

IMOLA IV Project 3rd Seminar

Mortgage Questions - first results

Elena Prada - elena.prada@provincia.tn.it

Project Name: Interconnexion Model for
Land Registries (IMOLA) IV

Coordinator Contact: European Land
Registry Association (ELRA)

Grant Agreement Number: 101160423



ELRA
European Land Registry Association



General info

Mortgage part

Uploaded 23 questions

3 possible answers

✓YES
✓NO
✓NOT APPLICABLE


4 formants for both answers (YES or NO)

- Legislative
- Case law (judicial)
- Doctrinal
- LR Range

Purpose

Highlight general characteristics + more detailed information


TERM

 **Mortgage**

A lien on the property or any [LR¹](#) Unit related to a loan or [other²](#) obligation to be fulfilled and in respect of which the [mortgage³](#) has a purpose of security or guarantee. The legal qualification of [mortgage³](#) corresponds to the national systems: what national laws legally consider as such will be considered a [mortgage³](#) and consequently the information about [mortgages⁴](#) will taken to Section C-Subsection [Mortgages⁵](#).

[LR Pivot](#)

TRANSLATION

 **Ipoteca**

E' un diritto reale di garanzia, oggetto di intavolazione (o prenotazione) nel Libro Fondiario. L'ipoteca attribuisce al creditore il diritto di espropriare, anche in confronto del terzo acquirente, i beni vincolati a garanzia del suo credito e di essere soddisfatto con preferenza sul prezzo ricavato dall'espropriazione. L'ipoteca può avere per oggetto beni del debitore o di un terzo e si costituisce mediante iscrizione nei registri immobiliari. L'ipoteca è legale, giudiziale o volontaria

[Italiano \(Servizio del Libro fondiario\)](#)

ANSWERS

Answers for **Ipoteca**

There are currently 23 / 23 answers for the term **Ipoteca**

100%



Participants

- ▶ 9 CCPP answered the questions
- ▶ Netherlands
- ▶ Spain
- ▶ Italy - Servizio Libro Fondiario e Catasto
- ▶ Italy - Agenzia delle Entrate
- ▶ Finland
- ▶ Malta
- ▶ Estonia
- ▶ Portugal
- ▶ Sweden

THANK YOU



- ✓ Effort
- ✓ Time
- ✓ Research
- ✓ Study
- ✓ KM application



- ✓ Mission
- ✓ IMOLA core
- ✓ Professional approach
- ✓ Land Registrar expertise
- ✓ Team up together

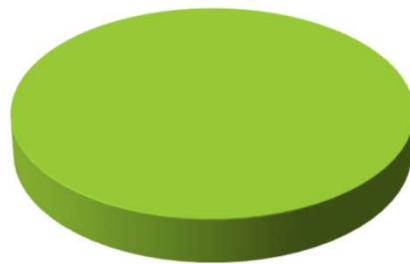


Preliminary results

Question: Is the mortgage established through constitutive registration, meaning that registration is required for its legal existence?

Result: YES - 100%

Constitutive registration



■ YES - 100%



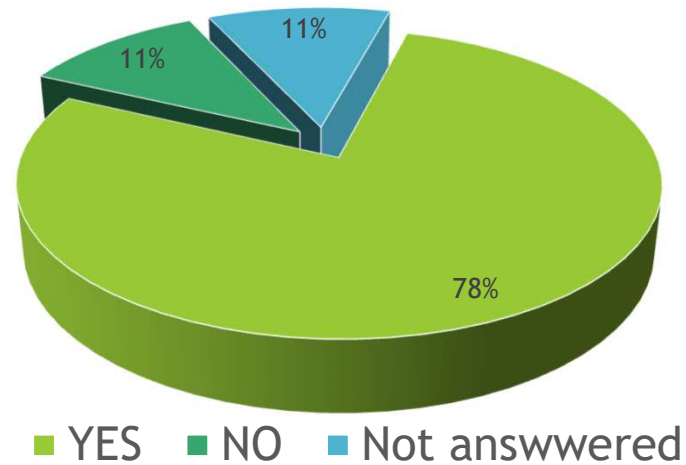
Preliminary results

Question: Does the mortgage hold the legal status of a property right according to the applicable national law?

