Risk based "regulatory delivery" for environmental rules – Why, how, with what effect?

Improving implementation and enforcement of environmental regulations

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Outline

- What is risk based enforcement – and what does it aim to achieve?

- Relevance of risk based enforcement to environmental regulations

- How does risk based enforcement work?

- Effectiveness – reaching the regulations' goals

- From "enforcement" to "regulatory delivery"

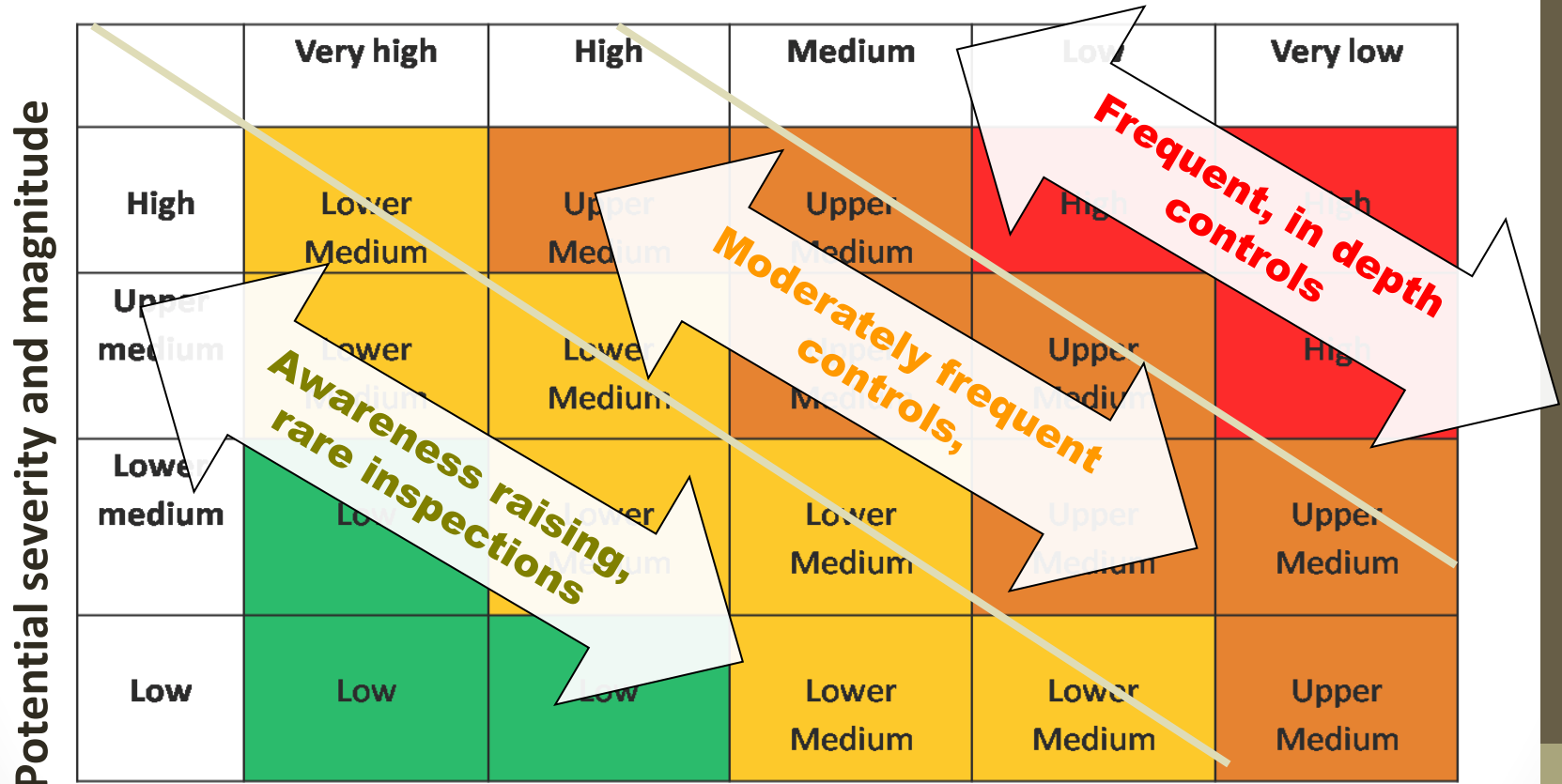# Risk-based enforcement: what is it – "what is different"? [1]

- Based on recognition that:
  - There are limited enforcement resources and not everything can be checked, investigated, followed up on etc.
  - Enforcement is not the unique driver of compliance – and compliance is not the only way to achieve the public interest
  - If there is no pattern in targeting and focusing enforcement, it will essentially end up being done at random
  - If there is no differentiation in enforcement approach between situations with clearly different risks, the perceived unfairness of the approach will undermine voluntary compliance
- <u>Risk</u> is defined as the combination of probability and potential magnitude of the possible hazard
- The risk-based approach affects targeting of inspection visits, selection of enforcement approach etc.

