

# Can safe spaces contribute to business regulation?

**Julien Etienne** considers why safe spaces require special attention

To achieve their objectives, regulators are dependent on the goodwill of those they regulate. That is particularly true of regulators' need of information about business practices. Businesses generate information and hold information. Regulators regularly request information, but whether they are ever fully, or even in part, successful in receiving relevant information, is more questionable.

In financially less austere times, intensive and frequent inspections added insights to regulators' pool of knowledge. However, in times of shrinking public finances in general, and of regulatory budgets in particular, regulating business practices is proving increasingly difficult as the frequency and intensity of inspections is reduced. The ability to gather information has decreased considerably, while the need for information has most certainly not done so. In fact, the globalization of supply chains has transformed the scale and complexity of the issues business regulators are mandated to address, making it more difficult for them to 'read' any particular situation. Meanwhile, whatever promises the 'information age', and notably 'big data', might hold for easing the job of government, they are yet to materialize.

Beyond inspections, there are not many alternative ways for regulators to collect information. Whistleblowing is often put forward as a viable alternative. However, while useful knowledge may occasionally emerge, whistleblowing is far from a panacea. Indeed, many regulators look at third-party complaints with suspicion since these may emerge for a variety of reasons, reflecting disgruntlement, personal biases or overall hostility to the regulated activity rather than relevant information about systemic wrongdoing. More generally, complaints are resource consuming as claims have to be investigated and verified.

Regulators have been seeking ways to alter the incentives for businesses to share information. One proposal is to establish so-called safe spaces. The idea of a safe space refers to a set of conditions that facilitates business interaction with other businesses and with regulators, without fearing any potential subsequent repercussions. Only few examples of such shared spaces exist. They tend to be short-lived, or perform unevenly over time. However, some examples of institutionalized and stabilized safe spaces do exist, such as in the civil nuclear industry in the United States and in civil aviation. However, these represent exceptions to the rule: safe spaces for businesses do not appear to work terribly well.

The study of safe spaces in the chemical and oil (onshore) industries has shed some light on potential causes for this pattern. In these two sectors, various forums, where membership is either exclusively industry-based, or allows some regulatory involvement, have been established to exchange incident data. Such incident data is useful to businesses operating with highly hazardous products and processes as they are seen as a good source for revealing unknown or unaddressed weaknesses. By responding appropriately to these sources of information, businesses may avoid catastrophic accidents and contribute to the overall safety of the sector as a whole. Incident data is also useful for regulators. It provides information, and it offers indications as to whether enforceable violations have been committed.

In the UK, a few safe spaces have been in operation in the chemical and oil sectors. They have worked without highly formalized rules with meetings generally being hosted and led by a representative of a trade association. Third parties do not attend these meetings, and various, mostly informal measures, have been taken to protect those providing information from potential adverse commercial or

regulatory enforcement-related consequences.

Listening to participants in these forums, it becomes quickly apparent how institutionally constrained they are. They operate in a context that emphasizes the demands for transparency, accountability, and fair competition. These demands are directly contradicted, if not violated by discussions within the safe spaces. In that sense, safe spaces are anti-institutional. One might even want to call them 'deviant'. Their organisers – mostly trade associations, but also, at times, regulators – have to take various steps to circumvent those requirements that would put at risk the immunity of those who share information in confidence. For instance, Freedom of Information requirements can be circumvented by exemptions or other measures. Organizers of industry-exclusive safe spaces also have to ensure that they are not exposing themselves to accusations of engaging in anti-competitive practices. After all, safe spaces effectively enable behind-closed-doors information sharing among firms operating in the same market.

It is unsurprising that the safe space 'practice' is disputed and that incident sharing in closed meetings is viewed in very different ways by insiders and outsiders. Participants, safety managers and regulators, share information for a purpose they believe in ('safety') and do not regard this information exchange as 'guilty knowledge'. Their colleagues within their organizations may have a very different interpretation. In business organizations, for example, 'lawyers' are worried about information sharing as this might damage a firm's reputation. They will therefore seek to constrain the scope and level of information sharing. In regulatory organizations, those with an enforcement-driven mindset are usually opposed to the guaranteed amnesties that are offered to businesses in order to make them share informa-



tion about breaches and failures.

The hostile environment explains why there have been so few safe spaces for business, and why the few examples that do exist have performed so poorly.

There are, however, further factors that have undermined the effectiveness of safe spaces. One of them is industry structure. Safe spaces are likely to work best in homogenous industry sectors which are characterized by stable technologies and a relatively limited number of players (exactly the conditions which facilitate cartel-building). In the chemical industry, chlorine production is one such area. The main players in this sector developed a reputation for successfully sharing incident knowledge in the 1980s. This led to considerable gains in reliability. Yet, since the 1990s, the dynamic, global and financialized nature of the chemicals industry has led to industry fragmentation. This dynamic has also undermined the standing of individuals within businesses who would be keen to exchange incident data with their peers.

Another set of difficulties emerges from the variety of motives and levels of commitment that industry representatives bring to safe spaces. Many scholars have seen a 'new industrial morality' spreading across the chemical industry after major accidents in the mid-1980s, notably to shape (and be shaped by) the Responsible Care programme. Arguably, that should be a crucial ingredient for effective sharing of incident data. Yet participants at Responsible Care meetings (a key safe space for chemical firms) appeared to have mixed motives, not all of which could be described as a

form of morality. Indeed, many would come to these meetings to ensure a level playing field is maintained between competitors. Others might refuse to share information because they see their knowledge on what may cause incidents and how to mitigate them as a commercial advantage. The amount and quality of information sharing may vary considerably between firms or regional meetings, or from one period of time to another.

As a result, might not so

information much

'flow' from safe spaces to regulators, but come in irregular bursts of highly variable quality and interest. Even if regulators were obtaining useful information, they would find it difficult to act decisively on it, as this would inevitably lead to an instant drying-up of the source. In Responsible Care meetings, for instance, discussions in the regulator's presence would be held under the Chatham House Rule, preventing the regulator's representative from using the information for targeted enforcement actions. Inspectors who do not abide by this unwritten rule would lose access to these discussions for themselves or their colleagues.

Does a record of short-lived experiments or ineffective information sharing mean that safe spaces present no significant benefits? Not quite. Even if safe spaces are not terribly good at facilitating information flows,

they still may hold the key to incremental improvements in industry practices. By getting business representatives to discuss failures and misconduct in meetings with peers and regulators, safe spaces may change perceptions and trigger useful innovations elsewhere. There is certainly scope for progress in the business world. Indeed, businesses, either individually or collectively, have not been getting visibly better at resolving fraud or hazard. The expression

'self-regulation' has also come to sound hollow as major cases of business failure or misconduct

have unfolded over the past few years. Arguably, safe spaces could help improve the prospects of self-regulation, because trade associations have a key role to play in making safe spaces work. By supporting safe spaces, regulators may be able to strengthen the authority of trade associations over their members, a condition identified as crucial to industry self-regulation in previous studies (Rees 1994).

## Reference

Rees JV (1994) *Hostages of each other: The transformation of nuclear safety since Three Mile Island*. Chicago: Chicago University Press.

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