Result: YES - 78%

NO - 11 % Netherlands

[Not answered 11 % Italy Agenzia delle Entrate]

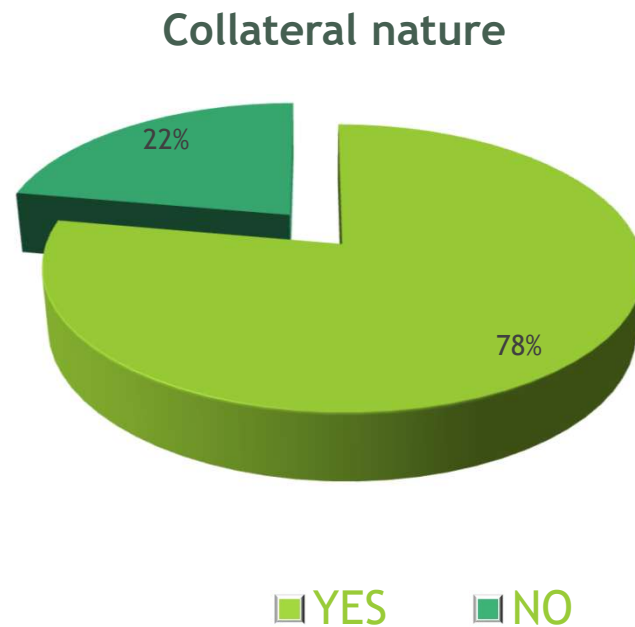


Preliminary results

Question: Is the mortgage classified as collateral under the applicable law?

Result: YES - 78%

NO - 22 % Estonia + Sweden

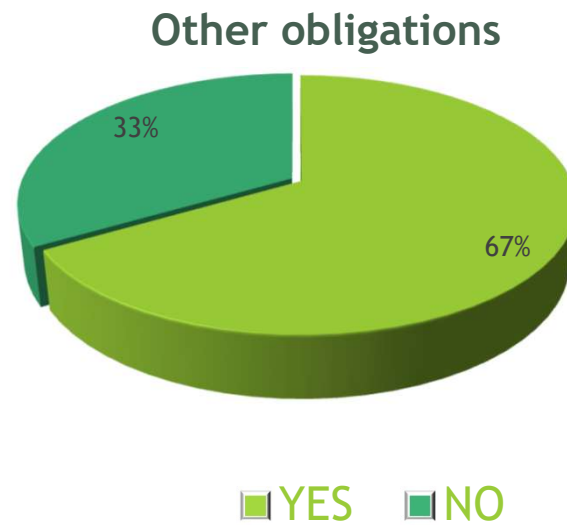


Preliminary results

Question: Can the mortgage guarantee other obligations different from the money debt, interests or arrears?

Result: YES - 67%

NO - 33 % Finland + Malta + Sweden



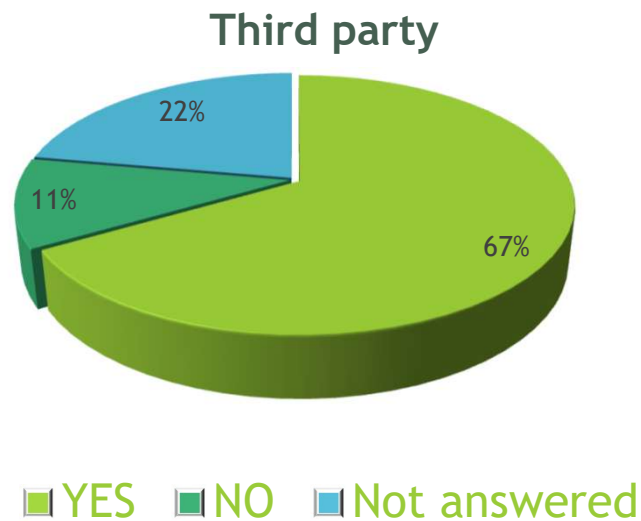
Preliminary results

Question: Can the mortgage guarantee a debt of a different third party?

