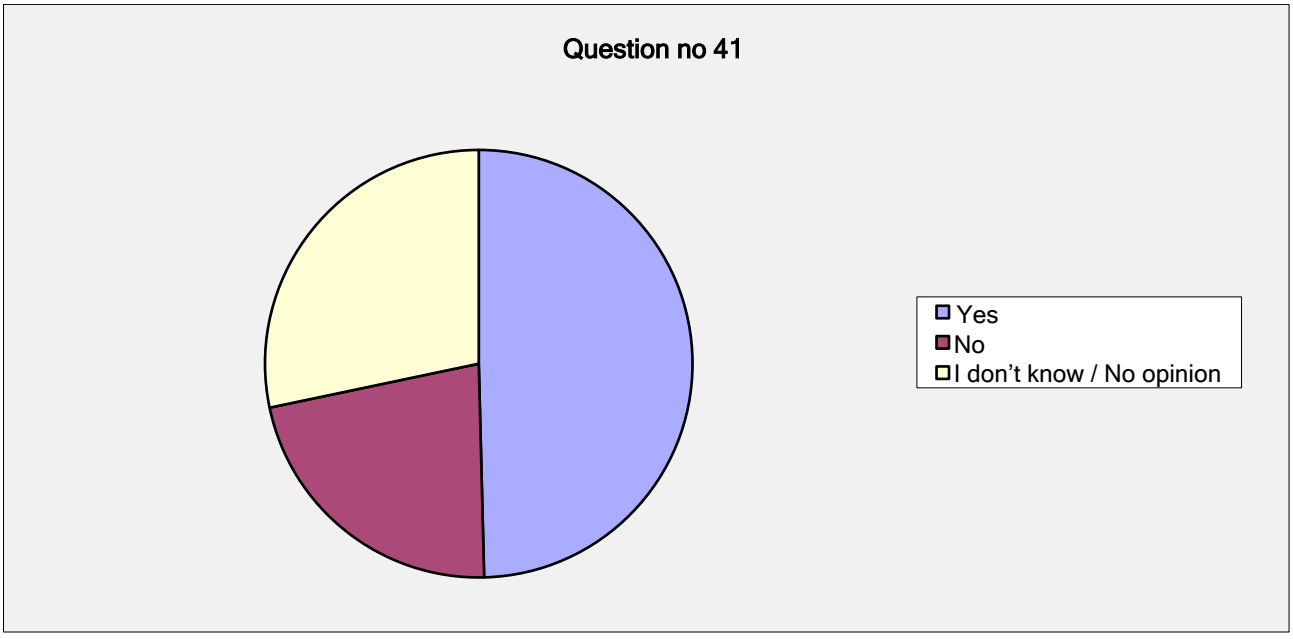
4. MATTERS RELATING TO COOPERATION BETWEEN CENTRAL AUTHORITIES.

This section was made up of 2 questions, whose outcomes are reported below.

Question no 41: *Based on your knowledge/experience, have the cooperation instruments provided for in Regulation No 2201/2003 proven useful in practice?*

658 participants out of 771 did not answer to this question. Among the 113 who did:

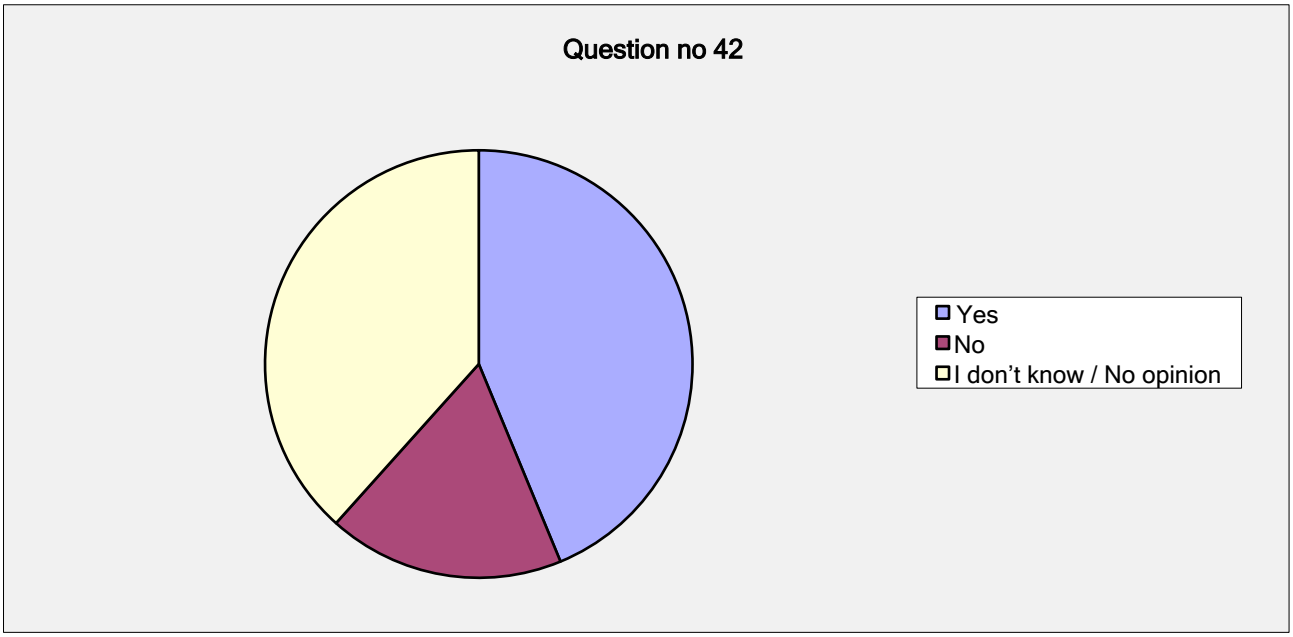
- 56 answered yes (49,56%). When asked to exemplify, 2 participants underlined that the cooperation instruments proved to be useful in child abduction of children and in the cross-border placement of children;
- 32 had no opinion or did not know (28,32%);
- 25 answered no (22,12%).



Question no 42: *Based on your knowledge/experience, have the cooperation instruments provided for in Regulation No 4/2009 proven useful in practice?*

659 participants out of 771 did not answer to this question. Among the 112 who did:

- 49 answered yes (43,75%). When asked to exemplify, 1 participant underlined that the cooperation instruments proved to be useful in recovering information about assets placed abroad;
- 43 had no opinion or did not know (38,39%);
- 20 answered no (17,86%).



Conclusions of the section "Matters relating Cooperation between Central Authorities"

From the collected data, conclusions may be summarized as follows:

- the cooperation instruments established in the Regulations 2201/2003 and 4/2009 are considered by some participants to have a positive and useful impact in practice, while many of them said not have practical experience on the matter (questions no 41-42).

5. INTERRELATIONS BETWEEN EU REGULATIONS AND INTERNATIONAL CONVENTIONS.

This section was made up of 1 question, whose outcomes are reported below.

