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Beneficiaries' Intermediaries in the European Regulation of Corporate Social Responsibility. Exploring the NGO – Investor – Union Nexus

Abstract

Intended beneficiaries have an undeniable relevance to regulation. However, current research has focused mainly on the two-party relationship between rule-making and rule-taking. We attempt to fill this gap by exploring the formal and informal roles that beneficiaries' intermediaries played in co-creating European Corporate Social Responsibility (CSR) rules and associated practices between 2000 and 2017. By linking recent conceptualizations of regulatory intermediaries with the literature on critical PCSR, we offer a more dynamic and contextualized understanding of the roles of beneficiaries' intermediaries. Specifically, we identify six micro-dynamics through which they influenced the regulatory process. Notably, our findings highlight how the convergence of interests between three groups of beneficiaries' intermediaries – the NIU (NGO-Investor-Union) nexus – had a key role in reshaping CSR rules. We conclude that, in the European context, stronger and better coordinated beneficiaries' intermediaries are crucial in order to achieve more effective corporate conduct regulation.

Keywords: corporate social responsibility; corporate reporting; EU regulation; regulatory intermediaries; responsible investment.

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4 **Introduction**
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7 The question of how to devise effective rules for ‘responsible’ business conduct is as problematic
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9 and topical as ever. There is widespread recognition that most global social and environmental
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11 problems – from human rights violations to climate change – cannot be tackled without the
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13 involvement of business and then, only using traditional government and state-centred regulatory
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15 initiatives. However, there is also growing dissatisfaction with existing private governance initiatives
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17 that lack strong mechanisms of enforcement and monitoring. Several studies have shown how multi-
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19 stakeholder and private regulatory initiatives have been captured by dominant corporate interests
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21 failing to serve the ‘common good’ and hold corporations more accountable (Dingwerth & Eichinger
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23 2010; Moog et al. 2015). As a result, particularly after the onset of the 2008 global financial crisis and
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25 due to growing awareness of social and environmental issues related to global production, many
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27 have invoked a ‘political turn’ in Corporate Social Responsibility (CSR) debates (Scherer & Palazzo
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29 2011).
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34 This paper aims to contribute to this debate, focusing on the overlooked perspective of business
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36 stakeholders whose interests CSR rules and policies are meant to protect and enhance. Our starting
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38 point is that emerging scholarships on political models of corporate responsibility generally agree
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40 that stakeholder participation and empowerment are necessary conditions to effectively and
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42 legitimately regulate corporate business conduct. However, proposals to develop models of
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44 ‘stakeholder democracy’ (Matten & Crane, 2005) or ‘deliberative democracy’ (Scherer & Palazzo,
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46 2008) mostly take for granted the capacity of corporate stakeholders to fill the “democracy gap and
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48 make corporate decisions more accountable” (Scherer & Palazzo 2011: 912). We argue that recent
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50 developments in research on regulatory intermediaries (Abbott et al. 2017) and in particular on the
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52 role of intended beneficiaries in transnational regulatory processes (Koenig-Archibugi & Macdonald
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54 2017) can shed light on the co-construction of more effective rules for global business. As Brès,
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4 Mena and Salles-Djelic (2019) point out in this volume, intermediaries are key actors in this process,
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6 playing both formal and informal roles in shaping what 'responsible' or 'accountable' business
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8 means in the first place, thus influencing the content, interpretation, and application of
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10 transnational regulations and codes for business conduct. Extending this line of research, we
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12 investigate to what extent changes in the capacity and coordination of beneficiaries' intermediaries
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14 (from now on BIs) involved in the regulatory process affect the co-construction of CSR regulation.
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18 We focus on the development of a European regime of CSR policies aimed at enhancing corporate
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20 accountability (Newell 2008; Voiculescu et al. 2007; Bianculli et al. 2014). Corporate accountability
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22 can be defined as the ability of those affected by a corporation to hold this organization to account
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24 (Utting 2008). Thus, it draws attention to the power and role of beneficiaries and their
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26 intermediaries, their capabilities and coordination in all the stages of the regulatory process.
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28 Accountability mechanisms include the use of multi-stakeholder initiatives (MSIs) as a means to
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30 continually develop standards and procedures; 'naming and shaming' companies through watchdog
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32 activities; using experts and critical research to both expose corporate misbehaviour and assess the
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34 effectiveness of existing regulatory initiatives; in-depth social auditing or investigation of complaints;
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36 and using market mechanisms or corporate governance structures to press for changes and reforms.
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41 Drawing on Koenig-Archibugi and Macdonald, we define beneficiaries as "the groups whose
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43 interests the rules and policies are ostensibly meant to protect, and whose protection is often
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45 invoked to justify new forms of transnational regulation." (2017: 37). However, as Koenig-Archibugi
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47 and Macdonald underline, "the question of whether they actually benefit from rules and regulation
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49 requires separate and careful analysis." (2017: 37). Abbott, Levi-Faur and Snidal (2017) define
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51 regulatory intermediaries as "any actor that acts directly or indirectly in conjunction with a regulator
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53 to affect the behaviour of a target." (2017: 19). Building on this literature, BIs can be understood as
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55 intermediaries that facilitate the development, monitoring, and implementation of rules, claiming to
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4 perform – formally or informally – some representative function in relation to the intended
5 regulatory beneficiaries within a specific regulatory arrangement. Obviously, the veracity of such a
6 claim of representation needs to be verified case by case, as the link between beneficiaries and their
7 intermediaries varies in strength. For example, trade unions formally represent their beneficiaries.
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9 Other ‘self-appointed’ BIs, such as rating agencies and NGOs, have a more tenuous link with the
10 interests they claim to represent. For the scope of this paper, we limit our attention to actors with a
11 plausible claim to representation.
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20 The study presents three contributions to the existing literature. First, we maintain that excessive
21 focus has been given to the perspective of regulatory targets (typically global companies): their
22 (instrumental) motivations for responsible behaviour; their relation with regulators; and the role of
23 targets’ intermediaries (auditors and accountants). Drawing on Koenig-Archibugi and Macdonald
24 (2017), we complement this perspective by focusing on the overlooked roles of NGOs, unions,
25 responsible institutional investors and responsible finance as BIs. Secondly, we link research on
26 regulatory intermediaries to the literature on critical political CSR (from now on PCSR) (Shamir 2004;
27 Makinen et al. 2012; Salles-Djelic & Etchanchu 2017), including power struggles and temporality in
28 the account of CSR regulation. This processual approach (Levy et al. 2016) makes the RIT model
29 (Abbott et al. 2017) more dynamic, helping to explain regulatory changes due to power evolution.
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31 Lastly, we argue that the involvement of stakeholders in the regulatory process is an important, but
32 not sufficient condition for effective regulation of corporate conduct. Our analysis shows that more
33 attention should be paid to cooperation and capacity to perform intermediary roles. In particular,
34 the research explores the emergence of a closer cooperation between NGOs (N), Investors (I), and
35 Unions (U) – the NIU nexus. One of the key findings that emerge from this study is the strong
36 interplay between these three groups of BIs, both in the phase of regulatory development and
37 adoption, and their potential for improved regulation. Research and policy implications are
38 theorised and discussed.
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4 The paper is organised as follows. First, we present our theoretical framework, combining the
5 functional explanation of CSR that characterises the RIT framework with the literature on critical
6 PCSR. Then, we discuss our research methodology and analytical framework. Our empirical data on
7 BIs' interactions and the evolution of the European regime of CSR is followed by our discussion and
8 interpretation of findings.
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18 **2. Beneficiaries' Intermediaries in the European regulation of CSR**

