

Immunity and Leniency Survey 2018



COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG LONDON LOS ANGELES
NEW YORK SAN FRANCISCO SEOUL SHANGHAI SILICON VALLEY WASHINGTON

www.cov.com

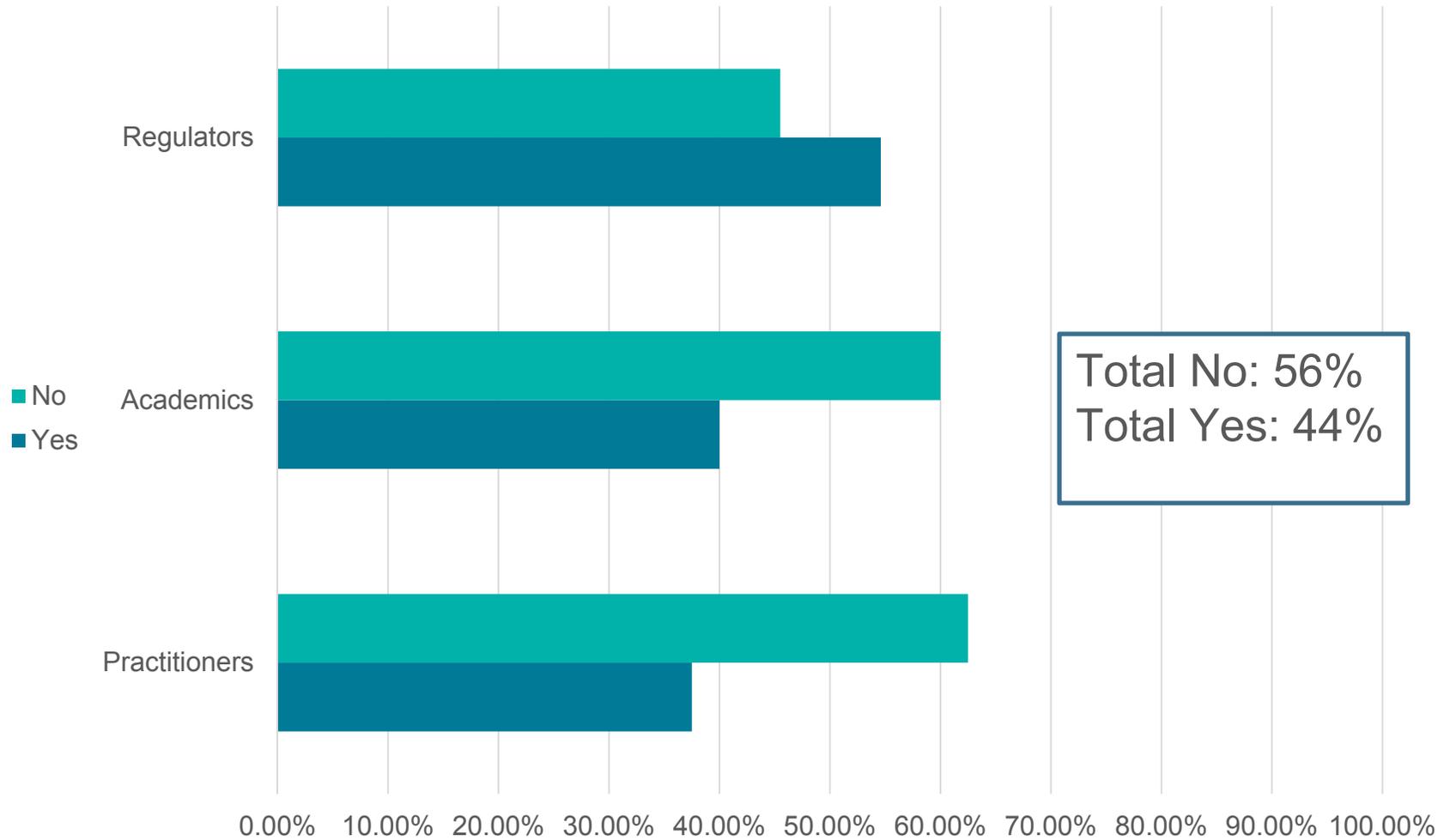
Introduction to the survey

- Survey created as a short on-line user friendly questionnaire which takes 10 minutes to complete
- Jointly with the Brussels Schools of Competition
- Focus on EU immunity and leniency (except for EU 29 competition authorities)
- Survey was open between 17 April and 25 May 2018, including various extensions to encourage participation
- Wide variety of different groups – distinction between external counsel, CEO's and GC's, academics and authorities
- Received many positive messages in response from all groups regarding the survey initiative and a significant interest in the results

