

Assuring regulatory transparency



- a critical overview

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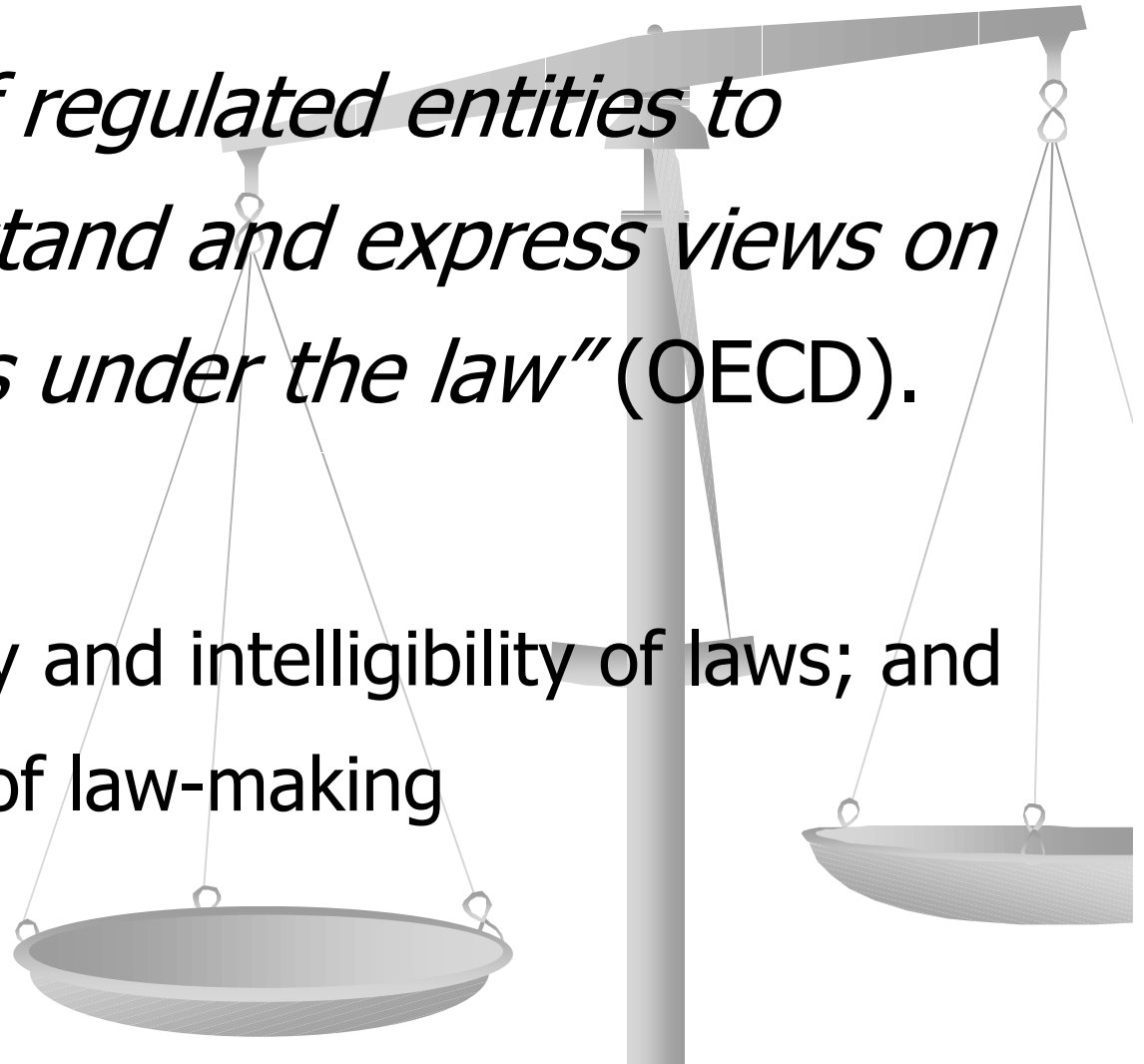
Why transparency?

