

Consultations in rule-making and IA

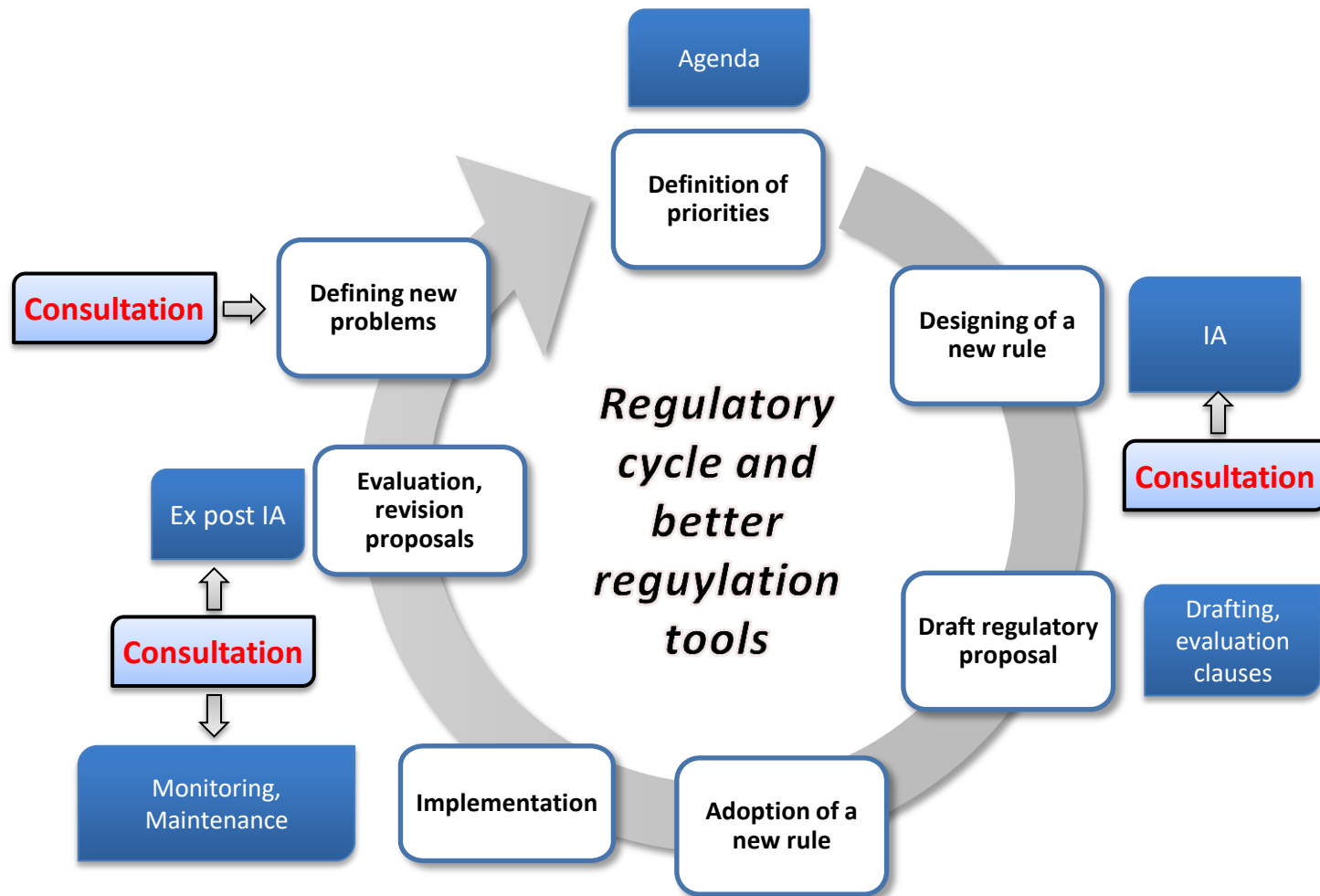
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Contents

- Definition of consultation
- Link between consultation and Impact Assessment (IA)
- Consultation practices
- Group exercise
- Consultation tools and techniques
- Possible risks and pitfalls



***Not every participation process can be
defined as “consultation”...***

What is Consultation?