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20 This study builds on recent research by Abbott et al. (2017) on regulatory intermediaries. While
21 regulation has been traditionally understood as a two-party relationship between rule-makers (R)
22 and rule-takers (T), they theorise the major and varied roles of intermediaries (I). They understand
23 intermediaries as "a go-between, whose presence necessarily makes some aspects of regulation
24 indirect, as the intermediary stands between the regulator and its target." (Abbott et al. 2017: 9).
25 This framework provides a helpful starting point to understand the roles of intermediaries in the
26 regulation of CSR. Corporate responsibility lies at the heart of the regulatory governance perspective
27 that underpins this RIT model (Levi-Faur 2005; Vogel 2010; Bartley 2007). However, we argue that
28 the conceptualisation of intermediaries implied in the RIT model is still too centred on the
29 relationship between the regulator and its target (R>I>T). Other conceptualizations of regulatory
30 intermediary roles remaining unexplored. In fact, intermediaries can also operate at the junction
31 between rule-makers (R) and intended beneficiaries (B) in what could be called the RIB model
32 (R>I>B). Similarly, major regulatory intermediary roles can be performed at the junction between
33 beneficiaries (B) and rule-takers (T). One may call this the BIT model (B>I>T). Building on Koenig-
34 Archibugi and Macdonald's (2017) proposal to extend the RIT model to beneficiaries, we consider
35 these relationships together (see Figure 1). These extensions can help us better understand multiple
36 forms of intermediation and the dynamic interplay among all the regulatory actors. .
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4 Koenig-Archibugi and Macdonald (2017) offer a useful descriptive typology of all the possible
5 relationships between beneficiaries and regulators, intermediaries or targets: separation (complete
6 disconnection); identity (performing R, T or I roles); representation (R, T or I act on behalf of
7 beneficiaries). Their conclusion stresses that how beneficiaries are included in the regulatory process
8 matters. It can influence what rules are made, in whose interest they are made, and how these rules
9 are interpreted and implemented.
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18 In order to go beyond the descriptive typology offered by Archibugi and Macdonald (2017), our aim
19 here is to combine the more functional arguments of the RIT framework with the insights offered by
20 critical studies of PCSR (see Shamir 2004; Levy et al. 2016; Makinen et al. 2012; Salles-Djelic &
21 Etchanchu 2017). Combining the two allows us to derive some conjectures about the relative
22 position of beneficiaries and the roles of BIs by taking into account the power structure inherent to
23 the regulatory field.
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33 The question of how beneficiaries are included in the regulatory process is central in the current
34 PCSR debate. Some scholars maintain that effective corporate conduct regulation can emerge
35 through global and inclusive forms of 'deliberative democracy' where corporations and civil society
36 organizations have equal representation (Scherer & Palazzo 2011). Other scholars are skeptical
37 about this view, stressing the fact that persisting power asymmetries will lead to the exclusion from
38 negotiating arenas of the voice of affected stakeholders (Benerjee 2011; Whelan 2012). Thus, how
39 NGOs, despite their limited resources, have been able to achieve substantial influence over
40 corporate practices as well as governance mechanisms remains a puzzle in the PCSR field (Levy et al.
41 2016: 4). We aim to contribute to this debate drawing, in particular, on Salles-Djelic and Etchanchu's
42 (2017) account of neoliberal CSR. The authors argue that historically beneficiaries' position appears
43 in many ways fragile and problematic. Expanding the firm's operations from local to global reach
44 increased the difficulty of identifying who exactly the intended beneficiaries of CSR policies are. In
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4 the past, they were workers, families and communities typically located in a relatively limited
5 regional or national territory. Today, these policies address the “global environment” or the “global
6 common good”, aiming to benefit a wide range of faceless stakeholders (consumers, employees,
7 communities, etc.). As a result, beneficiaries are increasingly virtualized, dispersed and fragmented
8 actors that struggle to directly participate in CSR regulatory processes (Fransen and Kolk 2007; Derry
9 2012).

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11 In addition, the neo-liberal ideological framework that underpins contemporary CSR regulation has
12 been characterised by a trend towards shareholder value maximization and marketization (Salles-
13 Djelic & Etchanchu 2017) that has further weakened beneficiaries’ position. Shareholder-centred
14 approaches based on agency theory narrowed corporate governance policies down to the dyadic
15 relationship between managers and shareholders (Soederberg 2010). Particularly in Europe, this
16 marked a departure from post-war ‘public’ models of corporate governance where organised labour
17 and other stakeholders were consulted, represented, or somehow taken into account (Ireland and
18 Pillay, 2010; Kinderman 2012). Marketization refers to both market ideologies and market-oriented
19 reforms (Salles-Djelic 2006) that resulted in the dominance of the so-called ‘instrumental CSR’: do
20 well by doing good (Makinen & Kourula 2012). As the market supposedly rewards best practices and
21 penalises the worst, this ideology assumes that regulation and governance mechanisms are
22 superfluous. Market mechanisms will lead to the diffusion of best social and environmental business
23 practices and innovations. In effect, this has resulted in the promotion of corporate self-regulation,
24 reducing the role of the state and other stakeholders and leaving greater discretionary power to
25 corporations and managers. From a beneficiaries’ perspective, marketization meant a de-politicised
26 approach (Shamir, 2004), where they became indiscernible from targets. Corporate responsibility
27 was depicted as a win-win situation that would ultimately benefit companies as well as all their
28 stakeholders.

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4 On the basis of this contextual analysis, our hypothesis is that the involvement of strong and
5 coordinated BIs is necessary for effective CSR regulation. Dispersed, fragmented and virtualized
6 beneficiaries are structurally unable to directly affect the development, interpretation and
7 application of rules. This conjecture is supported by preliminary studies of beneficiaries' roles. For
8 instance, Havinga and Verbruggen (2017) affirmed that, in the field of food safety regulation,
9 beneficiaries are "prominent by their absence". Similarly, referring to non-state regulation of labour
10 conditions, Koenig-Archibugi and Macdonald noted that beneficiaries' relationship with
11 intermediaries is characterised by "high levels of separation" (2017: 50), adding that when it comes
12 to rule-making processes, there is "a tendency to exclude beneficiaries from [direct] participation in
13 the governance of transnational regulatory schemes altogether." (2017: 47). This hypothesis
14 requires to investigate not only the lack of inclusion of beneficiaries and their representatives in the
15 CSR regulatory process but also their organizational capacity to influence targets and regulators.

