



Improving Regulatory Quality

Using the Regional Charter for
Regulatory Quality Effectively: A
Training Course for Practitioners
in Arab Countries

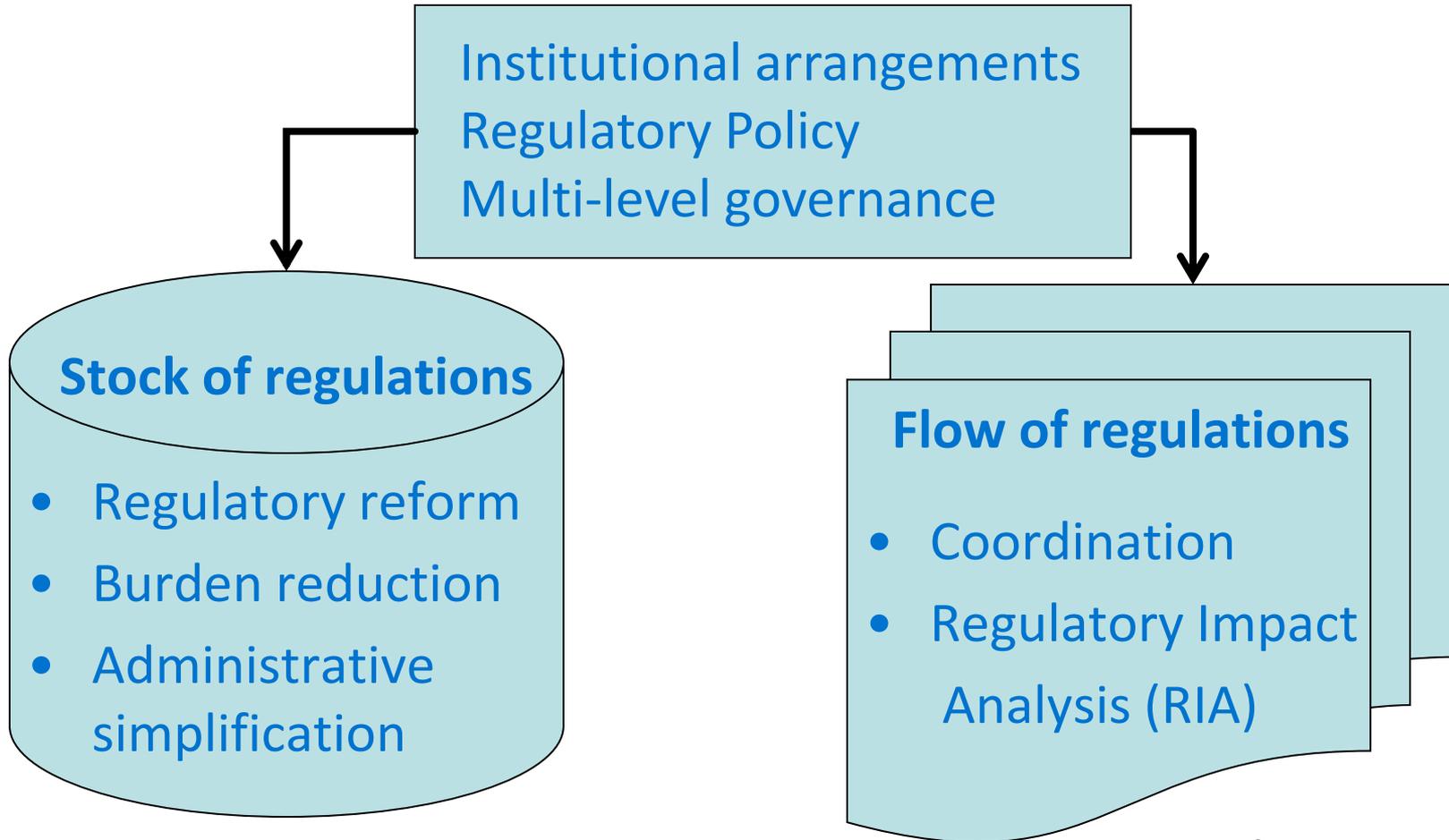
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Outline of the presentation

- The regulatory system
- Why improve regulatory quality?
- Regulatory Impact analysis: a fundamental tool to improve regulatory quality

Regulatory management



Why improve regulatory quality?

- Economic, social and distributional benefits
- In a context of tight budgets, option less demanding than fiscal policy
- Plays a central role in improving both citizen's and investor confidence in a country
- Engaging in regulatory reform to improve regulatory quality and establish permanent regulatory oversight has proven a highly effective option in the past

Case study example: Korea

- 1997-98 crisis: GDP declined by 7.6% in Q1 1998, but recovered to pre-crisis levels by the end of 1998. Crisis caused by external shock, overleveraged and unprofitable corporate sector and lack of supervision of financial sector
- At that time wide-ranging and ambitious program of reform, including the elimination of 50% of existing regulations
- Impact difficult to quantify but evidence of increased FDI level, reduction in compliance costs (4.4 % of GDP) and administrative cost savings of \$0.5 bn
- Korea successfully handled Asian financial crisis and current crisis is less severe than before

Regulatory Impact Analysis (RIA)

- Section Outline:
 - Context
 - Design and Process
 - Scope
 - Implementation
 - Elements

