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# The interaction of private and public regulatory governance: The case of association-led voluntary aviation safety programs<sup>☆</sup>

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## Abstract

The complex and globalized nature of many industries has led to a global governance deficit that has resulted in the rise of self-regulation by private firms. Despite well-developed body of literature, we know little about the interaction of private regulation and public governance. The questions this paper addresses are: How do private self-regulatory programs either fill a vacuum of regulation or complement existing regulatory structures, and how do these programs support or crowd out the development of government regulatory programs? This paper addresses these questions by developing case studies of internal audit, voluntary reporting, and data analysis programs operated by the International Air Transport Association (IATA). The results suggest that when there is a congruence of goals between industry and government, private regulatory programs can complement or even replace existing public sector regulatory regimes. Additionally, the results suggest that successful private self-regulatory programs can often be threatened by competing public programs.

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## 1. Introduction

The increasingly complex and globalized nature of many industries coupled with the shift from production supply chains from the developed to developing world has led to a global governance deficit that has resulted in the rise of self-regulation by private firms and associations (Büthe, 2010a; Locke, 2013; Ronit, 2006; Vogel, 2008; Gilad, 2010; Mills & Koliba, 2015). Scholars have long debated the efficacy and effectiveness of shifting from mandatory government-centered

*Abbreviations:* AO, Audit Organization; ASIAs, Aviation Safety Information Analysis and Sharing; CAST, Commercial Aviation Safety Team; EASA, European Aviation Safety Administration; ETO, Endorsed Training Organization; FAA, Federal Aviation Administration; FDM, Flight Data Management; FDX, Flight Data Exchange; GSIC, Global Safety Information Center; GADM, Global Aviation Data Management; IATA, International Air Transport Association; ICAO, International Civil Aviation Organization; IOSA, IATA Operational Safety Audit; SARP, Standard and Recommended Practice; SIE, Safety Information Exchange; SMS, Safety Management Systems; STEADES, Safety Trend Evaluation and Data Exchange System.

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regulatory regimes to voluntary private self-regulatory regimes (e.g. Andrews, 1998; Haufler, 2001). Private self-regulation occurs in various forms including standards that are developed by industries and guide governance; codes of conduct and best practices developed by industry associations and non-governmental organizations (NGOs); certification and labels (such as “green” and “triple bottom line” businesses) to develop a reputation for corporate social responsibility (CSR); and voluntary self-disclosure and audit programs to continually improve both efficiency and compliance with best practices and standards (Mayer & Gereffi, 2010; Potoski & Prakash, 2009). Scholars have examined several facets of the rise of private governance including the conditions for its emergence and the capacity and performance of private regulation (Eberlein et al., 2014; Abbott & Snidal, 2010; Büthe, 2010a; Cutler, Haufler, & Porter, 1999; Falkner, 2003; Pattberg, 2005). Empirical studies of private governance have examined efforts to regulate and coordinate complex activities across a wide range of domains including forestry, fisheries, financial markets and labor standards in the global south (Bartley, 2007, 2014; Cashore et al., 2004; Gulbrandsen, 2014; Porter, 2014).

The literature on voluntary self-audit and self-disclosure programs has largely been centered on the programs individual firms or those organized or implemented by government agencies. Voluntary self-disclosure programs offer firms the opportunity to monitor (through self-audits) and report regulatory violations in exchange for reduced sanctions, confidentiality, or the opportunity to collaborate with regulatory agencies, industry associations, or other firms to develop solutions to address the violations (Mills, 2010; Mills & Reiss, 2013). Self-disclosure and self-audit programs benefit both firms and government agencies by reducing compliance costs for firms and enforcement costs for agencies while providing them with secondary information about the level of compliance at specific firms (Kaplow & Shavell, 1994; Mills & Reiss, 2013). Arlen and Kraakman (1997) and Pfaff and Sanchirico (2000) argue that firms are in much better position to self-audit and identify regulatory non-compliance by employees than government agencies, however, firms are often unwilling to do so because of fears that the information on compliance problems they gather and disclose will be used by agencies or adverse private firms in investigations or to cause reputational damage by “naming and shaming”. In their examination of the behavior of firms who self-audit and disclosure violations to the EPA’s Audit Policy program, Short and Toffel (2008) found that self-disclosures by firms were often motivated by recent enforcement or inspection activities. Other studies have found that regulators reward firms who participate in self-audit and disclosure programs by reducing the number of future inspections (Short and Toffel, 2011).

A critical question surrounding the development of private governance arrangements to ensure compliance is the role of the state in providing legitimacy and enforcement capabilities (Ayres & Braithwaite, 1992; Rees, 1997; Bernstein & Cashore, 2007). Some scholars such as Rees (1997) have argued that public enforcement capacity is a necessary precondition for the establishment of private regulatory mechanisms, which Rees referred to as the “regulatory gorilla in the closet” (p. 519). Other scholars argue that private regulatory arrangements emerge as a result of a lack of, or failure of state-based regulatory governance arrangements (Abbott & Snidal, 2009b). A final group of scholars has argued that public and private regulatory actors can benefit from well-designed governance arrangements that complement one another (Black, 2003; Verbruggen, 2013). Private regulators benefit from the legitimacy provided by public regulatory enforcement agency of self-regulatory programs while public regulators gain access to resources such as information, expertise, financial means, authority, or organizational capacity that the regulator itself might lack (Black, 2003).

Despite the growing literature on private self-regulation mechanisms such as voluntary disclosure and self-audit programs, we know little about interaction of private self-regulation or its effect on the ability of the public sector to develop similar governance structures. The questions this paper addresses are: How do private self-regulatory programs either fill a vacuum of regulation or complement existing regulatory structures, and how do these programs support or crowd out the development of public regulatory enforcement programs? To answer these questions, this paper develops an empirical case study of voluntary self-disclosure, internal audit, and data analysis programs employed by air carriers and their trade associations to improve their level of safety. Specifically, this paper will examine the development and implementation of two programs operated by the International Air Transport Association (IATA): Safety Trend Evaluation, Analysis & Data Exchange System (STEADES) and the Internal Operational Safety Audit (IOSA) program. The STEADES and IOSA programs, are private self-regulatory programs designed and implemented by the airline industry to proactively identify safety hazards before they become incidents and accidents. The argument advanced in this paper is that when there is a congruence of goals between industry and government, private regulatory programs can complement or even replace existing public sector regulatory regimes. Additionally, this paper argues that private self-regulatory programs can develop to a point where they become a valuable tool for public regulators. Finally, this paper argues that successful self-regulatory programs can often be threatened by competing public programs that aim to replicate self-audit and data exchange programs operated by industry.

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