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32 The weakness of the beneficiaries' side is particularly problematic in the area of corporate
33 accountability. In fact, this regulation works indirectly and requires active beneficiaries to be
34 effective. Accountability regulation – such as corporate social and environmental auditing and
35 disclosure – provides a way to "increase the flow of information to the parties affected by corporate
36 activity, other market actors, and civil society groups, who may then rely on this information, for
37 example, in deciding whether to buy the company's products or to mount a media campaign against
38 it." (Parkinson 2006: 18). This indirect regulatory strategy is theoretically raising the cost of
39 corporate 'irresponsible' behaviour while rewarding 'responsible' companies. In reality, if the
40 information is not used or useful or if users simply do not have the organizational capabilities to hold
41 corporations accountable, the effect on corporate conduct is very limited. Actually, and rather
42 paradoxically, they can be of more benefit to regulatory targets than intended beneficiaries. As
43 illustrated also by Fransen and LeBaron in this special issue, there is evidence that supposedly
44 'independent' intermediaries (e.g. professional accountants and auditors) construct voluntary social
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4 auditing standards and reporting frameworks that are used by companies as a self-referential and
5 legitimizing tool (see also LeBaron et al. 2017; Bebbington et al. 2014). This ‘neutralization’ of the
6 beneficiaries’ side in the regulation of CSR has become natural and is widely taken for granted. As
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11 Cooper and Owen noted, the prevailing approach to CSR reporting failed “to address the issue of
12 effective utilization of information by recipients, and associated power differentials [...] if
13 accountability is to be achieved stakeholders need to be empowered.” (2007: 653). Similarly,
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17 Greenwood and Kamoche (2013) warned that deficient stakeholder involvement renders social
18 auditing ineffective for governance as either a stakeholder account or a strategic management
19 system.
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25 Recent European CSR policy developments that will be discussed in the following sections have
26 made paramount re-assessment of the position of BIs in this regulatory field and ascertainment of
27 which outcomes have been produced by their pressure and engagement.
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34 **3. Case selection, methods and data analysis**

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36 CSR regulation can take different forms (Voiculescu 2007; Vogel 2010; Bianculli et al. 2014; Brown &
37 Knudsen 2015). While most of the literature on regulatory intermediaries has been dealing with non-
38 state regulation, we decided to focus on the EU regulation of CSR transparency and reporting for
39 three main reasons. First, reporting has a special place because is one of the few areas of mandatory
40 CSR regulation. Second, European public regulation of CSR is on the rise (Knudsen et al. 2015) and
41 recent changes call for renewed attention to the role of public regulation (e.g., 2014 EU Directive on
42 non-financial reporting; 2015 UK Modern Slavery Act; 2017 EU Shareholder Rights Directive). Lastly,
43 transparency rules can be seen as a “*first port*” (Interview#10) for broader changes in the balance of
44 power between targets, regulators and beneficiaries. As Newell (2008) points out, they implicitly
45 outline the division of rights and responsibilities among civil society, states and market actors and
46 some of the means for achieving them.
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4 We adopt a “process theory” perspective to investigate empirically the role of beneficiaries’
5 intermediaries in this emerging European regime of CSR regulation (cf. Langley 1999; Pierson 2004).
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8 This research methodology gives particular attention to time ordering of the contributory events as a
9 way of capturing the key factors that explain the role of different actors in shaping policy and
10 regulatory changes. The research strategy consists of a ‘causal reconstruction’, which links initial
11 conditions to observable outcomes (cf. Mahoney 2001; Mayntz 2004).
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17 Consistently with this exploratory and reflexive approach, we identified the beneficiaries and BIs in
18 European CSR policies on the basis of the analysis of the data, particularly EU official policies and
19 documents. Rather than being an aprioristic decision, our analytical framework has gradually
20 emerged from the data collection.
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26 The study builds on a three-year research project on the driving forces behind major changes in EU
27 reporting regulation (2010-2013) that identified two ‘umbrella organizations’ – the European
28 Coalition for Corporate Justice (ECCJ) and Eurosif – as central players in shaping a series of European
29 CSR reforms. Table 1 briefly introduces them. The two organizations are spread across different
30 levels of governance: transnational players (e.g. Amnesty International); national multi-stakeholder
31 platforms (e.g. UKSIF, the UK branch of Eurosif; CORE, the UK branch of ECCJ); individual members
32 operating in one or several countries (such as VigeoEiris). Therefore they can be understood as
33 intermediaries of intermediaries or second-order intermediaries (Maggetti et al., 2017).
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44 Considering the large number of actors involved in the EU regulatory process, the two organisations
45 provided an entry point to investigate intermediation at different levels of governance and a starting
46 point for our research.
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3.1 Data Collection

The research covers the period from 2000 to 2017 and it is based on three main sources of data:

1) A content analysis of the responses received by the EU Commission in two public consultations held in 2011 and 2016 concerning the construction and adoption of the EU Directive on non-financial reporting. The data were used to understand the position and roles of the different actors in the CSR regulatory field and helped to structure some preliminary hypotheses on the connections between the two umbrella organisations and their policy preferences. This analysis confirmed the key *intermediary role* played by them and their members.

2) Forty-two semi-structured in-depth interviews with senior representatives of the two umbrella organizations, their members, experts and regulators completed in two phases: 20 interviews (2010-2013) and 22 interviews (2016-2017) (see Annex for the list of all interviews). In particular, the interviews have offered insights about behind-the-scenes informal relations between the groups of actors; their internal organisation; and their role in the construction and monitoring of CSR regulation.

3) A longitudinal qualitative content analysis of documents that cover the period 2000-2017. Some of the documents were provided by the interviewees; others are publicly available (press releases, conferences, publications). The document analysis has provided a dense understanding of cumulative institutional changes and a better comprehension of the interplay between different groups of actors in shaping the CSR regulatory process.

3.2 Data Analysis

We organised the data into condensed chronological accounts that mirror major shifts in the EU approach to corporate governance and accountability. Transnational regulation varies in intensity and is characterized by cycles (Braithwaite & Drahos, 2000; Halliday & Carruthers, 2009). Typically,

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4 each cycle starts when a window for policy change opens (Kingdon 1984). Here we identified two
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6 cycles of European reforms related to CSR (2000 - 2006 and 2009 - 2017) that allowed us to generate
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8 some hypotheses and questions more systematically. Thus, for each period considered, it soon
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10 emerged that the configuration of financial service providers, unions and NGOs' roles had also
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12 changed.
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15 The data were thematically coded. These themes were aggregated into four major themes through
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17 winnowing (Ravitch & Carl 2015): the organisational and epistemic capabilities of BIs; the level of
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19 collaboration amongst them (coalitions); their active participation and inclusion in rule-making and
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21 implementation processes; and contextual changes in the policy domain and ideological frame.
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24 Table 2 provides an overview of the shift from cycle I to cycle II.
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33 While corporate accountability intermediaries are often called 'third parties' and 'independent'
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35 auditors, in our analysis we established an analytical distinction between BIs and targets'
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37 intermediaries. The activities of the latter will be financed and supported by issuers of social and
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39 environmental reports, while intermediaries on the beneficiary-sides are funded by the various users
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41 of such information.
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44 As already mentioned, for the scope of this paper we focus on actors that self-identify themselves as
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46 intermediaries and are widely recognized as such, without assuming anything about the legitimacy
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48 of these claims. Nonetheless, we are aware that intermediaries claim to represent certain interests
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50 and it is easy to forget that they are often relatively small transnational elites, closely connected to
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52 each other but, sometimes, loosely related or even completely detached from the groups they claim
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54 to represent (Salles-Djelic & Quack 2010). On the other hand, intermediaries' power comes from
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4 these constituencies and it is often facilitated by their *official* and/or *formalized* recognition by
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6 regulators (Brès et al. 2018).
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10 **4. Analysis and findings. NGOs, investors and unions co-constructing the European CSR regime**