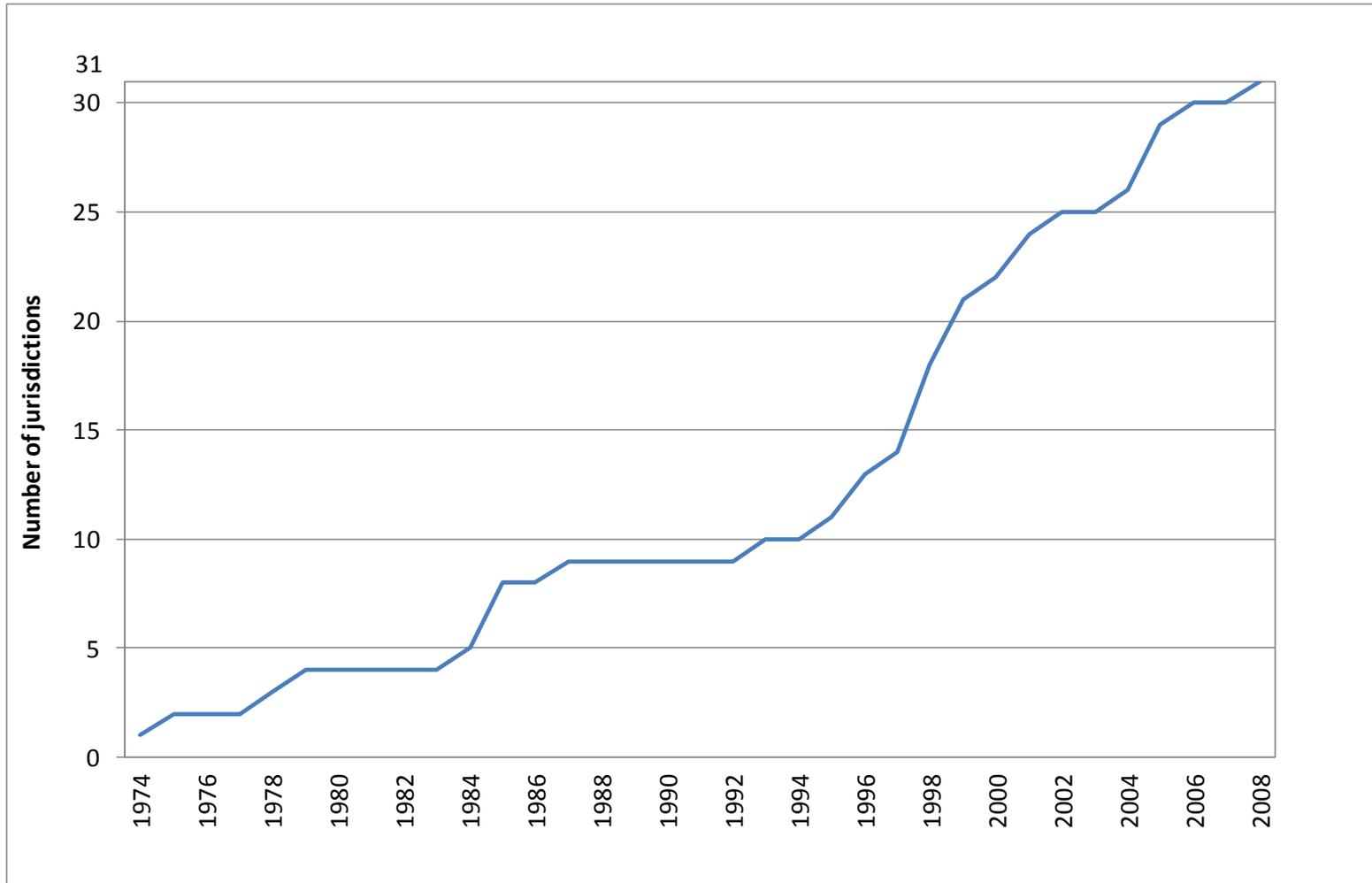
What is RIA?

- Systematic policy tool and decision process to examine and measure the likely benefits, costs and effects of new or existing regulation
- In the OECD, used most often to manage the flow of regulation (US, Canada, UK, France, EU, etc.)
- Role in the development, review and reform of regulations emphasized by the 1995, 1997 and 2005 OECD guiding principles and recommendations for regulatory quality and performance

Why is RIA important?

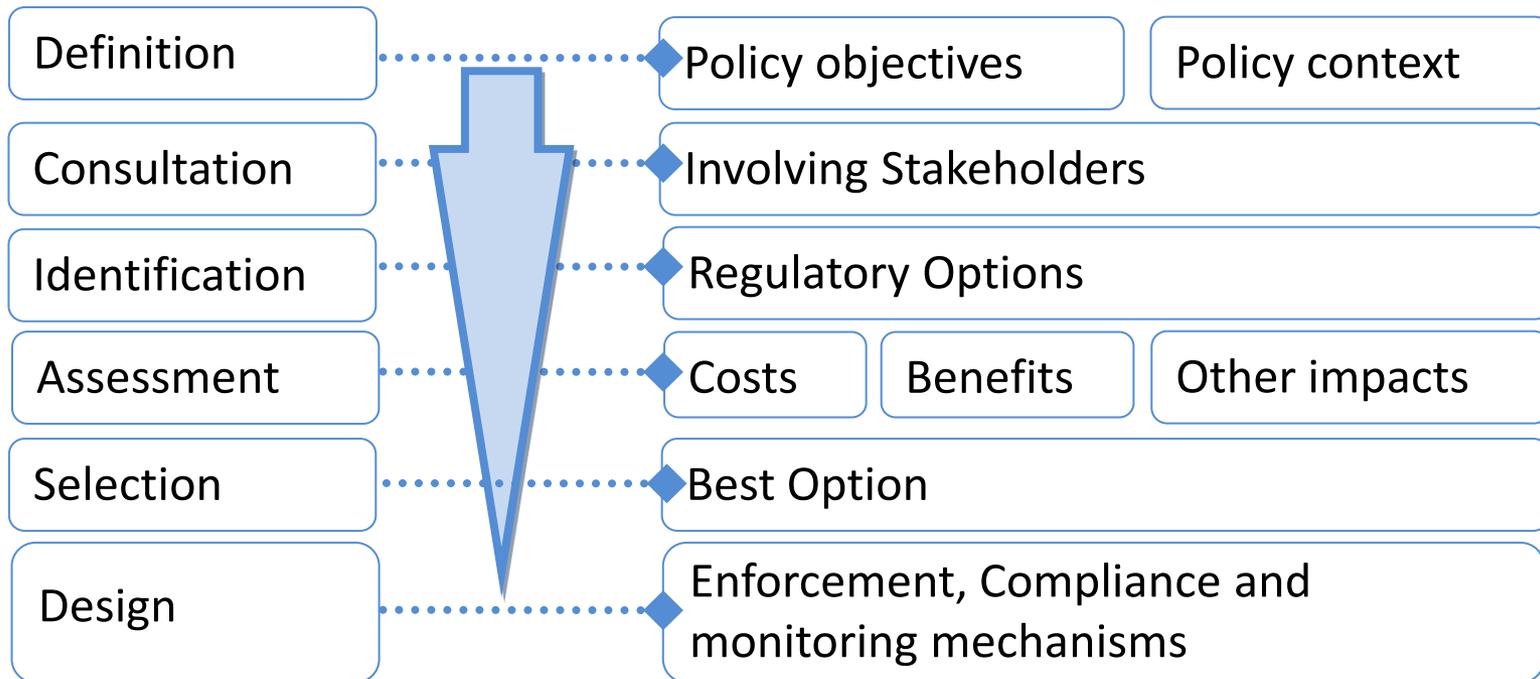
- Control the quality of regulation – a step in improving competitiveness
- Evidence-based policy making
- Improves transparency – both within Government and Civil Society
- Simple language understandable for everyone and easily accessible

