



“ Agile Regulatory Delivery”

Why do we do what we do, do others do the same, and does it work?

Keynote presentation - 2018 CFR Regulatory Conference

Florentin Blanc



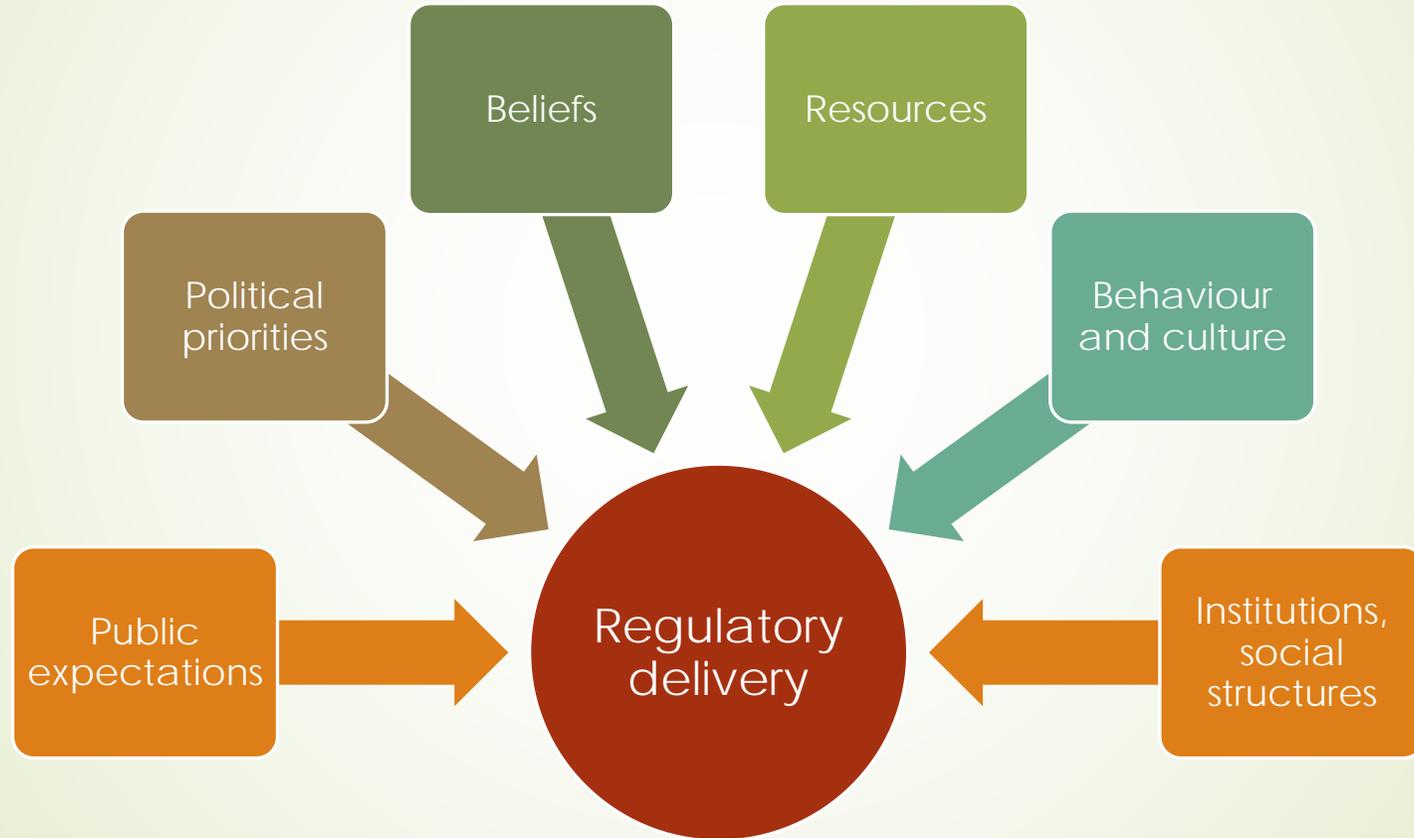
What are we talking about?

What is “regulatory delivery”? And how about “agile”?

Agile regulatory delivery – an overview

- ▶ Regulatory delivery: “everything that is intended to make regulations actually implemented”
- ▶ What do we mean with “agile”?
 - ▶ Flexible and adaptive – rapid to respond
 - ▶ Precise – just the right amount, right spot, right approach
 - ▶ Focused on results to be achieved rather on rules and procedures
...but can you do regulation without rules?...
- ▶ Some approaches: Risk-based, Ethical Business Regulation, procedural justice, transformation/service, technology...
- ▶ How does this fit within a broader vision of regulatory delivery? Within its historical development? Do we have any evidence that it works, or should we fear that “agile” will mean “friendly but ineffective”?

Conflicting pressures on regulatory delivery





Why do we care?

