

Civil Justice Systems in Europe: Implications for Choice of Forum and Choice of Contract Law

A Business Survey

Final Results

These are the results of a survey of 100 European businesses. The survey was conducted by the Oxford Institute of European and Comparative Law and the Oxford Centre for Socio-Legal-Studies. It was funded by Clifford Chance LLP and had the support of the European Justice Forum and the European Company Lawyers Association (ECLA). The organization of the data collection and the computation of the final results was undertaken by Alexander Wulf MLB of the London School of Economics' MSc programme on Social Research Methods.

The interviews were conducted by telephone, most of them between January and March 2008, with less than ten additional interviews conducted in a two week period in June and July 2008.

Care was taken to make the sample as representative as possible of all businesses engaging in cross-border transactions in Europe. In order to realize this, a multinational sample of businesses was recruited from eight focal Member States of the EU (France, Germany, Italy, Netherlands, Poland, Spain, UK and Belgium), with a minority of businesses from other European countries.

This document will be posted on the website of the Institute of European and Comparative Law, together with the survey questionnaire and a more detailed breakdown of the results. A detailed analysis will be published in a collection of essays which will bear the title of this study and will be edited by Stefan Vogenauer and Chris Hodges (Hart Publishing, 2009).

Oxford, 1 October 2008
Stefan Vogenauer

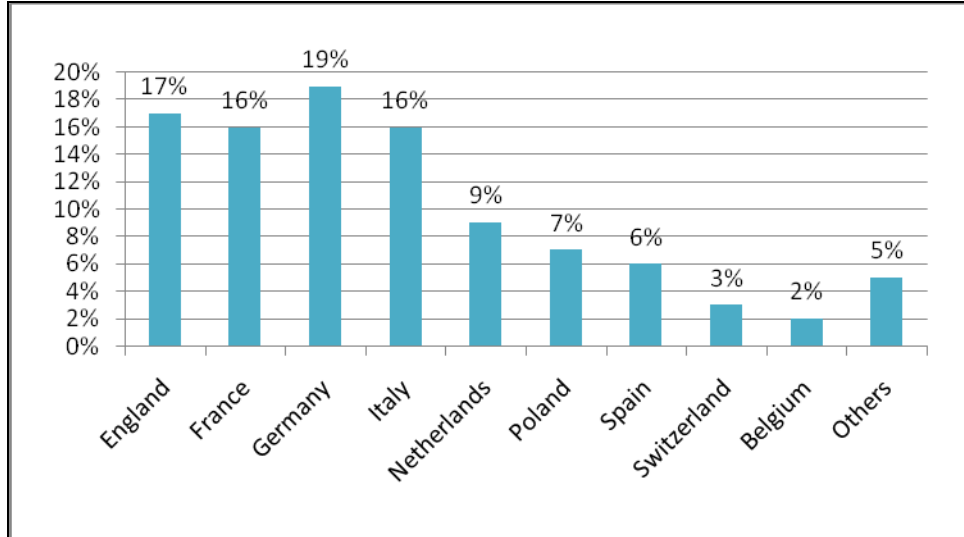
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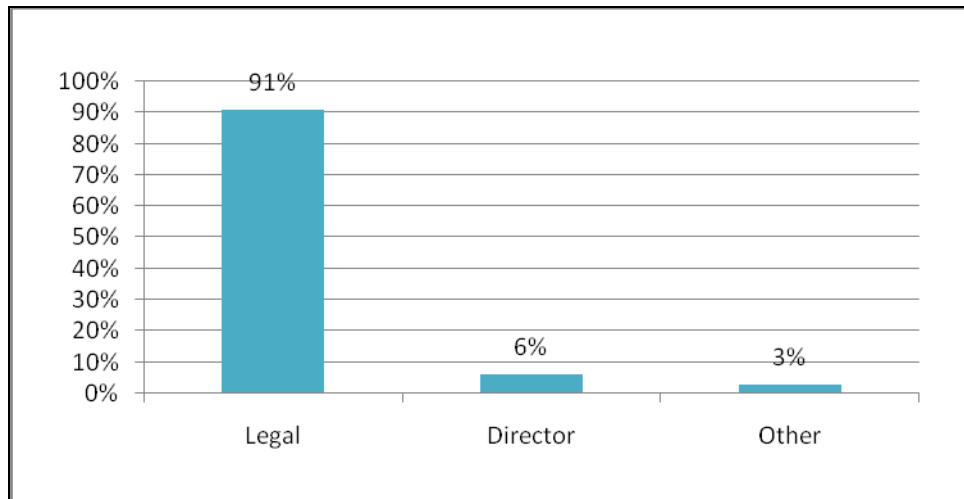
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About you

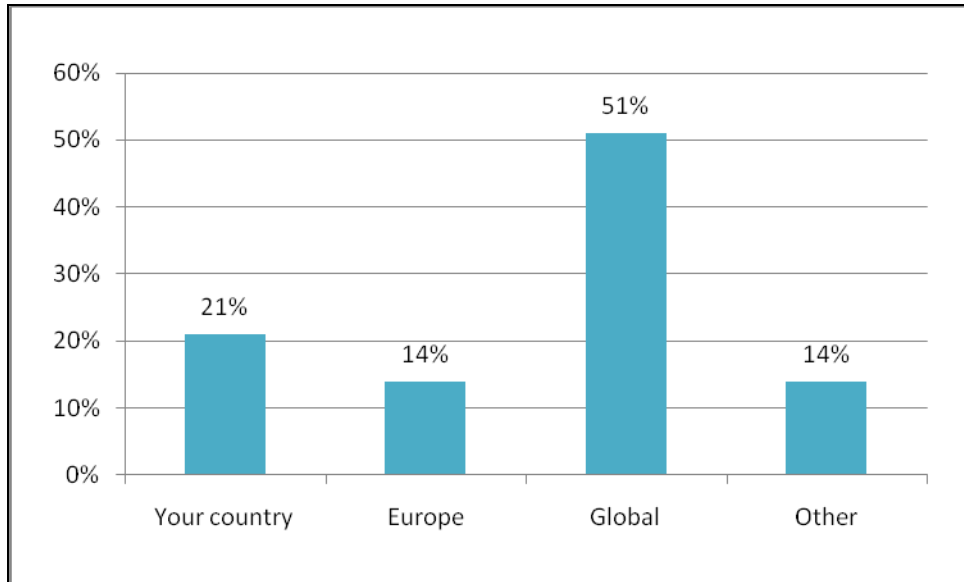
1 In which jurisdiction are you based?



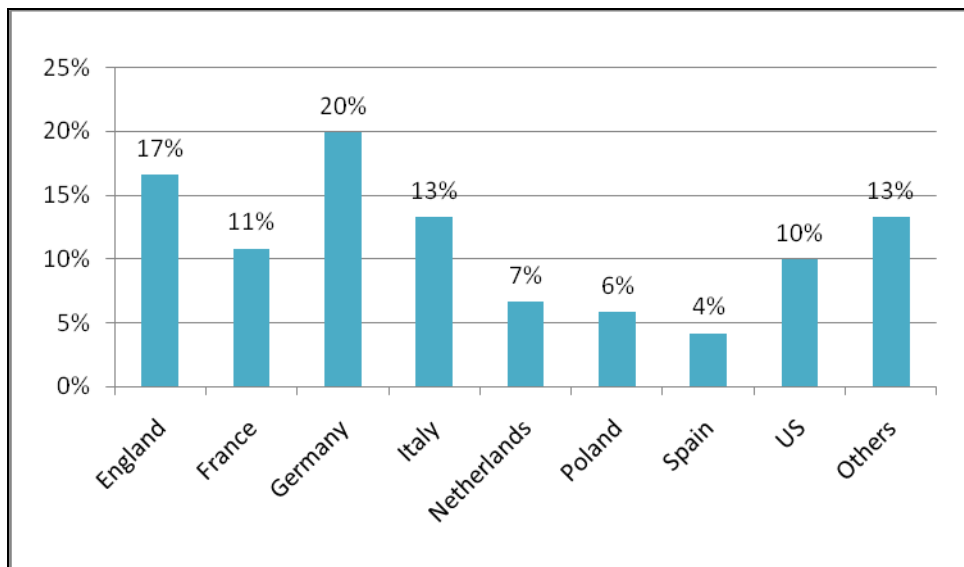
2 What is your primary function?



3 Which geographical area are you responsible for?

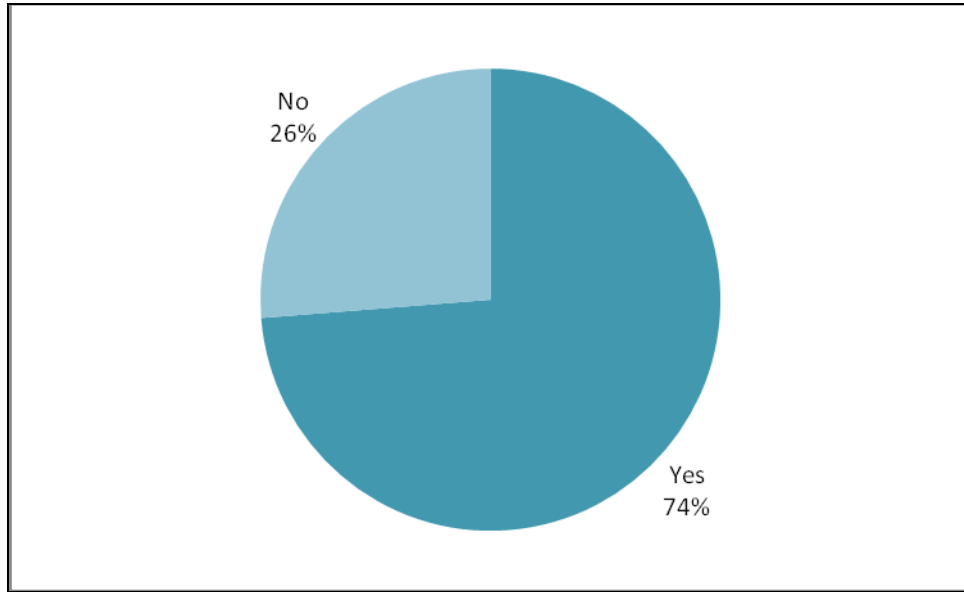


4 In which jurisdiction(s) did you qualify?

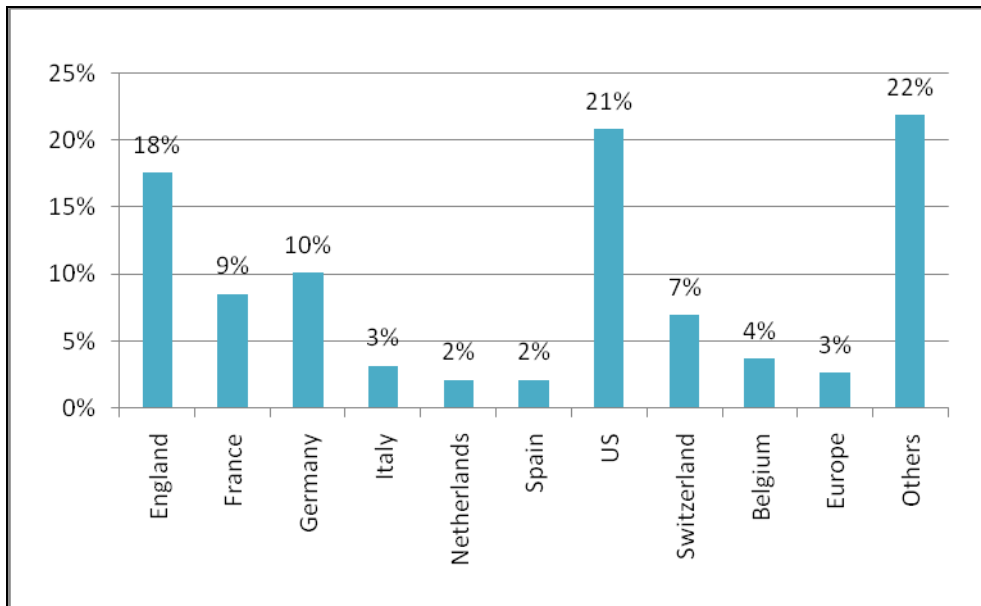


Note: US consist of US(NY) 5, US(Not specified) 4, US(IL) 2, US (NJ) 1.

5.1 Do you happen to be reasonably familiar with the contract law of another jurisdiction?

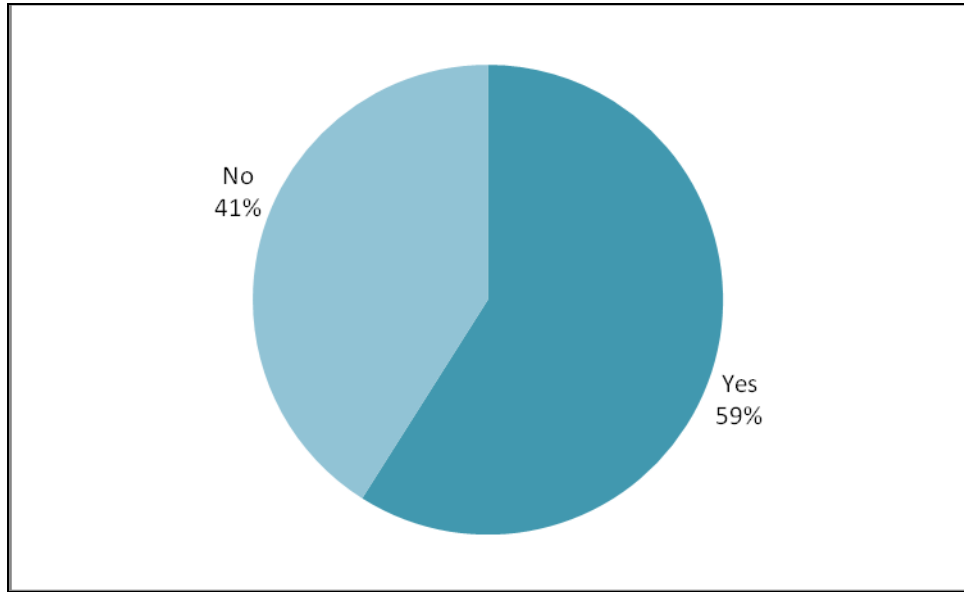


5.2 Yes, the contract law(s) of...

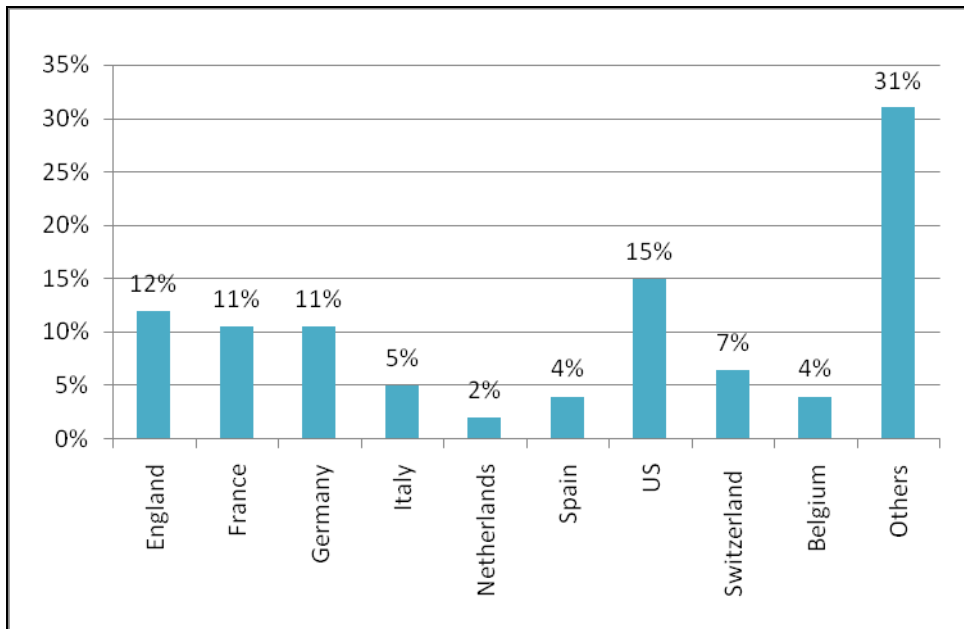


Note: US consist of US(Not specified) 23, US(NY) 10, US(CA) 3, US(IL) 1, US(PA) 1, US(TX) 1.

5.3 Do you happen to be reasonably familiar with the civil justice system of another jurisdiction?



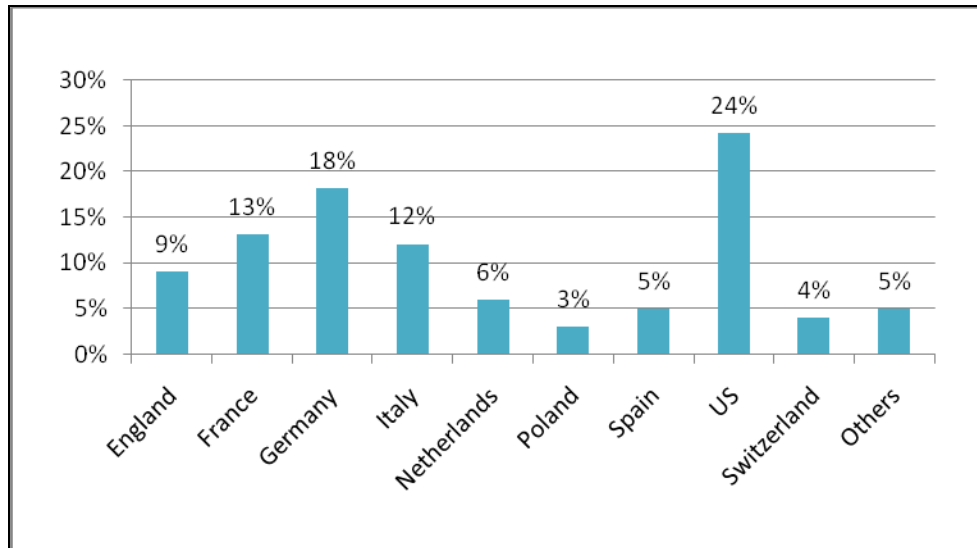
5.4 Yes, the civil justice system(s) of...



Note: US consist of US(Not specified) 18, US(NY) 7, US(CA) 2, US(TX) 2, US(LA) 1.