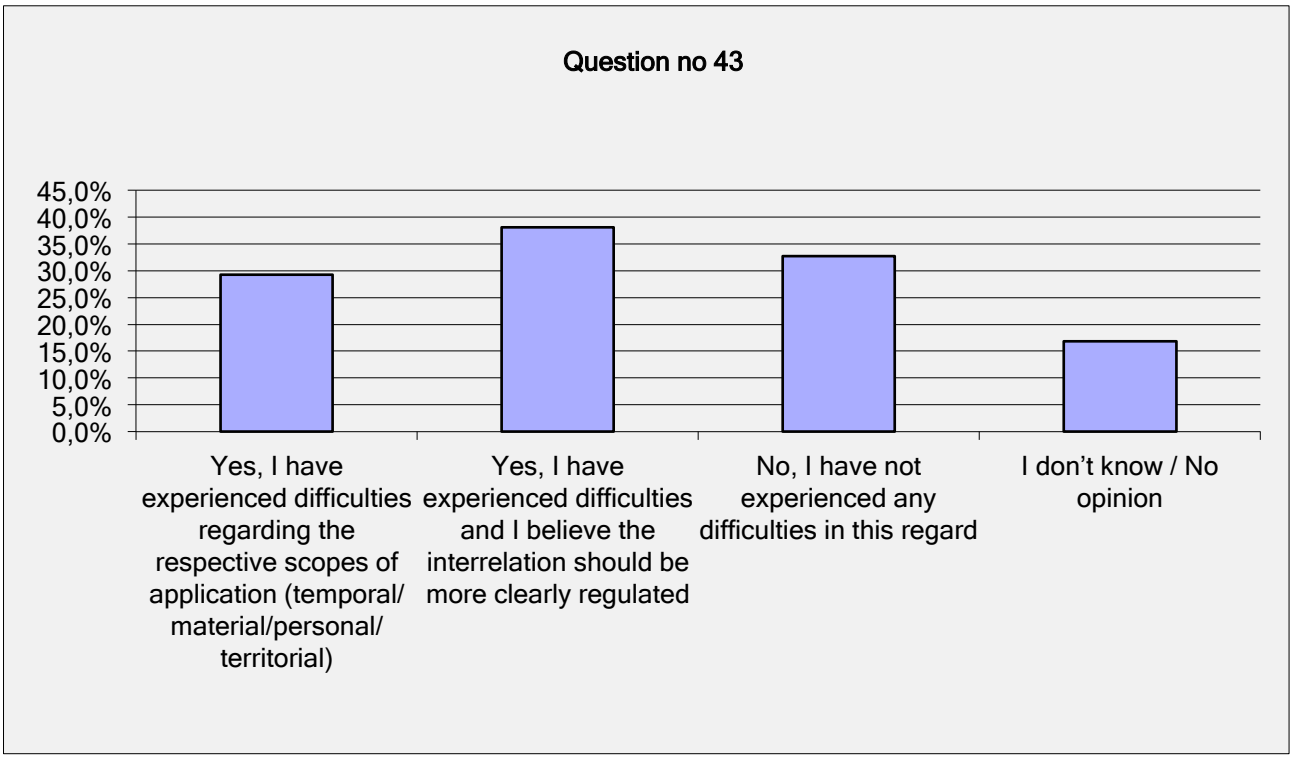
Question no 43: *Based on your knowledge/experience, have you experienced any practical difficulty as to the interrelations between EU Regulations on family matters and relevant international Conventions? (more than one answer is possible)*

658 participants out of 771 did not answer to this question. Among the 113 who did:

- 43 answered "Yes, I have experienced difficulties and I believe the interrelation should be more clearly regulated" (38,05%);
- 37 answered "No, I have not experienced any difficulties in this regard" (32,74%);
- 33 answered "Yes, I have experienced difficulties regarding the respective scopes of application (temporal/material/personal/territorial)" (29,20%);
- 19 answered had no opinion or did not know (16,81%).

When asked to exemplify, participants who gave a yes-answer indicated the following main difficulties:

- interplay between Brussels IIa Regulation and 1996 Hague Convention (6);
- interplay between Brussels IIa Regulation and 1980 Hague Convention (1);
- interplay between 4/2009 Regulation and other international instruments related to maintenance (1);
- different provisions between EU Regulation and international Conventions and the circumstance that a Member State can be party to a Regulation and not to a certain Convention, or vice versa (2);
- the absence of a codification of all the EU Regulations on family law.



Conclusions of the section "Interrelations between EU Regulations And International Conventions"

From the collected data, conclusions may be summarized as follows:

- among the participants who answered to this section, difficulties arose in relation to the interplay between EU Regulation and other relevant international Conventions, especially between Brussels IIa Regulations and 1980 Abduction Convention and 1996 Child Protection Convention (question no 43).