Result: YES - 67%

NO - 11 % Sweden

[Not answered - 22 % IT Agenzia delle Entrate + Malta]



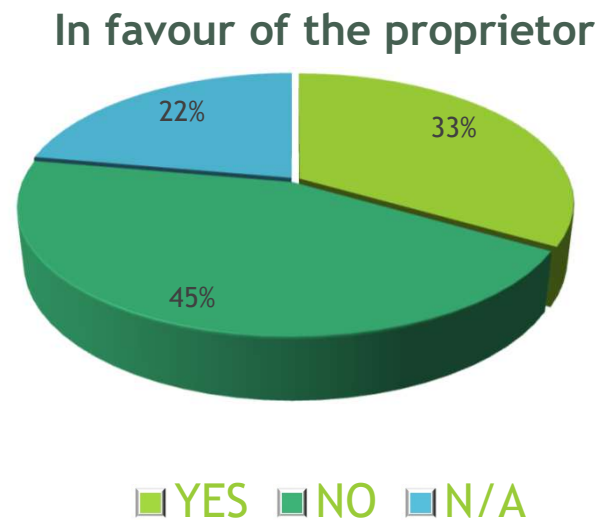
Preliminary results

Question: Can the mortgage be registered in favour of the proprietor of the LR unit?

Result: YES - 33% Estonia + Finland + Sweden

NO - 45 % Spain + Italy Libro Fondiario + Malta + Portugal

NOT APPLICABLE - 22 % Netherlands + Italy Agenzia delle Entrate



Preliminary results -FORMANTS

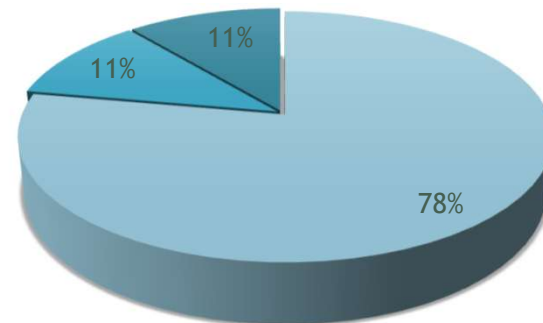
Question: Can the mortgage be registered in favour of the proprietor of the LR unit?

Formant: Legislative 78% - Estonia + Finland + Sweden + IT AE + IT LF + Portugal + Netherlands

Legislative and judicial 11% - Spain

LR Range 11% - Malta

In favour of the proprietor - FORMANTS



■ Legislative ■ Legislative and judicial ■ LR Range



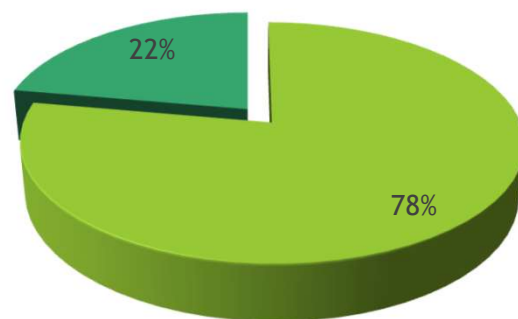
Preliminary results

Question: Is the rank of the mortgage established according to the date of registration?

Result: YES - 78%

[Not answered - 22 % Spain + Malta]

Rank - date of registration



■ YES ■ Not answered



Preliminary results

Question: Is the rank of the mortgage established through an agreement between the involved parties?

Result: YES - 78%

NO - 11% Sweden

[Not answered - 11 % Malta]



Preliminary results

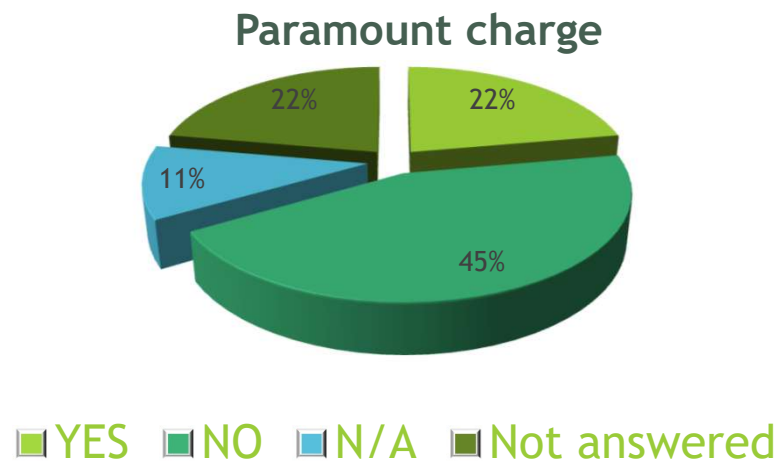
Question: Is the mortgage considered the paramount charge on the land register unit?