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12 In this section, we describe the role of BIs in co-constructing the meaning of European rules and
13
14 associated practices related to ‘corporate accountability’ as it emerged from our data, starting from
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16 a summary of our findings. Our longitudinal study identified two regulatory cycles, corresponding to
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18 changes in the EU politics of CSR as well as in the roles of NGOs, unions and SRI as BIs.
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23 The first cycle – starting around 2000 – was based on the idea of deploying a more reflexive and
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25 decentralized multi-stakeholder approach to hold global corporations accountable for their conduct.
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27 Key steps in this process were the definition of corporate responsibility (European Commission 2001
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29 and 2002) and the creation of a European Multi-Stakeholder Forum on CSR (EMSF) active between
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31 2002 and 2004. As already analysed by a consolidated literature, this regulatory process failed to
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33 deliver any major progress and was eventually manifestly captured by the regulatory target, large
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35 companies (Fairbrass 2011; de Schutter 2008; Ungericht & Hirt 2010; Kinderman 2013 and 2016).
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38 The second cycle followed the outburst of the global financial crisis – around 2009 – and has been
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40 characterized by a stronger willingness to move away from business self-regulation (Knudsen et al.
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42 2015). From 2009 to 2017, it has resulted in the introduction of CSR norms at the EU level (2013 anti-
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44 corruption EU Directive requiring some companies to publish country-by-country reports on
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46 payments to governments; 2014 EU Directive on disclosure of non-financial information; 2017 EU
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48 Shareholder Rights Directive that also promotes long-term and responsible finance). Similarly,
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50 stronger CSR requirements were introduced by some Member States like France (2017 ‘devoir de
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52 vigilance’) or the UK (2015 Modern Slavery Act). At the level of global governance, major
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54 breakthroughs include the endorsement by the UN Human Rights Council of the UN Guiding
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56 Principles on Business and Human Rights (2011) that led to the revision of the OECD Guidelines on
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4 Multinational Corporations (2011), introducing into the CSR policy debate the concept of corporate
5 due diligence for human rights violations.
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10 Our study builds on existing analyses of EU politics of CSR regulation in two ways. While the first
11 regulatory cycle has already been extensively analysed (Fairbrass 2011; de Schutter 2008; Ungericht
12 & Hirt 2010), we expand this picture considering the developments that have emerged since 2009.
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14 Moreover, by drawing attention to the key role of BIs, we complement existing explanatory
15 frameworks, focusing in particular on the role of targets and their intermediaries (e.g.
16 BusinessEurope and CSR Europe) (Kinderman 2013 and 2016; Brown & Knudsen 2015; Jackson et al.
17 2017).
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26 Analysing the data regarding the various phases of the European regulation of CSR from the
27 perspective of BIs, we have been able to explore the micro-processes that have characterized both
28 the first and the second cycle. Overall, we have identified six interconnected micro-dynamics. As for
29 cycle I, they are: CSR window of opportunity; BIs are weak and divided; Regulatory capture by
30 targets. The micro-dynamics in cycle II are: a new window of opportunity; NIU coalition building; the
31 evolution of BIs' roles. While the literature has been prevalently focused on the inclusion/exclusion
32 of stakeholders in the process of defining CSR rules (Scherer & Palazzo 2011; Mena & Palazzo 2012;
33 Moog et al. 2015), we maintain that the inclusiveness hypothesis is an important, but not sufficient
34 condition for effective corporate conduct regulation. Our analysis shows that stakeholders were
35 included in the regulatory process in both regulatory cycles. Thus, we argue that the regulatory
36 failure that characterized cycle I as well as the regulatory progress that emerged during cycle II can
37 be explained to a large extent by changes in BIs' cooperation and capacity to perform intermediary
38 roles at the various stages of the regulatory process.
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4.1 Regulatory cycle I (2000-2009). Multi-stakeholder governance and regulatory capture

Briefly considering the situation before 2000, the European approach to regulating responsible business conduct was mainly through tripartite social dialogue (Regini 2001). Analysing it through the lens of intermediation models, this regime was based on the activism of targets' (business confederations) and beneficiaries' (union confederations) representatives. Negotiations between employers and workers were mediated through collective, sectorial or company-level agreements that were legally enforced by the State. Organised labour was the main beneficiary, formally included in all intermediation roles, such as Agenda Setting, Negotiation, Implementation, Monitoring and Enforcement (ANIME) (Abbott & Snidal 2009), while other actors like investors and civil society had a secondary role. Therefore, rules focused on employment and industrial relations. Considering the ideological context underpinning this model, we can refer to the 'historical compromise' or 'social bargain' between labour and capital that emerged after WWII and underpinned European welfare state policies for decades (1960s-1990s) (Pagano & Volpin 2005; Gourevitch & Shinn 2005).

According to our interviews with EC officials, already around the mid-1990s *"the system was frozen. (...) at the time the employers association was kind of a monolith against any progress."* (Interview#11) Therefore, EU policy-makers started to introduce a more decentralised approach to regulate corporate conduct using variable forms of partnership not only with employers and unions but also emerging forces, in particular, civil society and institutional investors. The turning point was in 2000 when the European Council made a "special appeal to companies' corporate sense of social responsibility" (European Council 2000) and the Commission started to work on a new line of policy intervention that soon crystallized under the label of European CSR (de Schutter 2008).

Micro-dynamic 1: CSR window of opportunity. In 2000, CSR *"was something that was floating around"* (Interview#11) and its meaning in terms of policy and regulation was ambiguous and highly

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4 contested (de Schutter 2008). The central idea was that market mechanisms – pressure coming from
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6 media and NGOs on reputation or from consumers and investors – would effectively discipline
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8 business conduct. This frequently emerges from our data:
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11 “(...) companies are promoting their CSR strategies as a response to a variety of social,
12
13 environmental and economic pressures. They aim to send a signal to the various
14
15 stakeholders with whom they interact: employees, shareholders, investors, consumers,
16
17 public authorities and NGOs.” (European Commission 2001: 3)
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20 In this context, transparency and accountability policies took centre stage in the policy agenda:
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23 “There were more demands expressed towards companies but, at the same time, not a
24
25 willingness to regulate. So the way in between was to ask for transparency, and consumers
26
27 and investors would judge.” (EC official, Interview#11)
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29 In a period of spreading neoliberalism but also growing contestation of corporate power (Stiglitz
30
31 2002; Bakan 2004), this new regulatory approach was certainly seen by some EU policy-makers as a
32
33 possibility to update the rituals of the tripartite social dialogue, using a more reflexive and learning-
34
35 based approach to governance (de Schutter & Lenoble 2010). Also, some NGOs welcome its promise
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37 to include in the EU agenda broader social and environmental issues beyond industrial policies, new
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39 regulatory tools (such as fair trade certifications and environmental schemes like EMAS), and a
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41 broader range of stakeholders, all under the umbrella of ‘CSR policies’.
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47 **Micro-dynamic 2: BIs are weak and divided.** As a preliminary step, the EU Commission called for the
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49 creation of the EMSF that started to operate in 2002 with the aim of bringing together “enterprises
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51 and other stakeholders, including trade unions, NGOs, investors, consumers, to promote innovation,
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53 convergence and transparency in existing CSR practices and tools (such as code of conducts, labels,
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55 reports and management instruments).” (European Commission 2002).
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4 Our analysis suggests that the structural feebleness of beneficiaries' intermediaries and their
5 internal division can largely explain the regulatory failure that ensued. 'Meta-regulatory'
6 accountability policies based on transparency need active, strong and independent beneficiaries'
7 intermediaries to put pressure on targets and regulators (Parker 2007). This did not happen. Despite
8 the emphasis on the "strong surge in popularity among mainstream investors" (European
9 Commission 2001: 20), EC officials soon realised that Socially Responsible Investment (SRI) was a
10 "luxury" or a "niche market" with little leverage on corporate behaviour, it "did exist in the UK, and it
11 was about it." (Interview#12, 2012). Therefore, the key argument of EC officials for mandatory CSR
12 disclosure, that "it is in the interest of investors" (Interview#12, 2012), was rapidly dismissed by
13 targets' intermediaries as unsubstantiated. Because of the lack of support from mainstream
14 investors for any form of CSR regulation, targets' representatives could frame NGOs and unions'
15 requests as 'anti-business' policies leading to "straitjacketing red-tape" (EC official, interview#17). In
16 an attempt to boost SRI, in 2001, the Commission encouraged and financially supported the creation
17 of Eurosif. However, Eurosif was accredited only as an observer in the EMSF due to its very limited
18 leverage.