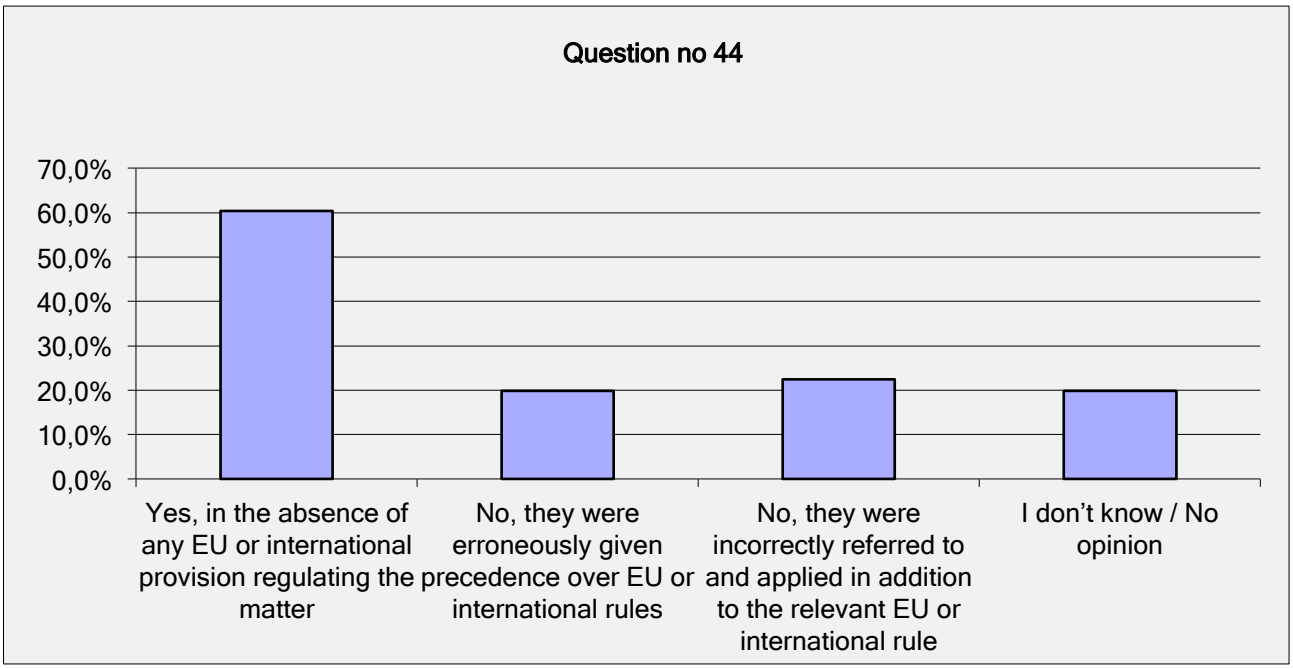
6. RESIDUAL APPLICATION OF DOMESTIC RULES OF PRIVATE INTERNATIONAL LAW.

This section was made up of 1 question, whose outcomes are reported below.

Question no 44: *Based on your knowledge/experience, have the rules of private international law of your country been properly referred to and applied in cross-border cases? (more than one answer is possible)*

660 participants out of 771 did not answer to this question. Among the 111 who did:

- 67 answered "Yes, in the absence of any EU or international provision regulating the matter" (60,36%);
- 25 answered "No, they were incorrectly referred to and applied in addition to the relevant EU or international rule" (22,52%);
- 22 answered "No, they were erroneously given precedence over EU or international rules" (19,82%);
- 22 had no opinion or did not know (19,82%).



Conclusions of the section "Residual Application of domestic rules of private international law"

From the collected data, conclusions may be summarized as follows:

- the majority of the participants agreed on the correct residual application of national p.i.l. rules by domestic courts, even though there is no lack of participants who underlined a wrong precedence given to national p.i.l. rules over EU Regulations or a joint application of the two p.i.l. sources (question no 44).

FINAL REMARKS

Preliminarily, it is worth highlighting that, apart from the first two questions of the survey aimed at picturing the background of the participants, the vast majority of the 771 participants in the survey did not generally answer to all the other 42 questions specifically related to the analysis of the EU Regulations on family law. In fact, going through all the questions it is possible to notice that the number of participants that actually decided to answer ranges from 36 (i.e. question no 10) to 140 (i.e. question no 3) out of 771, which means that many questions have been skipped. Moreover, even when they decided to answer, often many participants indicated that they did not have an opinion or practical experience on the specific aspect addressed in the question.

This can be the result of **different reasons**: firstly, it is linked to the matters addressed in the questionnaire and due to a limited knowledge, practical experience or awareness of the EU Regulations by legal practitioners; difficulties in their interpretation, application and in the interplay with other international Conventions; an actual limited circulation of decisions between Member States.