Result: **YES** - 22% Netherlands + Italy Agenzia delle Entrate

NO - 45% Estonia + Finland + Italy Libro Fondiario + Sweden

NOT APPLICABLE - 11% Portugal

[Not answered - 22 % Malta + Spain]



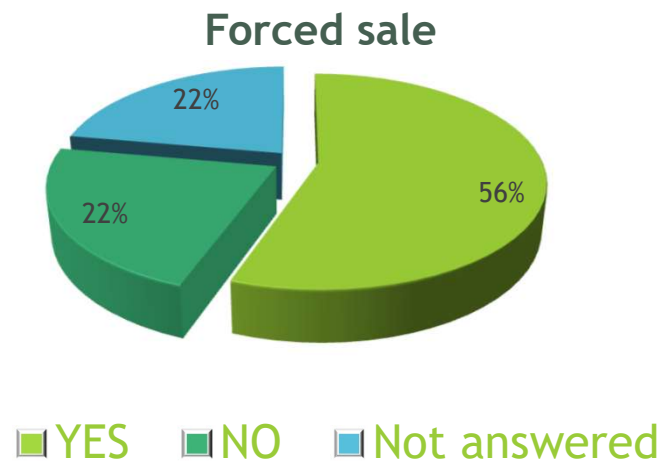
Preliminary results

Question: Does the mortgage grant the right to demand an auction or other form of forced sale of the mortgaged property?

Result: YES - 56% Spain + Estonia + Finland + Italy Libro Fondiario + Sweden

NO - 22% Netherlands + Portugal

[Not answered - 22 % Malta + Italy Agenzia delle Entrate]

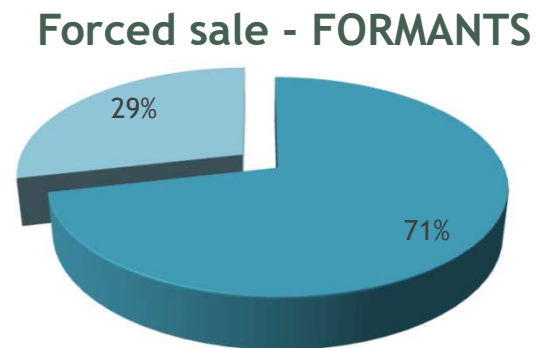


Preliminary results - FORMANTS

Question: Does the mortgage grant the right to demand an auction or other form of forced sale of the mortgaged property?

Formants: Legislative - 71% most of countries

Legislative + Judicial + Doctrinal - 29% Spain



■ Legislative ■ Legislative + Judicial + Doctrinal



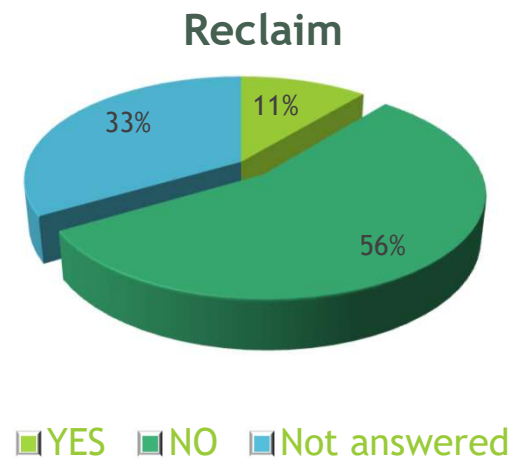
Preliminary results

Question: Does the mortgage provide the mortgagee with the authority to reclaim the mortgaged property?