19
20 The unions were also disengaged from the regulatory process. The multi-stakeholder approach
21 entailed a diminished bargain power compared to social dialogue. In general, the CSR agenda was
22 perceived as a dangerous departure from traditional industrial relations based on collective bargain.
23 Our interviews with unionists (Interviews#7, 8 and 16) reveal a sense of imposition by the EU
24 regulator. For instance: "[The Commission] came up with this concept of CSR, which is not workable.
25 (...) the nicety of the language in effect hides not only inaction but a deterioration of the current
26 situation. (...) Actually, [CSR] has undermined social dialogue." (Interview#16).

27
28 Overall, lacking strong pressure from investors and unions, NGOs acquired a central role in the multi-
29 stakeholder process, but they lacked the capacity and experience to countervail business'
30 representatives. The EMSF debate soon became ideologically polarized between supporters of
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4 mandatory and voluntary CSR (see Fairbrass 2011 for a detailed account). In fact, it became a
5
6 confrontation between David and Goliath: NGOs against business organisations. *“What did happen*
7
8 *is: the NGOs and unions did not succeed in having useful conclusions. In the end they lost.”*
9
10 (Interview#11).
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15 ***Micro-dynamic 3: Regulatory capture by targets.*** Certainly, the period between 2000 and 2009 saw
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17 a greater influence of some BIs, namely NGOs and responsible investors, in EU policies. However,
18
19 targets’ intermediaries *“hijacked”* the regulatory process, as an EC official told us, reducing the
20
21 *“whole social dimension at the EU level through the argument of jobs and growth”* (Interview#17).
22
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24 Rather than empowering stakeholders, the regulatory process accredited *“corporate strategies*
25
26 *designed to prevent the use of law as a means for bringing about greater corporate accountability”*
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28 (Shamir 2004: 669).
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31 In 2004, the EMSF completed its work without being able to reach any major agreement on common
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33 principles and policies. The EU Commission services pledged to draft a CSR Communication based on
34
35 the results of the EMSF. In 2006 the newly appointed Barroso Commission decided to issue a weak
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37 CSR Communication, which was *“agreed by the Cabinet directly with CSR Europe [business]”*
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39 (Interviews#2 and #11), launching a business-led ‘European Alliance for CSR’, centred on a *“more*
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41 *effective and less bureaucratic”* approach to CSR (European Commission 2006). In response, the EU
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43 Parliament passed, by a large majority, a resolution urging the Commission to extend legal
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45 obligations to certain key aspects of corporate accountability (European Parliament 2007). The EU
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47 executive’s reaction was to reaffirm that CSR was voluntary and should not be regulated at the EU
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49 level. As a result, NGOs and unions decided to boycott and, eventually, abandon the EMSF. The CSR
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51 agenda had been manifestly captured by large business (Fairbrass 2011; de Shutter 2008; Ungericht
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53 & Hirt 2010; Kinderman 2013).
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4 In practical terms, by 2005 the first CSR regulatory cycle had been exhausted. EU policy-makers
5 espoused an instrumental approach to CSR that excluded the introduction of mandatory CSR policies
6 such as reporting or auditing. Interestingly, by that time the same fate had befallen other multi-
7 stakeholder initiatives, failing to empower stakeholders (cf. Dingwerth & Eichinger 2010; Mena &
8 Palazzo 2012). The CSR Alliance was run by targets' intermediaries [CSR Europe and BusinessEurope]
9 that interpreted CSR communication as a PR opportunity. The accounting profession acted as
10 targets' intermediaries, in this self-referential exercise (CSR Europe et al. 2008), lacking legitimacy
11 (both expertise and independence) when it came to social and environmental accountability. As the
12 coordinator of one of the umbrella organizations recalls, *"there was so much opposition within the*
13 *Commission to undertake any political reform. Basically, the whole discussion was framed under CSR*
14 *terms."* (Interview#26). According to an EC official, *"The CSR Alliance was a strange animal.*
15 *Companies didn't have to commit to anything, they didn't actually do anything. It was slightly odd."*
16 (Interview#14).

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33 In line with the 'shareholder-centred' mantra that came to dominate EU corporate governance
34 policies, the Alliance formally recognized only investors as beneficiaries. Therefore, while NGOs and
35 unions were excluded from rule-making, investors [e.g. Lloyds and Aviva] and financial analysts
36 [EFFAS] were invited to contribute, resulting in the side effect of dividing BIs between economic and
37 social stakeholders. The workshop set up with investors as part of the CSR Alliance, 'valuing non-
38 financial performance', was *"one of the most interesting and successful"* (Interview#14).