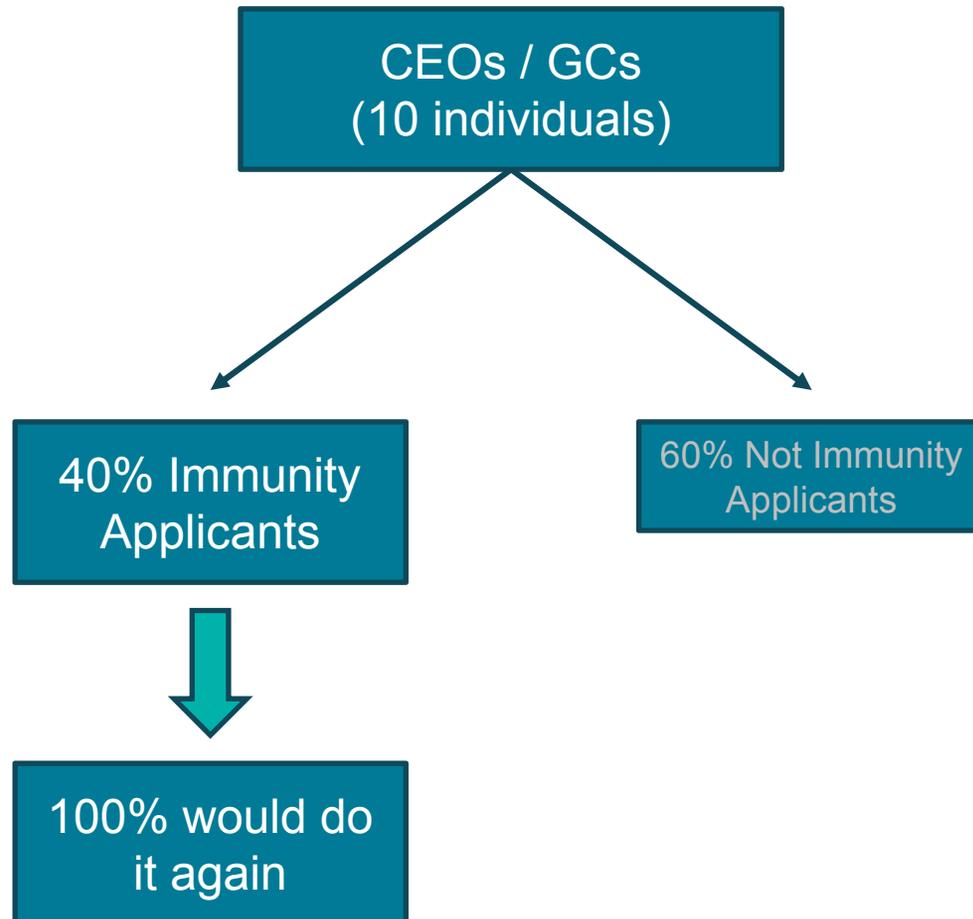
Questions

- **Question 1** : Have you seen a decline in immunity applications in the last 5 years? And why?
- **Question 2** : Have you seen a decline in leniency applications in the last 5 years? And why?
- **Question 3** : Do you expect the overall success of the EU immunity & leniency regime to decrease in the coming years?
- **Question 4** : How can the attractiveness of the EU immunity & leniency regime be improved?
- **Conclusions**

Question 1: Have you seen a decline in immunity applications in the last 5 years?