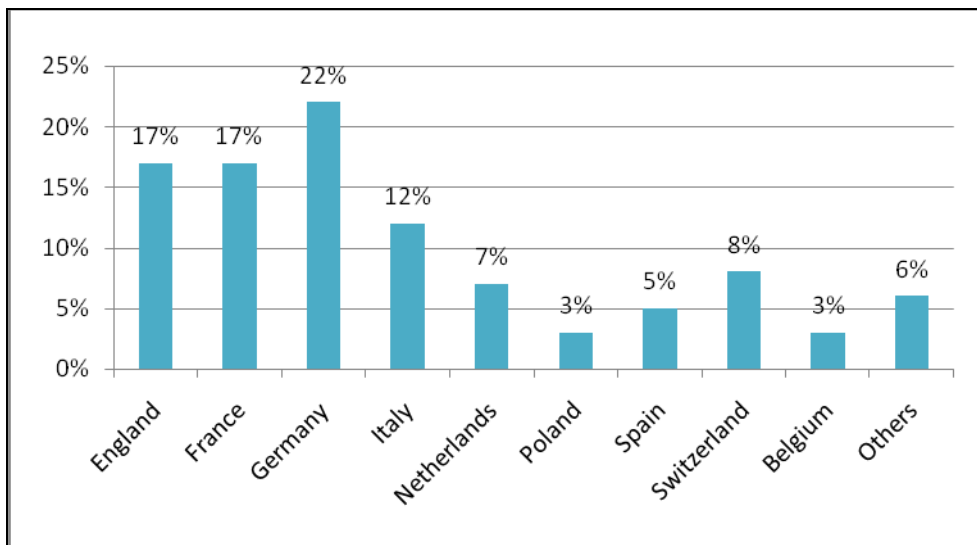
About your company

6 In which jurisdiction is your company's global headquarter located?

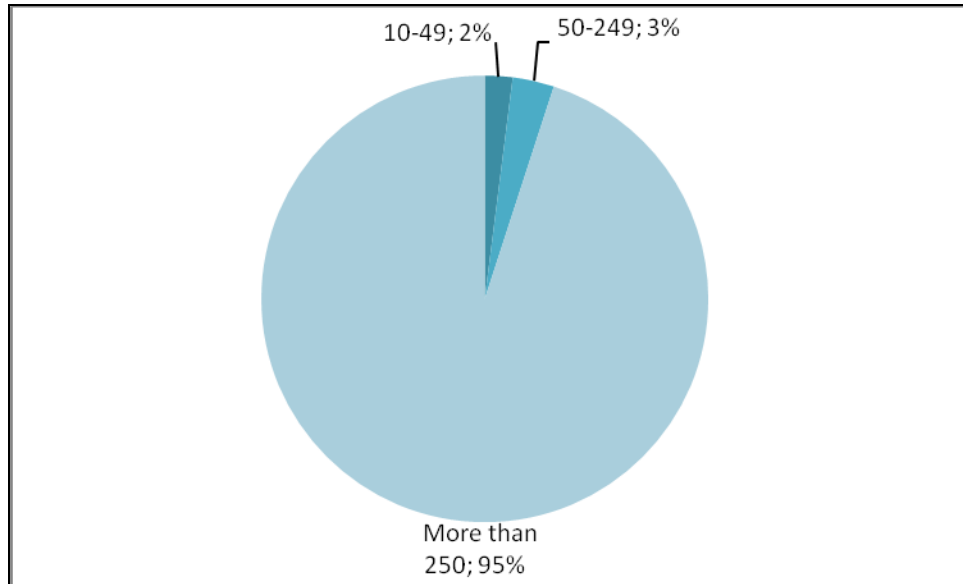


Note: US consist of US(Not specified) 13, US(IL) 2, US(NJ) 2, US(PA) 2, US(CA) 1, US(CT) 1, US(MA) 1, US(MN) 1, US(GA) 1.

7 In which jurisdiction is your company's main European base?

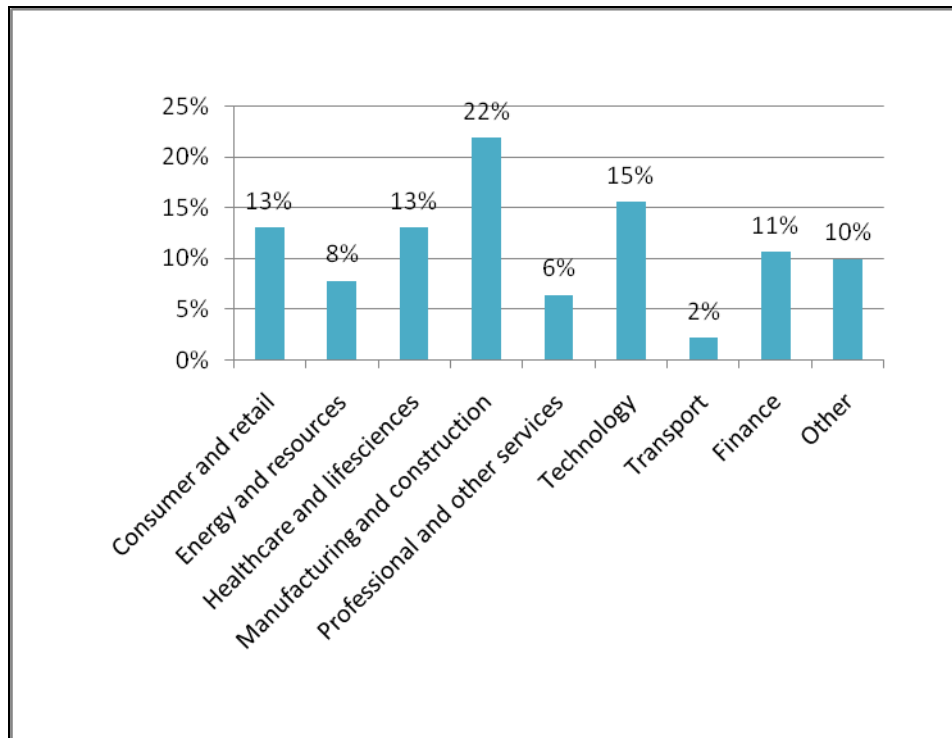


8 How many employees does the total company group have?



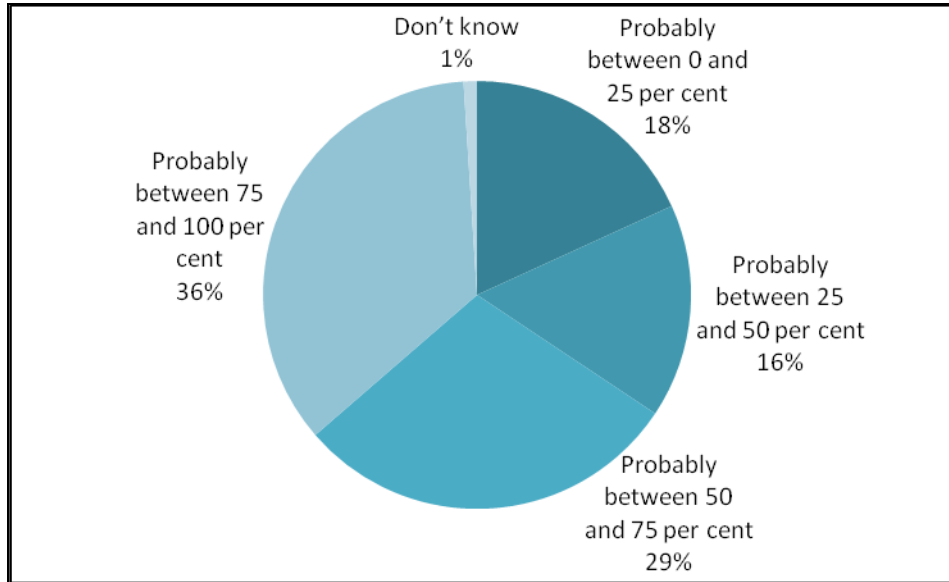
9 Which sector(s) does the group operate in?

(multiple answers possible)



Note: Only respondents' total answers are displayed.

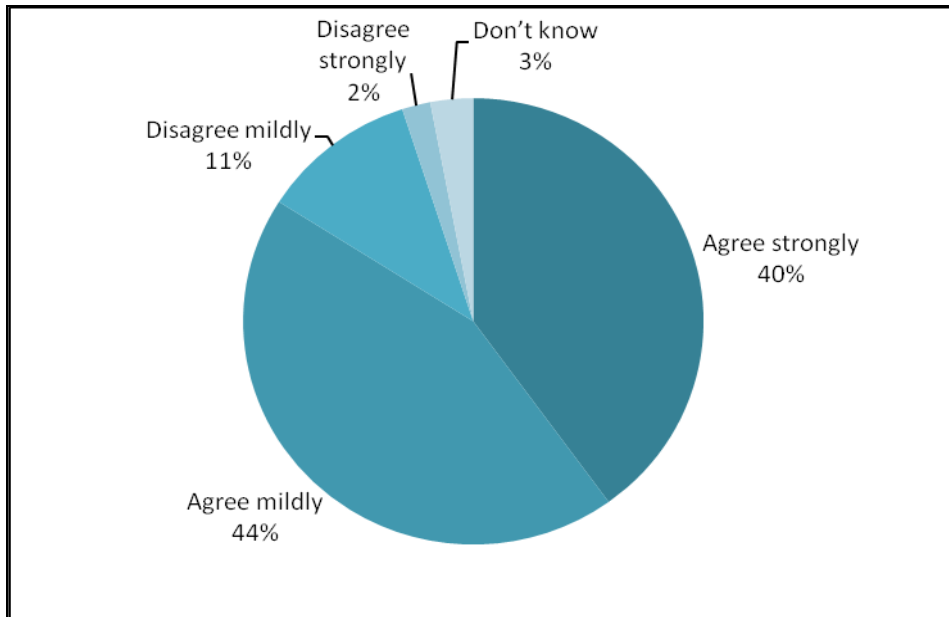
10 To what extent do you think cross-border transactions contribute to your business?



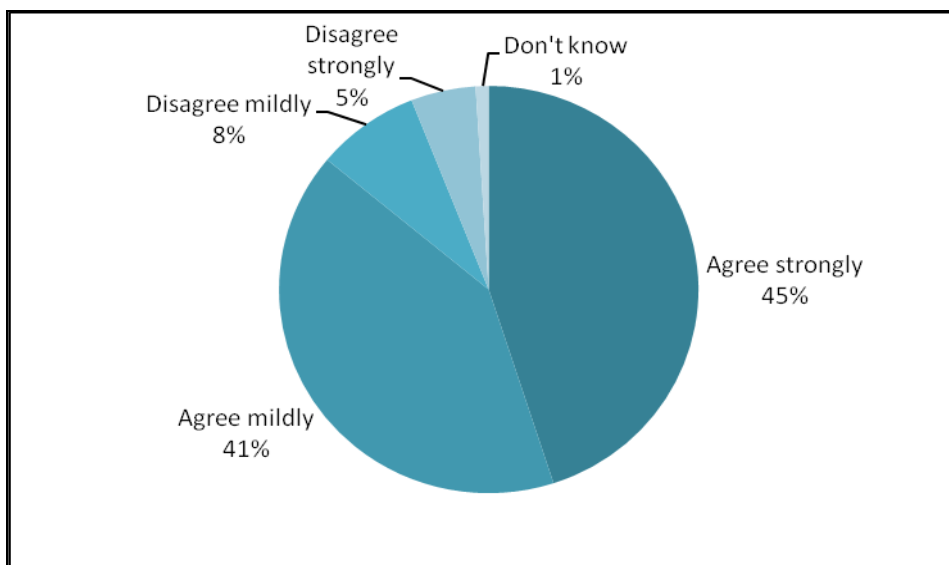
Your general views on divergences in civil justice systems and contract laws and their impact on choices of contract law and jurisdiction

Do you agree or disagree with the following statements?

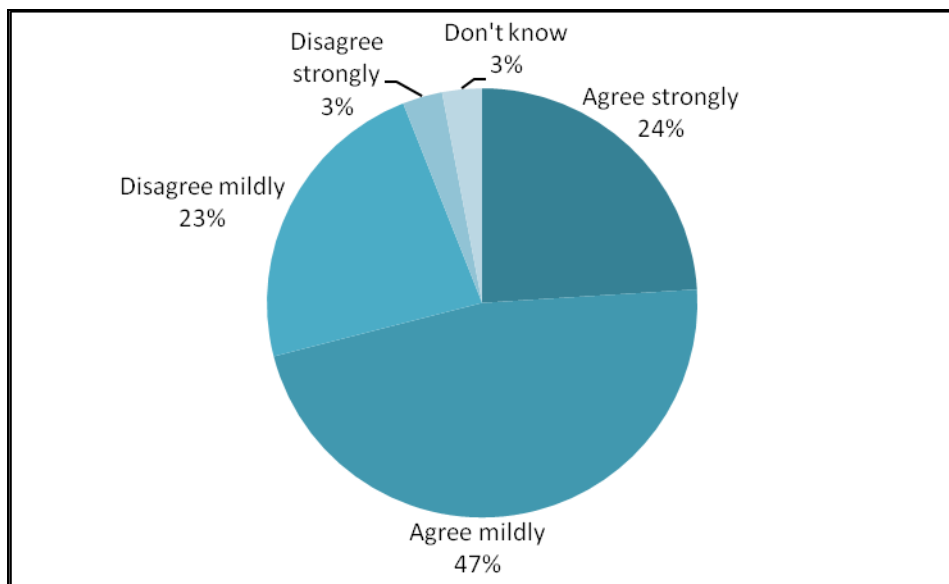
11 There is a considerable variation in civil justice systems across the EU.



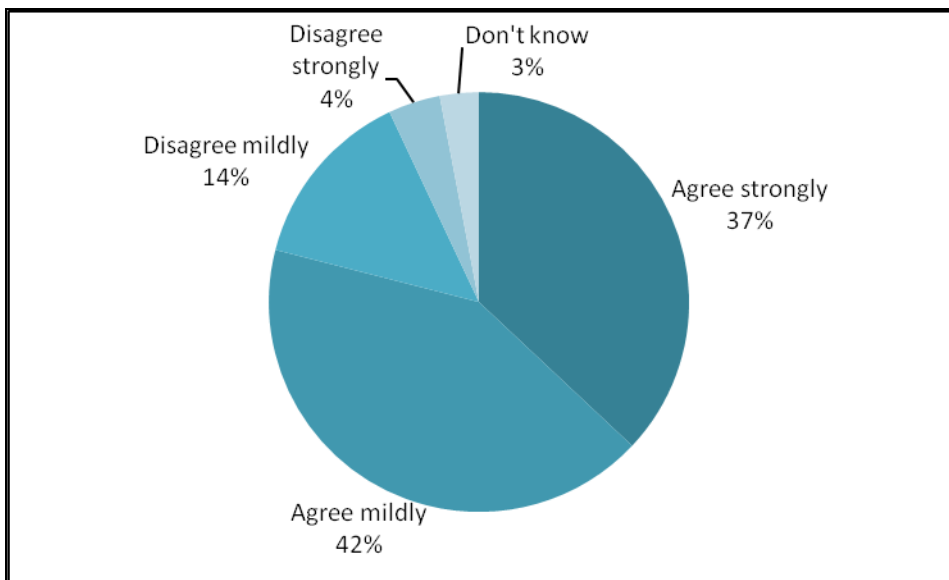
12 Such variations affect your choice of the governing contract law.



13 There is a considerable variation in the contract laws across the EU.

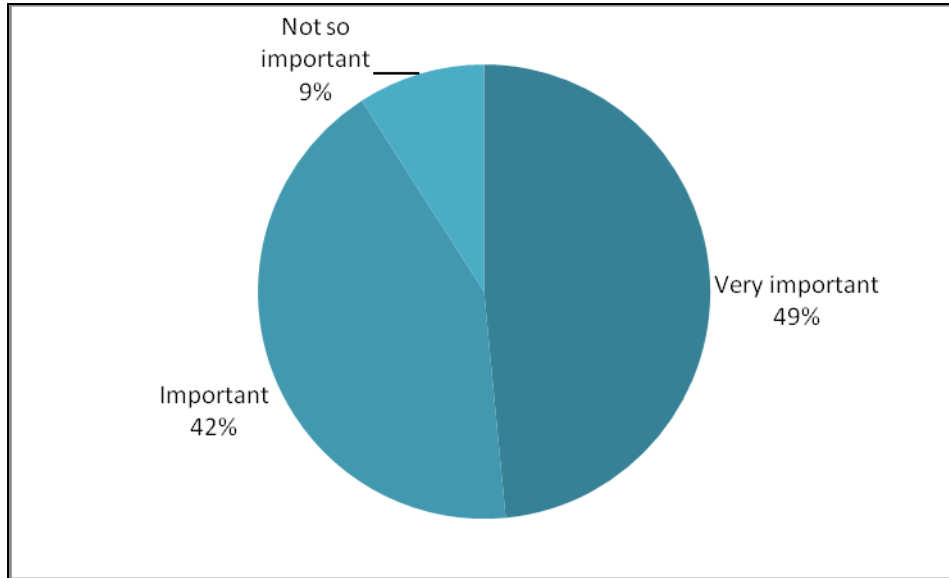


14 Such variations affect your choice of jurisdiction.

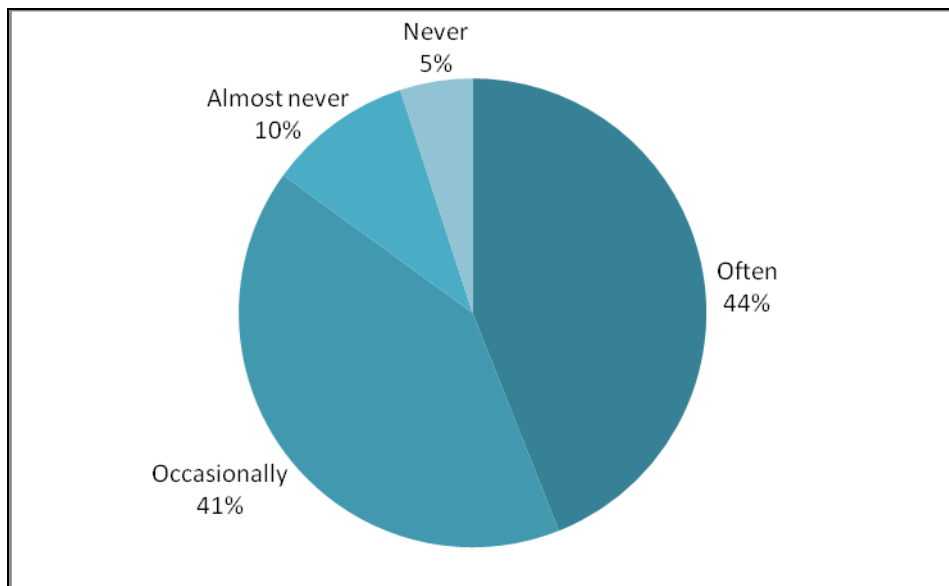


Choice of Governing Contract Law

15 When conducting cross-border transactions, how important is it to you to be able to choose the governing law?

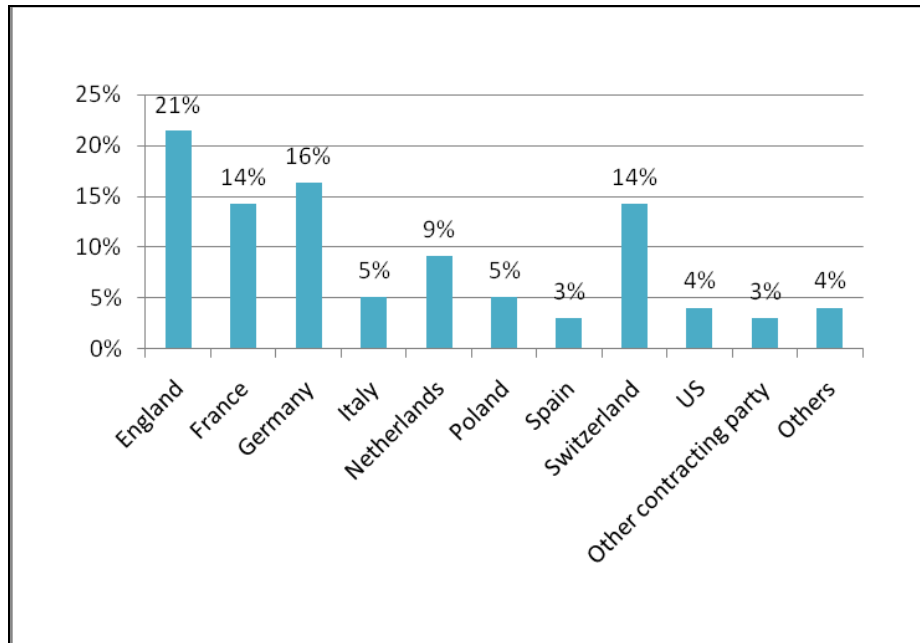


16 How often do you choose a foreign contract law as the governing law?



17.1 When conducting cross-border transactions, what is your preferred choice of governing contract law?

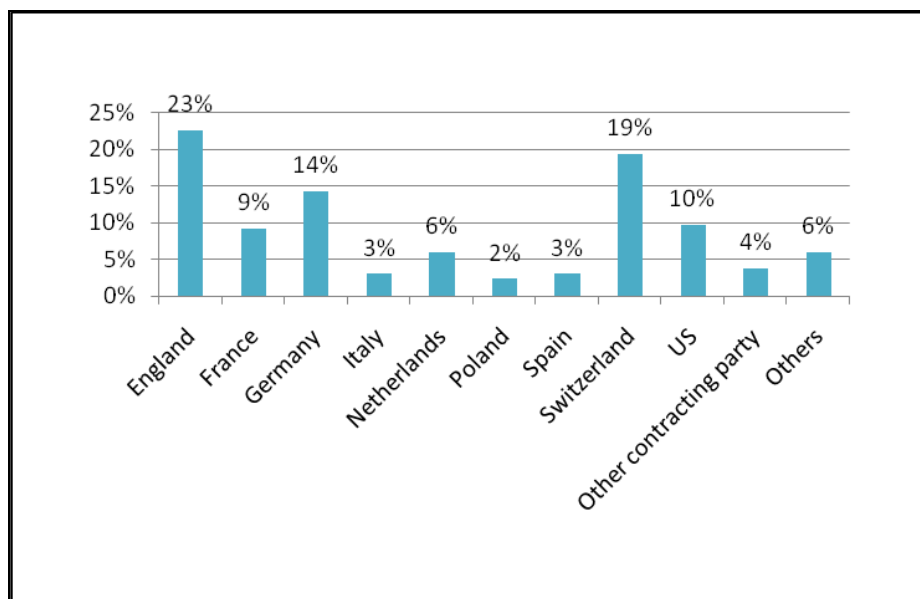
(multiple answers possible, in order of preference)



Note: Only respondents' first answers are displayed.