- Closely linked with the governance agenda;
- A core demand of NGOs & civil society groups
- A major part of regulatory policy for most OECD governments



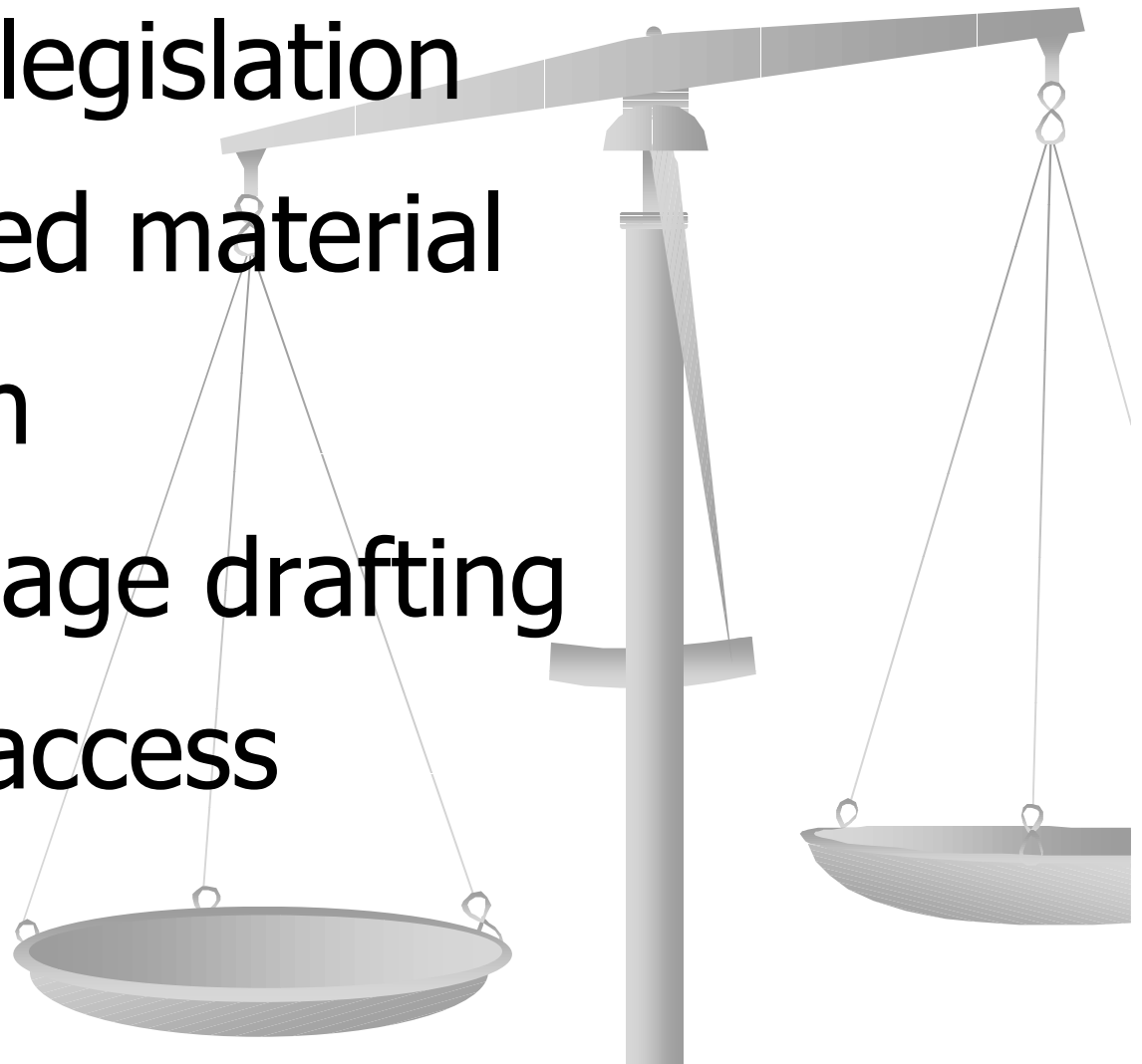
Defining transparency

- *"the capacity of regulated entities to identify, understand and express views on their obligations under the law"* (OECD).
- Includes both:
 - The accessibility and intelligibility of laws; and
 - The processes of law-making