- Consultation is a **formal process** by which decision makers collect inputs, opinions, data and points of view from stakeholders about (proposed or existing) policies.
- Consultations require a structured way to interact with stakeholders, using pre-defined **methods** and “rules of the game”.
- Consultation is not a one-shot policy, rather a continuous (and sometimes expensive) process that need to be **programmed** in advance
- I will focus on consultations supporting regulatory policies

Notification of
decisions taken



Consultation



PARTICIPATION

«Participation can be understood as *the interaction*, either formal or informal, between government and citizens and stakeholders (...) at the initiative of either, *that is used to inform a specific policy outcome* in a manner that ensure *well-informed decision making* and avoid policy capture» (OECD 2016)

Engagement/Co-
decision



...and what it is not

A mix of tools which replace the **decision**

A way to effectively **communicate** a decision

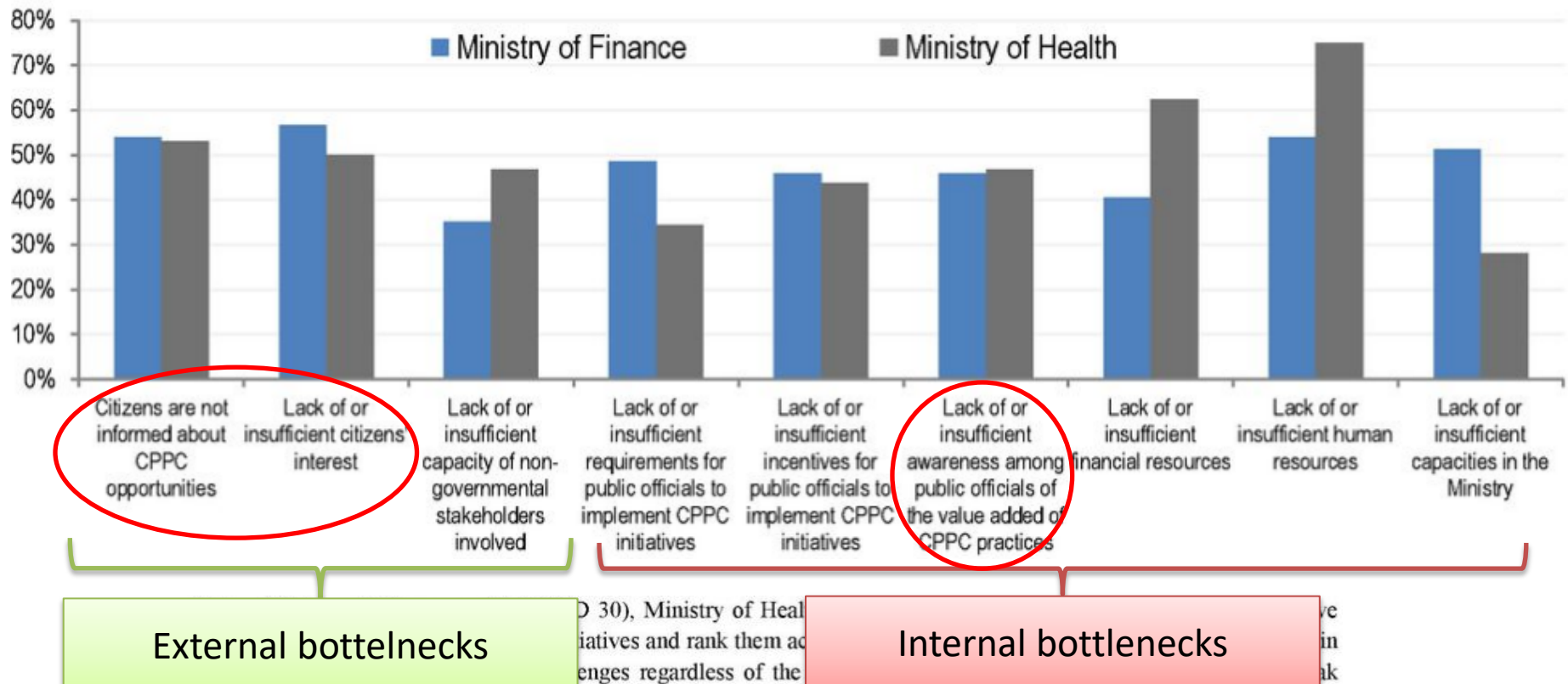
A set of rules for **institutional interactions**

Why does consultation matter?

- Considering all the interests at stake in the decision-making process
- Increasing transparency and participation → legitimacy
- Gathering information (make less mistakes and reduce knowledge costs)
- Increasing sharing for regulator choices and public trust
- Preparing the consulted to new rules and increase the degree of compliance
- Increasing negotiating weight (e.g. EU)

But why it's a difficult task

Figure 5.2. Main challenges to implement citizen participation in the policy cycle (CPPC) initiatives at the sector level



Republic provided the same answer to all five challenges, whereas Mexico indicated the same challenges for numbers 4 and 5. Japan's Ministry of Finance did not provide an answer to this question.

Source: Country responses to OECD (2015c), "2015 OECD Survey on Open Government Co-ordination and Citizen Participation in the Policy Cycle", OECD, Paris.

