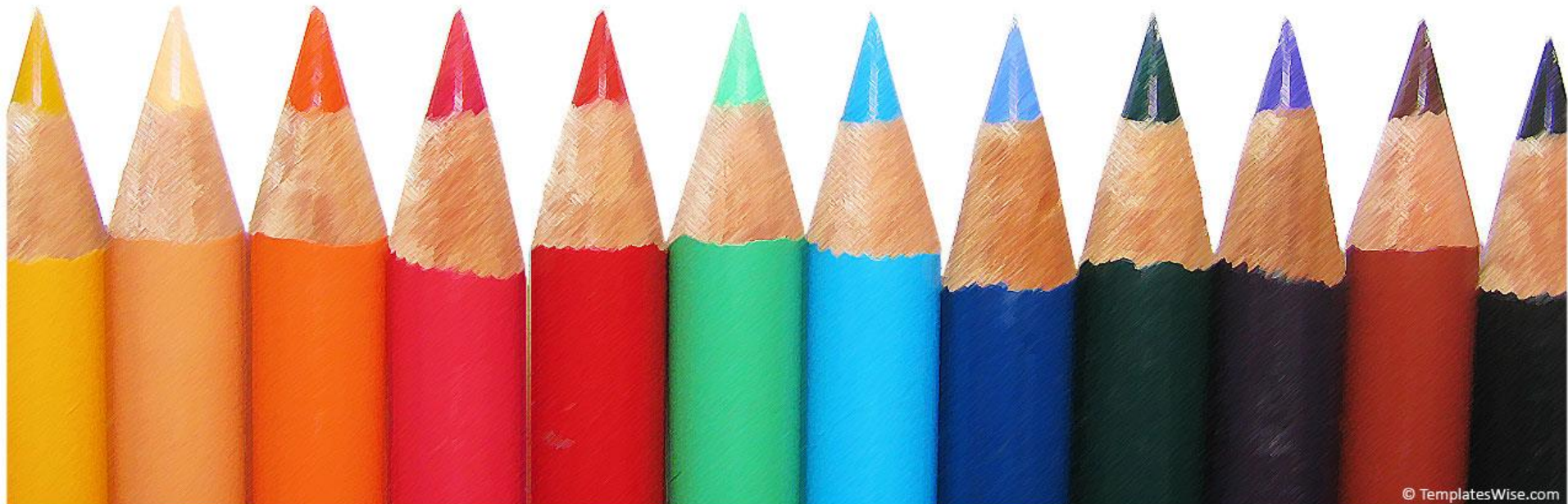


Legislative aspects of post-legislative scrutiny

Evaluation of Legislation Conference

Budapest, 3 May 2019

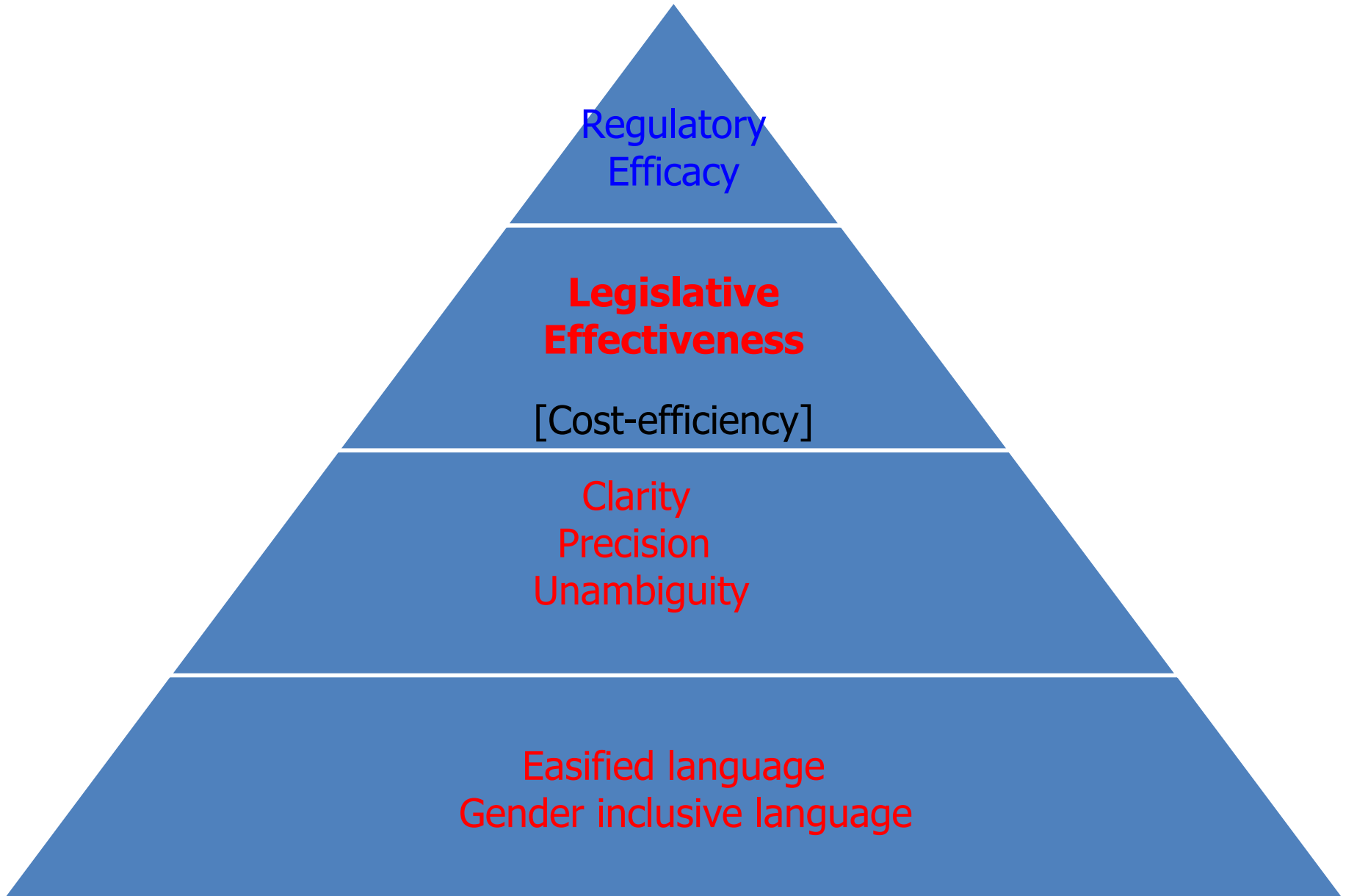
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The background

- Legislation is a tool for regulation
- Good legislation is one that produces the types, extent, and level of regulation required by the government
- In other words, good legislation is effective legislation that is capable of leading to efficacy of regulation

Elements of legislative quality



Scrutiny: the concept

- Evaluate efficacy: policy/law/results
- Evaluate effectiveness
- Identify the source of any mischief
- Rectify the problem in hope of achieving efficacy in the future

Scrutiny: the practice

- Who?
 - Policy officers/legal officers/drafters together
- When?
 - Before the end of the review cycle, normally between three and ten years
- How?
 - Ministry led meeting
- What?
 - Via a series of questions

Scrutiny in concrete

(1) Which were the desired regulatory results pursued by means of the legislation?

(2) Has the selected regulatory mechanisms led to the desired regulatory results, as evidenced by empirical data?

(3) Has the legal mischief been addressed by new legislation, as evidenced by data?

(4) Were there any issues arising from the choice of legislative expression and how can these be addressed?

(5) Is efficacy achieved?

(6) If not, was the legislation effective as evidenced by (3) and (4)?

(7) If not, how can the issues be addressed: repeal, repeal and re-enact, amend the legislation?

(8) In how many years does the legislation need to be re-evaluated?

Conclusions

- Post-legislative scrutiny requires a principled methodology that re-assesses the link between policy, legislative text, and regulatory results
- These can be introduced in an objectives clause in the text
- And can be strengthened by means of a sunset clause