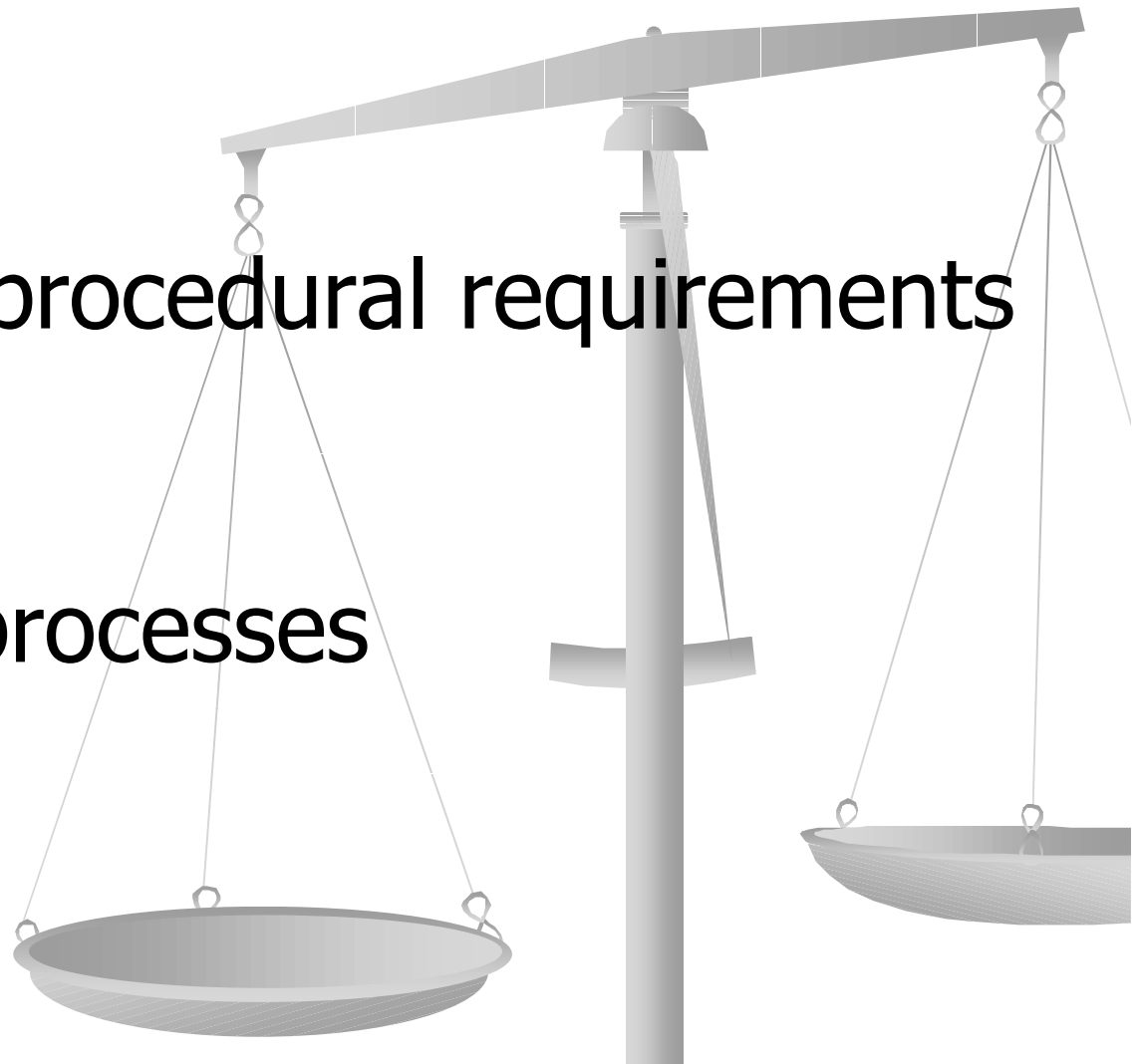
Accessibility & intelligibility

- Volume of legislation
- Incorporated material
- Codification
- Plain language drafting
- Electronic access



Process elements

- Standardised procedural requirements
- Appeal rights
- Consultation processes



Consultation tools

- Active vs passive consultation
- Active consultation:
 - advisory groups, committees, public hearings, informal consultation
- Passive consultation:
 - circulation for comment, notice and comment