Consultation – IA

- While (a good) IA without consultation is not possible, the opposite is true
- Consultation is a strong ally of good **impact assessment**
 - gathering info before the final proposal
 - People consulted don't waste their time
 - The IA structure triggers a more structured policy debate (what are the opinions on the policy problem, on the objectives, on the alternatives, etc.?)
- But: timing trade-offs
 - Consulting after an IA has been carried out means you will not be able to use the input for the analysis
 - Consulting before IA means you should have enough time for the analysis
- Possible solutions: consult on a **preliminary IA** (UK) or on a **inception impact assessment** (EC)

Standards, principles, recommendations...

Consultation standards

- In countries where **formal requirements** or mandatory **standards** for consultation exist the effectiveness of the process is generally higher

Examples: Notice and Comment in the US, European Commission's consultation standards, BRE code of practice on consultation

- Not necessarily a pre-requisite, but in some cases a **necessary condition**

A lot of standards and recommendation

- OECD
- EU Commission
- Governments (Ex. US, E.O. 13563)
- Parliaments (Ex. Italian Senate)

- Commitment and political leadership

- Rights

- Clarity

- Time

- Inclusion

- Resources

- Coordination

- Responsibility

- Evaluation

- Activities

- Participation

- Openness and accountability

- Effectiveness

- Cooperation

- + minimum standards

- Public participation

- Open exchange of information

- Minimum

- Periodic

- Seek

- Those

- to be

- Impartiality

- Communicative loyalty

- Inclusion

- Accessibility

- Structuring

- Transparency

- Publicity

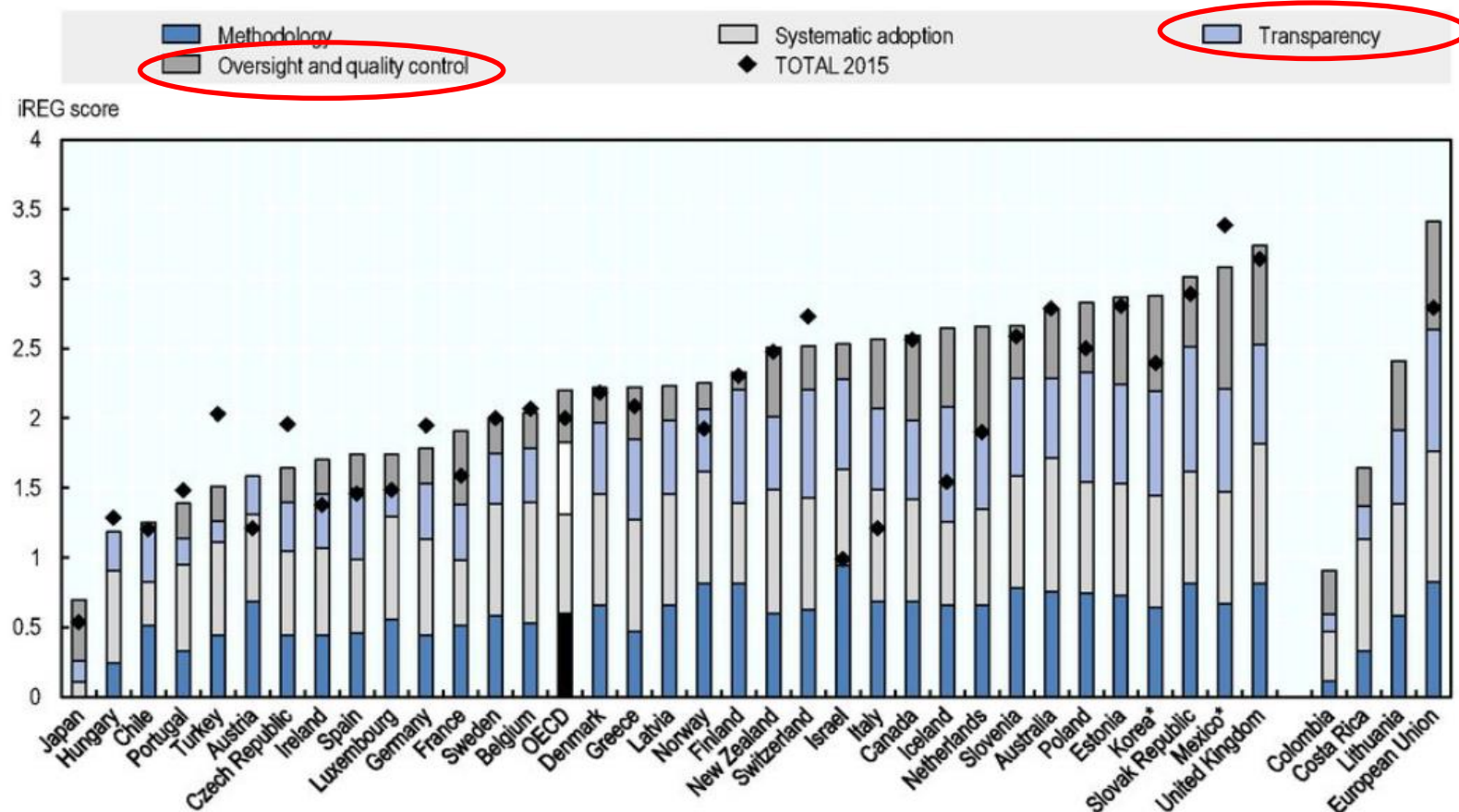
- timeliness

- Privacy protection

- Feedback

OECD Reg Policy Outlook 2018

Figure 2.6. Composite indicators: Stakeholder engagement in developing primary laws, 2018