Trend in RIA adoption by central governments across OECD countries (1974-2008)



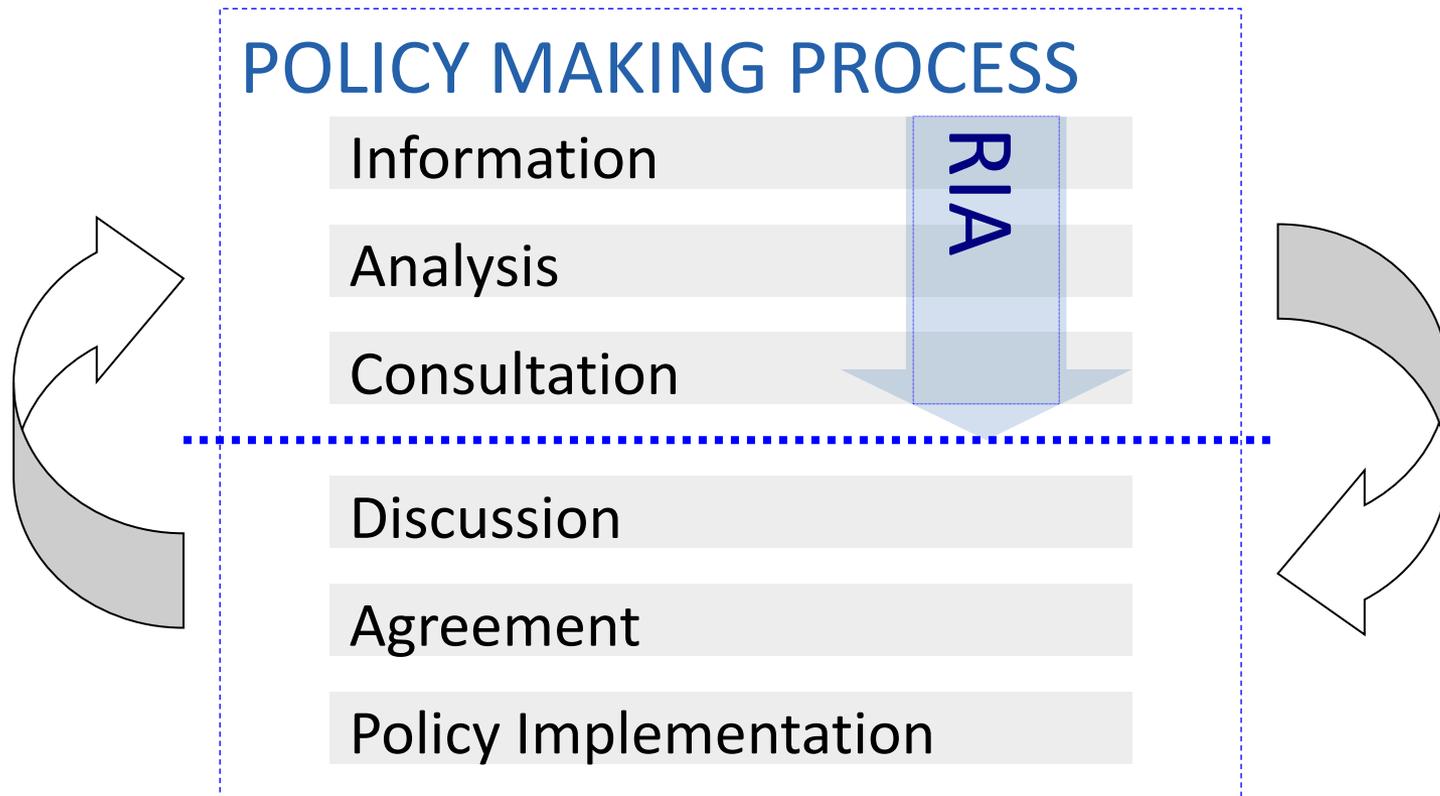
How does RIA work?

The process of Regulatory Impact Analysis



After RIA is prepared: **DECISION MAKING**

How does RIA fit into the policy-making process?



Primary or secondary legislation?

- Less and less divergence among OECD countries
- Primary legislation usually has more far reaching impact
- Secondary regulation (decrees, bylaws) may set technical standards, adoption usually not that transparent
- It may be easier to constrain delegated regulatory authority

Apply to all proposals or only major ones?