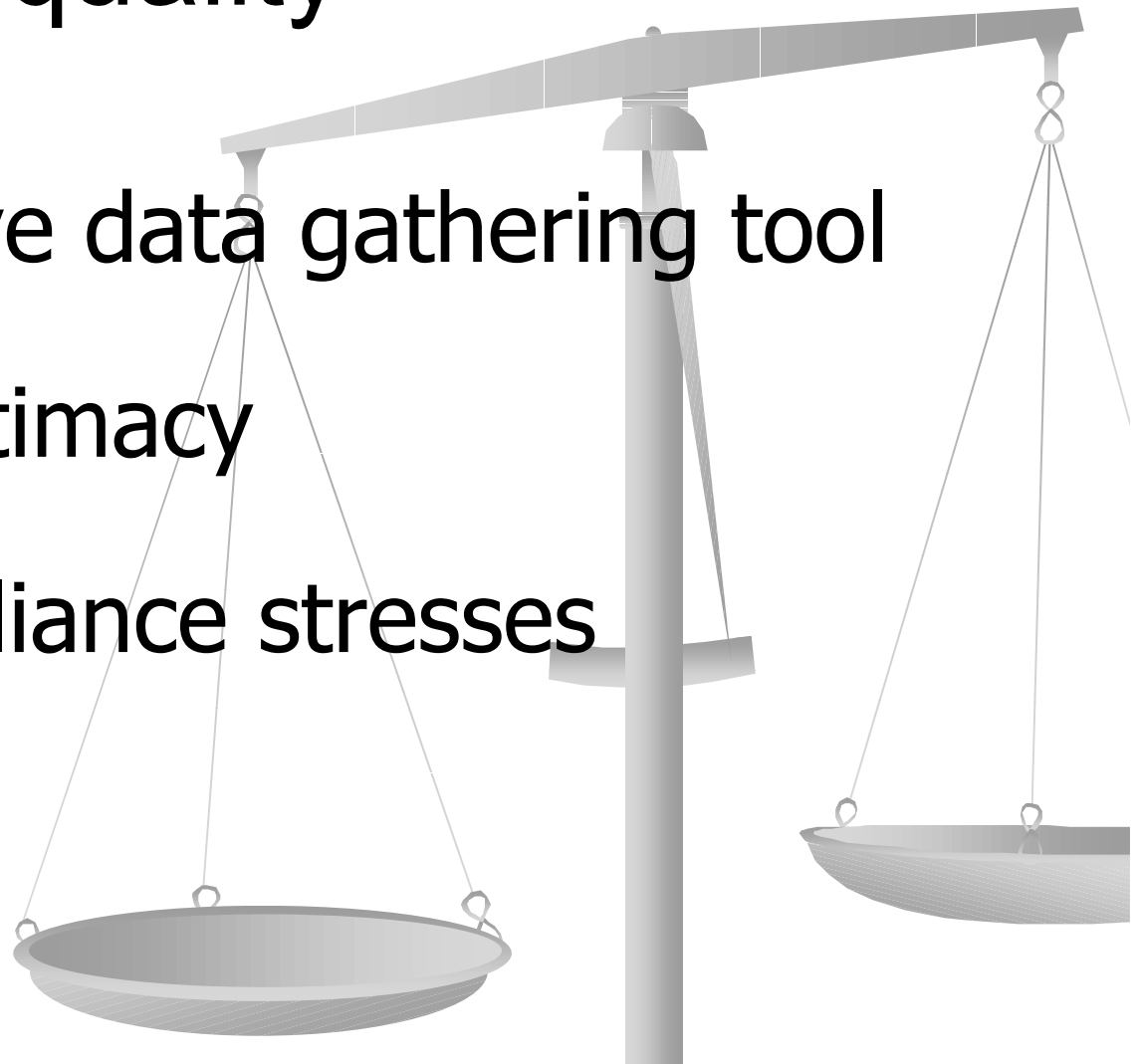
Why is transparency important?