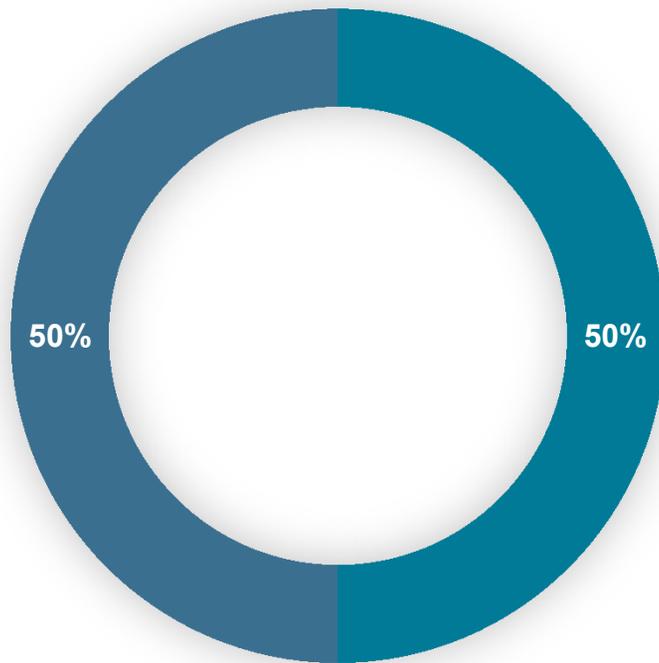


Specific question 1 for CEO's and GC's : Confronted with the same fact pattern, would you go for immunity again?



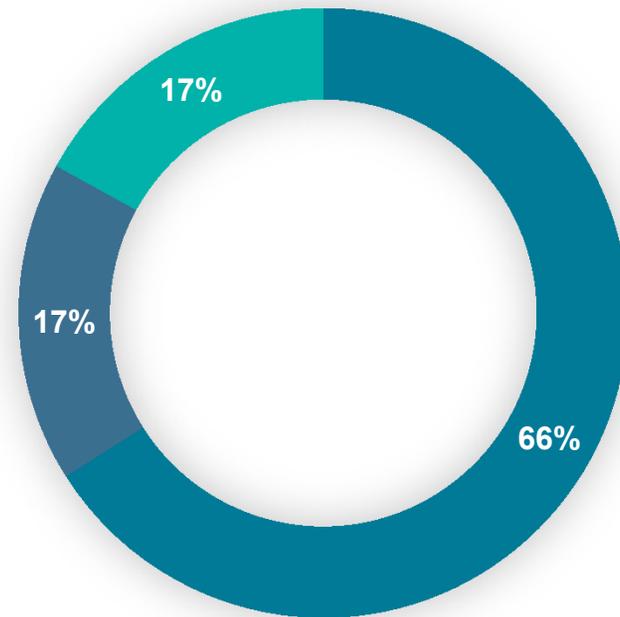
Has there been a decline in immunity applications in the last 5 years: Main reason