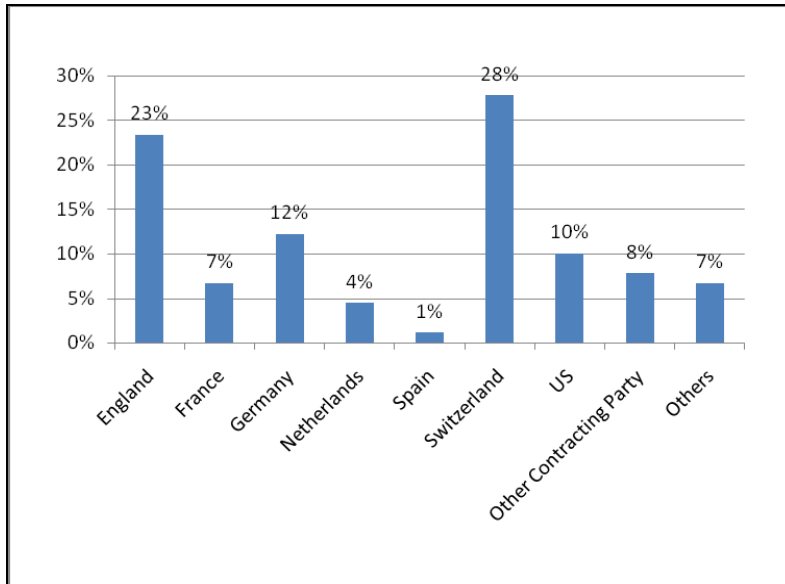
17.2 When conducting cross-border transactions, what is your preferred choice of governing contract law?

(multiple answers possible, in order of preference)



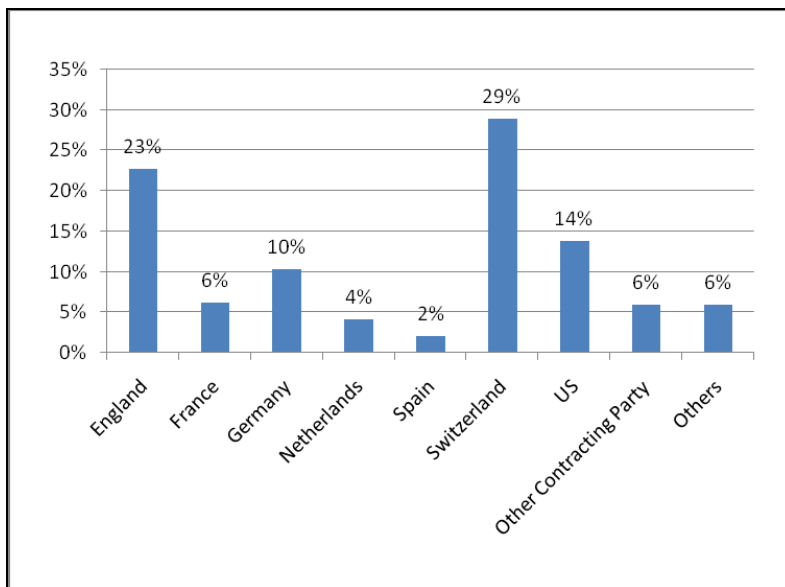
Note: Only respondents' total answers are displayed.

17.3 If the answer to Question 17 was the contract law of the respondent's home jurisdiction, the following bar chart shows the preferred contract law other than that.



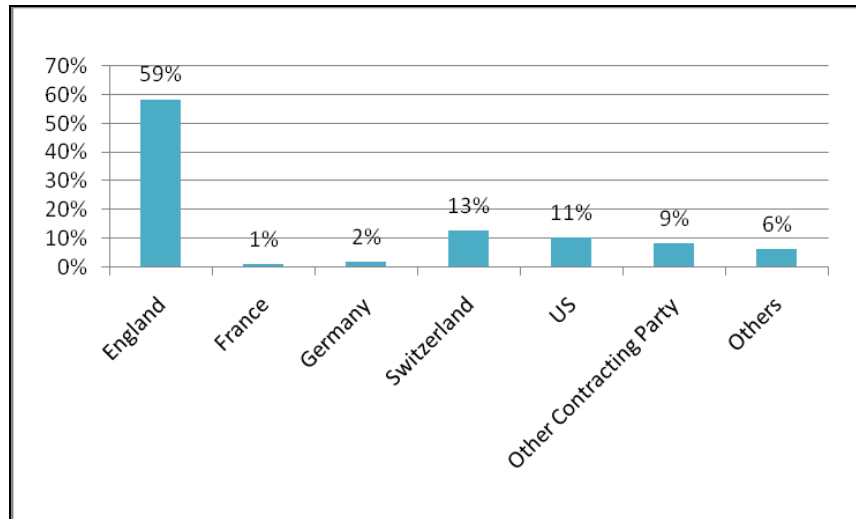
Note: The bar chart is calculated on the basis of Q17(i) and Q1. Only respondents' first answers are displayed.

17.4 If the answer to Question 17 was the contract law of the respondent's home jurisdiction, the following bar chart shows the the preferred contract law other than that.



Note: The bar chart is calculated on the basis of Q17(i) and Q1. Only respondents' total answers are displayed.

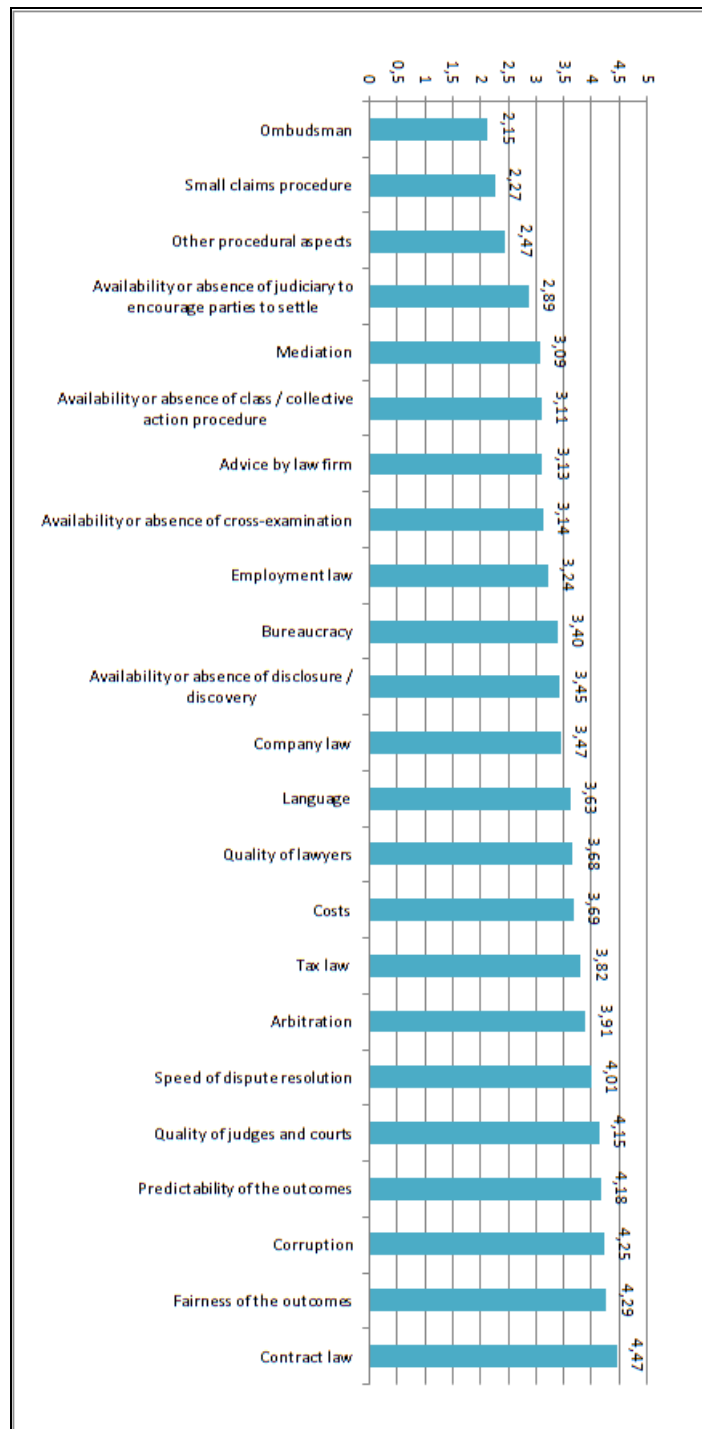
18 Overall, which contract law do you think is the most used by anyone when conducting cross-border transactions?



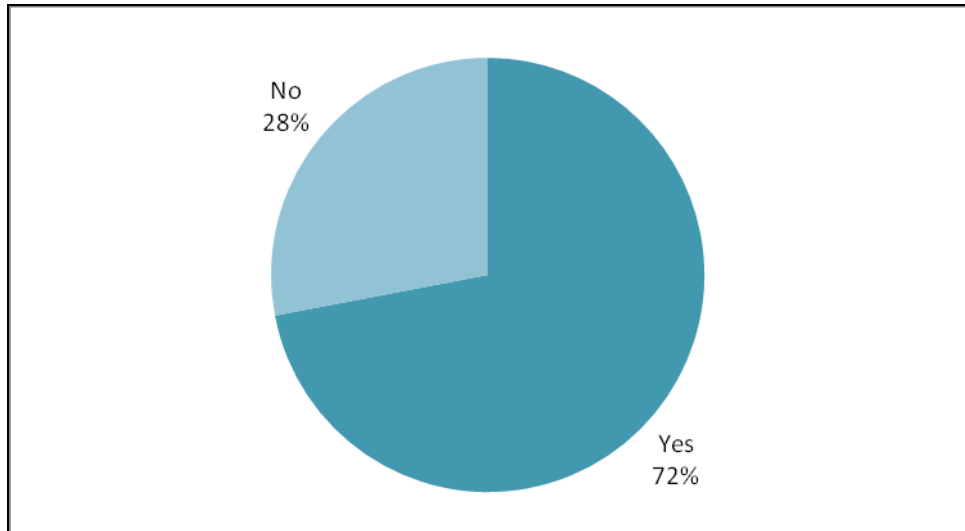
19 When choosing a governing contract law for cross-border transactions, to what extent do you take into account the following factors?

(please rate each of the following factors on a scale between 1 and 5, with 1 as the most important and 5 as the least important)

Note: Scale has been reversed: 5 is the most important and 1 the least important.

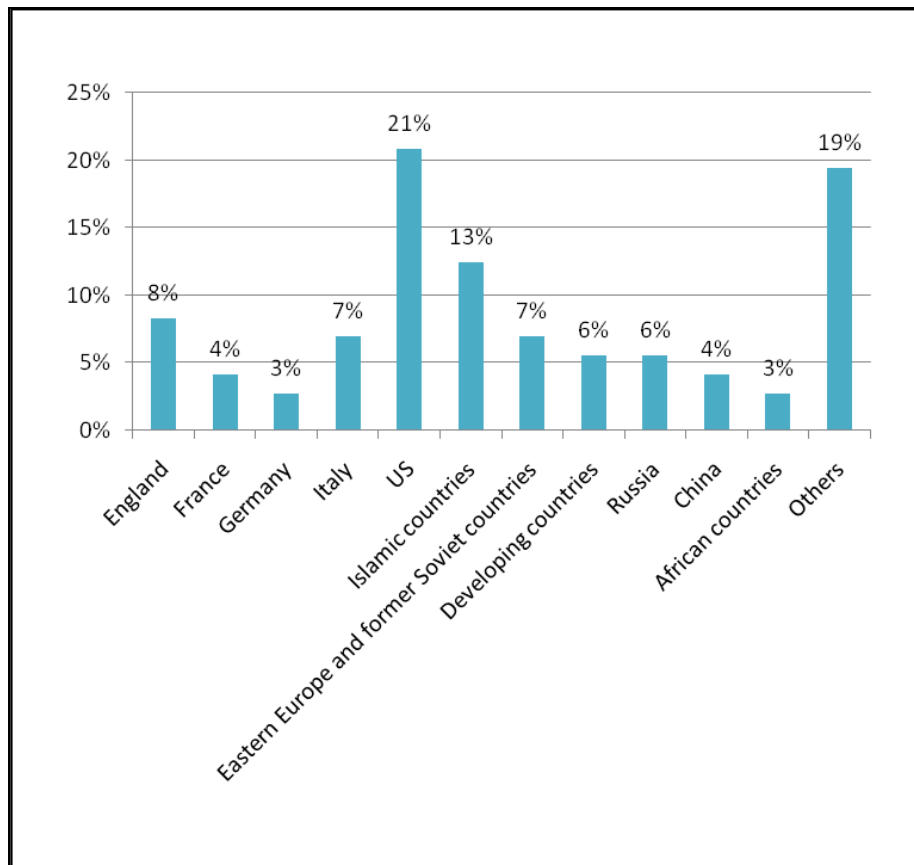


20.1 When conducting cross-border transactions, is there any contract law the choice of which you try to avoid?



20.2 Yes, the contract law of...

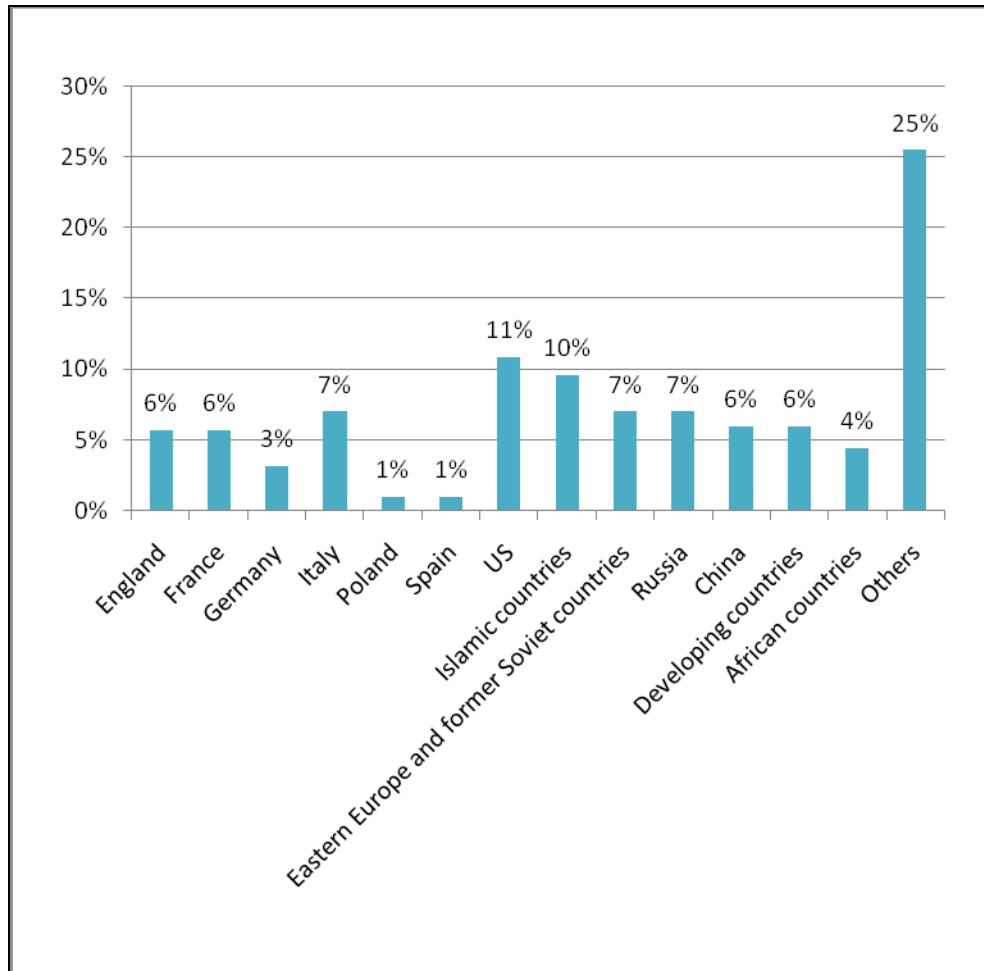
(multiple answers possible, please state the law you are least likely to choose first)



Note: Only respondents' first answers are displayed.

20.3 Yes, the contract law of...

(multiple answers possible, please state the law you are least likely to choose first)

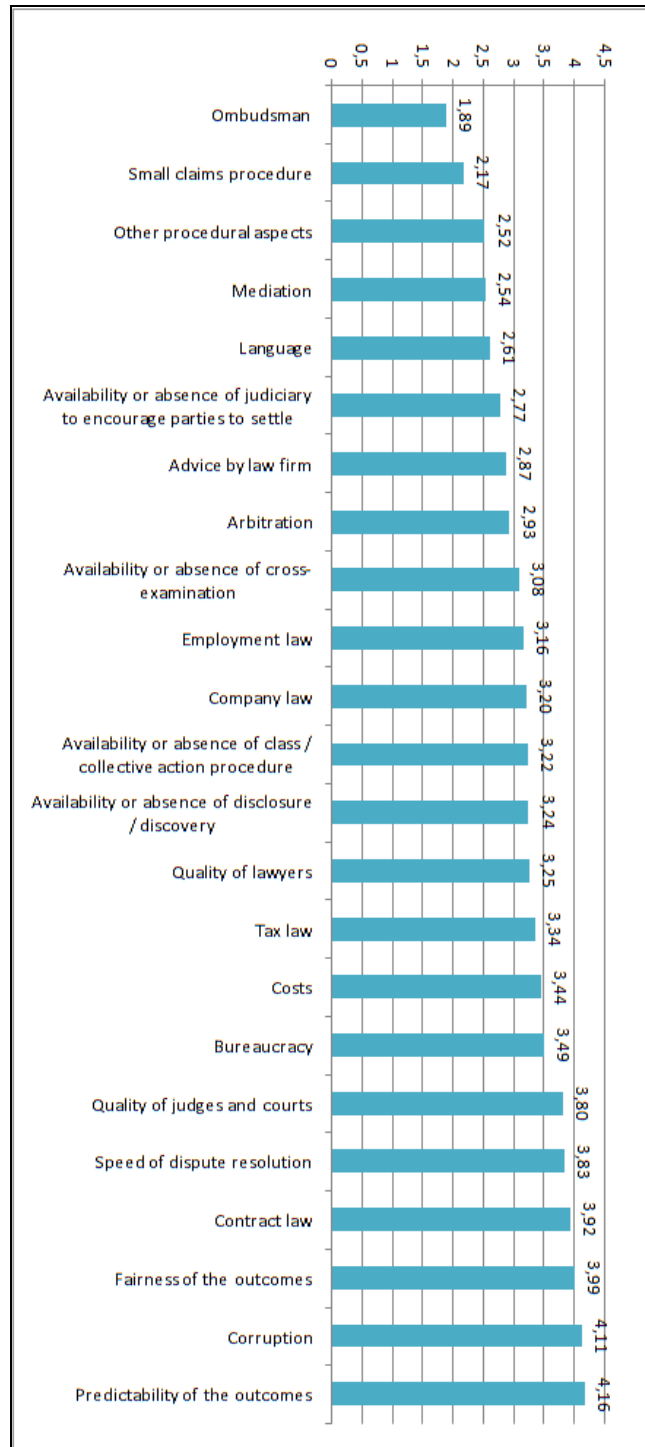


Note: Only respondents' total answers are displayed. US consist of US(Not specified) 14, US(CA) 2, US(TX) 1.