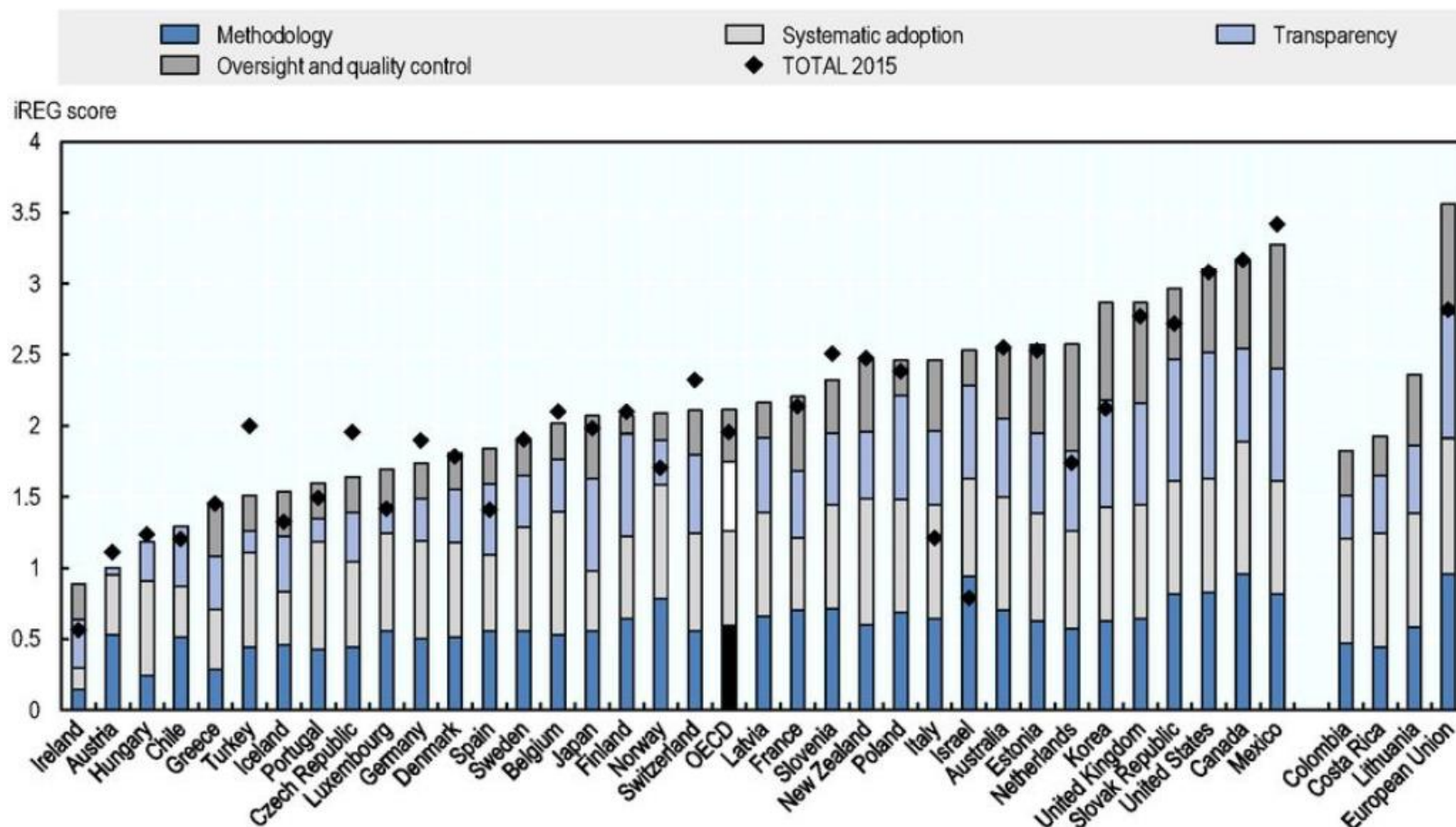


Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress. *In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.

Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

OECD Reg Policy Outlook 2018

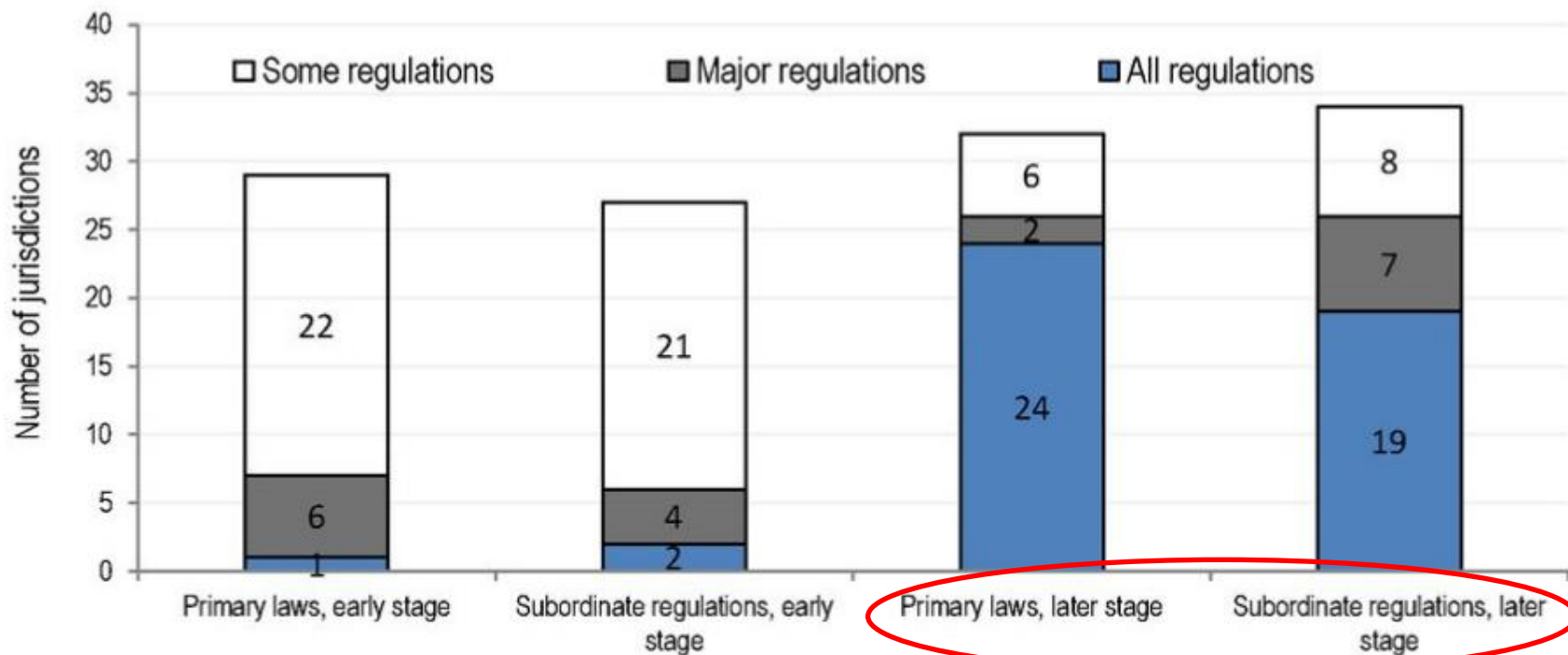
Figure 2.7. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2018



Notes: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Timing can make the difference

Figure 5.6. Consultations happening on primary and subordinated regulations (2014)



Notes: Early stage refers to stakeholder engagement that occurs at an early stage, to inform officials about the nature of the problem and to inform discussions on possible solutions. Later-stage consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued. Based on data from 34 countries and the European Commission as of December 2014.

Source: OECD (2014), "2014 Regulatory Indicators Survey results", www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Group Exercise: Consultation strategy

- As members of the EC DG responsible for preparing an “EU Fake news regulation” you are asked to carry out a consultation in order to prepare an IA
- Your task: to decide what you need to know (consultation goals) and how to involve all the relevant stakeholders before issuing the new regulation
- Your constraints: budget and time

Time available for the group exercise: 20 min.

The Commission's choices

- Public consultation through on-line questionnaire
- Two questionnaires, one for the citizens and one for legal persons and journalists:
 - Scoping the problem
 - Assessment of the measures already taken to counter the spread of disinformation online
 - Scope for possible future actions
- Other consultation tools: Eurobarometer + High level group
- Feedback: Summary report <https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-fake-news-and-online-disinformation>
- Announcement of a COM on fake news to be adopted in spring

Total replies: 2986 (2784 from individuals and 202 from legal organisations)

Consultation tools and techniques

Consultation Strategy

Planning in advance:

- **objective** of the consultation(s)
- **target groups**
- the appropriate consultation **tools**
- **timing**
- **resources**

EC Consultation Cycle

http://ec.europa.eu/info/law/contribute-law-making_en



EC publishes also a Planning calendar of upcoming public consultations

Stakeholders Mapping

Objective: select the subjects to be consulted.