- Many countries have linked RIA requirements to the magnitude of potential impacts of proposals
- Difficult to identify suitable threshold
- Quantitative vs. qualitative thresholds
- USA – annual costs exceeding \$100 mil. Or more
- Canada: \$10 million or more
- France: no threshold yet

Institutional design

- Dynamic process between the center and sectoral ministries regulators
- System of checks and balances
- Need for expertise in sectoral ministries/regulators, Division of tasks
- Balance between political discretion and need for expertise, Timing
- The variation in RIA systems: presidential vs parliamentary regimes

Common challenges

- Related to the tool:
 - Problem identification, Consultation and data
 - Considering alternatives, “Proportionate analysis”
 - Quantification, Risk assessment
- Related to the structure/process
 - Scope of application / selection of proposals
 - Quality control (oversight)
 - Presentation / Communication
 - Integrate RIA up-stream (early in decision-making)
 - Integrate RIA down-stream (“closing the loop”)
 - Training, Multi-level context

OECD good practices (1)

- 1. Political commitment and endorsement at the highest levels
 - Legal basis for RIA
 - Clear ministerial accountability
- 2. Allocate responsibilities for the RIA programme
 - Operational responsibilities with the services
 - Inter-service coordination
 - Central quality oversight

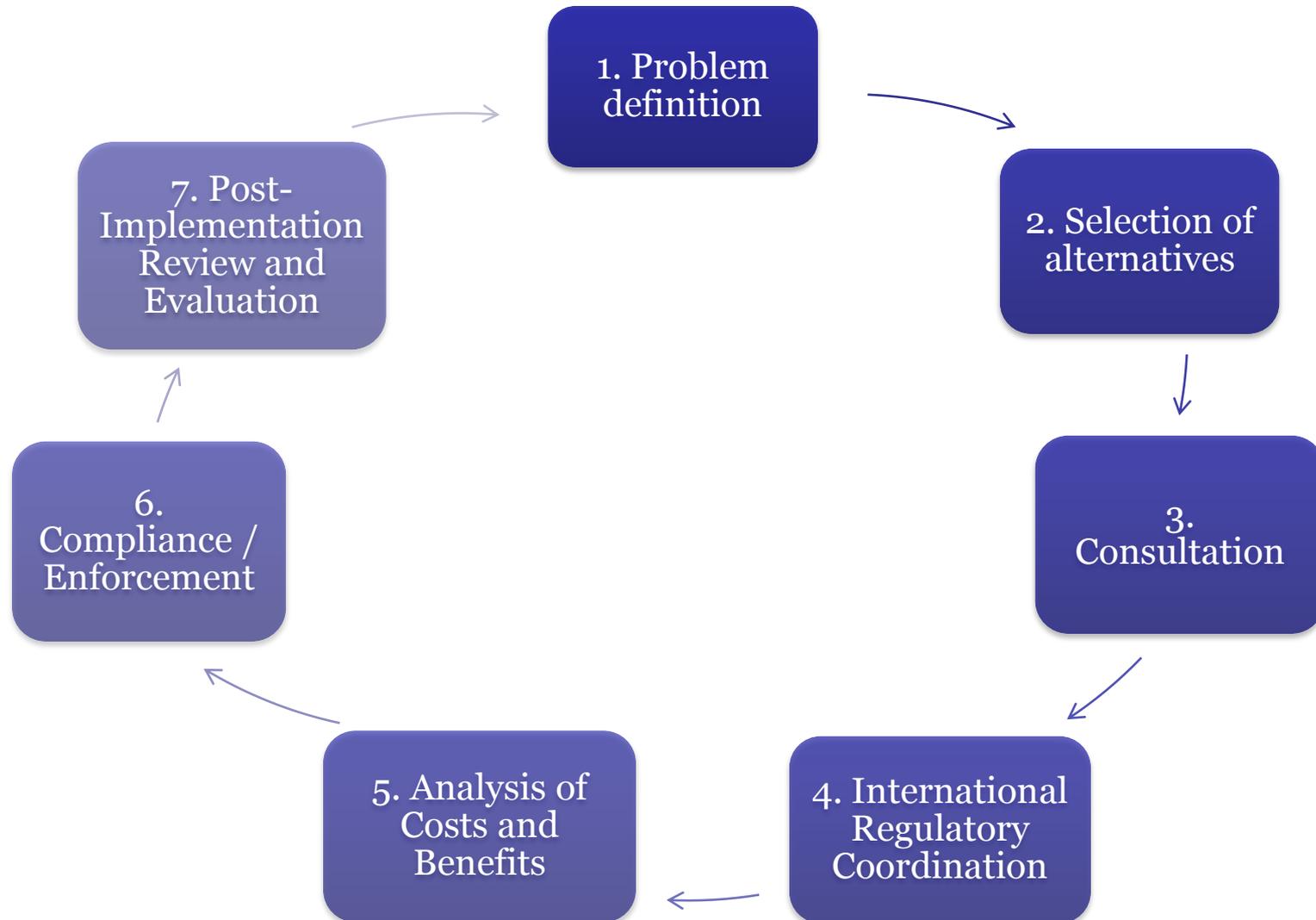
OECD good practices (2)

- 3. Target and prioritise RIA efforts
 - Scope of application / thresholds for when to do RIAs
 - Sectoral impacts
- 4. Develop comprehensive guidelines
 - Mandatory
 - Both on process and on technical aspects
- 5. Carry out sound analysis
 - Strategies for data collection
 - Consistent but flexible methodologies

OECD good practices (3)

- 6. Consultation / Transparency / Communication
- 7. Training, training, training
- 8. Apply RIA to both new and existing regulation