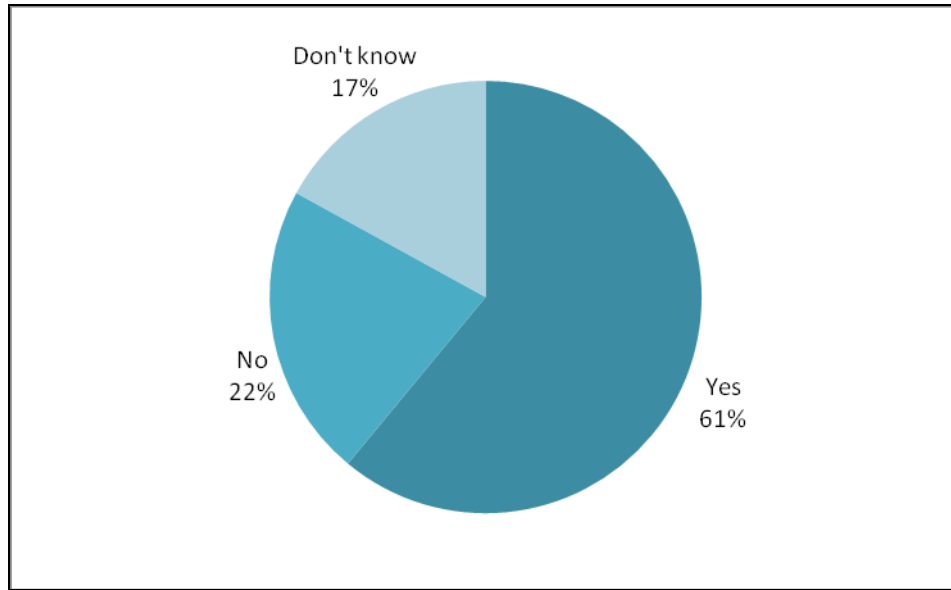
21 If the answer to Question 20 was 'yes': Do you tend to avoid these contract laws because of...

(please rate those factors that lead you to avoid these contract laws on a scale between 1 and 5, with 1 as the most important and 5 as the least important)

Note: Scale has been reversed: 5 is the most important and 1 the least important.

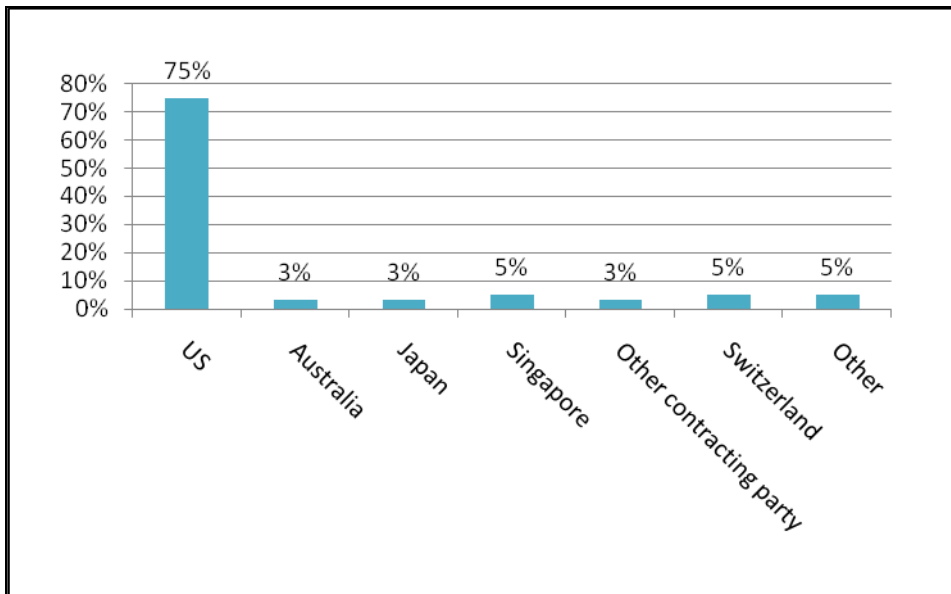


22.1 If no European law was suitable for your purposes, would you choose a governing contract law outside Europe?



22.2 Yes, the law of...

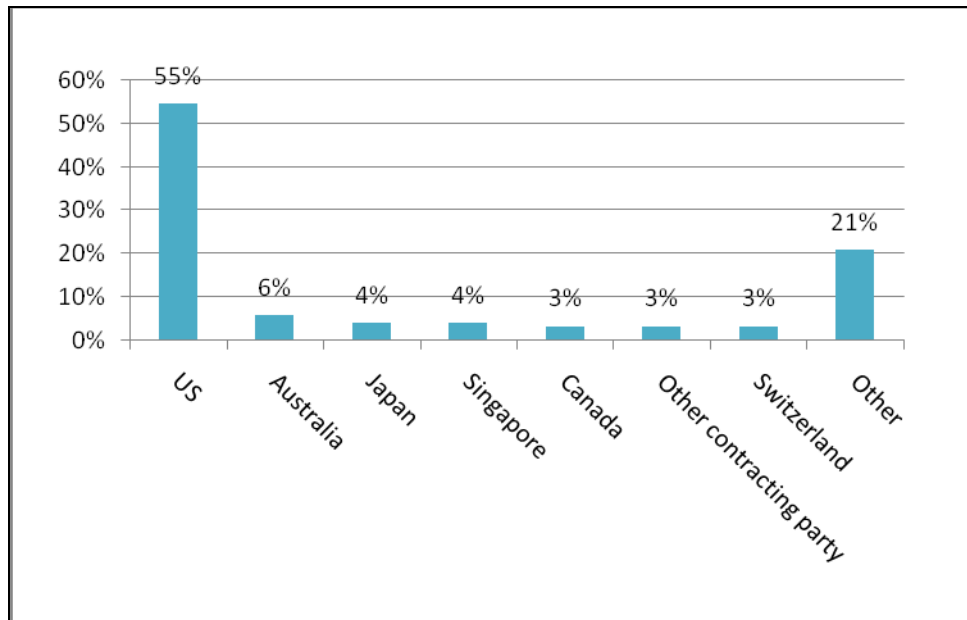
(multiple answers possible, in order of preference)



Note: Only respondents' first answers are displayed.

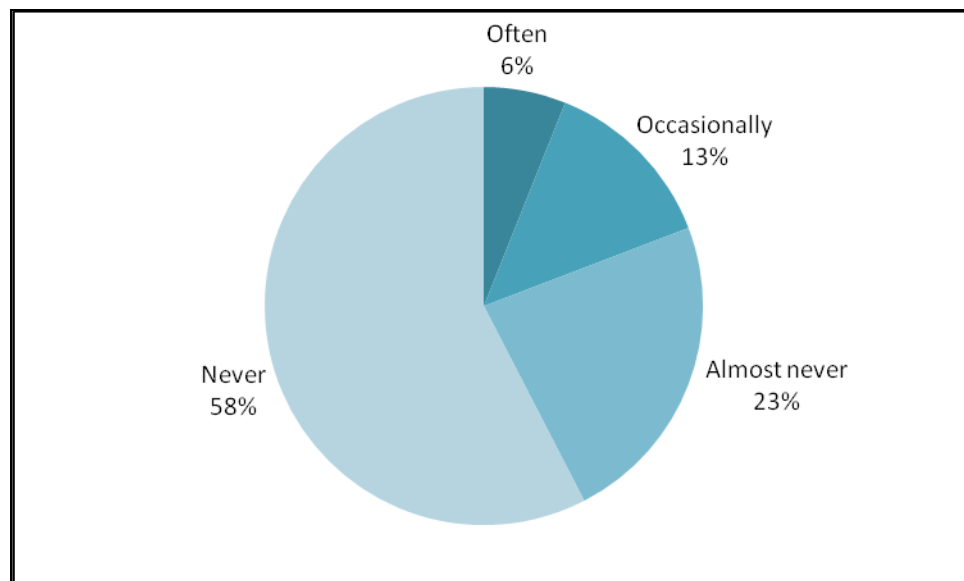
22.3 Yes, the law of...

(multiple answers possible, in order of preference)

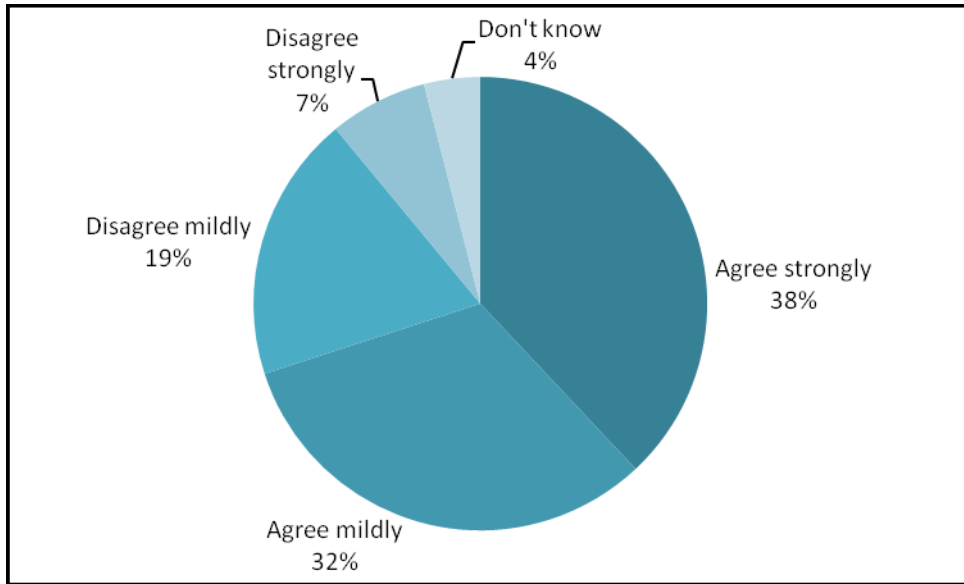


Note: Only respondents' total answers are displayed. US consist of US(NY) 34, US(Not specified) 20, US(DE) 4, US(CA) 3, US(IL) 1, US(PA) 1, US(TX) 1, US(WA) 1.

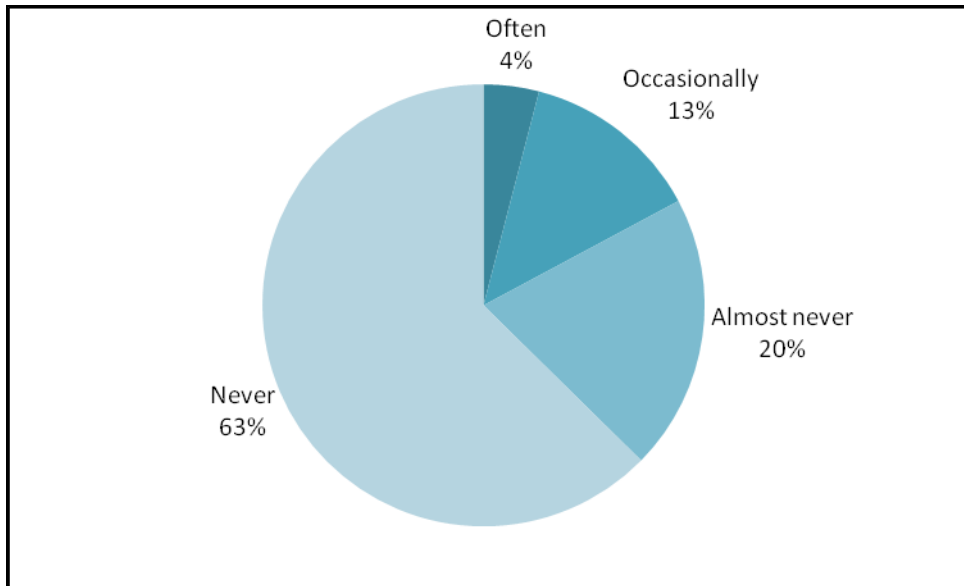
23 When conducting cross-border transactions, how often have you agreed that the contract be governed by 'general principles of international commercial contracts', 'the lex mercatoria' or the like?



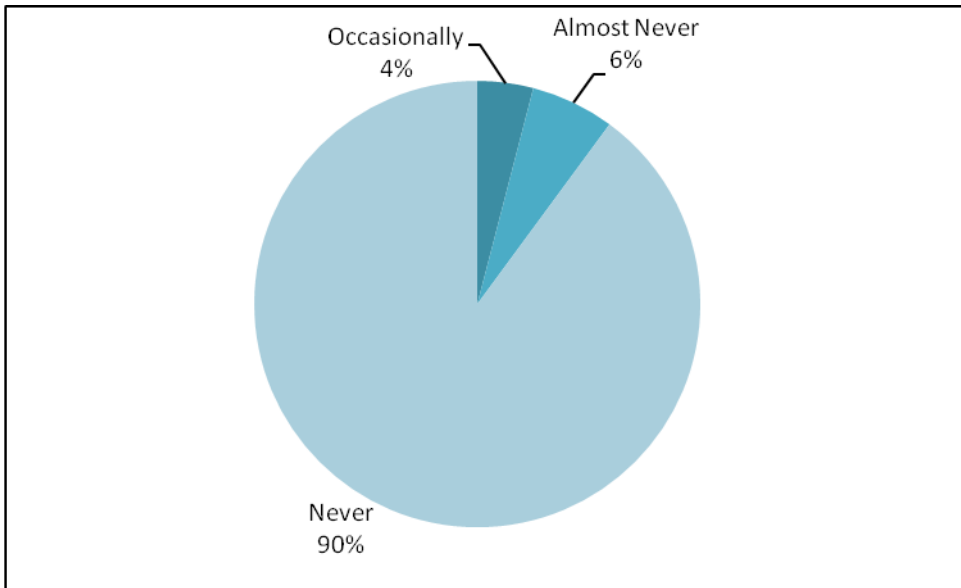
24 Do you agree with the following statement? Cross-border transactions would be facilitated if there was a European or even global contract law which the parties could choose.



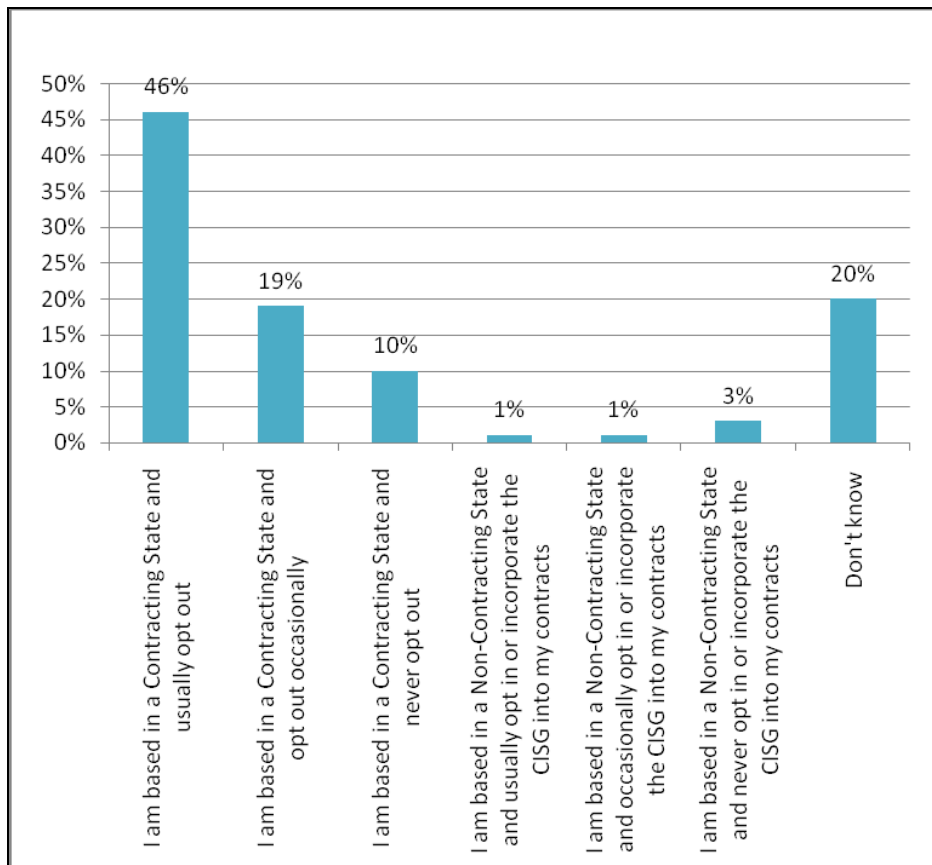
25 When conducting cross-border transactions, have you ever agreed that the contract be governed by the UNIDROIT Principles of International Commercial Contracts or have you ever incorporated these Principles into your contracts?



26 When conducting cross-border transactions, have you ever agreed that the contract be governed by the Principles of European Contract Law ('PECL') or have you ever incorporated these Principles into your contracts?

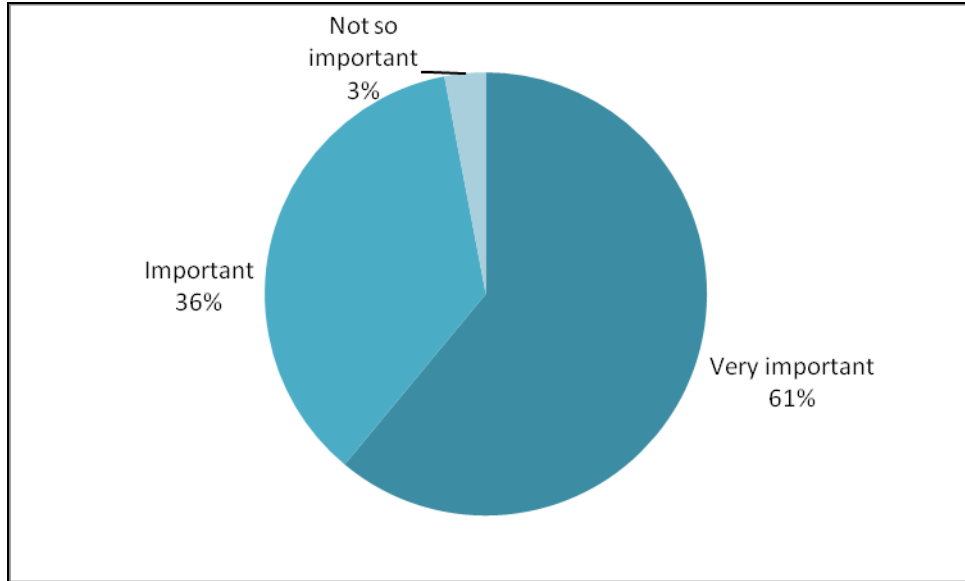


27 When conducting cross-border sales of goods, what is your choice with respect to the Vienna Convention on the international sale of goods ('CISG')?