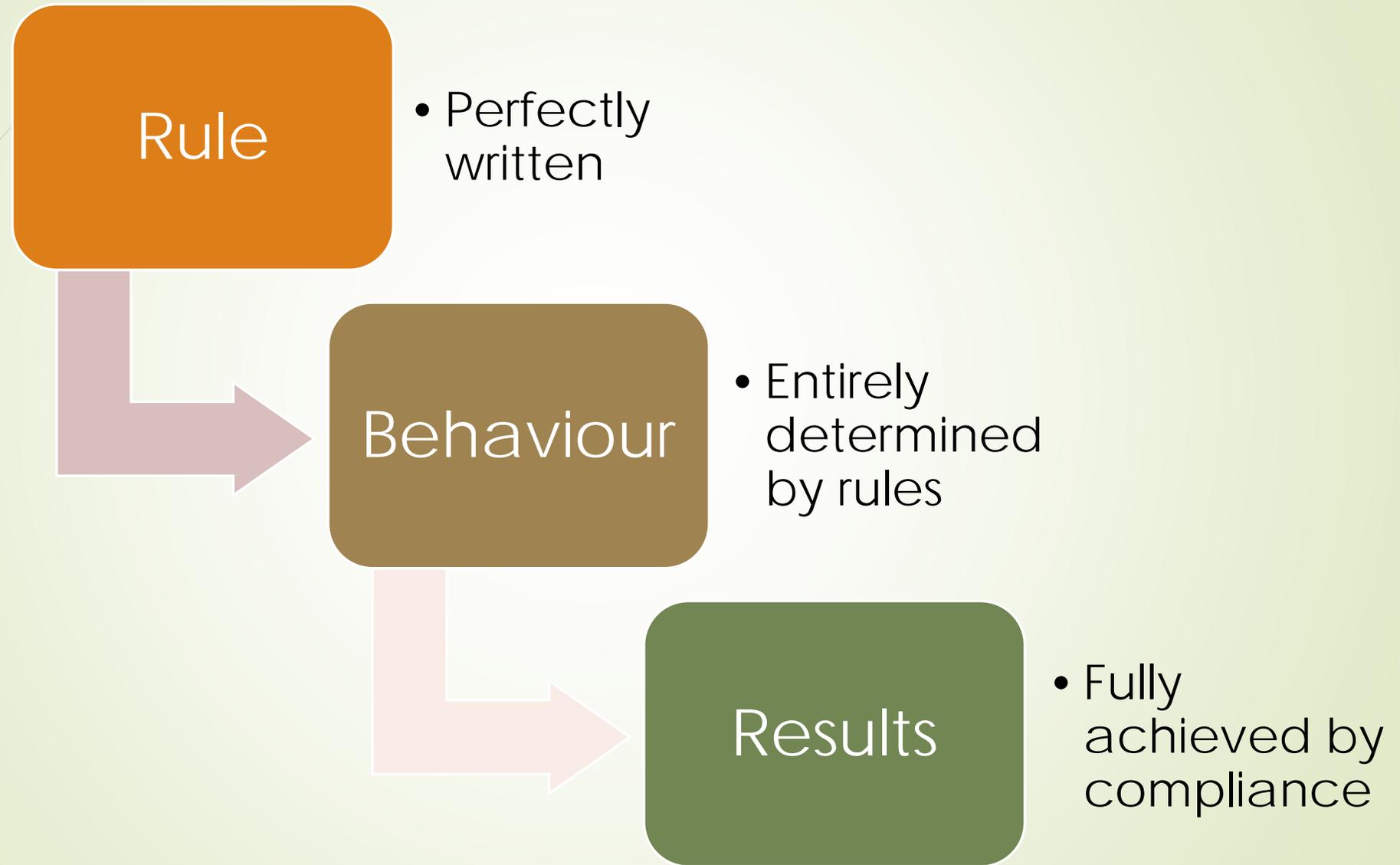
What is expected from regulation, and regulatory delivery?



Why do we regulate? And how?

- ▶ Public policy goals: safeguard health and safety, protect the environment, raise public revenue etc.
- ▶ Regulation often appears like an easy tool to wield: it costs little to those who adopt laws, and it can be presented to the public as “action”
- ▶ In addition to “substantive” rules, regulations also include procedures and instruments to implement the rules
- ▶ The assumption is that rules, procedures, instruments will produce the desired results – and that if they do not, “more” or “stricter” is needed
- ▶ Criticism has often focused on the costs that rules impose – but not always sufficiently looked at the fundamental assumptions about whether they work

A simplistic view of rules to results is misleading



...and a more realistic view of results!