Practitioners



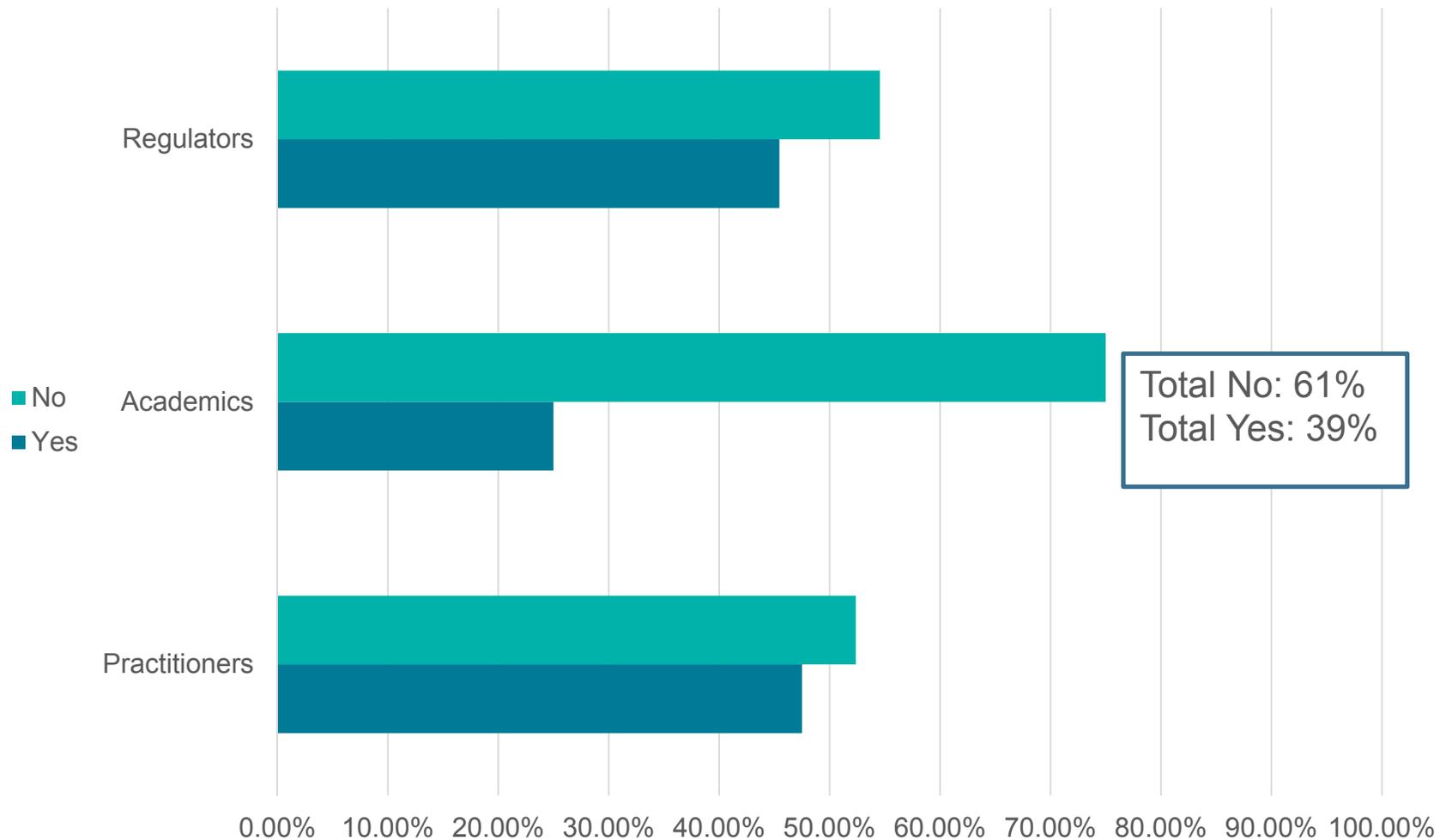
- Uncertainty around the cartel concept
- Civil damages