Result: YES - 11% Netherlands

NO - 56% Spain + Finland + Italy Libro Fondiario + Sweden + Portugal

[Not answered - 33 % Malta + Italy Agenzia delle Entrate + Estonia]



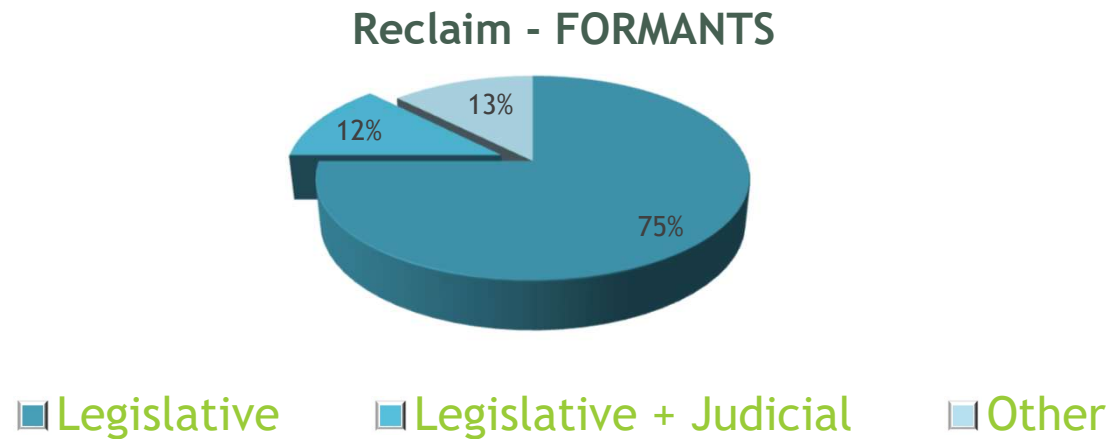
Preliminary results - FORMANTS

Question: Does the mortgage provide the mortgagee with the authority to reclaim the mortgaged property?

Result: Legislative - 75%

Legislative + Judicial 12% Spain

Other - 13% Finland [a court decision is needed]



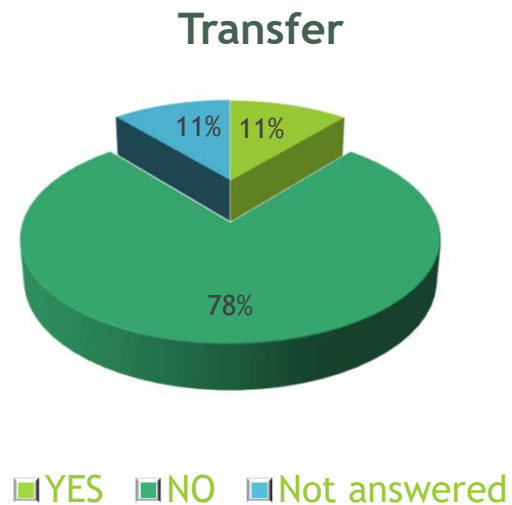
Preliminary results

Question: Does the mortgage restrict the mortgagor from transferring the property while it is encumbered by the mortgage?

Result: YES - 11% Netherlands

NO - 78%

[Not answered - 11 % Malta]



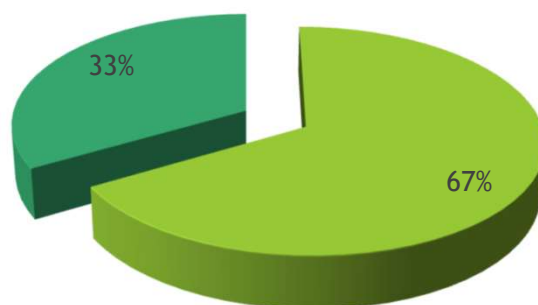
Preliminary results

Question: Can another mortgage be registered after this one has been established?