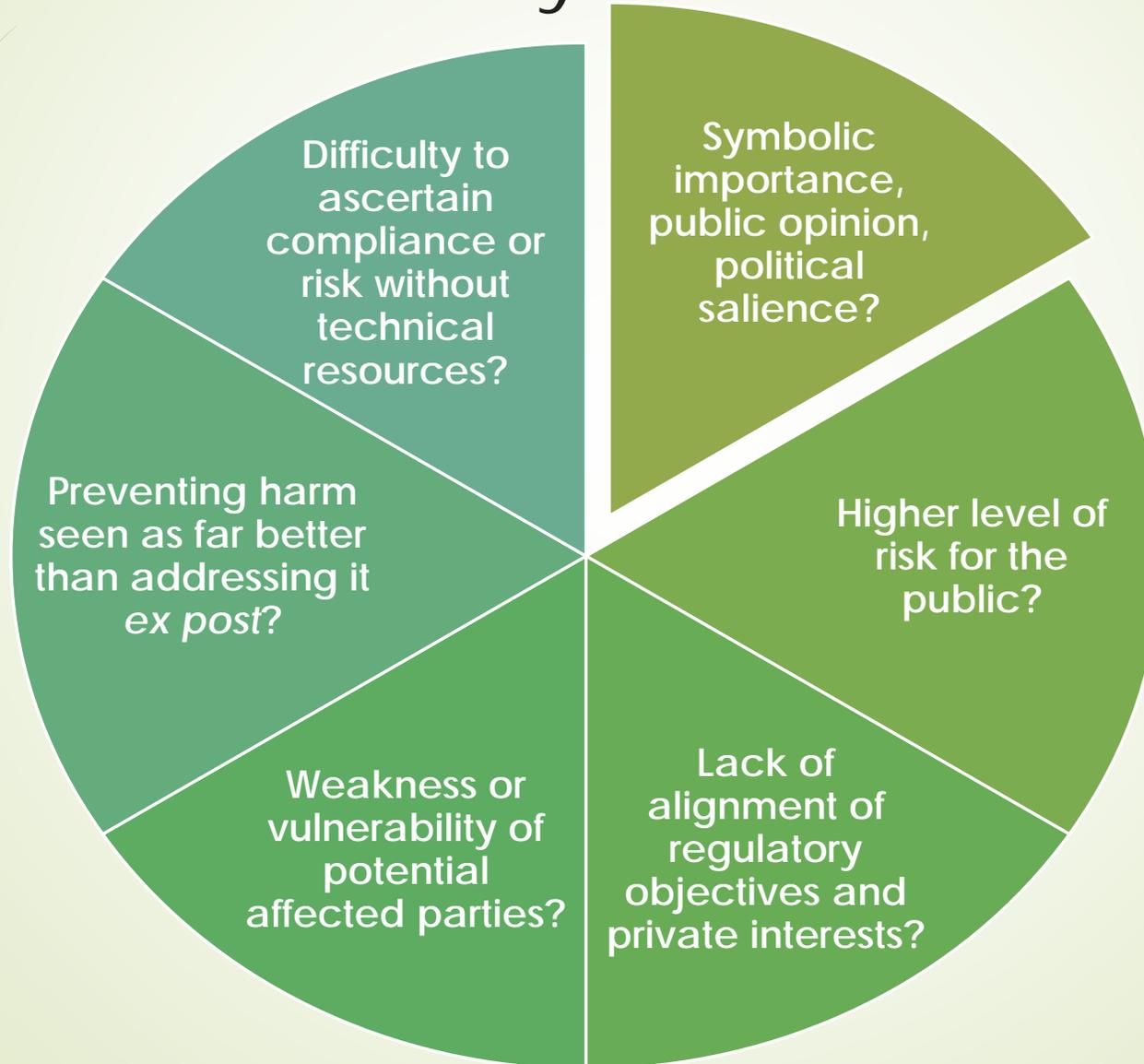




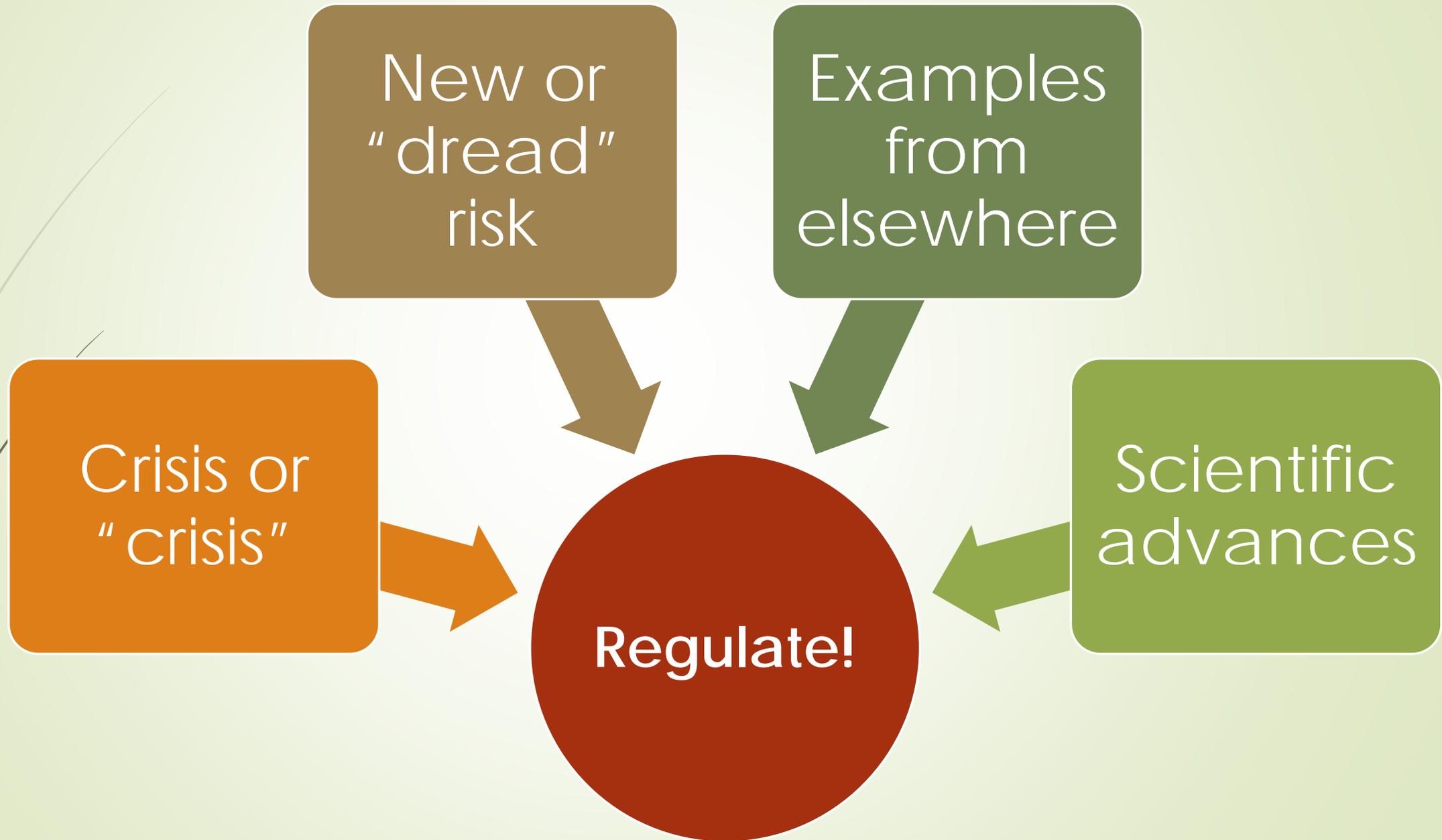
How did it evolve?

Why do we regulate a certain way today?