Risk-based enforcement: what is it – "what is different"? [2]

- Targeting: inspection visits more frequent for objects defined as "high risk" – can be very (even extremely) rare at "low risk" objects

- Approach: deeper controls where there is higher risk – responsive enforcement depending on seriousness of risk or damage, behaviour of controlled entity etc.

- Differs from "non-risk-based" in that it:
  - Explicitly accepts selectivity, and embraces it
  - Does not seek high coverage by inspection visits, or high number of enforcement actions, *per se* – numbers should be linked to risk, and effectiveness of the enforcement system should be appraised in terms of risk mitigation and outcomes

Combining severity and magnitude to select intervention

Likelihood of adverse event

Potential severity and magnitude

	Very high	High	Medium	Low	Very low
High	Lower Medium	Upper Medium	Upper Medium	High	High
Upper medium	Lower Medium	Lower Medium	Upper Medium	Upper Medium	High
Lower medium	Low	Lower Medium	Lower Medium	Upper Medium	Upper Medium
Low	Low	Low	Lower Medium	Lower Medium	Upper Medium

Awareness raising, rare inspections

Moderately frequent controls,

Frequent, in depth controls

The risk pyramid

Strict surveillance warranted – *ex ante*

Mostly *ex post* **control**

Limited need for regulation

High Risk
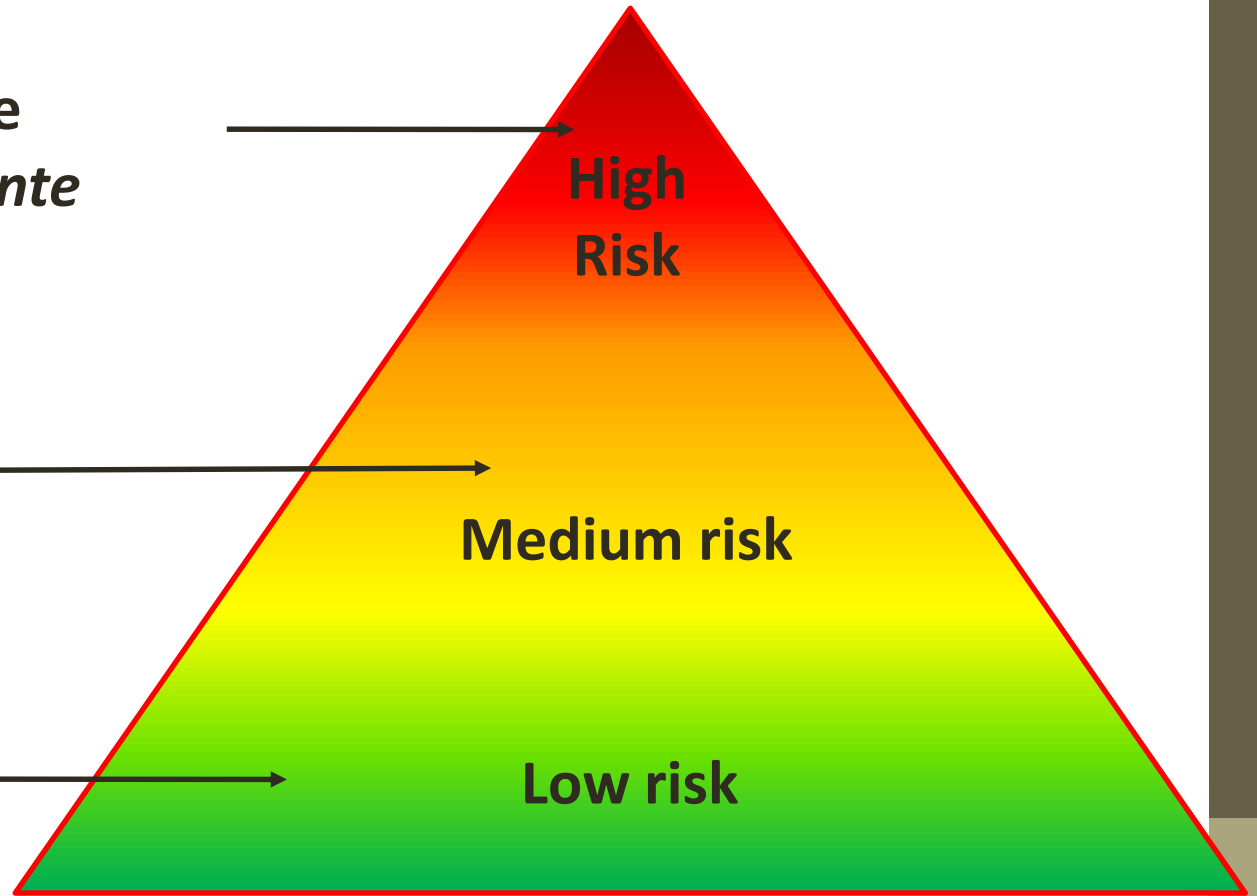
Medium risk

Low risk

The aims of risk-based enforcement

- Optimize efficiency: achieve the best possible results for a given level of (inherently limited) resources
- Increase legitimacy:
  - Transparent criteria
  - Differentiation of approaches
- Maximize effectiveness:
  - Resources targeted where they can deliver highest results
  - Procedural justice effect through differentiation and transparency
  - Use a variety of tools to improve compliance and positive outcomes in all situations (awareness raising and advice in particular – also leverage consumer power by spreading information on compliance etc.)

Relevance to environmental regulation

- Huge scope of environmental regulation (and environmental problems) and considerable variations in type and level of risk
- Limited resources, even in countries which put a relatively high focus on the environment
- Potential for resistance to regulations and enforcement ifseen as "one more burden"
- Considerable evidence that enforcement is not the only driver of compliance or of "better behaviour" more broadly – need to harness drivers of "voluntary improvement/compliance"
- "More" enforcement is not always automatically "better"
- "Smart Regulation" concept coined specifically in environmental context (N.Gunningham)

Problems with the "old way" of doing things

- Assuming "more" is "better" – is this always correct?
  - Quite clearly not in many transition/development context (rent-seeking issues, professionalism/transparency problems etc.) – see e.g. recent survey conducted in Kyrgyzstan by the WBG
  - But also not always in developed/OECD countries (sub-optimal efficiency, perceived procedural injustice, adverse reactions vs. burden, economic impact etc.)
- Not always clear to the public and to regulated entities how decisions are made, following which approach, criteria etc.
- Possibly too much belief in compliance as driven primarily by deterrence (cost calculation) rather than by a complex set of drivers (see e.g. E.A.Lind, T.Tyler, etc.)