2 phases:

1) Identification of all the categories of recipients potentially affected by the intervention

All points of view (direct and indirect recipients), not only the most obvious, considering stakeholders:

- representing a **plurality of interests**;
- on which the **main costs and benefits** will fall;
- who **have expressed interest** in regulatory changes;
- who **hold specific information** and skills.

2) Selection of stakeholders to be involved in the consultation

- Select the subjects on which the main impacts fall, taking into account the sub-categories
- Including those who could play a decisive role in ensuring a successful implementation
- Take into account also the “less structured” (under represented) stakeholders
- In the case of targeted consultations, selection criteria as unbiased as possible (eg, the ability to represent different types of recipients, the availability of data and specific technical knowledge, etc.)

Consultation document

- A document that provide for all the relevant background information
- It should be transmitted before the consultation begins

A synthesis about **the problem to be solved** (included a risk analysis, if necessary) and the objectives to be achieved through the policy

Information about the **present situation**

Proposed **options** (if present) or a synthesis of the **proposed policy/rule**

A description of the **aim of the consultation** in progress

Stakeholders involved in the consultation

The **deadline** to participate

How consultation **results** will be used

Contacts to obtain information

It
includes:

The main consultation techniques in rule-making/1

- Targeted consultation (only some people)

Informal consultation, working groups, focus groups, panels, notice and comment, surveys, experts interviews...

Example: EU consultation on the introduction of 5G networks in Europe “targets primarily industry representatives”.

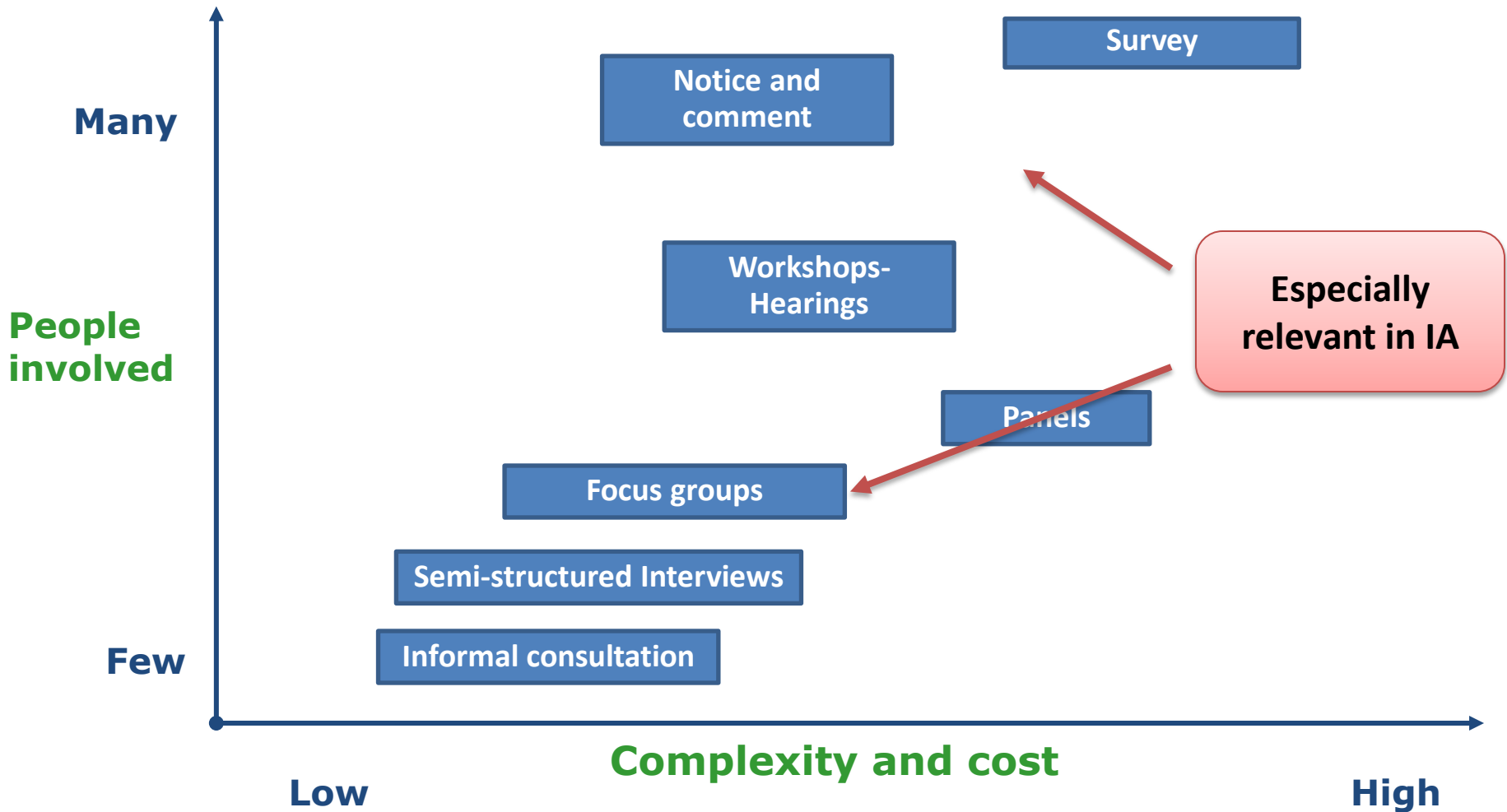
- Open public consultation (whoever can participate)