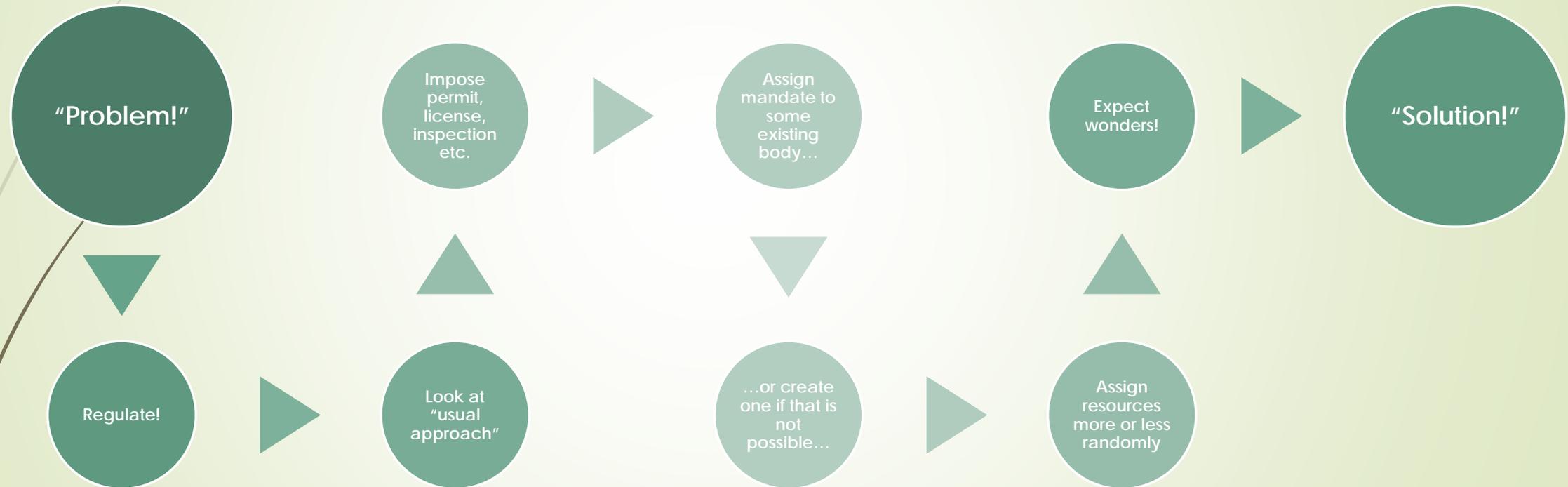
Drivers of regulation and regulatory delivery - the rational theory...



...and the historical development...



...and choice of regulatory delivery methods was not "rational" either...



Very different approaches – how about results?

- ▶ Greece: intense use of prior approvals –detailed specifications – what effects?
- ▶ Former Soviet Union – very frequent, repeated inspections –what outcomes?
- ▶ United States: comparing states/activities with/without licensing – what differences?
- ▶ Georgia: drastic, radical cuts in enforcement, procedures – what changed?
- ▶ No apparent correlation in country/between countries between level of tax inspections and tax revenue level (IFC study in Eastern Europe)
- ▶ Fire safety specifications – do they really work? (Netherlands research)
- ▶ Non-food products – very different systems for conformity assessment etc. between Canada, Australia, US and EU – what differences in outcomes?
- ▶ We know little about how our assumptions translate in practice – how much does regulation help – and how well do different “delivery” approaches perform...
- ▶ **Regulatory delivery systems characterized by high level of path dependency**



Let's look at the evidence

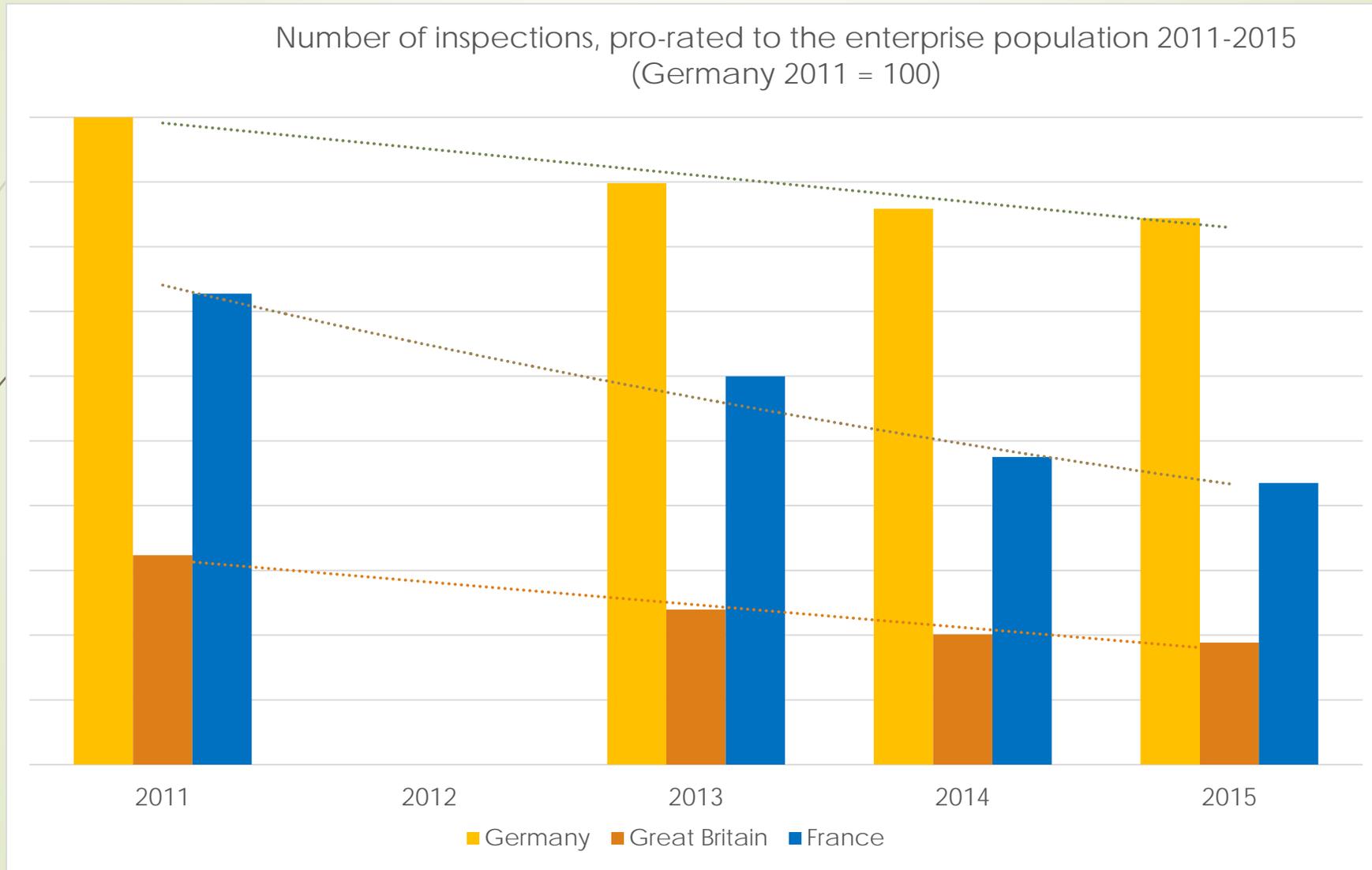
Do certain approaches perform better, or worse?