4.2 Regulatory cycle II (2009-2017). Beyond voluntarism and the emergence of NIU coalitions

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51 Given the widespread acceptance of the voluntary approach to CSR regulation, beneficiaries'
52 intermediaries had to face major challenges "to get beyond the mantra that CSR = voluntary only"
53 and "complement corporate responsibility with corporate accountability" (Amnesty International et
54 al. 2004). Yet, rather surprisingly and despite strenuous opposition from targets and their
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4 intermediaries (Kinderman 2013 and 2016), between 2009 and 2017 some important CSR reforms
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6 were adopted by the EU as well as certain Member States. Analysing the data regarding the
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8 activities of ECCJ, Eurosif and their members, we have been able to explore the micro-dynamics that
9
10 have characterized this transition from the perspectives of beneficiaries' intermediaries. Certainly,
11
12 the financial crisis created a new narrow window of opportunity for CSR reforms. However, as for
13
14 the first cycle, that would not be sufficient to overcome targets' well-organized counter-pressures
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16 (Kinderman 2013). Our data suggest that the key for regulatory progress can be found in two
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18 important changes: BIs' greater structural capacity to engage in various intermediation roles
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20 (ANIME) and the emergence of a closer collaboration between NGOs, responsible investors and
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22 unions.
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27 ***Micro-dynamic 4: A new window of opportunity.*** All the interviewees stressed that the 2008
28
29 financial crisis opened a new 'window of opportunity' for regulatory changes, providing a strong
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31 argument against self-regulation. Compared to the first cycle, both responsible investors and NGOs
32
33 had a stronger operational capacity to exploit this window of opportunity and engage more in
34
35 agenda-setting. Following the defeat of the EMSF and the frustration of seeing CSR policies
36
37 captured, NGOs realized the "need to start a European network, which would be active in Brussels
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39 and work on corporate accountability issues at EU level." (de Clerck 2016) This led to the creation of
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41 ECCJ in 2006.
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46 In 2009-10, ECCJ and Eurosif, which had been created back in 2001, separately engaged in countless
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48 meetings, initiatives, workshops, press releases and collaborations aimed at moving the CSR agenda
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50 beyond voluntarism. They opted for largely non-ideological, but bold and substantiated proposals
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52 for reforms. The (only) point of contact between their proposals was a request for better disclosure
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54 based on mandatory social and environmental reporting (ECCJ 2008; Eurosif 2009b).
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57 They adopted different strategies and arguments. ECCJ attacked the lack of legitimacy and failure of
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59 EU policies with a Europe-wide campaign called 'Right for People, Rules for Business' to mobilise
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4 citizens. NGOs used powerful examples and images of human rights violations perpetrated by large
5 corporations, asking the EU to hold companies accountable. They mobilised their network of legal
6 experts to produce reports (ECCJ 2010) and studies (Augenstein 2010) highlighting possible reforms.
7
8 As acknowledged by an EC official: *“We no longer had an EMSF, it was just with business. One major
9 stakeholder was missing. The credibility of the process was thrown into question.”* (Interview#10).
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11 We obtained evidence of a series of meetings and emails that demonstrate a negotiation between
12 ECCJ and the Commission (April 2008-February 2009). In exchange for reconsidering their
13 participation in the EMSF, ECCJ obtained examination of its proposals by different services of the
14 Commission.
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24 In this phase, Eurosif used its access to EU policy-makers and the Laboratory ‘valuing non-financial
25 performance’ to highlight that investors wanted more stringent CSR rules. Eurosif mobilized its
26 members, especially mainstream investors, to write its 2009 position paper; asked them “to meet
27 directly with DG Internal Market officials” with “the ultimate goal” that “ESG [Environmental Social
28 and Governance] factors (...) can be a top priority for the incoming Commission.” (Eurosif 2009a)
29
30 They heavily lobbied European institutions, particularly promoting a set of ESG KPIs developed by
31 the European Federation of Financial Analysts Societies (EFFAS 2010). They worked with the EU
32 Parliament and the accounting profession (then FEE) to show broader support for reforms. In
33 particular, they successfully asserted responsible and long-term investment as the ‘antidote’ to the
34 financial irresponsibility and short-termism that had led to the 2008 financial meltdown, supporting
35 their arguments with data and analysis. The Eurosif approach in this phase remained distinct but
36 complementary to the ECCJ’s.
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51 The centrality of the two organisations in the regulatory process is confirmed by several interviews
52 with policy-makers. This is a new element compared to the previous phases. For instance, one EC
53 official affirmed: *“NGOs have been very vocal with us, especially in the initial phase. We found them
54 very helpful. (...) especially, it has been through the NGOs that we have got in touch with the main
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4 *academics in this field.” And also: “I think the investors were key drivers for this. (...) We considered*
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6 *the fact that investors are discussing this as one of the key evidence that the market was demanding*
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8 *for increased transparency. So, we don’t do this for the regulators’ sake but because there is a*
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10 *demand which is not met by current supply.”*

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13 **Micro-dynamic 5: NIU coalition building.** Despite their large networks and strong activism, both
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15 ECCJ and Eurosif are small organisations that struggle in the agenda-setting and negotiation process,
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17 *“because they can put less money and resources in it”* compared to targets’ representatives like
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19 BusinessEurope (EC official, Interview#13). In 2011, however, they began to collaborate more. The
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21 interviews and documents provide abundant evidence of this cooperation and its evolution. Table 3
22
23 contains some extracts that illustrate this micro-dynamic at the EU-level. Crucially, this only began
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25 after the EU Commission: (1) abandoned the business-driven CSR Alliance, *officially* including all
26
27 stakeholders in the regulatory process; and (2) took a more *dirigiste* economic approach and
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29 announced a legislative proposal on reporting (Single Market Act 2011), following the appointment
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31 of Michel Barnier as Internal Market Commissioner. After the EC proposal on non-financial reporting
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33 was stalled for several months in 2012 (Bizzarri 2013) the two umbrella organisations obtained a
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35 joint meeting with Commissioner Barnier to reiterate their support for the Commission’s initiative to
36
37 address corporate transparency through legislative proposals. The meeting was *“a very key moment,*
38
39 *because it really proved to trade unions and investors that this kind of collaboration could help us*
40
41 *being very influential”* (Interview#26). Coordination between the two organizations intensified
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43 further as a consequence until the non-financial reporting directive was adopted in 2014. In this new
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45 phase, the activism of beneficiaries’ intermediaries – in particular investors – and their stronger
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47 capabilities shaped the policy debate in a completely new direction. As an EC official put it: *“I think if*
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49 *I look at it objectively, one of the roles of the investors’ interest is to make it no longer a ‘black versus*
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51 *white’ debate. (...) Then it is not simply the NGOs’ agenda. It becomes, if I am honest, an easier*
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53 *agenda to sell.”* (Interview#14).
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{TABLE 3 ABOUT HERE}

Notably, the NIU coalition is not limited to the collaboration of ECCJ and Eurosif at the EU level. It has a truly transnational character. Formal and informal links between members of ECCJ and Eurosif exist also at the national level. Through a series of interviews, we investigated 12 formal bonds between ECCJ and Eurosif – specific organizations that belong to both networks – that exist in Spain, France, the Netherlands and the UK. While a detailed outline and discussion of national micro-dynamics and varieties of the NIU nexus goes beyond the scope of this paper, we certainly found evidence of ramifications and links across different forms of NIU coalitions. Furthermore, we found preliminary evidence that in France, the Netherlands and the UK, the NIU nexus had an important role in the recent adoption of important pieces of CSR regulation such as the 2015 Modern Slavery Act in the UK (Interview#34) and the law on the “*devoir de vigilance*” in France (Law n° 2017-39, 27 mars 2017) (Interview#35). In the Netherlands, a notable example has been the signature – after two years of negotiations – of an agreement between the Dutch banks, unions, NGOs and the government to join forces on international responsible business conduct regarding human rights in the banking sector (interview#37; 41) (Social and Environmental Council 2016).

Micro-dynamic 6: The evolution of BIs’ roles. Whereas in previous phases intermediaries could not find a compromise agreement and failed to deliver any progress, after 2013 the NIU coalition delivered some important “*successes (...) that can embed some very important concepts of corporate responsibility into law.*” (Interview#26). Looking only at the EU-level, they include the adoption in 2013 of EU transparency rules for extractive industries, aimed at fighting against tax fraud and corruption; the adoption in October 2014 of the non-financial reporting directive; and in March 2017 the amendment of the Shareholder Rights Directive, aimed also at boosting long-term investments and SRI.