Result: YES - 67%

[Not answered - 33 % Estonia + Malta + Italy Agenzia delle Entrate]

Other mortgages



■ YES ■ Not answered



Preliminary results

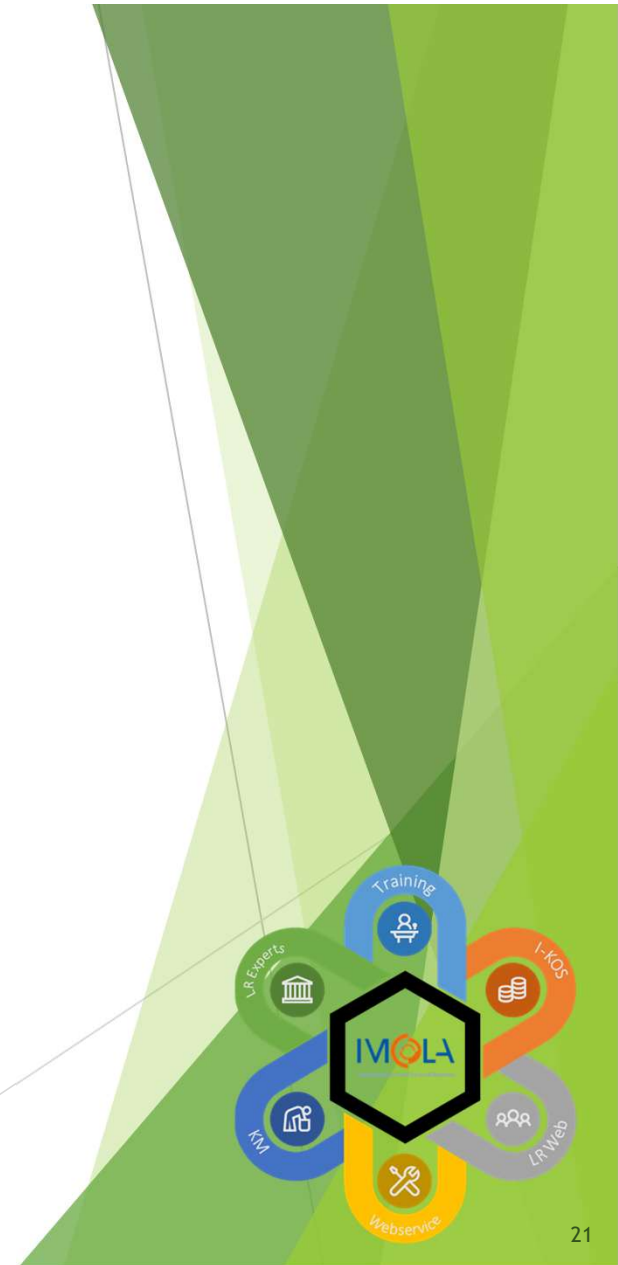
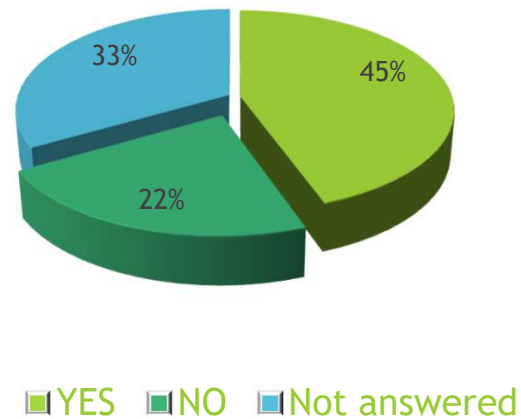
Question: Can additional encumbrances be registered after this mortgage?

Result: YES - 45% Spain + Finland + Italy Libro Fondiario + Sweden

NO - 22% Netherlands + Portugal

[Not answered - 33 % Estonia + Malta + Italy Agenzia delle Entrate]

Additional encumbrances



Preliminary results

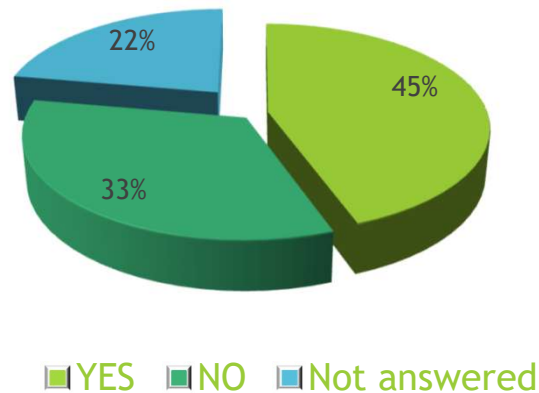
Question: Does mortgage result in a temporary registration?