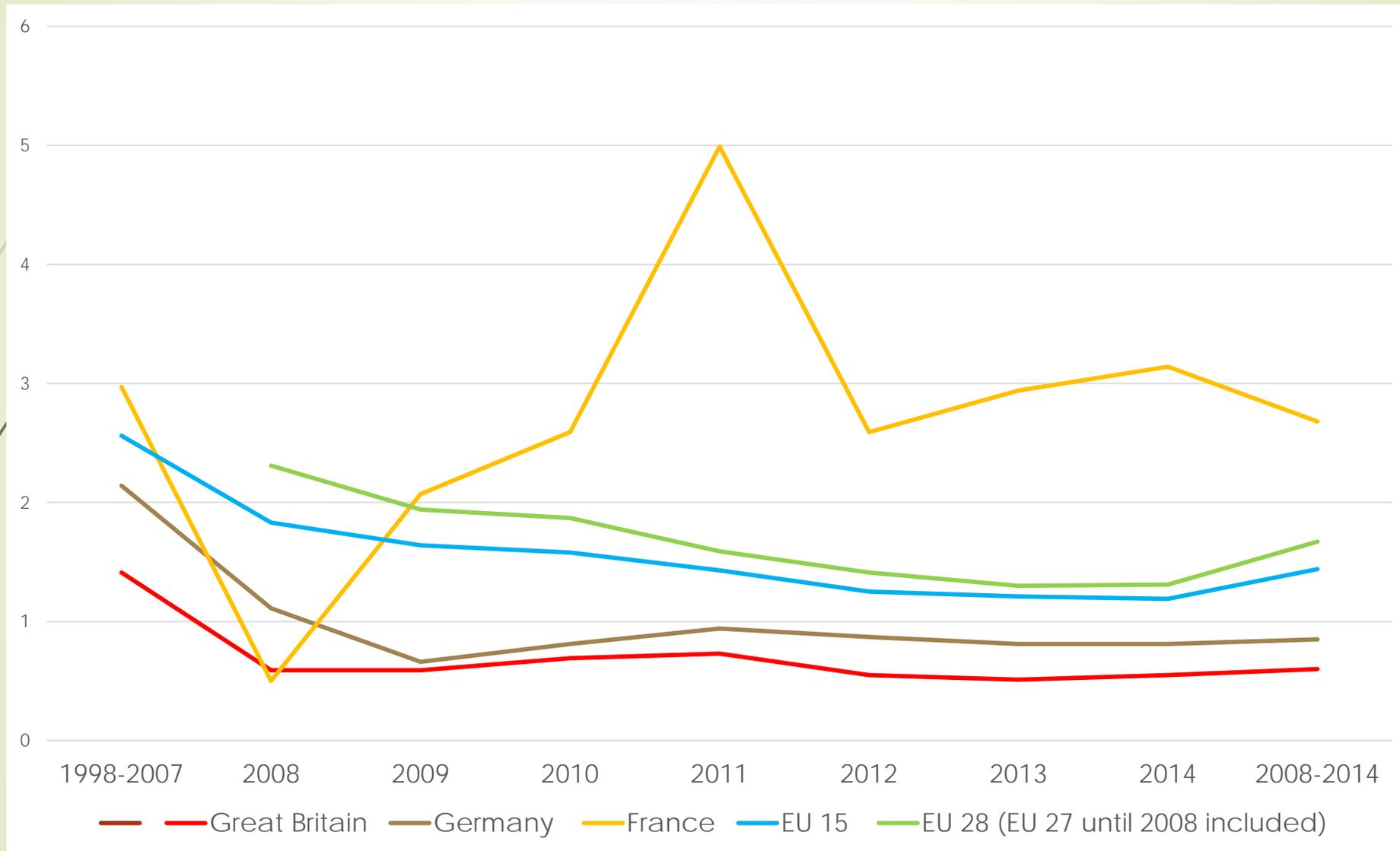
Occupational safety in Britain, Germany and France – a case study