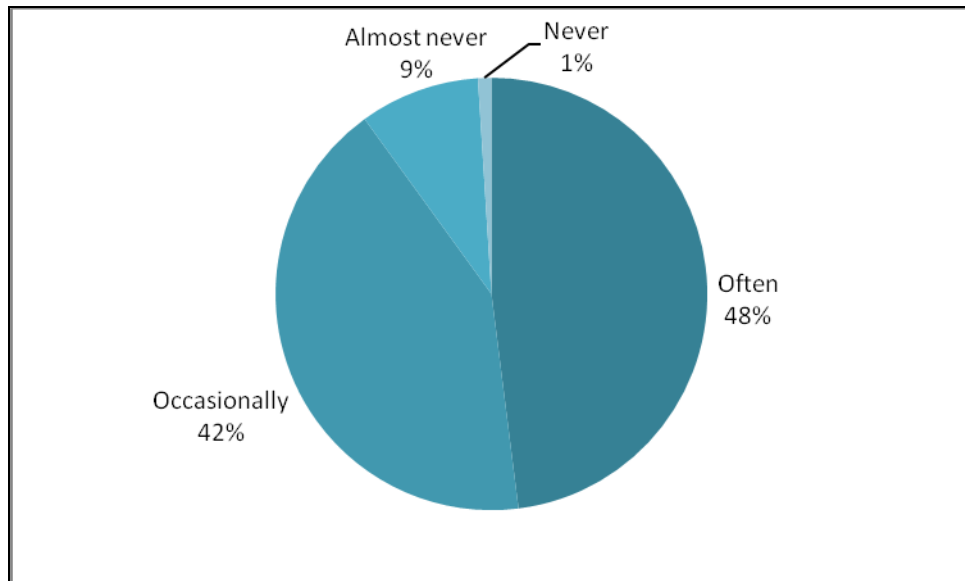


Choice of dispute resolution forum

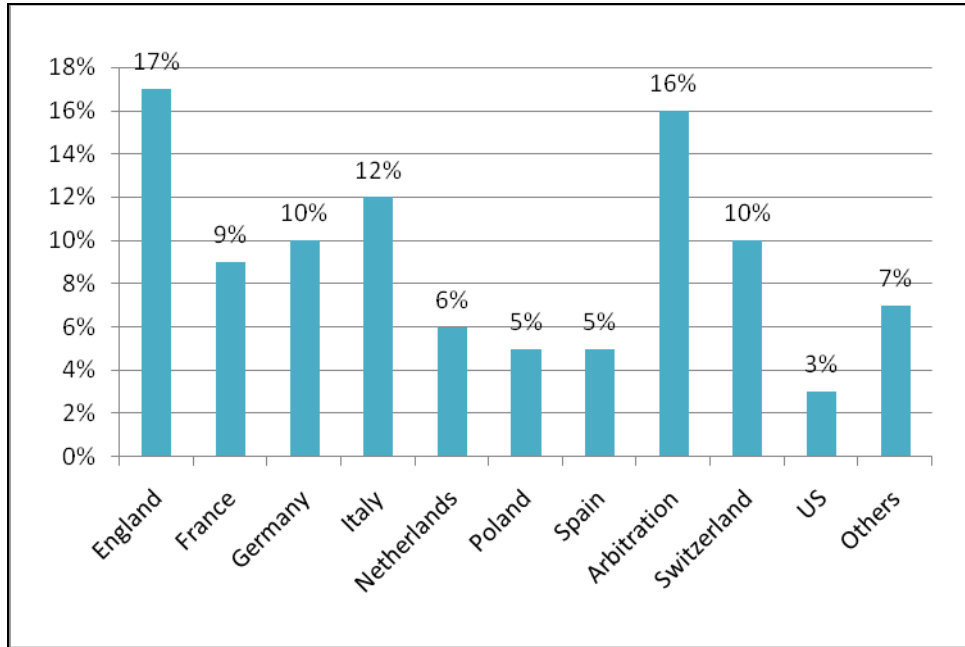
28 When conducting cross-border transactions, how important is it to you to be able to choose the dispute resolution forum?



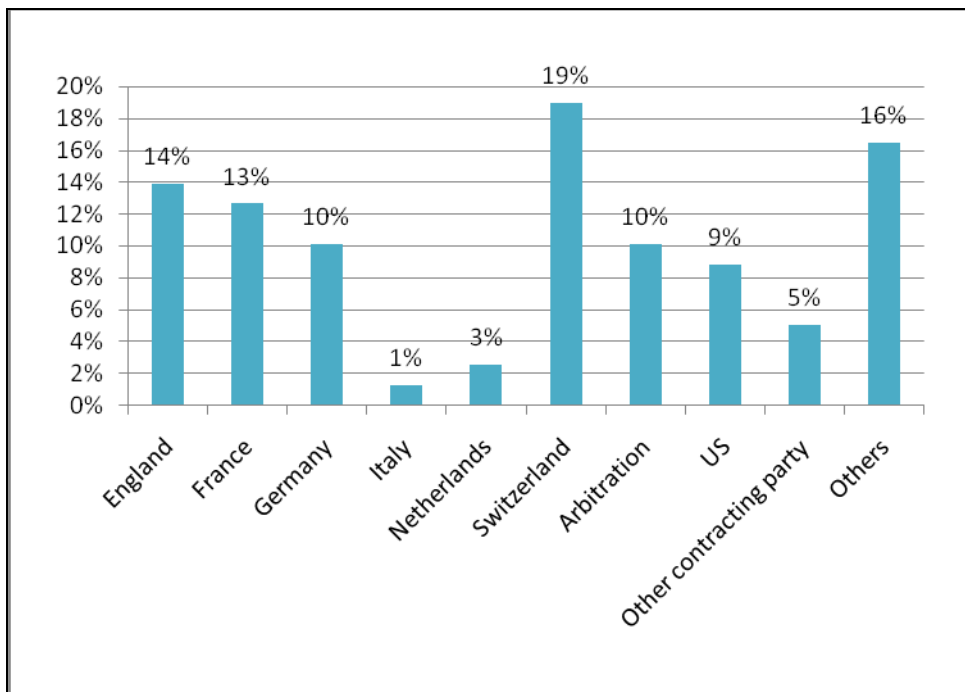
29 How often do you choose a foreign forum?



30 When conducting cross-border transactions, what is your preferred choice of forum?



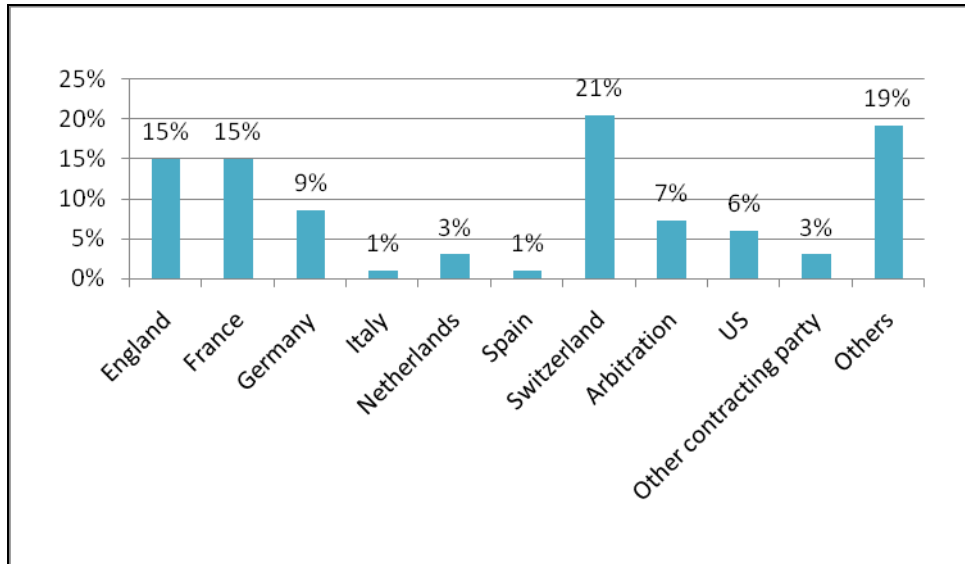
31.1 If the answer to Question 30 was your home jurisdiction, what is your preferred forum other than your home jurisdiction?
(multiple answers possible, in order of preference)



Note: Only respondents' first answers are displayed.

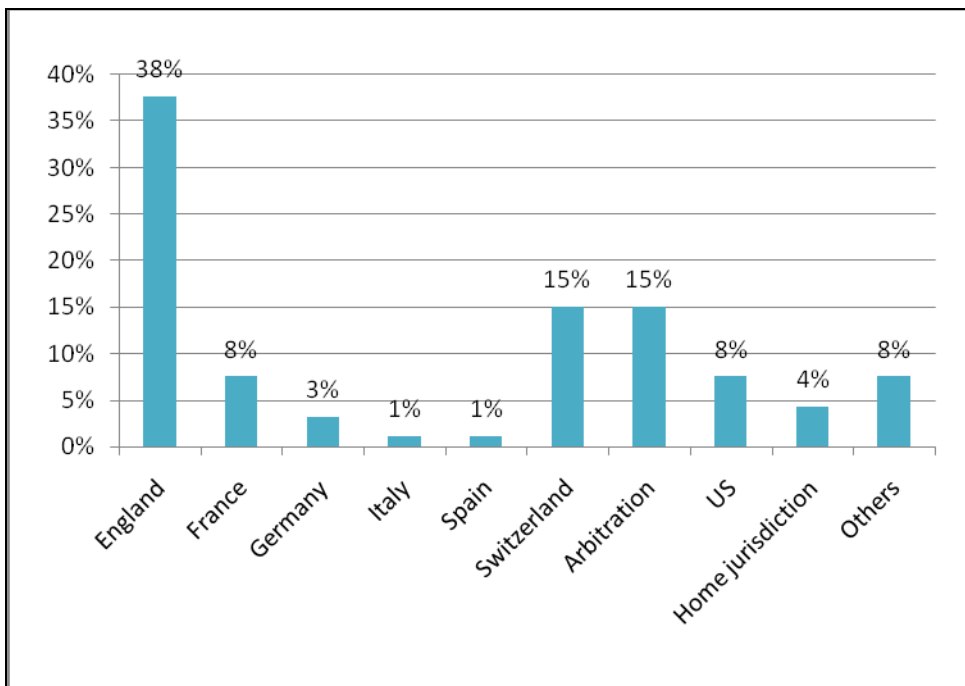
31.2 If the answer to Question 30 was your home jurisdiction, what is your preferred forum other than your home jurisdiction?

(multiple answers possible, in order of preference)



Note: Only respondents' total answers are displayed.

32 Overall, which forum do you think is most frequently chosen when conducting cross-border transactions?

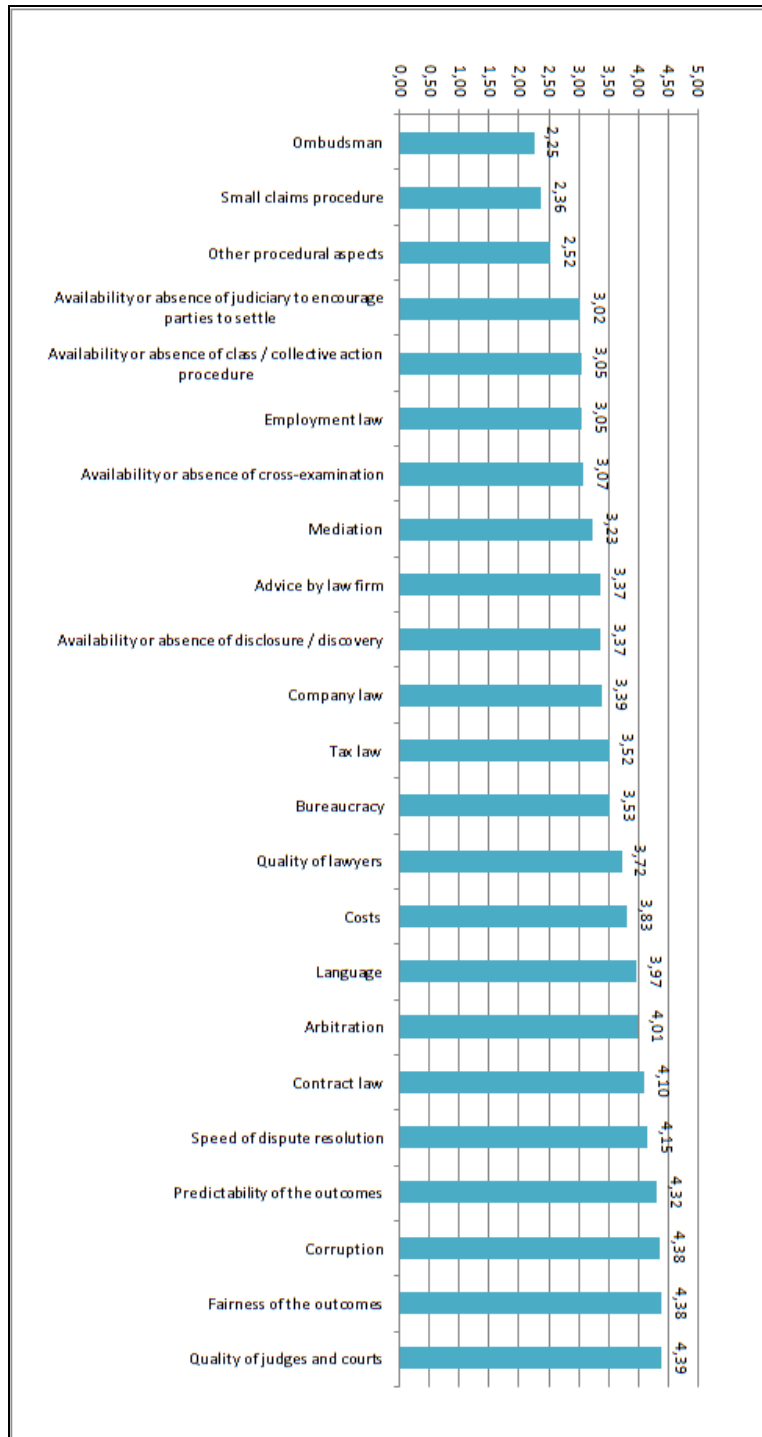


Note: US consist of US(NY) 4, US(Not specified) 3.

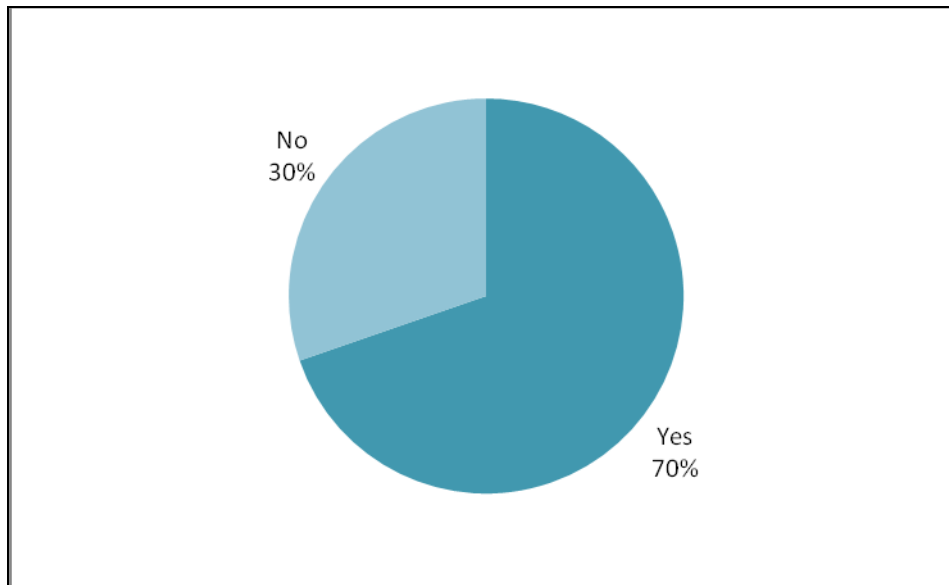
33 When choosing a dispute resolution forum for cross-border transactions, to what extent do you take into account the following factors?

(please rate each of the following factors on a scale between 1 and 5, with 1 as the most important and 5 as the least important)

Note: Scale has been reversed: 5 is the most important and 1 the least important.

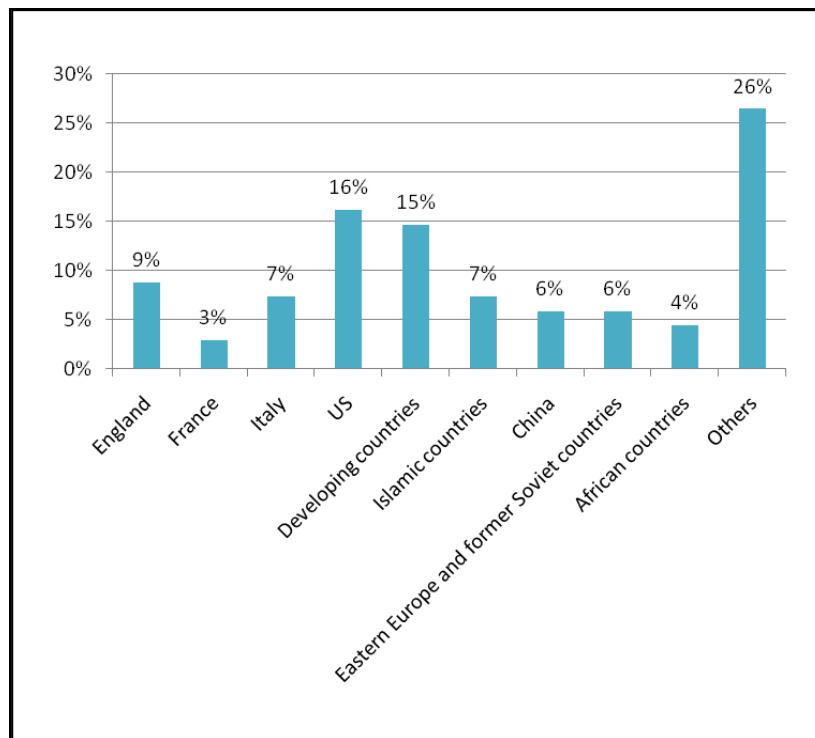


34.1 When conducting cross-border transactions, is there any forum the choice of which you try to avoid?



34.2 Yes, the following forum...

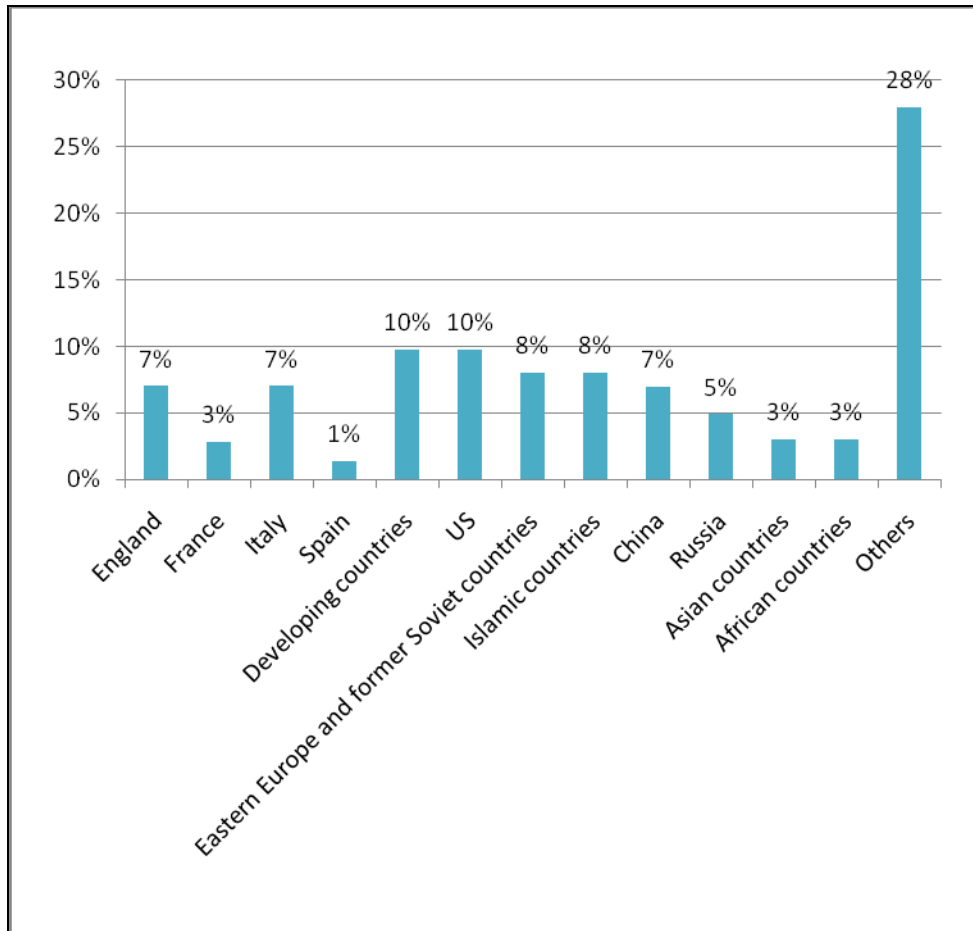
(multiple answers possible, in order of preference)



Note: Only respondents' first answers are displayed.