Elements of RIA: Overview



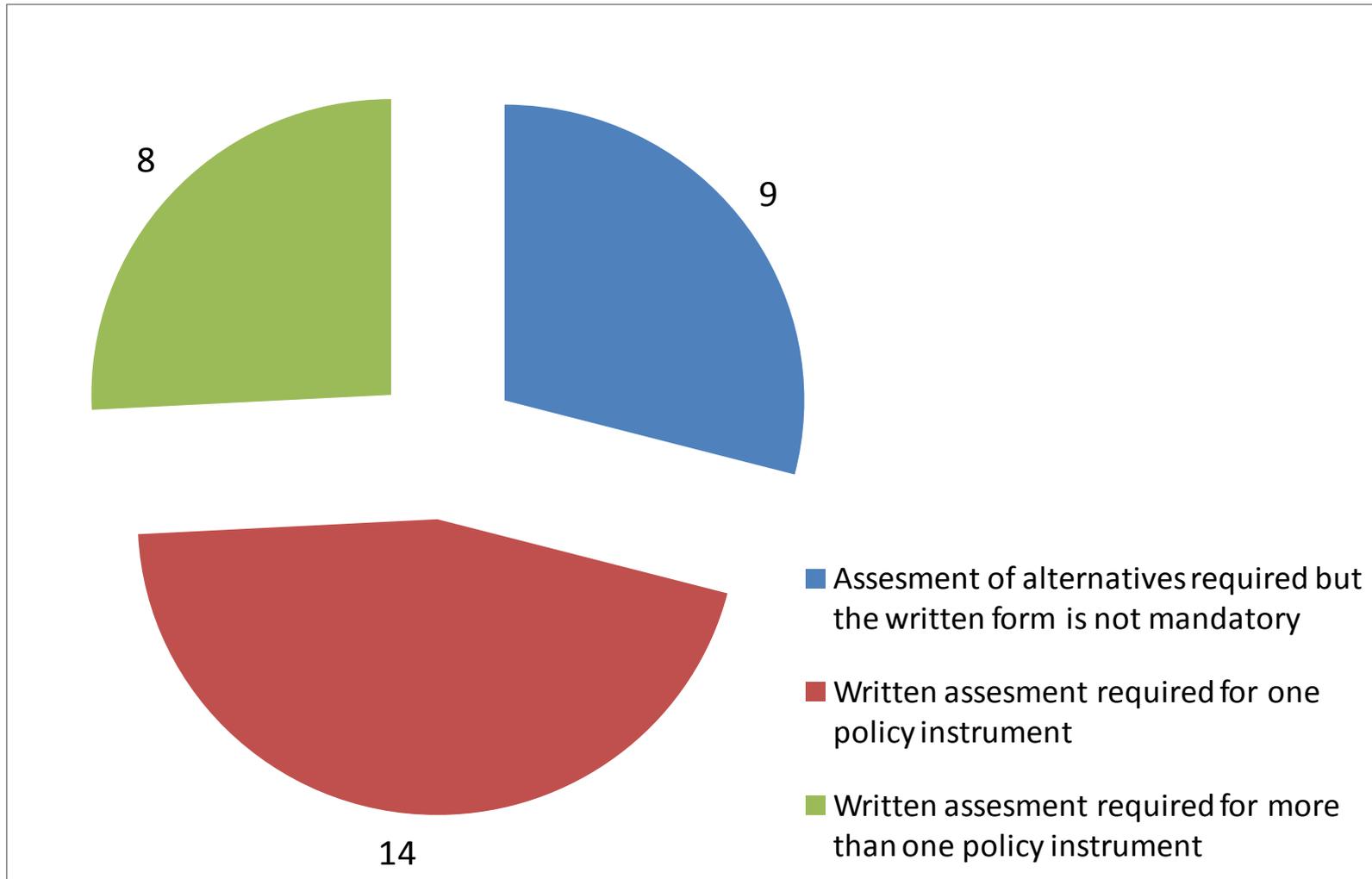
What is the problem? Is government action justified?

- Many regulatory failures stem from an ill-defined or too narrow problem
- Countries have increasingly sought to justify government intervention
- Problem / Objective setting is an essential step for effective performance measurement

Requirements of the RIA process

- Clearly determine policy objectives
 - Case for regulation / Market failure / Policy goals
- Consideration of full range of available alternatives
 - Regulatory / Non regulatory
- Evaluate likely possibilities of success
 - Consider the role of government / characteristics of the sector
 - Discard unworkable proposals
- Cost benefit analysis of alternatives
 - Identify the alternative with the highest net benefit

Assessment of alternative policy instruments OECD countries, 2008



Notes: Data presented for the 30 OECD member countries and the European Union.

Source: OECD Regulatory Management Systems' Indicators Survey 2008, www.oecd.org/regreform/indicators.

Alternatives to what?

Command and control regulation

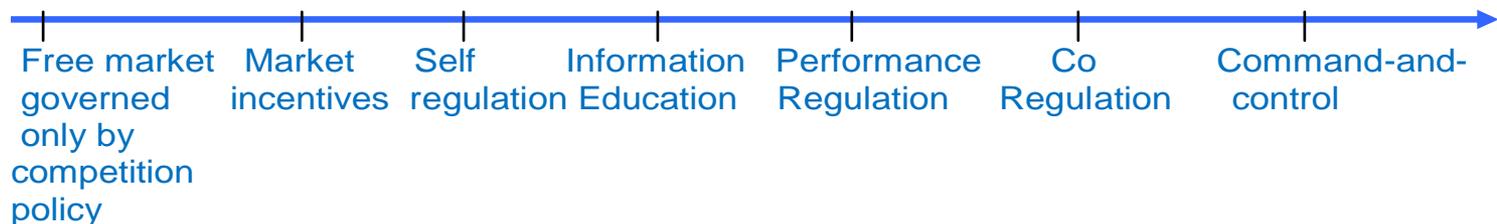
- Prescriptive Black letter law
 - May not promote good regulation
- Efficiency reducing
 - Dynamic/ allocative/ technical
 - Prevents innovation
 - Can create market distortions/ barriers
- Potentially Ineffective
 - Costly to business and the government
 - May not ensure compliance
- A product of habit?

What alternatives to consider?