- Occupational safety legislation significantly EU harmonized
- Long history of regulation and inspections in all 3 countries
- Highly similar “background” in terms of safety overall, development level etc.
- Occupational safety data: fatal accidents rate are generally reliable, and “standardized” by Eurostat to correct for differences in economic profile
- Regulatory delivery approaches are very different between the 3 countries

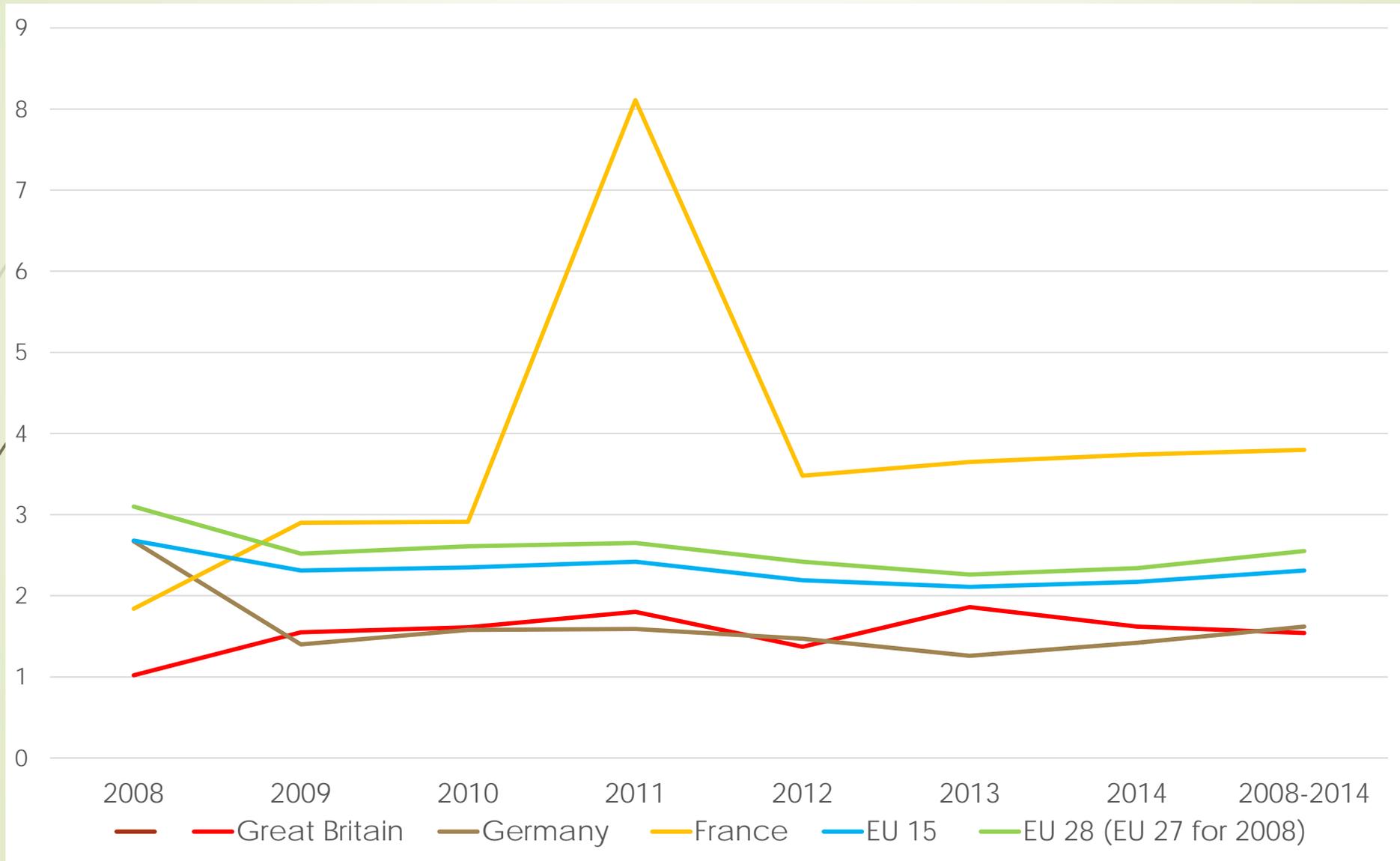
Enforcement outputs: Occupational Safety Inspections in Britain, France and Germany



Fatal occupational accidents rate (per 100.000 workers), Eurostat, excluding transportation-related



Fatal occupational accidents rate (per 100.000 workers), Eurostat, including transportation-related





What approaches behind these results?