34.3 Yes, the following forum...

(multiple answers possible, in order of preference)

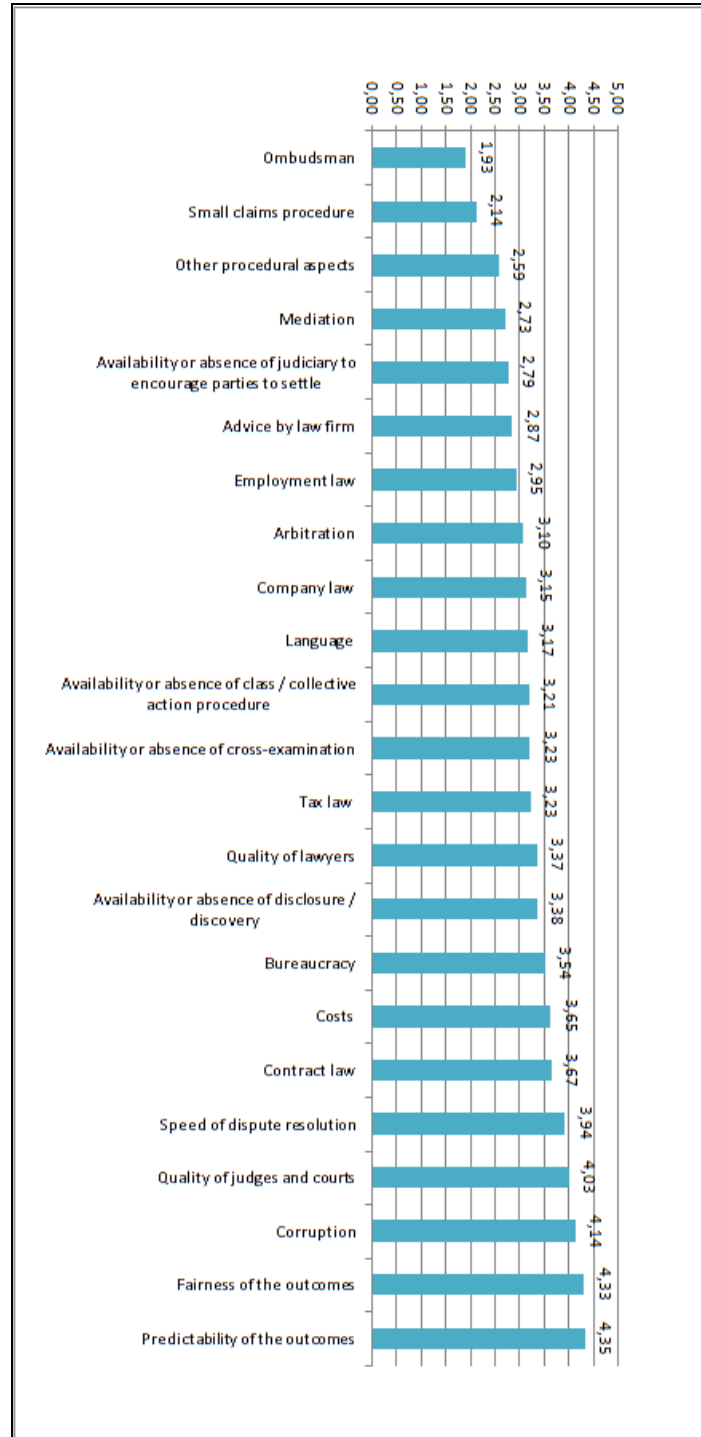


Note: Only respondents' total answers are displayed. US consist of US(Not specified) 12, US(CA) 2.

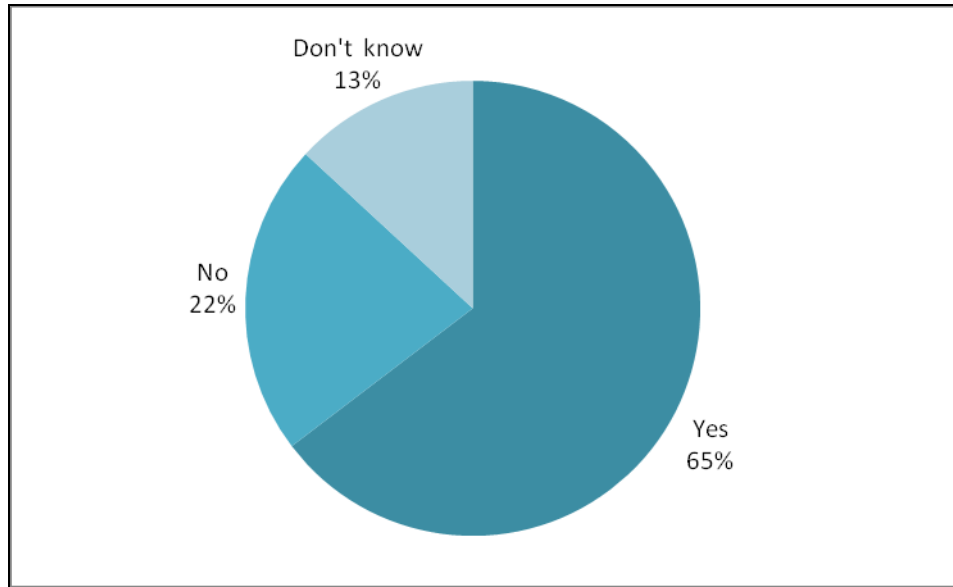
35 If the answer to Question 34 was 'yes': Do you tend to avoid these fora because of...

(please rate those factors that lead you to avoid these fora on a scale between 1 and 5, with 1 as the most important and 5 as the least important)

Note: Scale has been reversed: 5 is the most important and 1 the least important.

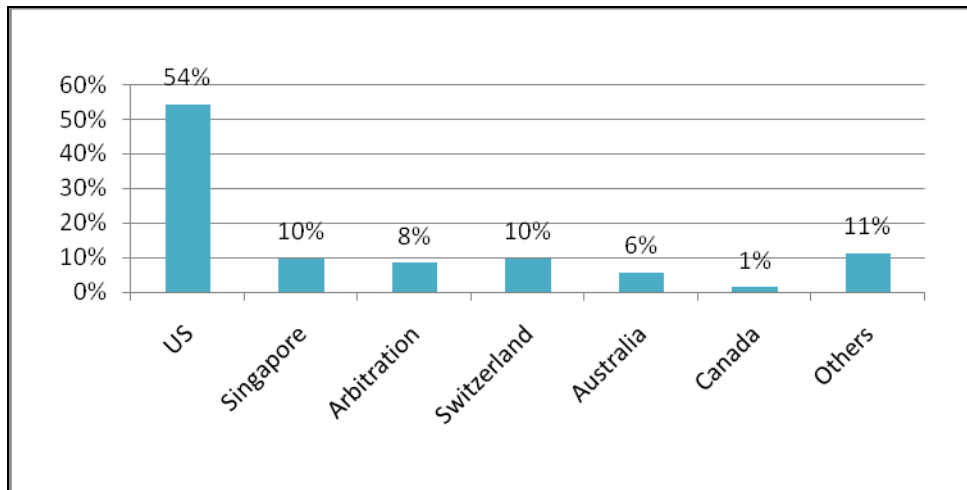


36.1 If no European forum was suitable for your purposes, would you choose a forum outside Europe?



36.2 Yes, the forum of...

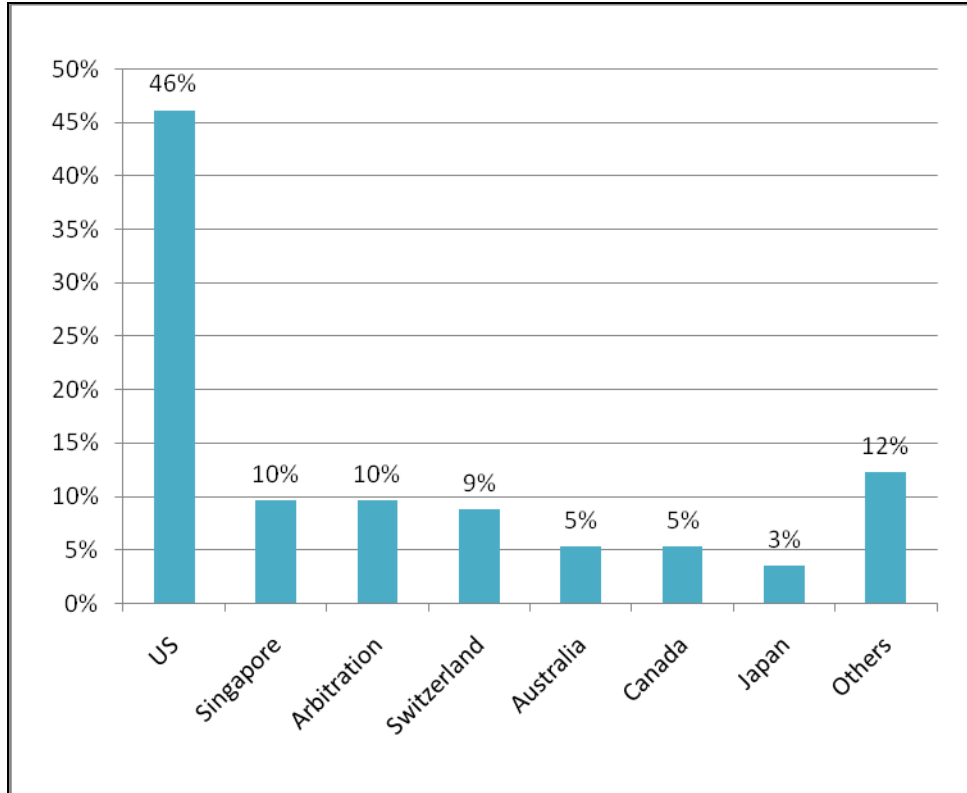
(multiple answers possible, in order of preference)



Note: Only respondents' first answers are displayed.

36.3 Yes, the forum of...

(multiple answers possible, in order of preference)



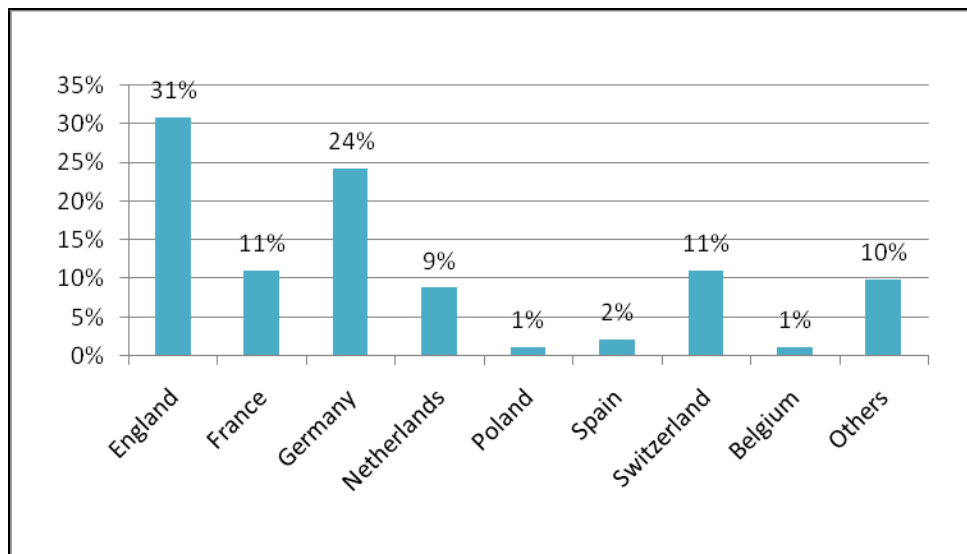
Note: Only respondents' total answers are displayed.

National civil justice systems in Europe and further harmonisation

Regardless of whether you choose a certain forum or not, can you let us have your views on the quality of European civil justice systems in the abstract.

37.1 Which European country do you think has the most favourable civil justice system?

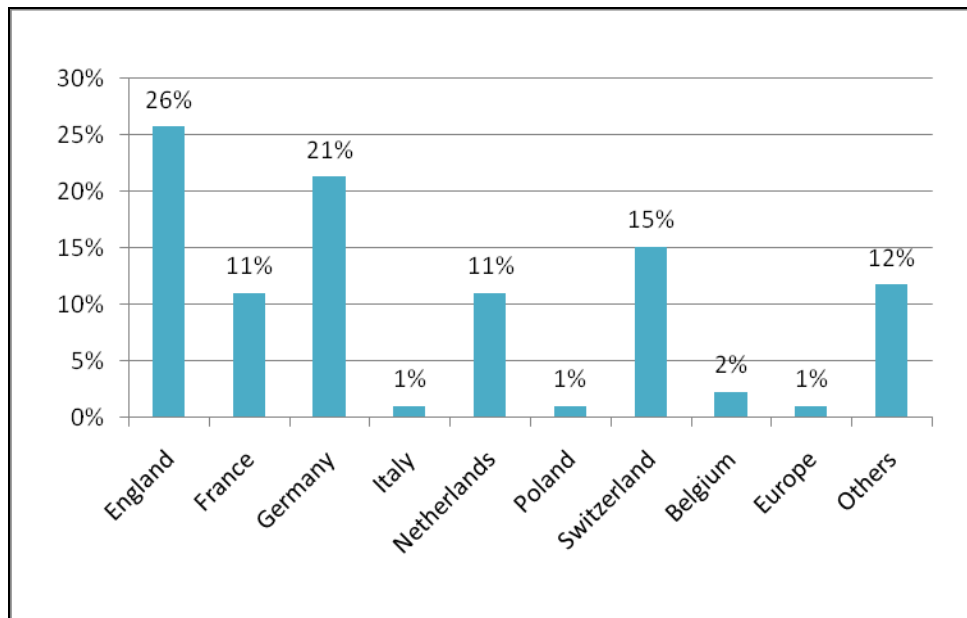
(multiple answers possible, in order of preference)



Note: Only respondents' first answers are displayed.

37.2 Which European country do you think has the most favourable civil justice system?

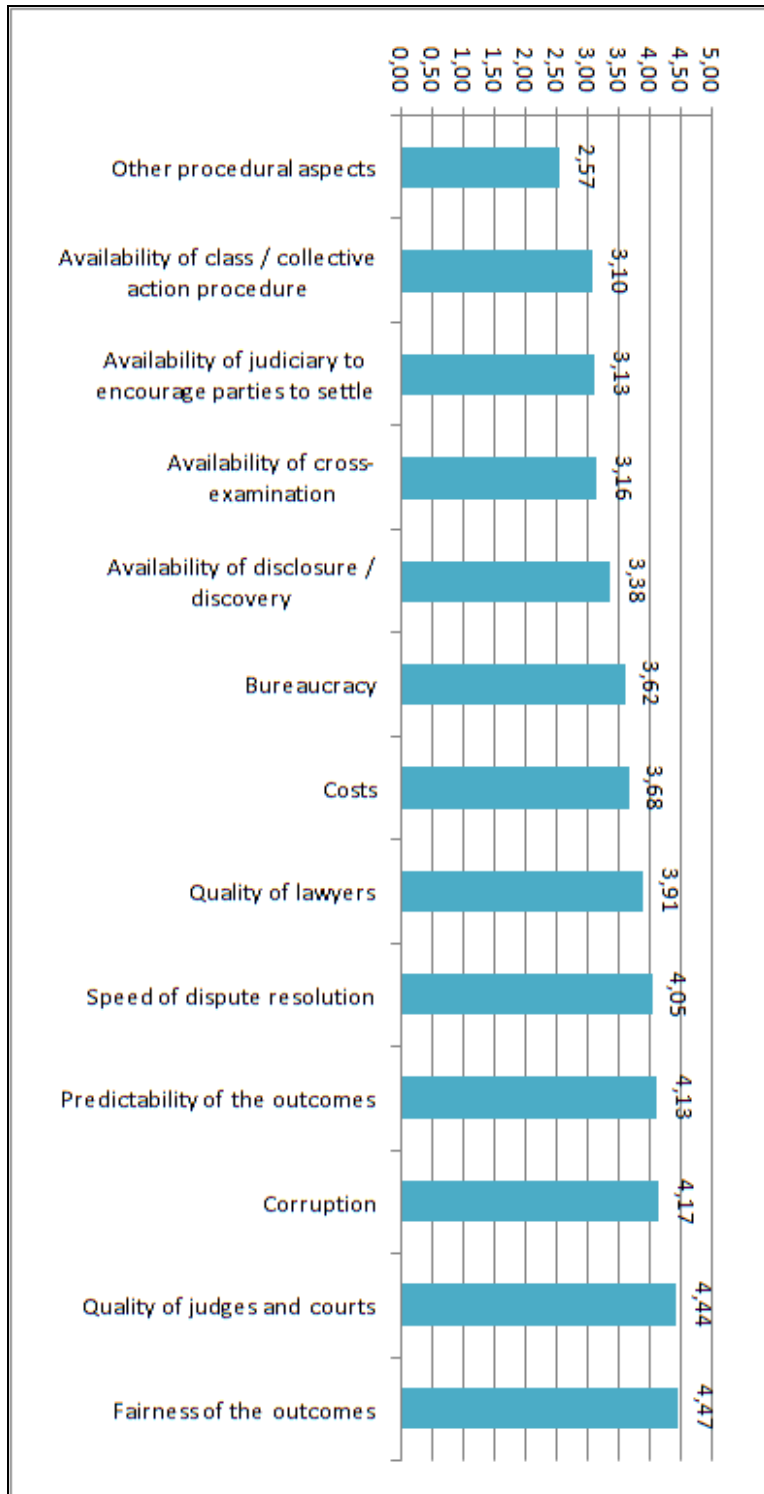
(multiple answers possible, in order of preference)



Note: Only respondents' total answers are displayed.

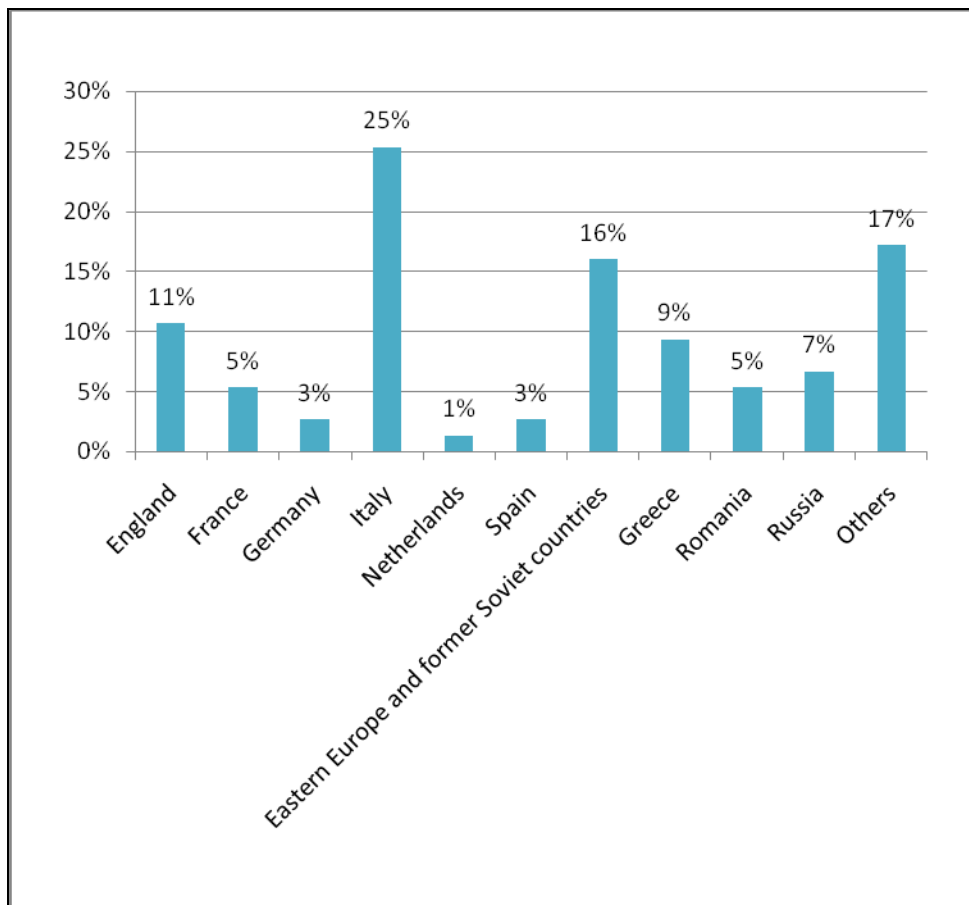
38 What are the advantages of your preferred civil justice system in Europe?
 (please rate each of the following factors on a scale of 1 to 5, where 1 is extremely high and 5 is extremely low)

Note: Scale has been reversed: 5 is the most important and 1 the least important.