- A governance value in itself
- A means of empowering citizens
- Addresses declining trust in governments
- Promotes regulatory quality



Transparency and regulatory quality

- A cost-effective data gathering tool
- Improves legitimacy
- Reveals compliance stresses



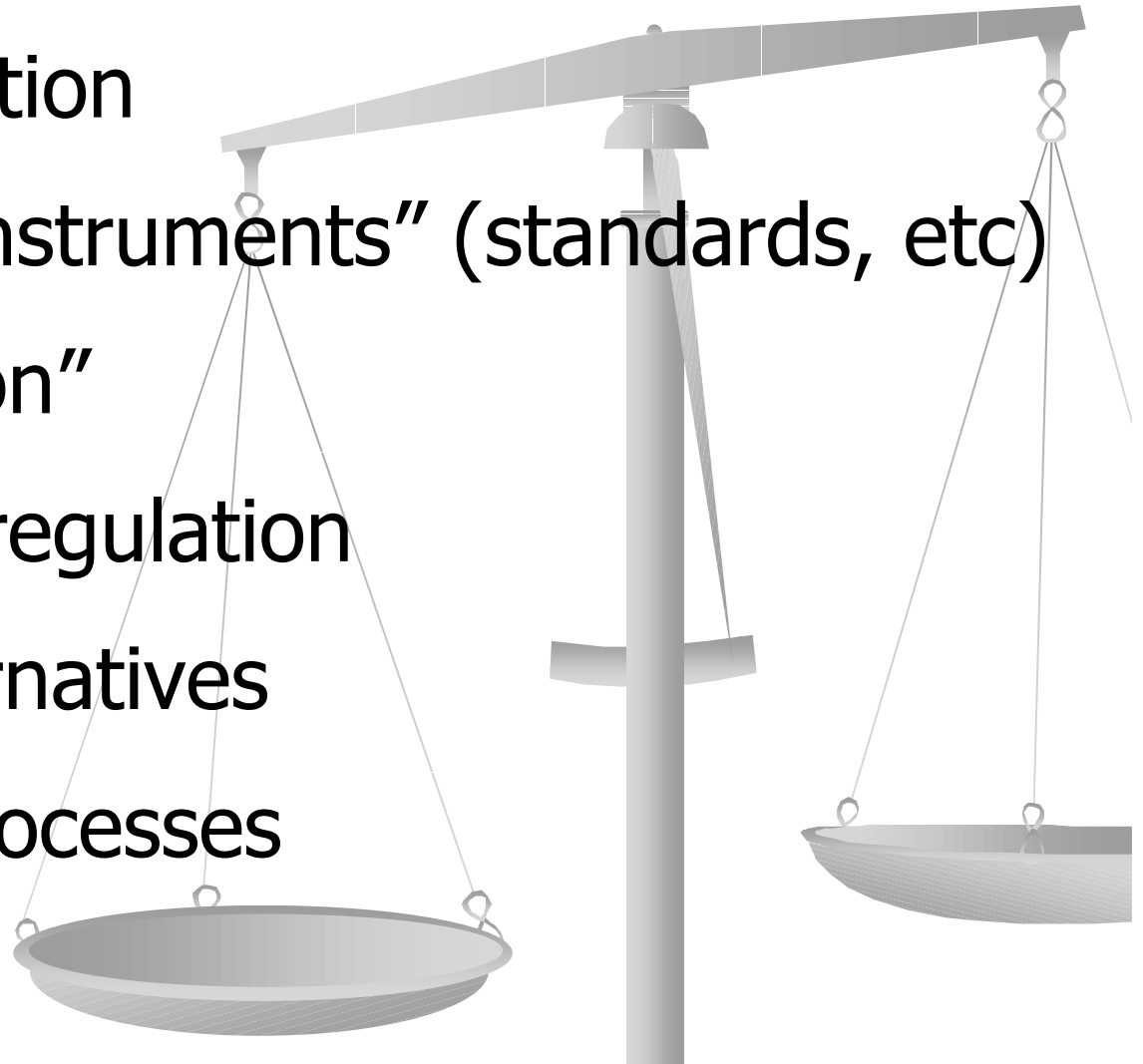
Trends in transparency

- More public consultation
- Better information to support consultation
- Administrative Procedure Acts
- Independent appeals processes
- Role of international trade rules
- Electronic access to regulation