Result: YES - 45% Netherlands + Italy Agenzia delle Entrate + Italy Libro Fondiario + Portugal

NO - 33% Estonia + Finland + Sweden

[Not answered - 22% Spain + Malta]

Temporary registration



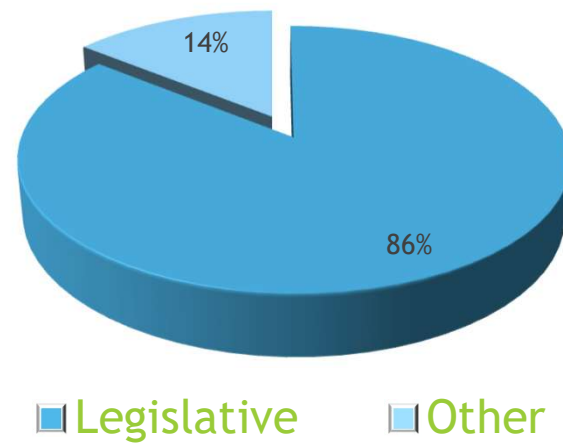
Preliminary results - FORMANTS

Question: Does mortgage result in a temporary registration?

Formants: Legislative - 86%

Other - 14% Netherlands [no explicit legislative formant]

Temporary registration - FORMANTS



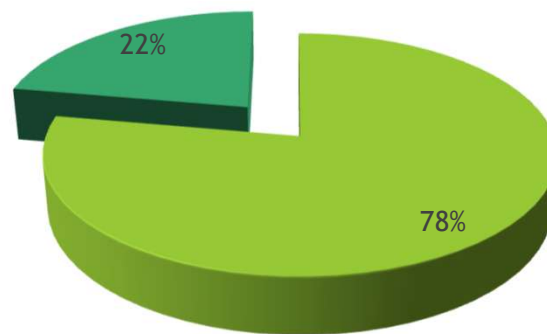
Preliminary results

Question: Does the mortgage result in provisional registration?

Result: NO - 78%

[Not answered - 22% Spain + Malta]

Provisional registration



■ NO ■ Not answered



Comments

- ▶ Connection between the principle of collateral nature of the mortgage and the possibility to register a mortgage in favour of the proprietor of LR Unit



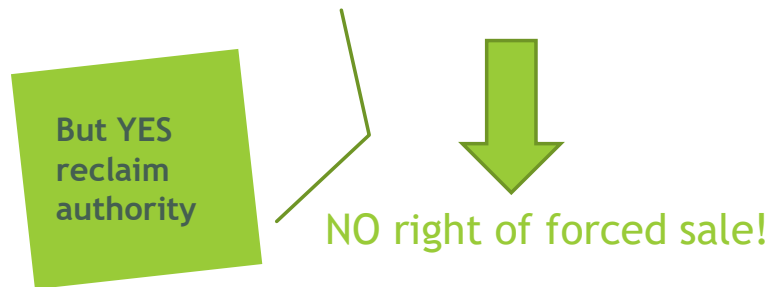
But not a debt
of a third
party!

- ▶ NO collateral nature: **Estonia + Sweden**
- ▶ Registration in favour of the proprietor: **Estonia + Sweden (+ Finland)**



Comments

- ▶ Powers of mortgagee + subsequent registrations
- ▶ Restrictive systems: **Netherlands + Portugal**



- ▶ Restrictive systems: **Netherlands**



Limits for mortgaged property transfer + no additional encumbrances



Conclusions

- ▶ Partial and preliminary results
- ▶ Need of more data
- ▶ Project: intended to be constantly implemented
- ▶ Effort + time
- ▶ Call for work on KM
 - ▶ Answer questions + use of formants
 - ▶ Complete not answered questions
- ▶ No deadline - more data for June seminar
- ▶ **WP2: feel free to contact us for any kind of doubts**





Thank you for your attention

elena.prada@provincia.tn.it