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4 Two elements can be stressed concerning the current evolution of BIs' roles in CSR regulation.
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6 Firstly, before 2009 the European policy-makers disregarded institutional investors as targets for CSR
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8 policies. Eurosif and its allies contributed to add this second stream to the CSR regulatory pipeline
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10 through initiatives like the 2017 Shareholder Rights Directive, which is expected to boost SRI in
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12 Europe. However, the 'ultimate targets' (Havinga & Verbruggen, 2017) of the new legislation remain
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14 large listed companies. SRI is used as an intermediary to increase CSR and monitoring by institutional
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16 investors. Interestingly, interviews with EC officials (Interview#32 and 39) revealed that NGOs'
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18 intervention was determinant in 'protecting' the SRI elements in the Shareholder Rights Directive.
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20 "[Members of the European Parliament] *are sensitive to the arguments of the NGOs and I think here*
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22 *there were a couple of NGOs that really explained that this is useful for society.*" In effect, some large
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24 NGOs like ActionAid, WWF and Friends of the Earth openly supported the directive (WWF 2016),
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26 confirming the versatility of NIU coalitions.
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32 Furthermore, and crucially, the NIU nexus plays an important role also in the adoption of CSR
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34 regulation – typically through monitoring and fire-alarm mechanisms. Compared to the 2000 – 2009
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36 phase, all three components of NIU coalitions have developed their monitoring capabilities and
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38 began integrating their tools and resources. For instance, all the interviews with ESG analysts
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40 (interviews#21, 23 and 25) show that they have well-established and multi-layered collaborations
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42 with NGOs and unions that typically take three forms: NGOs can use them when they work with
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44 businesses to identify potential reputational risks; ESG analysts strategically use NGOs and unions to
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46 "*track what companies do in reality*" (interview#21); often they are part of multi-stakeholder
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48 platforms, such as Eurosif or VBDO, the Dutch SIF, that include NGOs or unions.
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53 Considering the phenomenal growth of European SRI (Eurosif 2016) and the use of ESG information
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55 by governments and multinational organisations, benchmarking exercises by ESG analysts or by new
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57 initiatives like the Corporate Human Rights Benchmark (CHRB) become important CSR drivers. At the
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4 same time, NGOs and unions have developed their own instruments to mobilise and influence
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6 institutional investors (Interviews#36, 37, 38, 40 and 42). By way of example of how the NIU nexus
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8 can contribute to change corporate conduct, since 2011, the UK NGO ShareAction [member of both
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10 NGOs and investor umbrella organizations] has effectively translated NGOs and unions' campaigns
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12 on 'Living Wage' into capital markets campaigning (Interview#37 and 40). Namely, ShareAction has
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14 co-ordinated a collaborative initiative of institutional investors with over £100 billion assets under
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16 management to encourage all FTSE 100 companies to apply Living Wage standards in their UK
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18 operations (the Investor Collaborative for the Living Wage). Between 2011 and 2017, this campaign
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20 contributed to increase the number of FTSE 100 employers applying the Living Wage standard from
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22 two to 46. According to ShareAction, 15,000 employees have positively benefited from this
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24 coordinated campaign (Interview#40). Notably, in 2016, ShareAction promoted the creation of ERIN
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26 (European Responsible Investment Network), a pan-European network of NGOs, unions and other
27
28 organisations that responds to the need for "more coordination when it comes to investor-focused
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30 initiatives and policy making. (...) learning about what tactics work when you try to influence
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32 investors and about what is going on in other countries." (Interview#37).
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39 **5. Discussion**

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41 Our longitudinal study explored to what extent the capacity and coordination of beneficiaries'
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43 intermediaries (BIs) affects the corporate accountability regulatory process. Empirically, we focused
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45 on the multiple roles of three groups of beneficiaries' intermediaries – NGOs, SRI and unions – in the
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47 development and adoption of European CSR rules and associated practices. We were theoretically
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49 motivated by the aim of balancing the focus on the relationship between the regulator (R) and its
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51 target (T) to include the perspective and motivations of beneficiaries and their intermediaries. Our
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53 findings complement König-Archibugi and Macdonald's (2017) argument that whether and how
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4 beneficiaries are involved in the regulatory process does matter by stressing the importance of
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6 organizational capacity and coordination.
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10 Specifically, considering the period 2000-2017, we identified the emergence of two regulatory cycles
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12 leading to substantially different outcomes. Cycle I ended with no changes to the CSR regulation, as
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14 well as the manifest capture of the regulatory process by the targets and their intermediaries. Cycle
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16 II, after the 2008 financial crisis, led instead to the adoption of a series of reforms. Overall, in both
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18 periods, EU regulators were supportive of the beneficiaries' positions to the point of funding the
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20 creation of Eurosif and including them in the regulatory process. Targets' representatives
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22 consistently opposed mandatory CSR (Kinderman, 2013). Thus, the key difference between the two
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24 cycles lies in the greater capacity of NGOs and responsible investors to shape the CSR regulatory
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26 process and the emergence of an NIU (NGO-Investor-Union) nexus – which allows BIs to play a
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28 stronger and more coordinated role. This section expands on this central argument and discusses its
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30 theoretical and regulatory implications and scope conditions.
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37 **5.1 Combining the RIT model and critical political CSR**

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42 Our study integrates the descriptive typologies offered by the RIT model (Abbott et al., 2017; König-
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44 Archibugi & Macdonald, 2017) with insights from 'political CSR' debates (Scherer & Palazzo, 2011;
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46 Edward & Willmott, 2012; Mäkinen & Kourula, 2012; Salles-Djelic & Etchanchu, 2017; Levy et al.,
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48 2016).
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53 Critical PCSR helps in understanding power relationships within the extended RIT model proposed by
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55 König-Archibugi & Macdonald (2017) (see Figure 1). In particular, we draw attention to the
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57 'neutralization' of beneficiaries' side in CSR regulatory processes. Due to the global expansion of
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4 business operations, intended beneficiaries have become increasingly virtualized, dispersed and
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6 fragmented groups of actors that would struggle to participate directly in CSR regulatory processes
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8 (Salles-Djelic & Etchanchu, 2017). Thus, in this context, direct participation of beneficiaries, without
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10 representation, is likely to result in the exclusion from the regulatory process and possibly a
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12 regulatory capture by targets and their intermediaries (see Figure 2). Fransen and LeBaron in this
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14 special issue provide a telling example of how target-related intermediaries such as big audit firms
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16 can influence CSR rules related to forced labour and modern slavery. This argument has implications
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18 also for König-Archibugi and Macdonald's (2017) taxonomy of the possible relationships between
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20 beneficiaries and the other groups of regulatory actors. It underpins our conclusion that the
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22 presence of strong and coordinated BIs plays a crucial role in effective CSR regulation.
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29 {FIGURE 2 ABOUT HERE}