Regulators

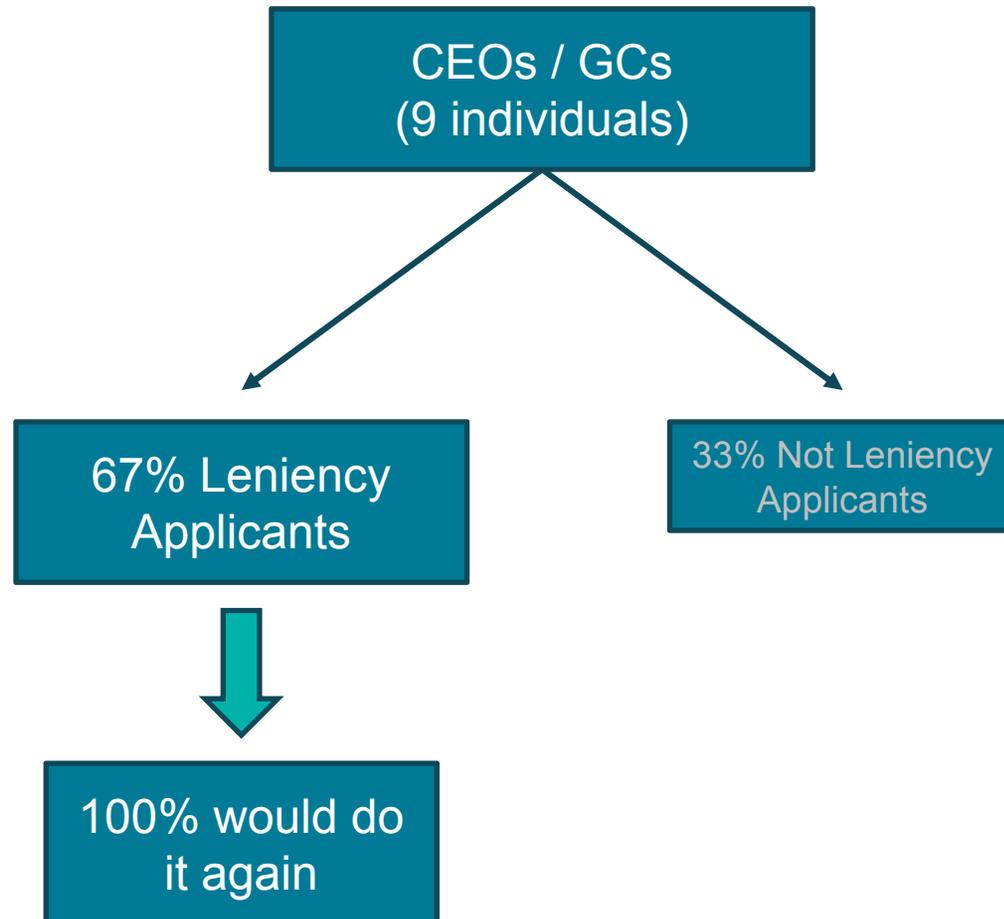


- Civil damages
- Uncertainty regarding reductions
- Relations with competitors

Question 2: Have you seen a decline in leniency applications in the last 5 years?

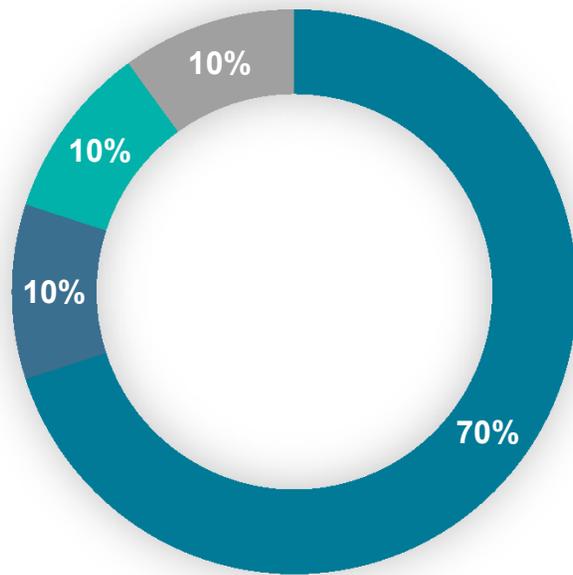


Specific question 2 for CEOs and GCs: Confronted with the same fact pattern, would you go for leniency again?



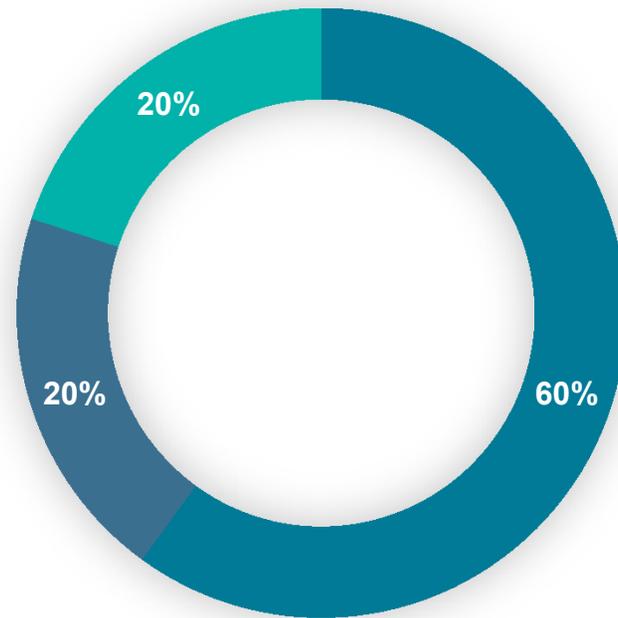
Has there been a decline in leniency applications in the last 5 years: Main reason