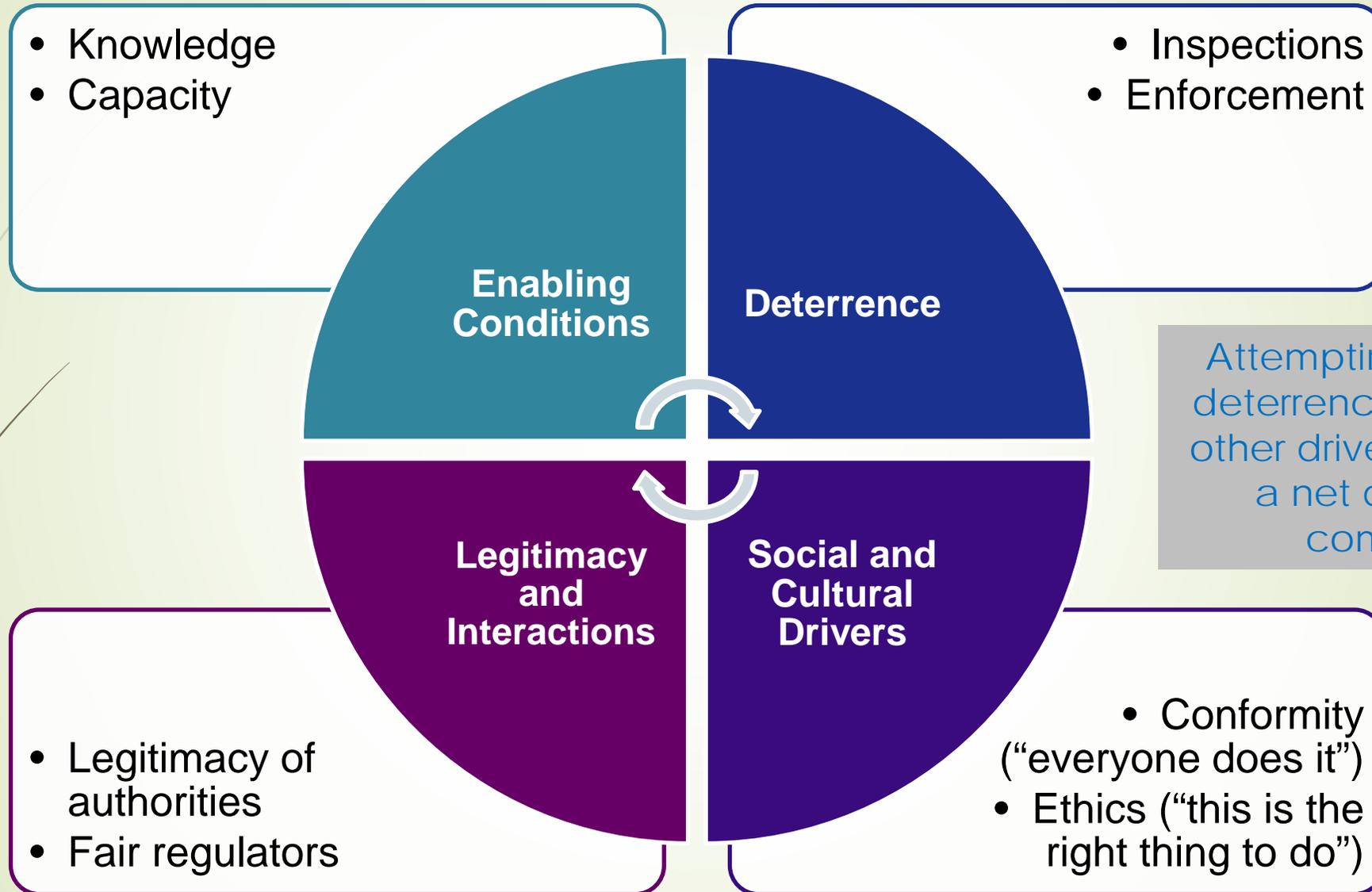
- Britain: rather rare inspections, “law as last resort” (but immediate action possible), emphasis on working “upstream”, engaging with businesses and workers, structured approach to information and education
- Germany: very frequent inspections, some duplications in the system, emphasis on preventive approach, some sanctions, mix of “old” and “new” approaches, information and education rather “ad hoc”
- France: frequent inspections, “zero tolerance” approach (but long delays), safety together with employment law, resistance to change and coordination, very little prevention and education



Explaining the results

Evidence is nice – now give us some theory!

Drivers of behaviour





Moving forward

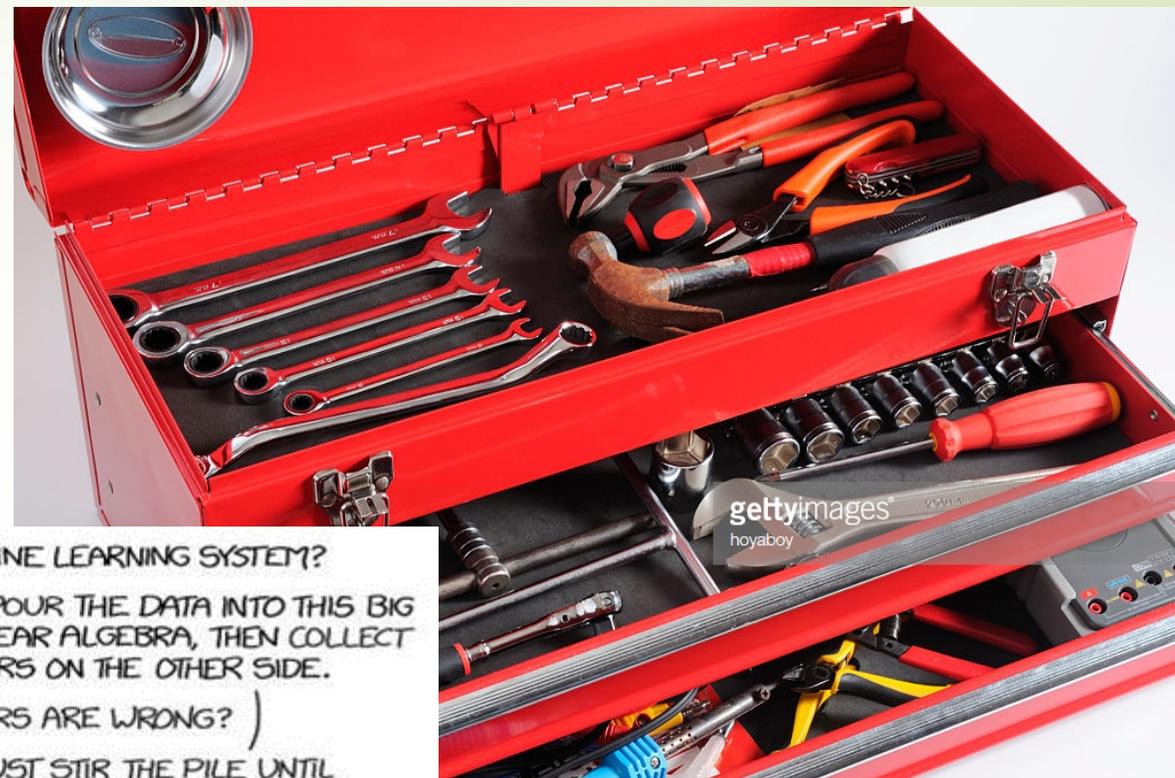
What can we do with these findings?