- For a summary of issues see e.g. UK's 2005 *Hampton Review,* OECD and World Bank Group fact-finding reports

Building blocks of risk based environmental enforcement

- Data on objects inherent characteristics and on their compliance history – preferably interconnection with other regulators
- Analysis of past years (defining priorities) and of data on objects being supervised in order to target control activities
- Develop and publish clear and transparent methods, criteria, results reports etc. (see England and Wales Environmental Agency Corporate Scorecard as an example of the latter)
- Differentiate enforcement approaches (see *Responsive Regulation* – Ayres and Braithwaite)
- Use a variety of complementary tools for different situations, target groups etc. (including major awareness/outreach efforts) (linked to the "Smart Regulation" approach)
- Targets = outcomes in terms of public goods, not enforcement volumes

How does "risk based enforcement" look in practice?

- In many cases, can correspond to a significant *decrease* in volume of inspections/controls and possibly in enforcement actions too

- Means that the regulator and its staff know where to focus thanks to adequate data and tools, and effectively do so in practice, addressing the highest risk as much as possible

- Recognizes limitations in what regulation can achieve and seeks to have a comprehensive/complex approach to improving environmental outcomes

- Regulatory agencies not only working on control/enforcement but on awareness, results measurement, outreach, guidance, etc.

Is "risk based enforcement" effective? And effective *at what?*

- What is the goal/objective?
  - Finding violations and punishing them?
  - Achieving the highest possible level of compliance?
  - Achieving the best possible environmental outcomes?
  - Optimizing environmental *and* economic and social outcomes?
- What are the measurement sources and their limitations?
- Available evidence suggests that risk based enforcement is effective in terms of achieving better environmental outcomes with a given set of resources, while also improving the economic/social effects of regulation – but such evidence is still limited and overall results measurement needs to be further improved

Towards a more comprehensive "regulatory delivery" approach

- Rather than looking at "enforcement" a possibly better way is to think of "regulatory delivery" – "everything that helps to turn regulation into action" – it includes control and enforcement, but also education, outreach, information, guidance, and also empowering consumers, citizens etc.

- See e.g. work of the UK's Better Regulatory Delivery Office (BRDO) [including specifically on risk framework]

- Recent conference in London (September 2014) on improving regulatory delivery internationally

- OECD Principles for Good Practice in Regulatory Enforcement and Inspections published in 2014

- Ongoing World Bank Group work on this topic developing over the last 10 years

Some links:

https://www.wbginvestmentclimate.org/uploads/How%20to%20Reform%20Business%20Inspections%20WEB.pdf

http://www.oecd.org/gov/regulatory-policy/enforcement-inspections.htm

https://www.gov.uk/government/publications/brdo-international-resources

Thanks for your attention!