Practitioners



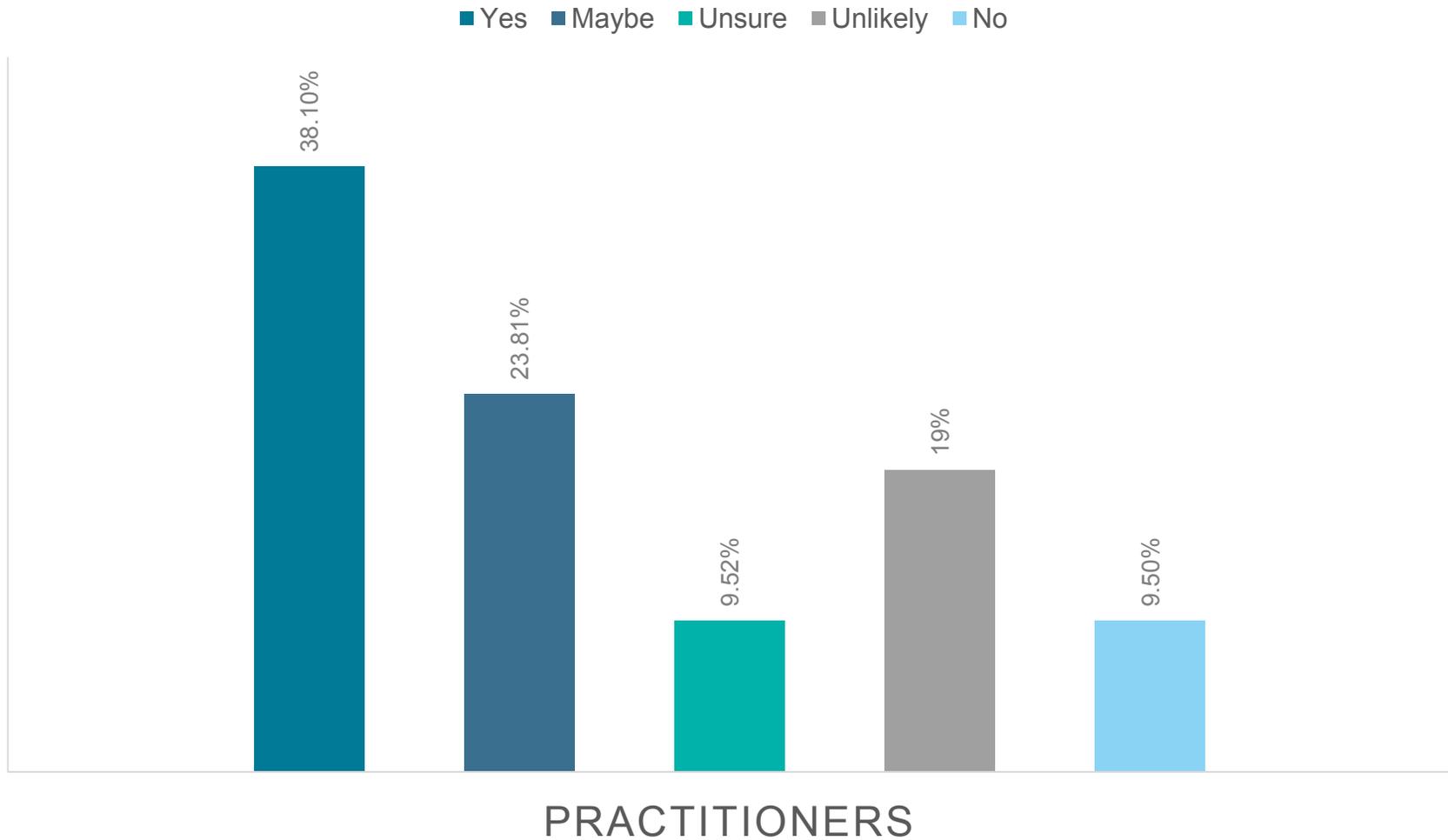
- Civil damages
- Uncertainty regarding reductions
- Uncertainty around the cartel concept
- Bad experience with the authorities