Notice and comment, public hearings, on-line forum, E-communities, on-line questionnaires...

Example: EU Open Public Consultation on Strengthened cooperation against vaccine preventable diseases. “All citizens, administrations, associations and other organisations with an interest in vaccination and health policy, public health, healthcare in Europe and globally are welcome to contribute to this consultation”.

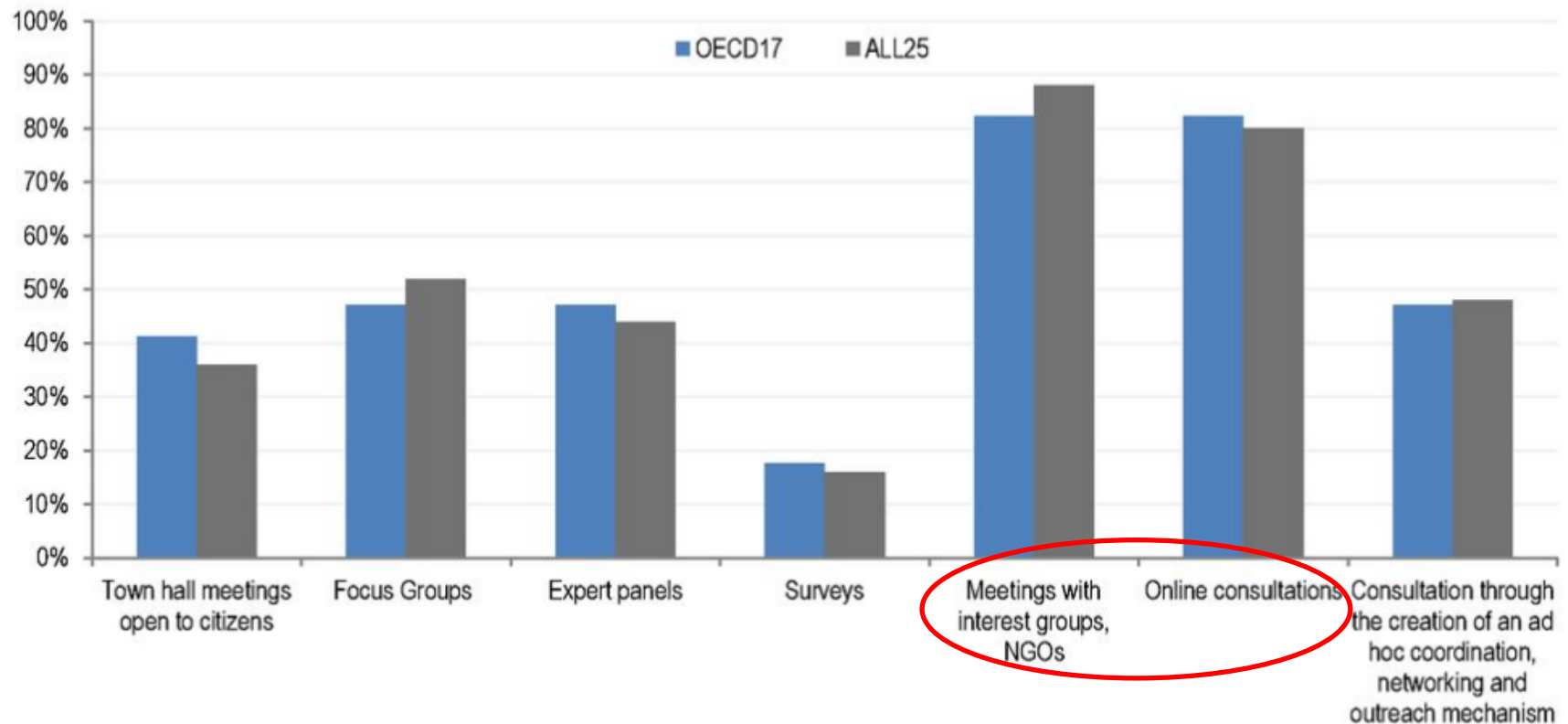
N.B. On-line does not necessarily mean “open”

The main consultation techniques in rule-making/2



OECD countries practices

Figure 5.16. Consultation mechanisms used by countries in the development of the open government strategy



Note: Only countries that answered that they had an open government strategy were asked this question; n=25 (OECD 17).