Secondly, the comprehension and the filling out of the questionnaire itself may give rise to difficulties. Perhaps some of the questions might have been perceived as too technical or too complex, or the structure of the question itself might have seemed too unfriendly to the users (e.g. high number of questions; technicality of the alternatives; the fact that many questions were interrelated and therefore particular attention had to be paid to their sequence and to the previous answers). However, it has to be stressed as well that the high degree of complexity reflects the complexity of the subject matter addressed by the questionnaire.

In the light of the foregoing, some final conclusions and evaluations may be summarized as follows. Generally speaking and taking into account the response rate to the questionnaire, EU Regulations on family law still represent legal tools that are scarcely known by legal practitioners and professionals. Among the different aspects addressed by the questionnaire, the provisions on jurisdiction contained in the relevant Regulations are the ones that registered the highest confidence among the participants, even because it appears to be clear how the habitual residence of the parties has to be ascertained in practice in relation to the different Regulations, also thanks to the related ECJ case-law. The first section of the questionnaire was also the one that contained the highest number of questions because from both the national exchange seminars and the First Assessment Report it stemmed that matters on jurisdiction were the ones mostly dealt with.

Despite this, also in relation to this section there is room for a wider spreading of certain legal tools that are still only little used, such as the **transfer of jurisdiction** of Art. 15 of Brussels IIa Regulation and **choice-of-courts agreements.**

As to the applicable law, instead, it appears that major attention must be paid in spreading the awareness on **choice-of-law agreements**, still very limited in practice, and to the tools provided by the EU with a view to ascertain the foreign law that has to be applied in a given case, such as the **European Judicial Network**.

The need to increase the application of all these tools, that appear to be very limited in practice, because of the different reasons underlined above, is intimately related to the purpose of ensuring the so-called *effet utile* of the EU Regulations, thus guaranteeing a truly effective circulation of persons (through the recognition of their statuses).

From the answers given to the recognition and enforcement section it is possible to infer the limited circulation of decisions within the European judicial area since half of the participants declared not to have (or to have only seldom) dealt with cases regarding these matters. This can perhaps be due to the fact that only in a limited number of cases there is the actual need for the party who obtained a favourable decision to have it recognized and enforced in a Member State other than the one whose authorities issued the decision itself. However, the limited circulation of decisions can also be due to a scarce knowledge of the relevant legal instruments among judges and legal practitioners and of how to correctly fill in the **certificates** and the **extracts** provided by the annexes of the Regulations. In view of improving the application of European instruments, particular focus on these aspects is needed in order to ensure the circulation of decisions across EU Member States.

In addition, it must be stressed that the main **grounds of non-recognition** often invoked by applicants are those related to the service of documents and the public policy exception. As to the former, different procedural formalities existing between national legal orders may imply difficulties in the recognition. Also, even though this has not been expressly mentioned by the participants, a limited use of the Regulation no 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters might have encouraged the recourse to this ground of non-recognition. With particular reference to the public policy exception, the outcomes of the questionnaire reveal the need of a clarification of the notion of public policy and also the need of establishing common standards between Member States in order not to

frustrate or prejudice the circulation of decisions. The public policy exception, in fact, is still too strongly linked to national legal systems. This is particularly true in relation to the proceedings that involve children. In this regard, the majority of the participants who answered the questionnaire agree that developing common practices on the **hearing of the child** is of the utmost importance to make it possible for a decision to overcome the national borders. This had already emerged during the national exchange seminars as a crucial aspect regarding the recognition of judgments.

In the light of the main problems encountered by the participants according to the outcomes of the present questionnaire and the above outlined considerations, the necessity to provide practitioners with the tools to deal with the relevant EU and international legal instruments on family law, which is the main objective pursued by the present project, is increasingly strong. It is undisputed that, in order to identify the issues to be addressed, the dialogue between legal operators coming from different countries is essential. The need to overcome the difficulties met by practitioners and to spread the knowledge and the use of the legal tools on family law provided by the EU Regulations are the reasons why the project ultimately aims at developing models/template of practical means that may prove useful to better arrange cross-border disputes, such as uniform best practices and guidelines, that will be the focus of workstream 2. These outputs will be all intended to increase the recourse to said Regulations that, despite being applicable for a certain number of years, still appears to be too limited or not properly made.