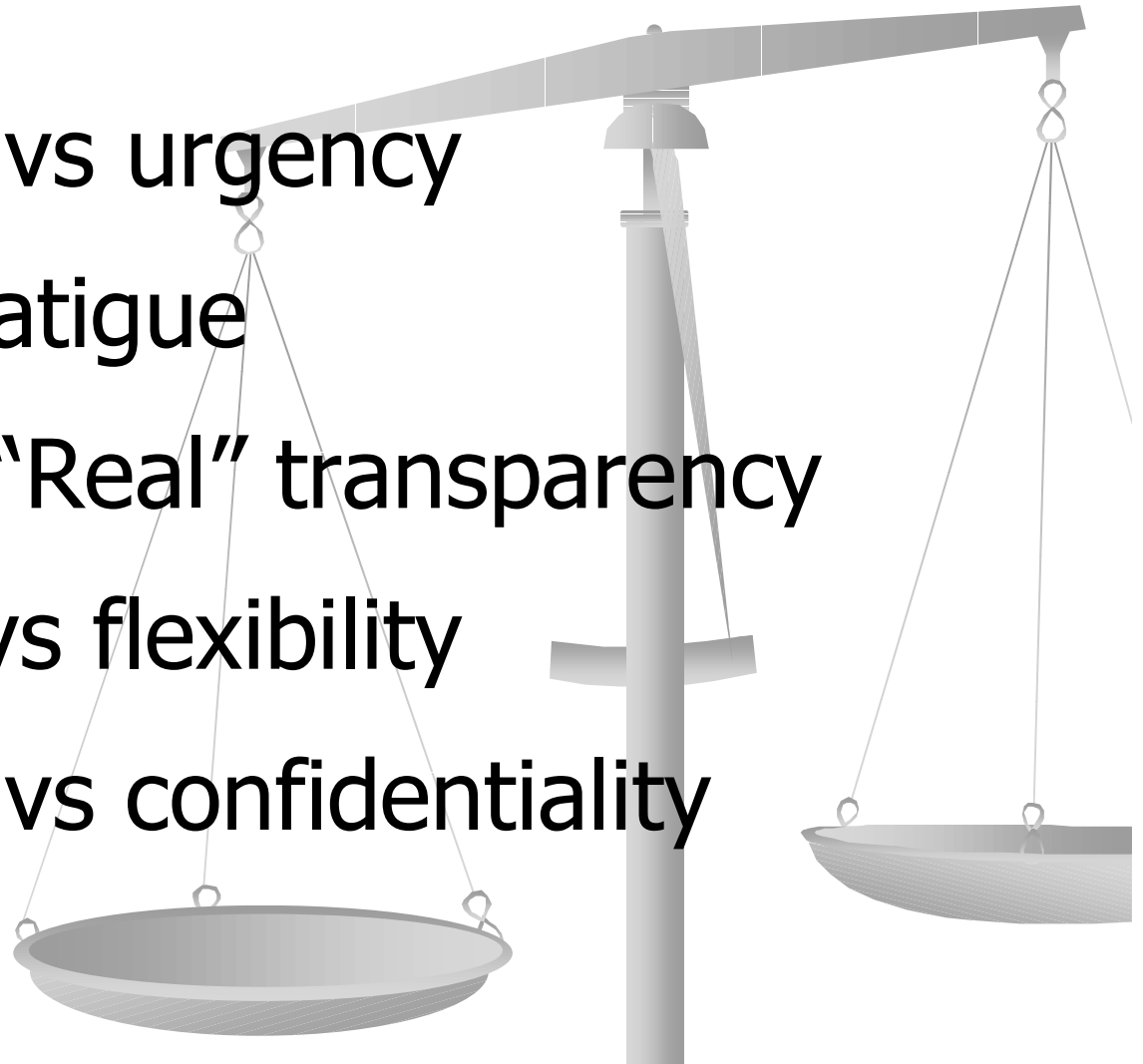
Challenges for transparency

- Regulatory inflation
- “Incorporated instruments” (standards, etc)
- “Quasi-regulation”
- Supra-national regulation
- Regulatory alternatives
- “Emergency” processes