- Regulatory alternatives
 - Performance based regulation / Co-regulation / Economic instruments - market incentives
- Non regulatory alternatives
 - Voluntary codes / self regulation / information campaigns
- Spectrum of regulatory instruments:

Market driven solutions

Government driven solutions



Performance based regulation

- Specifies outcomes or objectives and allows parties to choose means of compliance
- Flexible, promotes innovation, lowers compliance costs
- May create uncertainty, favor large companies, difficult to monitor compliance, detailed guidance can become de facto law
- Use when rate of technical change is high, incentives for compliance are strong and a clear understanding of the problem to be addressed

Co-regulation

- The regulatory role is shared between government and an industry or occupational body which can enforce breaches of an industry code
- Utilises expertise of the industry or professional association and promotes accountability
- Reduces requirements for government resources
- May raise barriers to entry and unintended monopoly power which may restrict competition
- Best used when industry is strongly homogenous, professional independence is important and self enforcement is possible.

Market incentives

- Economic incentives can be used to modify behavior, for example through creating a market, taxing activities which generate negative externalities, or subsidizing positive activities
- Can be less costly than regulation, promote flexibility, innovation and be largely self enforcing
- Can be difficult to target and may generate unintended market distortions, structurally difficult to remove when no longer required
- Useful when behavioral change is required across the community and sensitive to price signals

Voluntary codes / Self Regulation

- Industry self regulation uses voluntary codes to describe the types of activities that they agree to comply with to ensure acceptable standards
- Voluntary codes have no legal authority: compliance is achieved through the participants desire to uphold the reputation of the industry
- Provides a market based solution to regulate ethical behavior – operationally practical
- Relies on sufficient market power to deter non-compliance
- Compliance may be low, can create barriers to entry

Negative Licensing

- Individuals and business that have demonstrated past bad behavior are precluded from operating in a particular industry
- Practical when governments seek to exclude persons with particular characteristics (eg criminals) rather than specify positive requirements
- Relatively low cost, does not require registration
- Exclusionary criteria may be difficult to specify and enforcement costs may be high

Information campaigns

- An education program can be appropriate in cases where the market failure is an information problem. Depends on whether the target group can be identified and reached economically
- Can be very light handed
- May reduce costs of regulation and increase compliance
- May be conducted by government or business
- May not be successful in changing behavior
- Examples of advertising the effects of speeding, smoking or exercise

Some criteria for assessing alternatives

- For all options, how does it rate on...
- Effectiveness
 - Promote compliance and meet objectives?
- Efficiency
 - Deliver a positive net benefit at lowest opportunity cost?
- Equity and Fairness
 - Transparent, inclusive, promote competition?

Conclusion

- Case by case approach
 - Consideration of characteristics of industry sector
- Clearly linked to policy objectives.
 - Will it achieve its policy aims?
- Incentives and institutional issues.
 - Do the approaches ‘work with’ existing incentives?
 - Can they be effectively monitored and enforced?
- Evaluation of risks.
 - Likelihood and consequences of regulatory failure
 - Possibility for return to status quo
- Be creative
 - Adapt to human behaviour, new technology, new tricks, opportunity for policy learning

Why consult?

- Valuable source of ideas and data
- Intrinsic and instrumental value
- Increased transparency (increased trust)
- Draw upon collective intelligence of society: better outputs and outcomes at a lower cost
- People are more likely to accept and comply with policies they feel they have shaped

Consultation is a central element of RIA

- Form of quality assurance
- Means of ensuring data fully gathered and refining methodologies
- gives affected parties the opportunity to identify and correct faulty assumptions and reasoning
- *Regulatory oversight bodies need to play a role in enhancing and refining consultation practices*

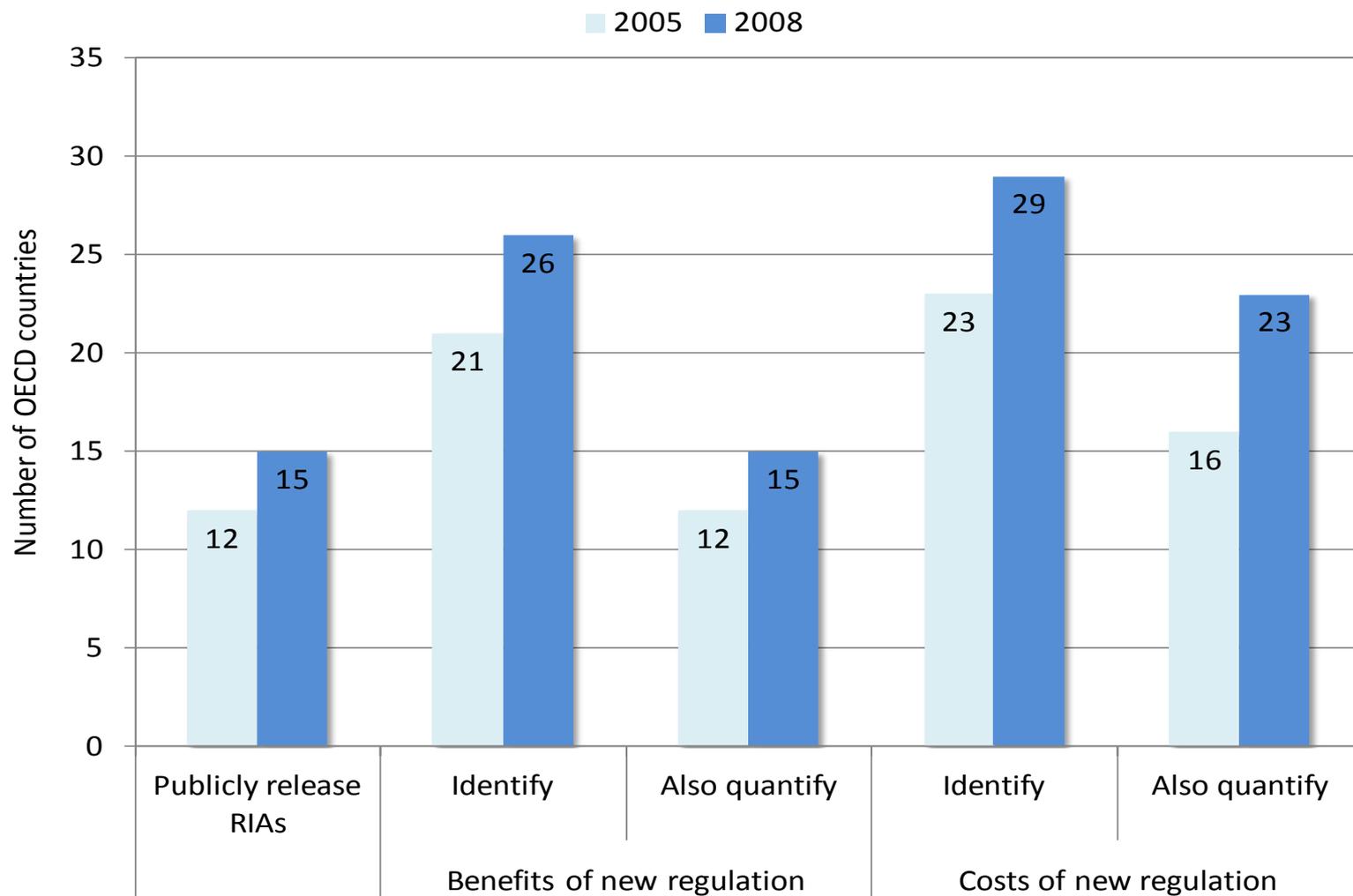
Why coordinate?