Regulators

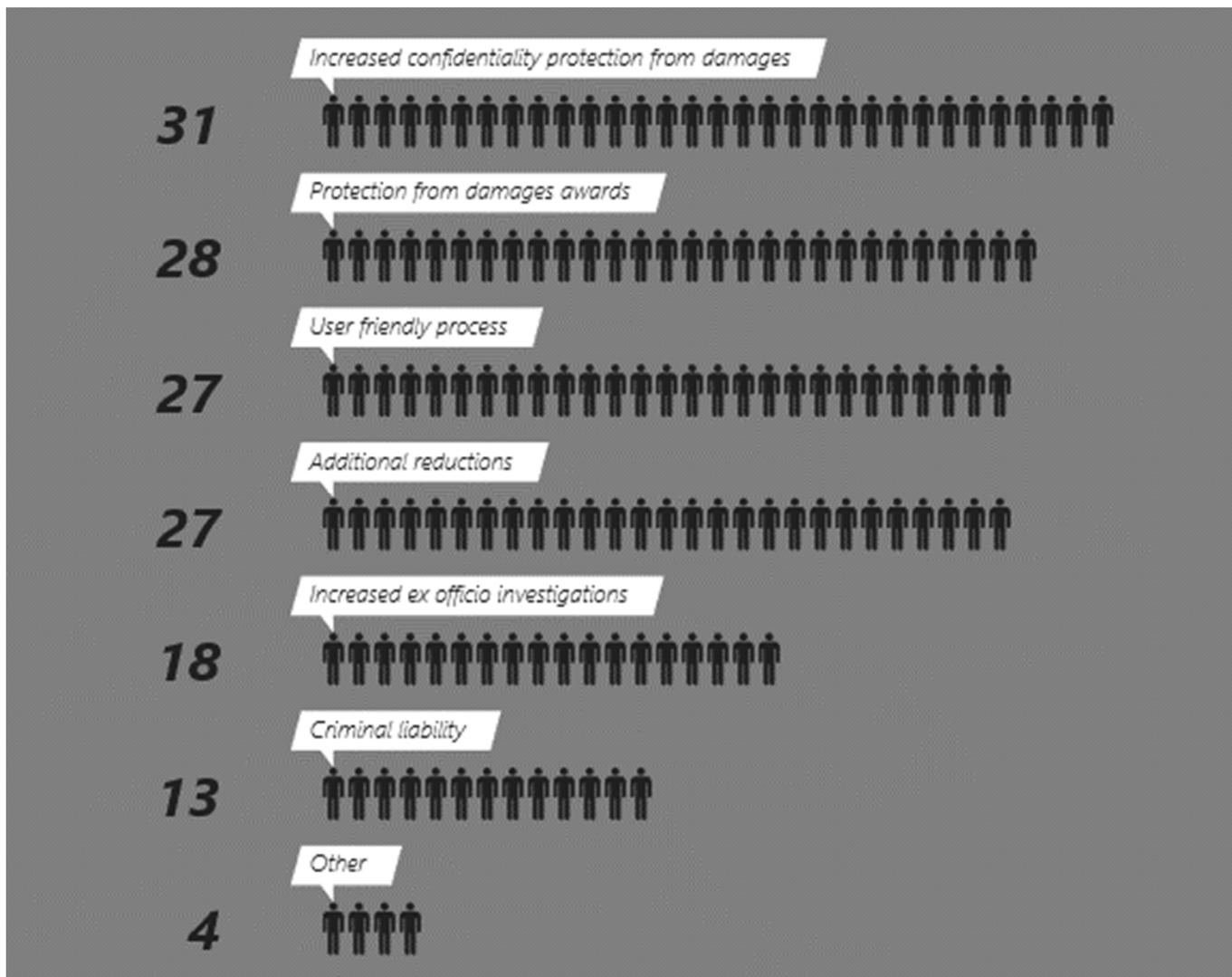


- Civil damages
- Uncertainty regarding reductions
- Relations with competitors

Question 3: Do you expect the overall success of the EU immunity & leniency regime to decrease in the coming years?



Question 4: How can the attractiveness of the EU immunity & leniency regime be improved? (Combined results)



Conclusions - general

- Going forward, the majority of practitioners believe the overall success of the EU regime will decrease in the coming years
- The most and least popular ways of increasing the attractiveness of the regime were not (very) surprising
 - The most popular option overall was protection from damages, closely followed by increased confidentiality protection
 - A more user-friendly process came in as a close third (the most popular choice for practitioners, while the least for regulators)
 - The least popular option overall was increased frequency of ex-officio investigations (no votes from CEOs/GCs, while most popular with regulators), followed by criminal liability (favoured by academics)

Next steps?

- Where do we go from here?
- There are things we as practitioners can do:
 - National level surveys
 - Coordinate with other practitioners to achieve further insights
 - Undertake surveys involving electronic voting at conferences
- There are things you as competition regulators can do:
 - National level surveys
 - ECN investigation and co-operation
 - ICN investigation and co-operation
 - Open exchange of results at an EU level
 - Public support and endorsement from regulators to encourage wider participation

Contact details

Johan Ysewyn
Partner and Head of EU Competition Practice
jysewyn@cov.com

Phone: +32 2 549 52 54