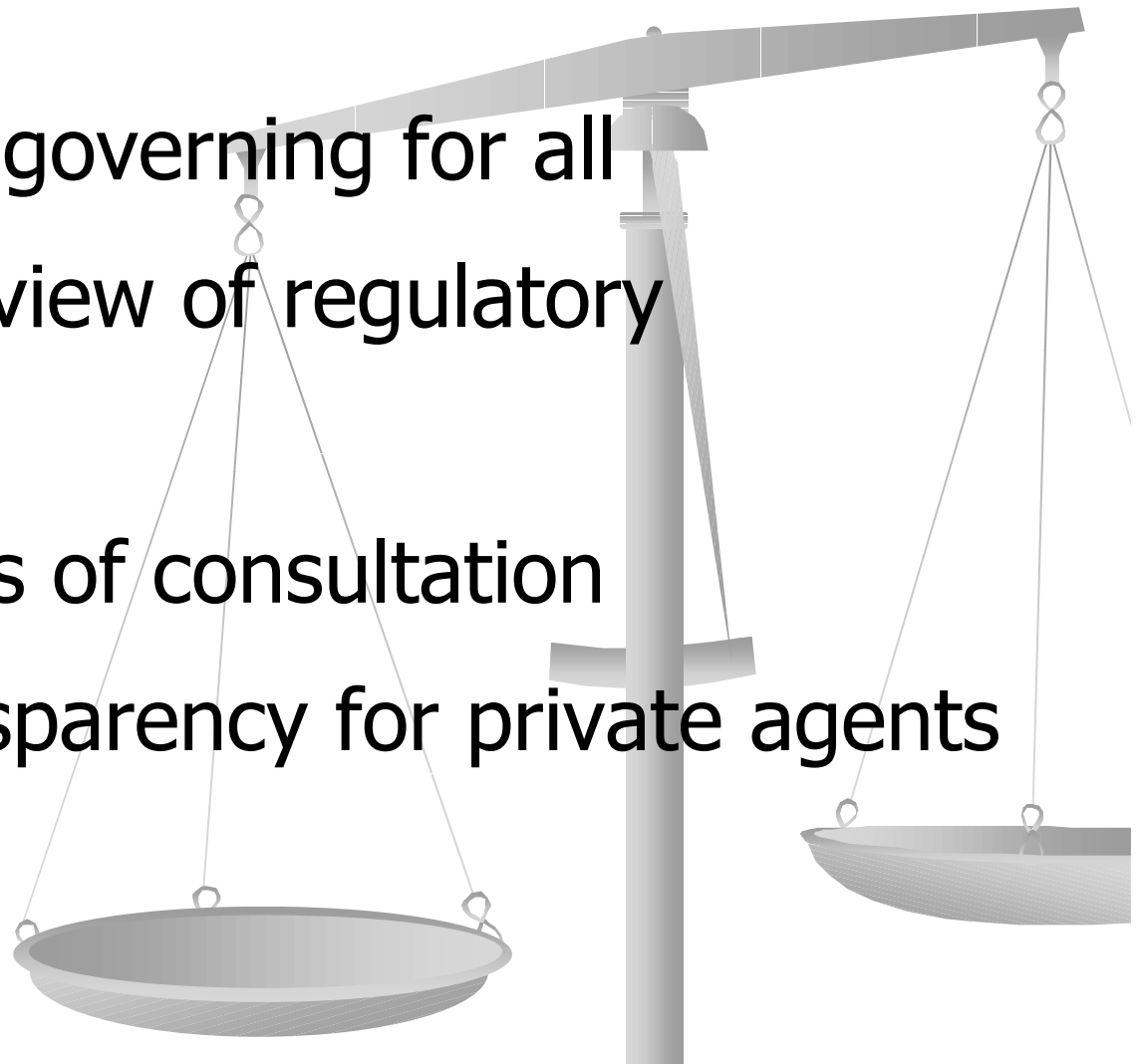
Some broader issues (1)

- Transparency vs urgency
- Consultation fatigue
- “Formal” and “Real” transparency
- Predictability vs flexibility
- Transparency vs confidentiality



Some broader issues (2)

- Consultation vs governing for all
- Independent review of regulatory decisions
- Different models of consultation
- Mandating transparency for private agents



Conclusions

- A critical, benefit/cost based approach
- Quality is important
- Transparency elements must be mutually supportive
- Manage conflicts with other regulatory quality dimensions