39.1 Which European country or countries do you think have the least favourable civil justice systems?

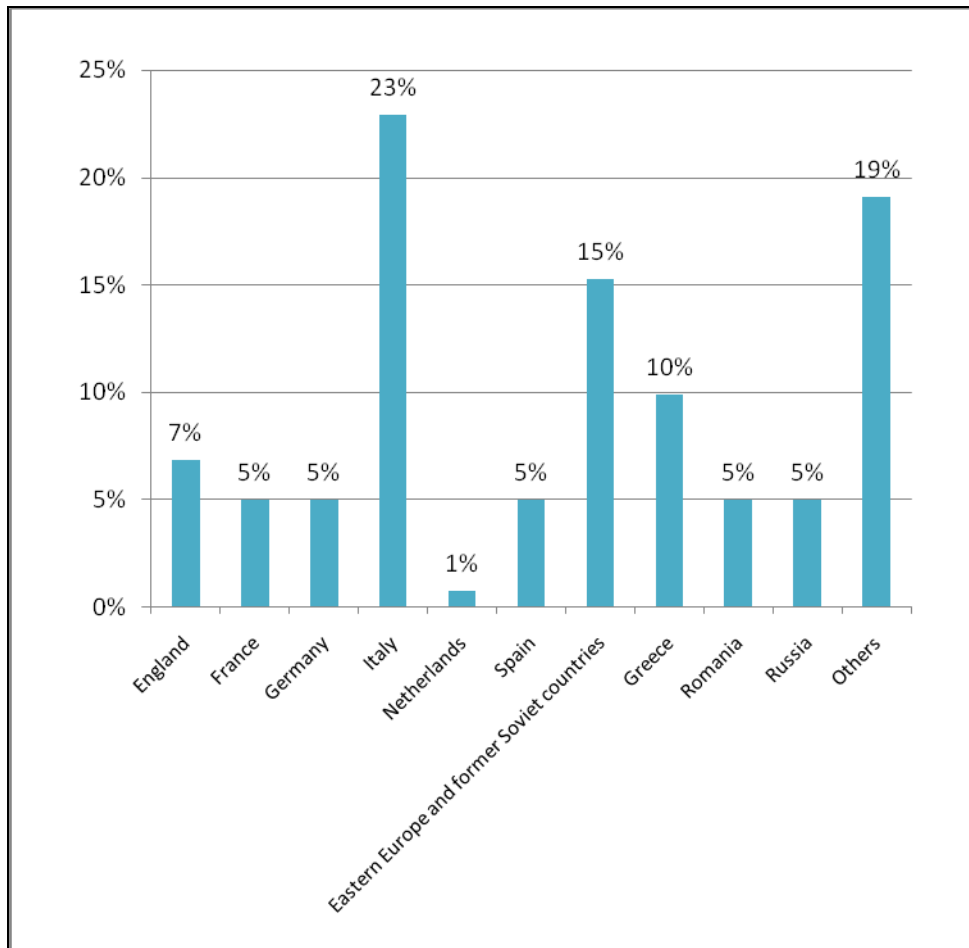
(multiple answers possible, please state the least favourable law first)



Note: Only respondents' first answers are displayed.

39.2 Which European country or countries do you think have the least favourable civil justice systems?

(multiple answers possible, please state the least favourable law first)

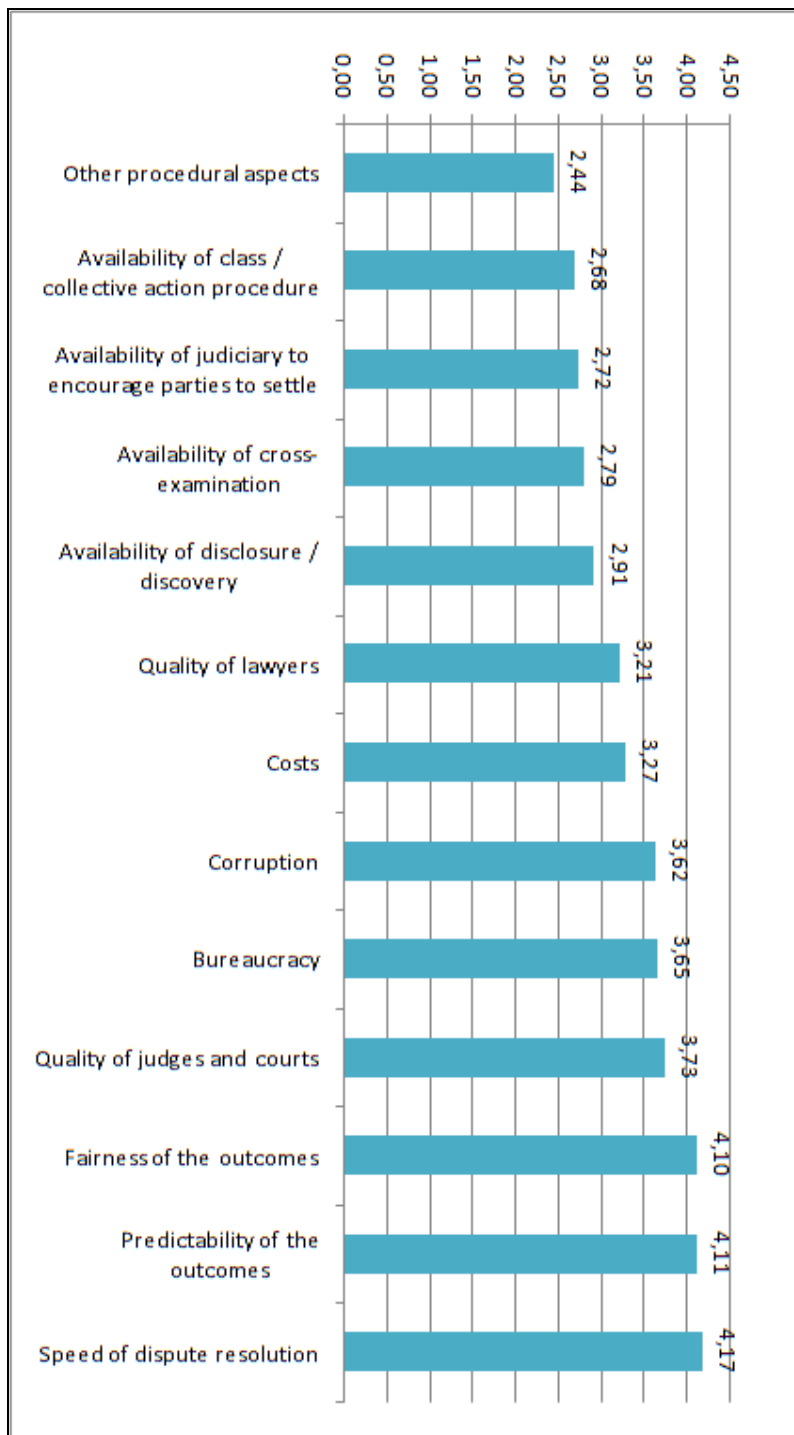


Note: Only respondents' total answers are displayed.

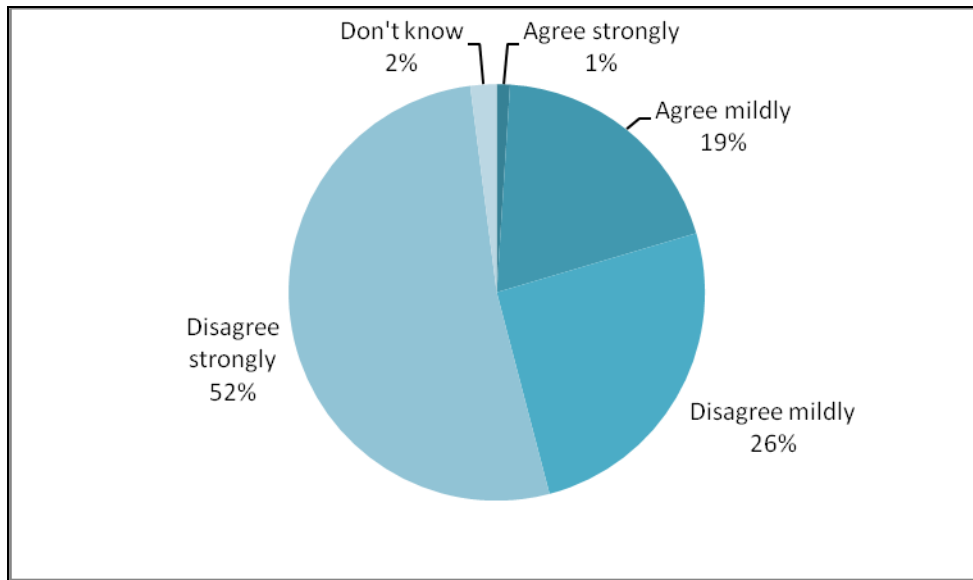
40 What are the disadvantages of your least preferred civil justice system in Europe?

(please rate each of the following factors on a scale of 1 to 5, where 1 is extremely high and 5 is extremely low)

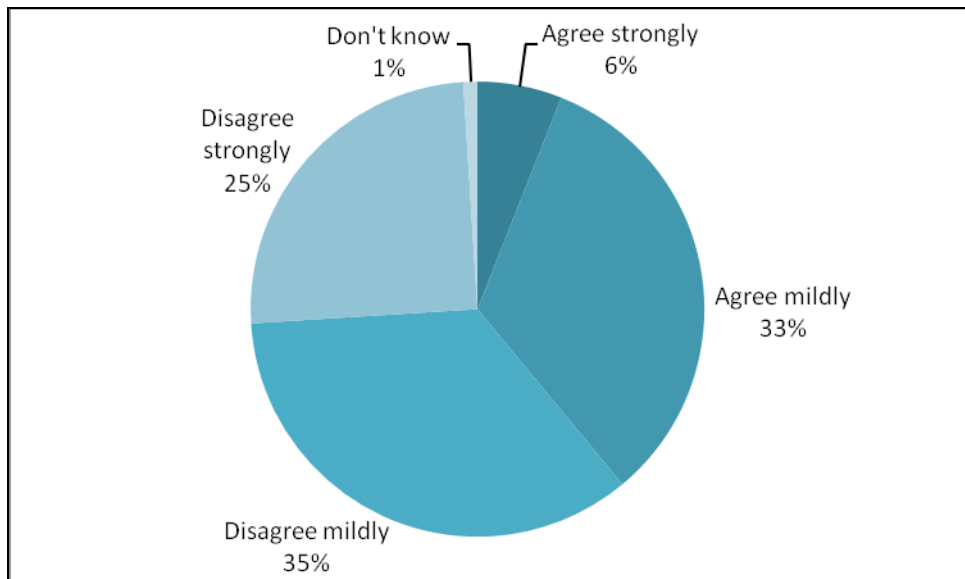
Note: Scale has been reversed: 5 is the most important and 1 the least important.



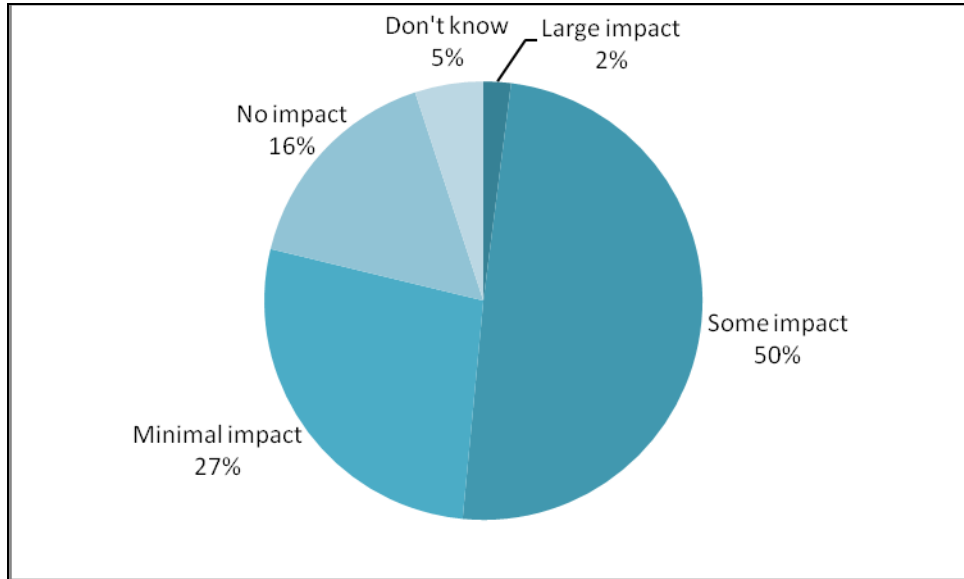
41 Do you agree with the following statement? Variations in European civil justice systems deter your company from doing business in certain jurisdictions.



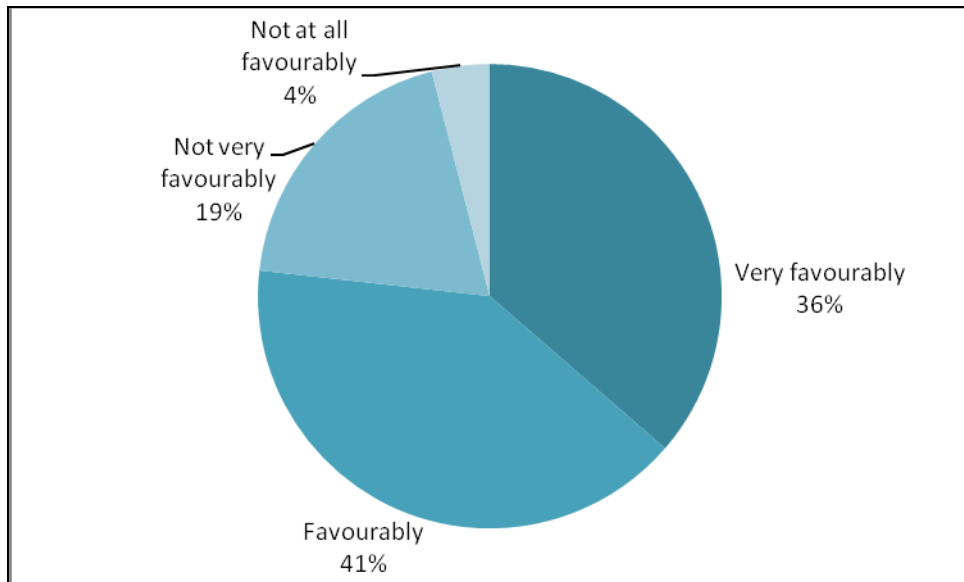
42 Do you agree with the following statement? Regardless of whether your company is affected from differences in European civil justice systems, such differences constitute, overall, a barrier to trade.



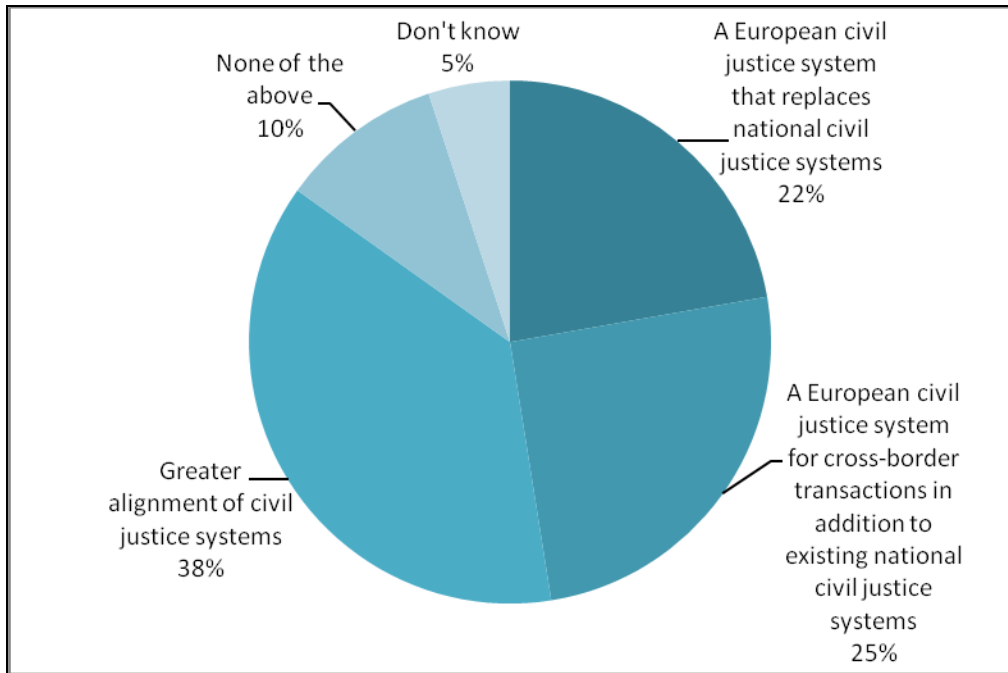
43 Do differences in European civil justice systems have a financial impact on your business?



44 How favourably do you view the concept of a harmonised European civil justice system?

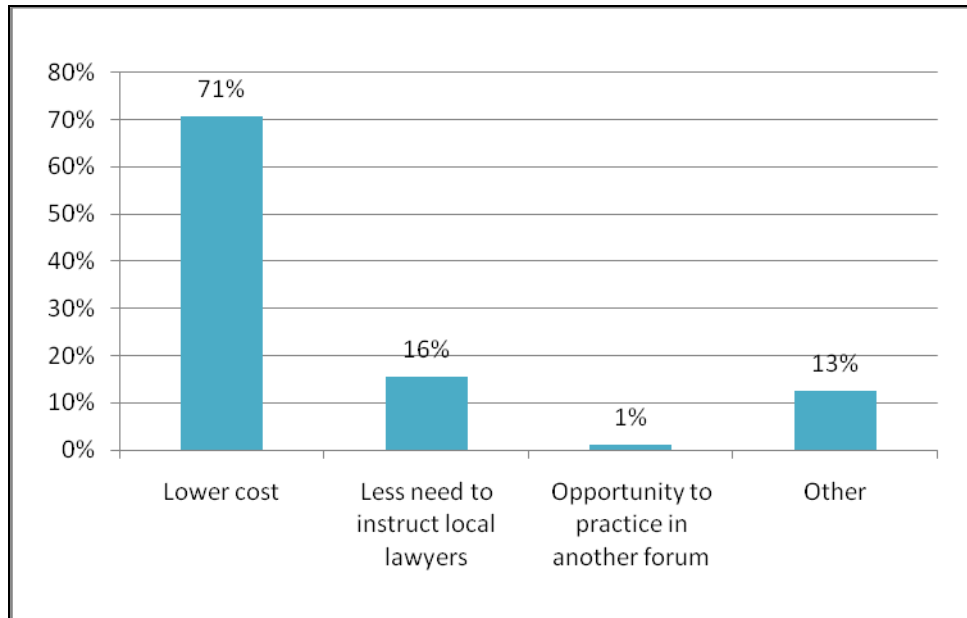


45 Which of the following options would be preferable for your business?



46.1 What do you think could be the advantages if European civil justice systems were more harmonised?

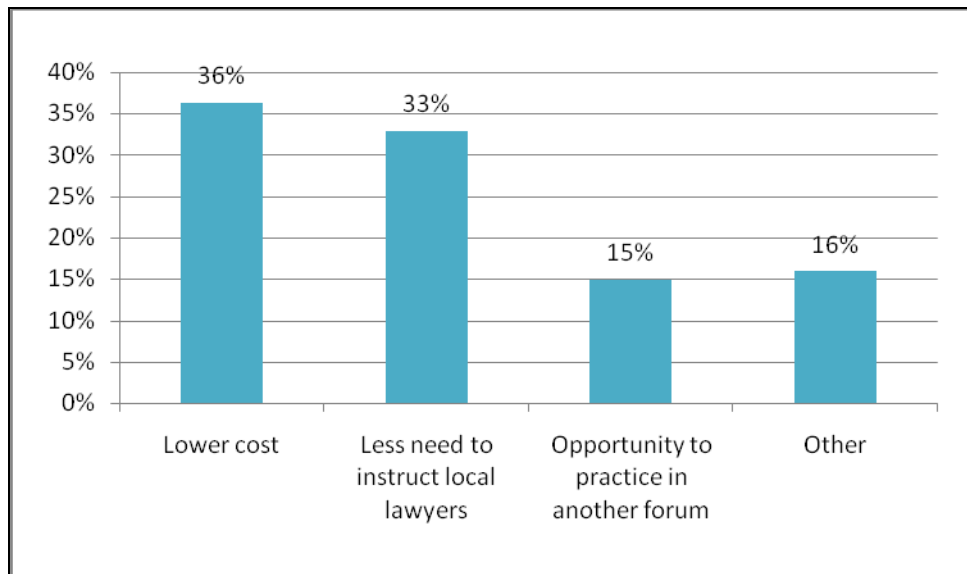
(multiple answers possible)



Note: Only respondents' first answers are displayed.