- Collaborative identification of a regulatory agenda
- Increasing integration of international markets magnifies the salience of global systemic risks

Benefit-Cost Analysis (BCA)

- OECD recommends that the BCA should be used where feasible in conducting RIA
- BCA, when applied appropriately in the regulatory context, attempts to take account of the full range of impacts, including environmental and social impacts, as well as economic impacts.
- Should serve as a basis for decision-making (choose the option that maximises net benefits)

RIA Requirements: Analysis of Costs, Benefits and Public Accessibility in OECD countries (2005 and 2008)

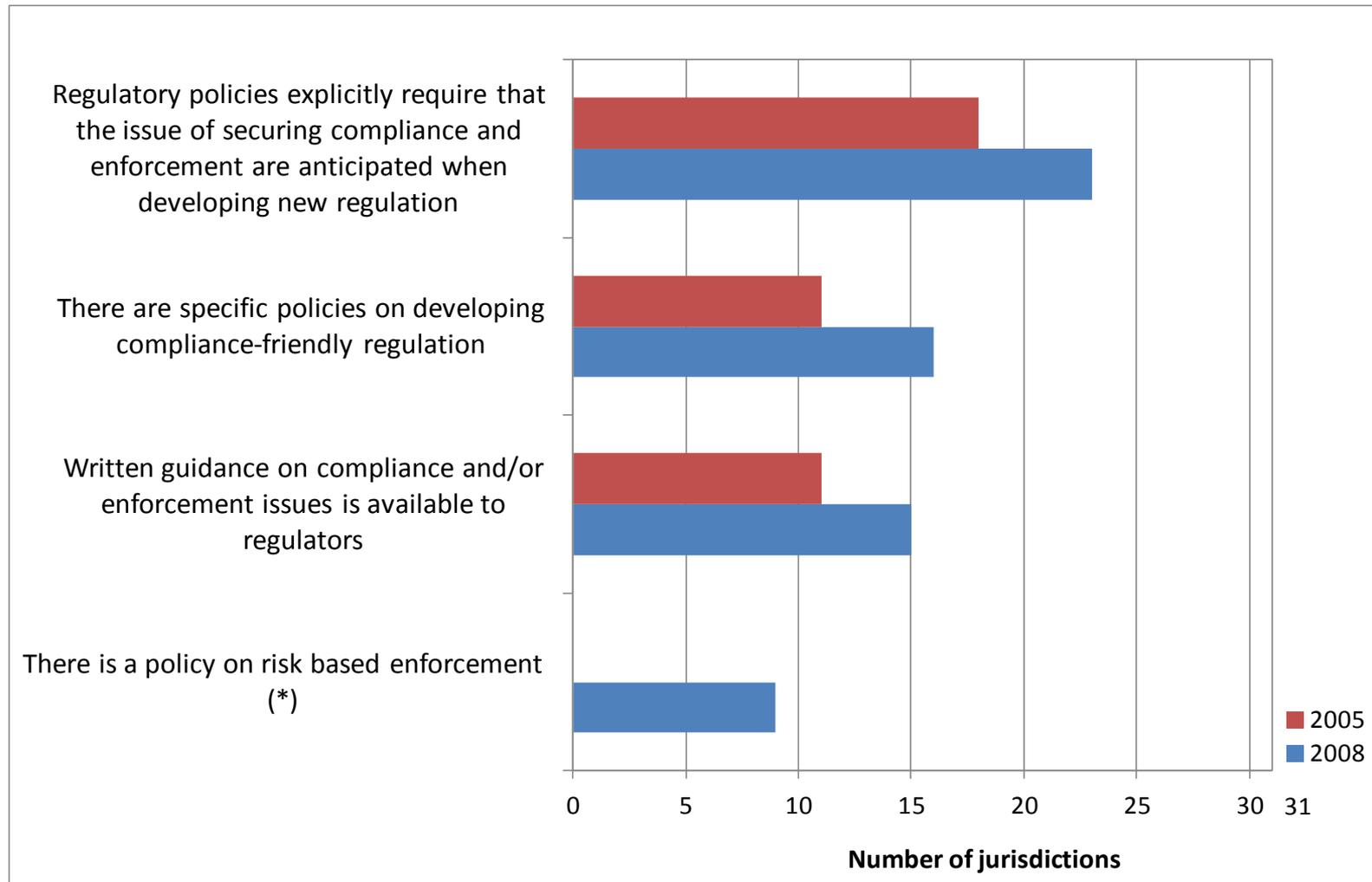


Note: This figure is based on country responses to the OECD Survey of regulatory management systems conducted in 2005 and 2008. Each column is the sum of country responses “always” and “for major regulations only”. *Source:* OECD Regulatory Management Systems’ Indicators Survey 1998, 2005 and 2008, www.oecd.org/regreform/indicators.