Source: Country responses to OECD (2015c), “2015 OECD Survey on Open Government Co-ordination and Citizen Participation in the Policy Cycle”, OECD, Paris.

Less traditional tools

- New forms of participation involving people not only in the decision-making, but also for **producing and sharing new ideas**, gathering data and developing new services («open innovation»).
- Focus on the more general concept of **participation and open government**: transparency, access to public data, evaluation of public activity, etc. → citizens' participation in the whole policy cycle
- From *participation* to **engagement** (cooperation and empowerment). Example: participatory budgeting (Paris municipality, NYC, etc.)

US Federal Administration

Challenge.gov is a site administered by the US Government where federal **agencies** are able to **post their challenges** and the **public** can offer **innovative submissions** to those challenges.



- **Prizes** (monetary or non-monetary) often accompany challenges and contests.
- Challenge.gov is open to the general public. On this site, the public can show their support for a particular challenge and propose a submission to government challenges.

Welcome to Challenge

Welcome to Challenge, where Government agencies ask you to help resolve their toughest problems. Browse through our open challenges to see how you can help!

<https://challenge.gov/a/buzz/challenge>


French Government

The great
national debate

<https://granddebat.fr/>

“On the initiative of the President of the Republic, the government participates in an important national debate on four issues concerning the nation's main issues: **taxation and public spending**, **state organization of public services**, **ecological transition**, **democracy and citizenship**.”

In recent weeks, mayors have opened their municipalities so that citizens can begin to express their expectations. Our country will now enter a wider phase and will start **local debates throughout the territory**, so that a great national dialogue is committed to everyone and that every citizen can contribute to it”

 1 932 884


Contributions

 10 452

Réunions locales

 16 000*

Cahiers citoyens

 10 000*

Courriers et courriels reçus

To guarantee the independence of the great debate, a **college of guarantors** (independent of the Government) has been appointed.

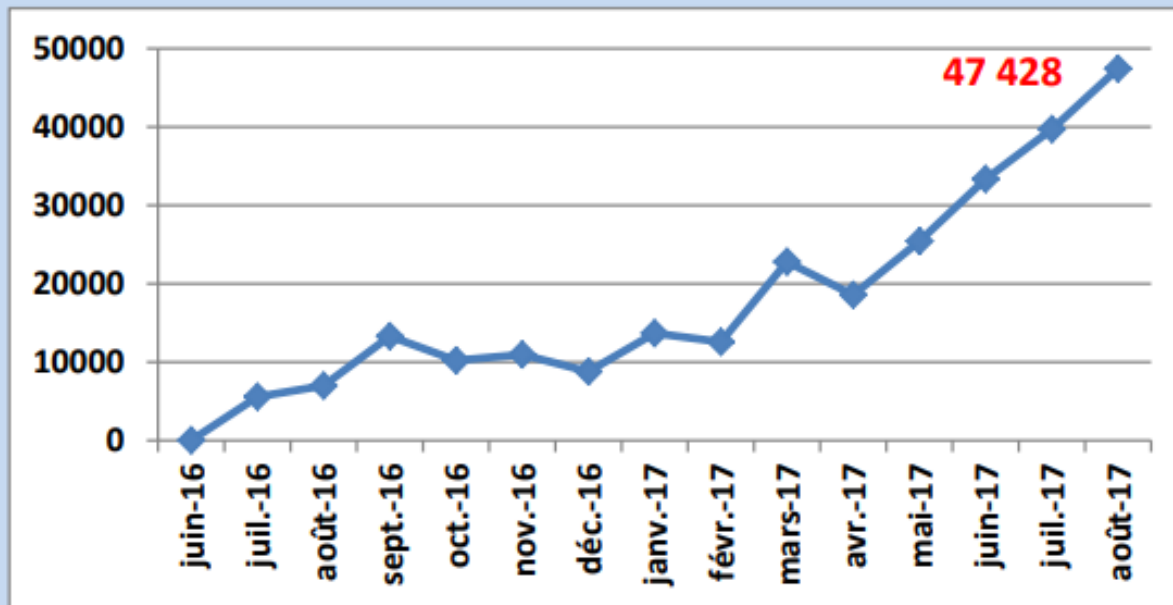
How many of you are using ...



#EUhaveYourSay

#EUHaveYourSay “has contributed to a steady increase in the number of visitors to the Contribute to law-making website, reaching more than 47,000 in August 2017”

Figure 4. Evolution in the numbers of visitors to the Contribute to EU law-making site



European Commission, COM(2017) 651 final, Completing the Better Regulation Agenda: Better solutions for better results