Relevance to Canada? Some examples?

- ▶ Reform of product safety regulation – changes in many countries at the same time – but different options adopted. Do we know what works?
- ▶ Deconstruct problem first: what are the causes and mechanisms of action? How can we influence the problem? Are we intervening at the right point? Are we using the right tools?
- ▶ Not everyone/not always same behaviour motivations – this is why sometimes exceptions also to the “aligned incentives” assumption e.g. in food – means: no one size fits all?
- ▶ Understand and work with behaviour
- ▶ How do we fit this with rules?

Knowing when to use which tool is essential!



THIS IS YOUR MACHINE LEARNING SYSTEM?
YUP! YOU POUR THE DATA INTO THIS BIG PILE OF LINEAR ALGEBRA, THEN COLLECT THE ANSWERS ON THE OTHER SIDE.
WHAT IF THE ANSWERS ARE WRONG?
JUST STIR THE PILE UNTIL THEY START LOOKING RIGHT.



Can agility, fairness and rule of law coexist?

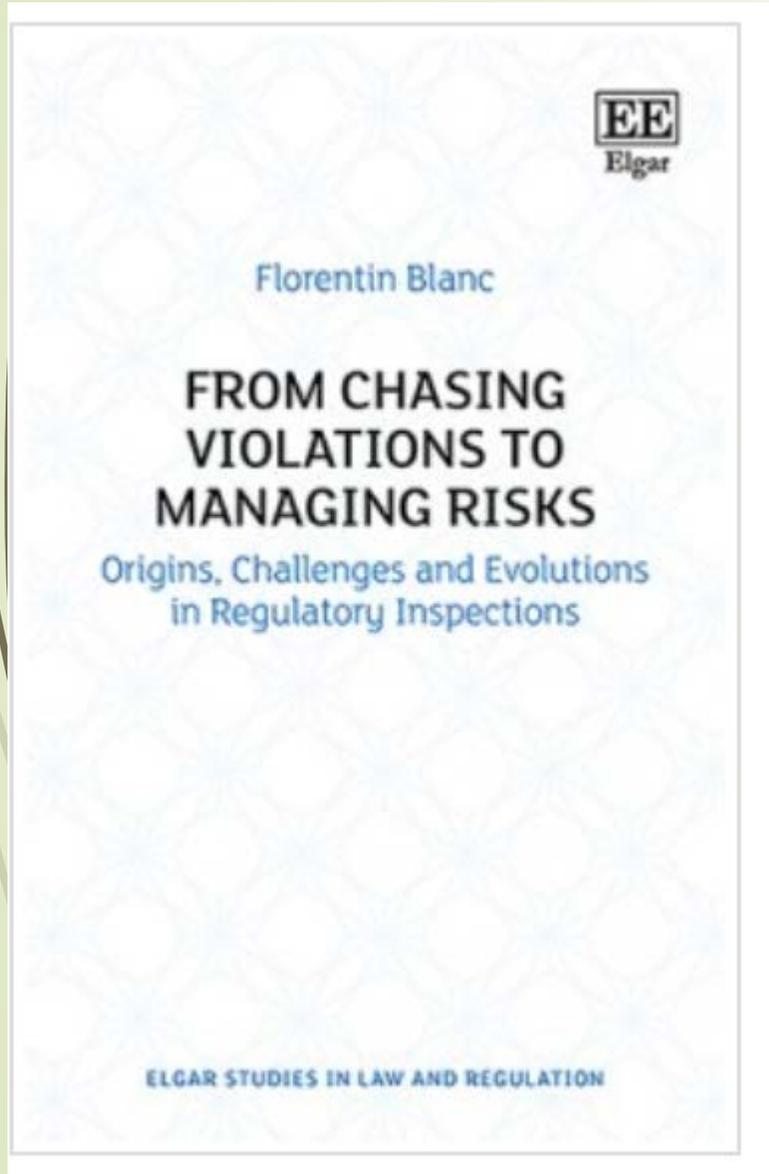
- ▶ Like squaring a circle: more flexibility, discretion is needed, transparency and fairness are expected, rule of law is fundamental...
- ▶ Several elements to achieve this:
 - ▶ Accountability for results – clear goals, objectives, targets, measurement
 - ▶ Discretion grounded on professionalism
 - ▶ Discretion framed by a clearly stated approach and risk-based and ethical vision
(ex. GB HSE's Enforcement Management Model)
- ▶ Making regulation work better is not always achieved by "more regulation of regulators" – cf. CCPSA vs. US CPSA



Agile Regulatory Delivery – in summary

- ▶ Conflicting demands, on already excessive expectations
- ▶ Path dependency, unchallenged assumptions – fresh thinking needed
- ▶ Compare and benchmark systems, practices and results
- ▶ Understand mechanisms, causal pathways etc. / understand where intervention is realistic, and can be effective
- ▶ Agility requires discretion but should not be arbitrary (ethical model + professionalism + risk-based enforcement framework)
- ▶ Challenge: relies on performance based rule => professionalism required on regulator's side – but can be difficult for businesses => “agile” may mean differentiation of approaches / segmentation (by size, risk etc.)

“From Chasing Violations to Managing Risks”



- For more details on these issues – see newly released book available at:
<https://www.e-elgar.com/shop/from-chasing-violations-to-managing-risks>
- Considers historical development, theoretical foundations and case studies on regulatory inspections and enforcement / regulatory delivery – including questions of data and information technology
- Presents the results of 10+ years of work, dozens of countries’ experience, and consideration of several decades of research...