Compliance and enforcement

- OECD 2005 principles: regulations should be efficiently applied with non-discriminatory and transparent procedures for enforcing regulations and with fair appeal processes
- Achieving a high level of compliance is a key factor in the effectiveness of regulations.
- How to influence the awareness, willingness and ability of regulated groups to comply?

Compliance and enforcement issues, 2005 and 2008



Notes: Data for 2005 and 2008 are presented for the 30 OECD member countries and the European Union.

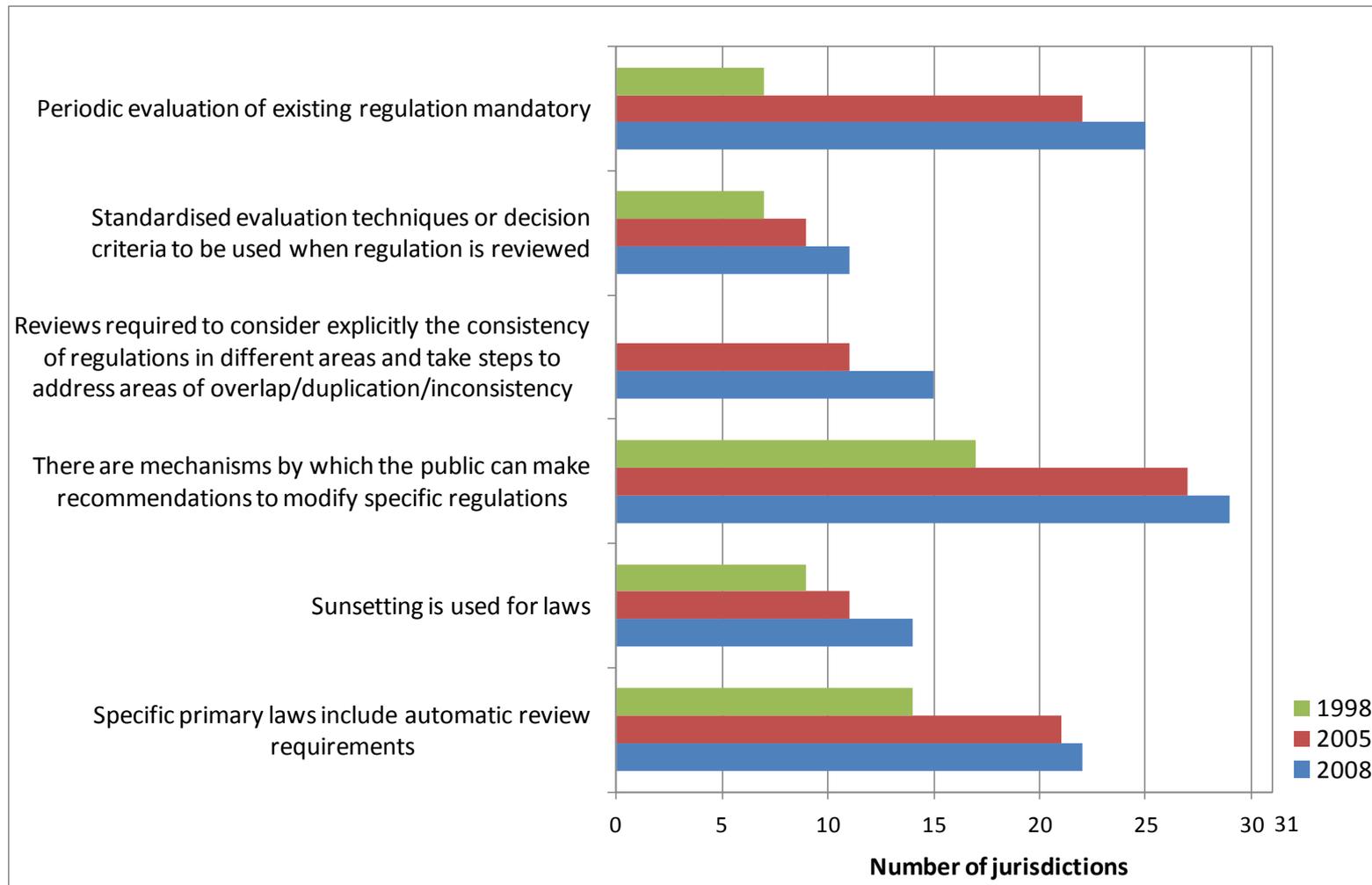
(*) No data are available prior to 2008.

Source: OECD Regulatory Management Systems' Indicators Survey 2005 and 2008. www.oecd.org/regreform/indicators.

Performance measurement & evaluation

- Develop standardised evaluation techniques or criteria
- Report on performance
- Review / Repeal regulation if necessary
- Automatic reviewing or repealing clauses may be considered, such as sunseting

Regulatory review and evaluation in OECD countries 1998, 2005 and 2008



Notes: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the EU in 2005/2008.

(*) No data are available prior to 2005.

Source: OECD Regulatory Management Systems' Indicators Survey 1998, 2005 and 2008, www.oecd.org/regreform/indicators.

For more information:

- OECD country reviews on regulatory reform are available at www.oecd.org/regreform
- OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*
- OECD (2006), *Alternatives to Traditional Regulation*
- OECD (2008), *Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers*
- OECD (2009), *Better Regulation in Europe: An Assessment of Regulatory Capacity in 15 Member States of the European Union*
- OECD (2009), *Regulatory Impact Analysis: A Tool for Policy Coherence*



Thank you for your attention!

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