46.2 What do you think could be the advantages if European civil justice systems were more harmonised?

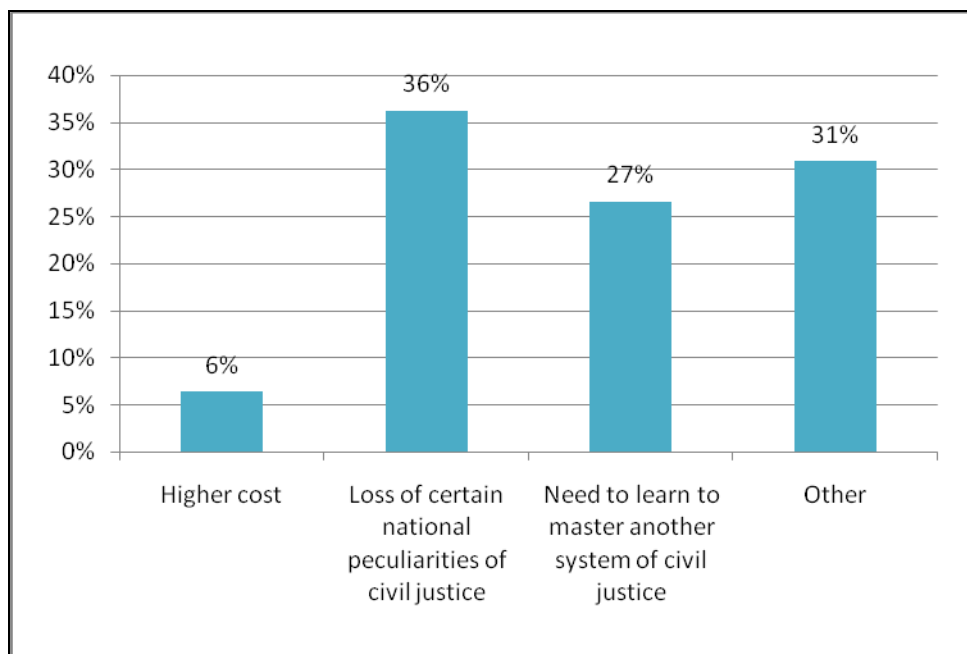
(multiple answers possible)



Note: Only respondents' total answers are displayed.

47.1 What do you think could be the disadvantages if European civil justice systems were more harmonised?

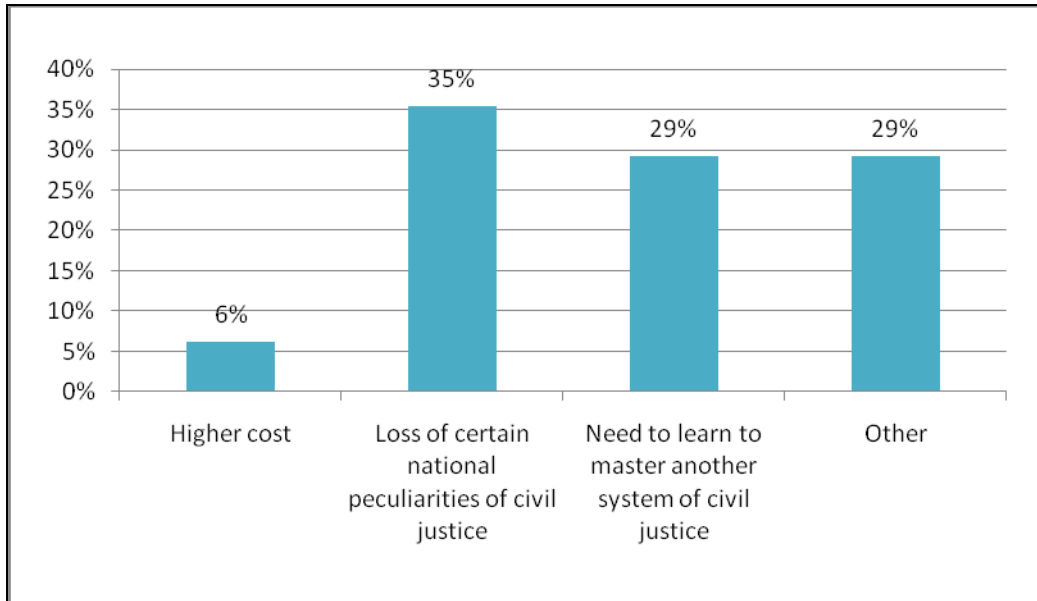
(multiple answers possible)



Note: Only respondents' first answers are displayed.

47.2 What do you think could be the disadvantages if European civil justice systems were more harmonised?

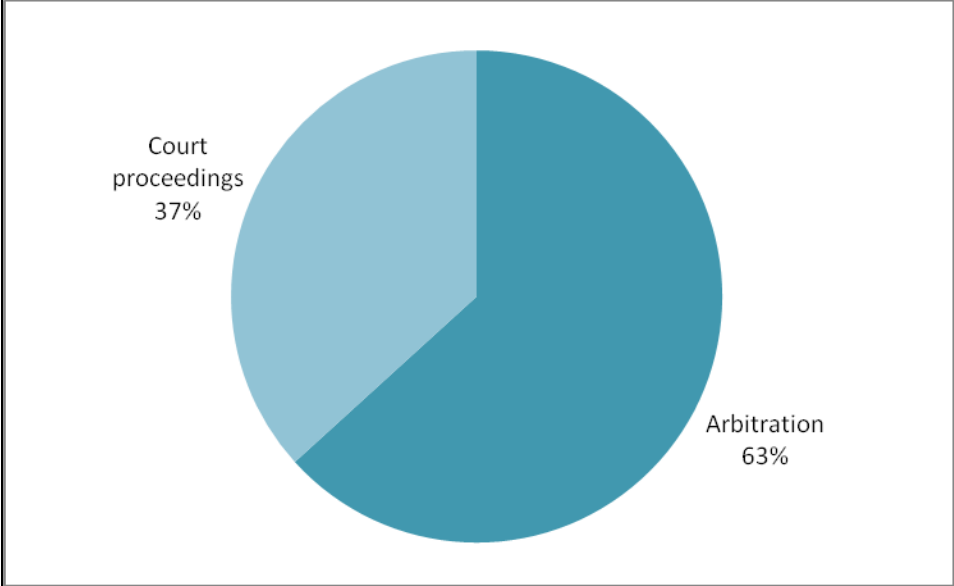
(multiple answers possible)



Note: Only respondents' total answers are displayed.

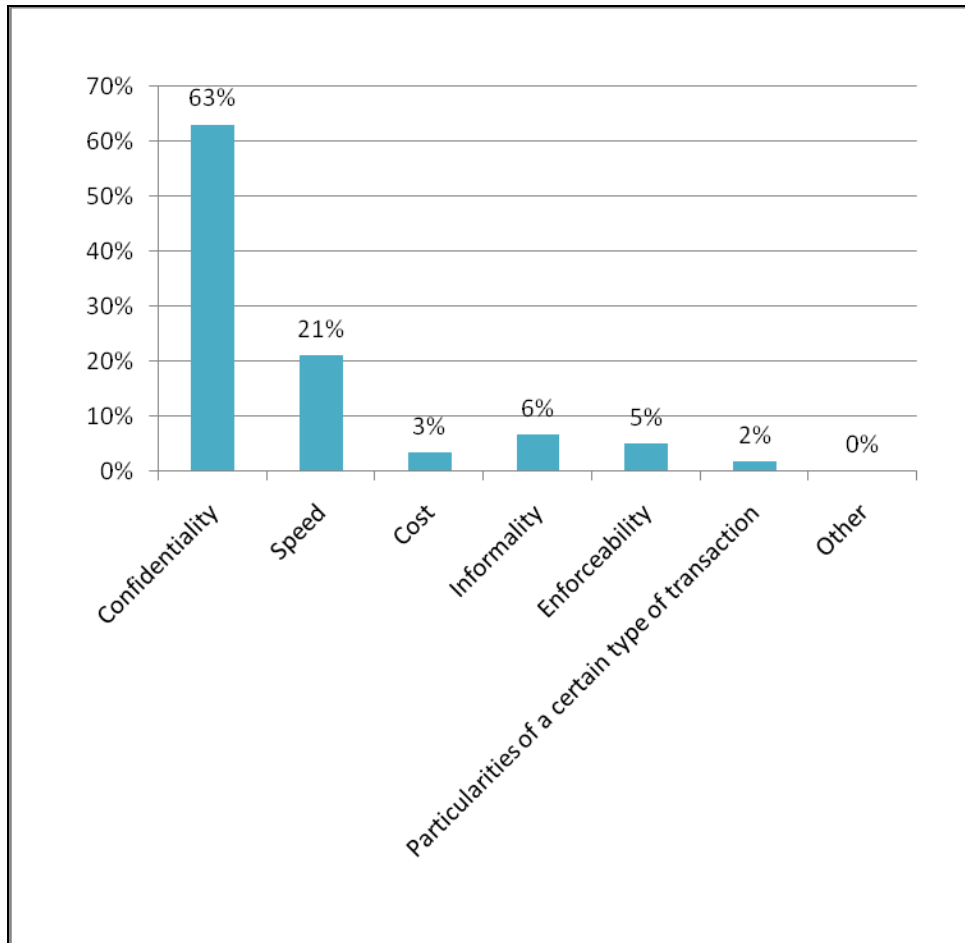
Alternative Dispute Resolution

48 When conducting cross-border transactions, do you prefer arbitration to court proceedings?



49.1 If you prefer arbitration, why?

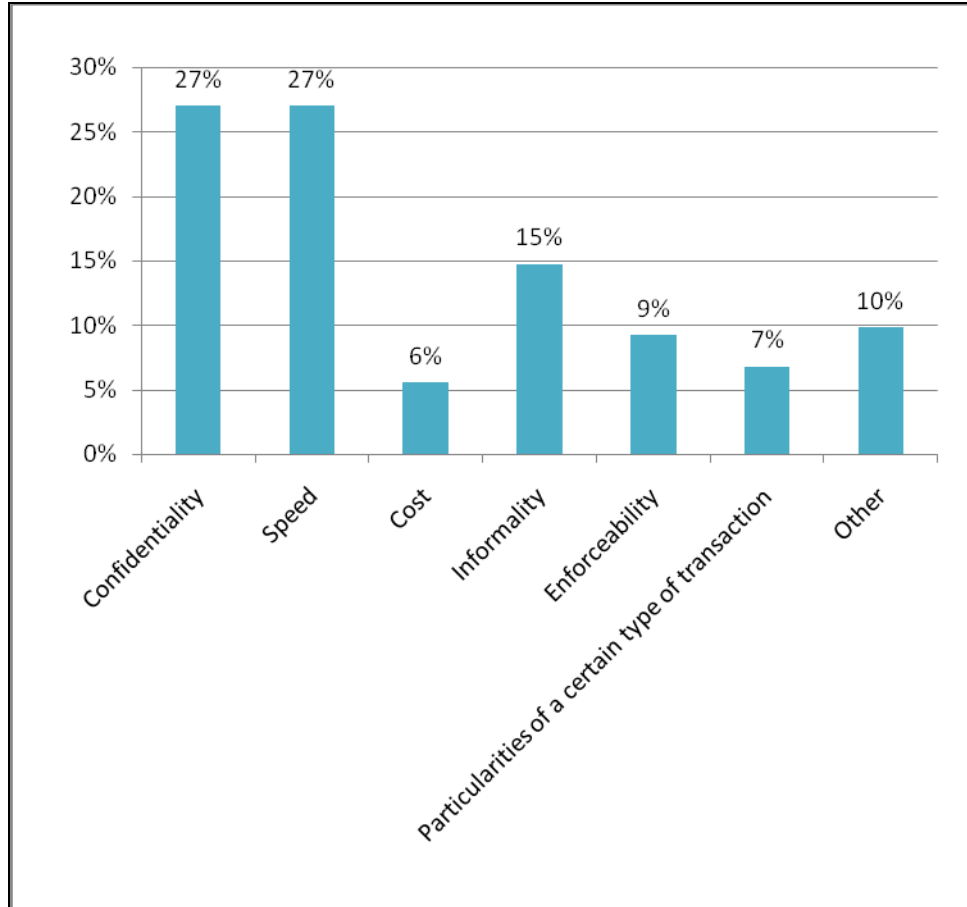
(multiple answers possible)



Note: Only respondents' first answers are displayed.

49.2 If you prefer arbitration, why?

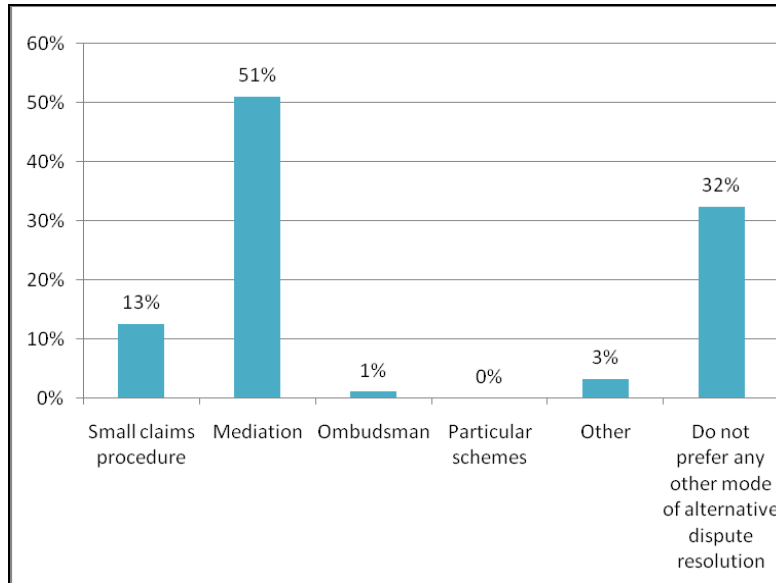
(multiple answers possible)



Note: Only respondents' total answers are displayed.

50.1 When conducting cross-border transactions, do you prefer one or more of the following other modes of alternative dispute resolution to court proceedings?

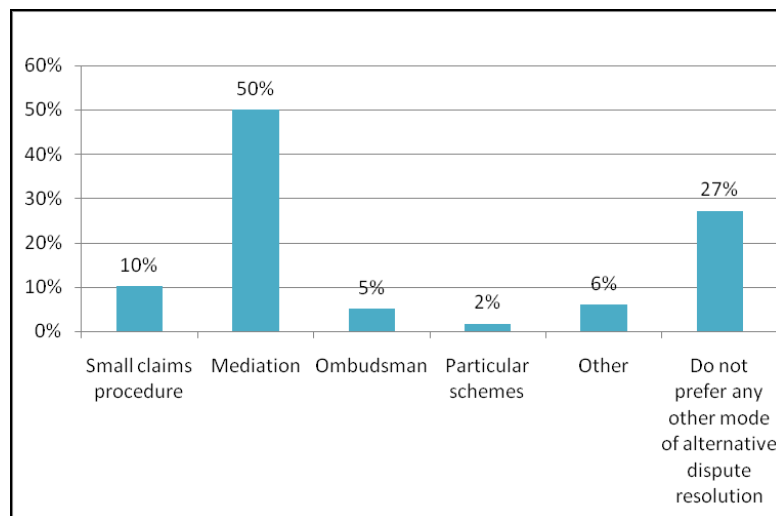
(multiple answers possible)



Note: Only respondents' first answers are displayed.

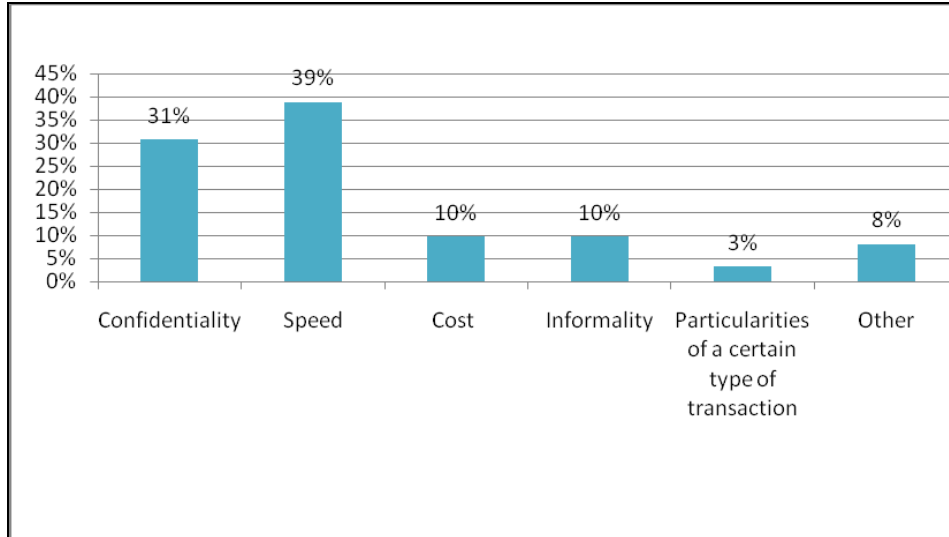
50.2 When conducting cross-border transactions, do you prefer one or more of the following other modes of alternative dispute resolution to court proceedings?

(multiple answers possible)



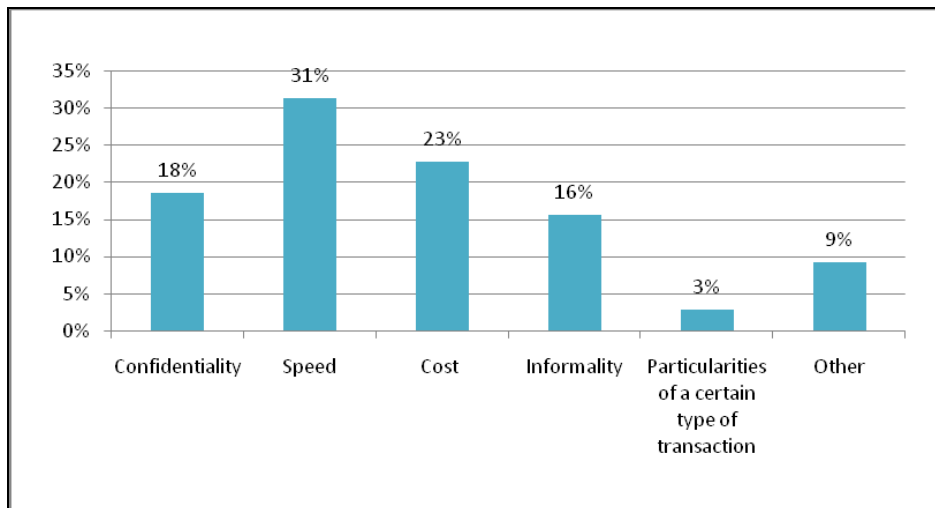
Note: Only respondents' total answers are displayed.

51.1 If you prefer other modes of alternative dispute resolution, why?
(multiple answers possible)



Note: Only respondents' first answers are displayed.

51.2 If you prefer other modes of alternative dispute resolution, why?
(multiple answers possible)



Note: Only respondents' total answers are displayed.