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33 We found evidence of this dynamic in the first regulatory cycle, when EU regulators assumed that
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35 companies would promote CSR strategies as a response to the market and social pressure exerted by
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37 all sorts of stakeholders (e.g. investors, consumers, communities, media). In reality, they soon found
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39 out that there was a structural problem due to the weakness or lack of capabilities of these broadly
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41 conceived beneficiary groups.
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45 Furthermore, drawing on a processual approach to PCSR (Levy et al., 2016) that emphasizes
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47 temporality, our study has outlined six micro-dynamics that offer a more interactive account of the
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49 politics of regulatory intermediation and the roles of BIs. During cycle I, BIs were initially included in
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51 the rule-making process. Yet both responsible investors and NGOs lacked the capacity to monitor
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53 and discipline targets directly, not just through the regulator. Targets and their intermediaries
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55 exploited BIs' weakness to capture the rulemaking process. Eventually, unions and NGOs were also
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57 formally excluded from the EMSF. This shows how the inclusion/exclusion of BIs is the result of
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4 power dynamics, more than a precondition for effective CSR regulation. In this phase we found that
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6 BIs were weak also because they were divided, unable to work together in the regulatory process.
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8 This contributed to the fact that BIs were not seen by the regulator as viable options to perform
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10 intermediation tasks such as monitoring and enforcement. In contrast, the post-2009 phase is
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12 characterized by stronger and better organised BIs, capable of monitoring and enforcing compliance,
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14 acting at different levels of governance using eclectic accountability tools (from legal actions to SRI
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16 and NGO campaigning). In terms of organizational structure, this required the creation of longer
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18 chains of intermediation (second or third order BIs) as in the case of Eurosif and ECCJ ‘umbrella
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20 organizations’. This happened towards the end of the first cycle, in consideration of the need for a
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22 better structure and of the high degree of distance between beneficiaries and their intermediaries.
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24 However, our study also revealed that the greater involvement of BIs in the regulatory process is
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26 largely due to the convergence of interests and greater coordination among three groups of BIs:
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28 NGOs, investors and unions (NIU nexus). This alignment of forces facilitated the development,
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30 monitoring and implementation of new CSR rules in the European context. We thus propose a more
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32 pragmatic and processual approach to regulatory intermediation that integrates the RIT model and
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34 PCSR. Here we understand regulatory intermediation as “an extended, interactive, and somewhat
35
36 unpredictable process” (Levy et al. 2016: 368) through which regulatory actors employ a wide range
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38 of tactics and engage in variable and (in)formal coalitions. The NIU nexus exemplifies this more
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40 processual and more contested model of CSR regulation that also allows the identification of
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42 surprising, more fragile and unformalized modes of regulatory intermediation.
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49 Lastly, we also maintain that the regulatory intermediary framework (Abbott et al. 2017) can play an
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51 important role in advancing the heated PCSR debate concerning the need to find new extended
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53 forms of democratic ‘will formation’ that include business and civil society in regulatory processes.
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55 Some scholars suggest that this can be achieved through a decentralized form of ‘deliberative
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57 democracy’ in which business can play a positive role driven by a concern for the public good that
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4 goes beyond selfish calculations (Scherer & Palazzo 2007; 2011). More critical PCSR scholars are
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6 sceptical. They argue that this overly idealistic solution neglects asymmetries of power and interests
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8 (Edward and Willmott 2012; Whelan 2012) and call for stronger regulation of business conduct and a
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10 more radical approach to stakeholder democracy (Mäkinen & Kourula 2012). Our findings regarding
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12 the emergence of NIU coalitions constitute a promising alternative to both the imposition of rules in
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14 a command and control fashion and allowing corporate executives large discretionary power – the
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16 *noblesse oblige* approach to PCSR (Crouch 2009). The regulatory intermediary framework helps to
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18 frame this debate in a more systematic manner, generating new insights about the regulatory roles
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20 of key groups of stakeholders. Organizing their roles into intermediaries, targets, beneficiaries and
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22 regulators helps increase understanding of the positions in the regulatory field, functional relations,
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24 regulatory effectiveness and capabilities. It can illuminate “which constellations of conditions are
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26 likely to produce which outcomes” (König-Archibugi & Macdonald 2017: 54). In this respect, based
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28 on our analysis, we are sceptical about Scherer and Palazzo’s (2011) idealistic perspective of
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30 deliberative democracy. We rather agree with Salles-Djelic and Etchanchu (2017: 657) that the key
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32 for effective corporate accountability lies in curbing managerial discretionary power. Specifically, we
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34 propose that, in the current context of virtualized, dispersed and fragmented beneficiaries, stronger
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36 and better coordinated BIs are crucial in order to countervail the asymmetric power and resources
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38 of business. However, our analysis also suggests that critical PCSR scholarship should take a more
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40 pragmatic and dynamic approach that also includes structural business-civil society cooperation. In
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42 particular, our finding regarding the emergence of NIU coalitions invites reflection on the common
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44 interest in effective CSR that may bond groups of actors as different as NGOs, investors and unions.
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46 The following section advances some implications of our findings – in particular regarding the NIU
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48 nexus – and briefly discusses the scope conditions of our argument.
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58 **5.2 Theorizing NIU coalitions: conceptualization and scope conditions**

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4 In line with a processual and pragmatic approach to regulatory intermediation, the emergence of
5
6 NIU coalitions should be seen as contextual, fragile and contested. At the same time, we believe that
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8 it has the potential to evolve into a more structured model of corporate governance. We
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10 conceptualize the NIU nexus as having three key characteristics.

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13 *First*, what actually unifies NGOs, investors and unions is the common objective of holding managers
14
15 accountable and reducing managerial discretion. In this sense, NIU coalitions are not real alliances
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17 but rather ‘marriages of convenience’ between actors that are often opposed. Thus, NIU coalitions
18
19 are fragile. NGOs, responsible investors and unions certainly have viewpoints that partially overlap.
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21 Some NGOs, such as ShareAction or WWF, engage companies using shareholder activism. SRI has its
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23 roots as a form of social activism. Unions are, through large pension funds, structurally involved in
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25 the capital market. However, they also have different priorities, worldviews and attitudes towards
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27 corporations, underpinned by distinct understandings of ‘corporate accountability’.

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31 *Second*, their convergence of interests is thus far mainly related to transparency and CSR reporting
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33 regulation. One possible explanation is that, as suggested by Mena, Brès and Salles-Djelic (2019: 10)
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35 in this issue, auditing tools, benchmarking practices and CSR reports can become “a way to develop
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37 intermediation as a ‘boundary object’ (...) [that] keeps the regulatory injunction broad and blurry
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39 enough to be widely acceptable and adaptable”. This conjecture invites further research. More
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41 broadly, as already mentioned, CSR regulation works indirectly and requires active beneficiaries to
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43 be effective. Therefore, we could hypothesize that stronger coordination among the three groups of
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45 actors was encouraged by their common regulatory role as BIs. Our exploratory research seems to
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47 confirm this conjecture by showing that the success of NIU coalitions was rapid and surprising for
48
49 the very actors involved in the nexus. NIU coalitions were not planned. They are forms of emergent
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51 intermediation, based largely on unofficial and unformalized relations among a variety of BIs (see
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53 also Bothello & Mehrpouya in this special issue).
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4 *Third*, NIU coalitions overcome the business/anti-business divide that characterized CSR policy
5 debates. On the contrary of most of the papers in this special issue, illustrating the familiar divide
6 between business as a target and civil society as a beneficiary, the NIU nexus offers a different case
7 in which parts of business and civil society are both beneficiaries. According to our analysis, this
8 characteristic also explains its sudden success with policy-makers. In a context still dominated by a
9 neoliberal ideological approach to CSR (Salles-Djelic & Etchanchu, 2017), the NIU nexus appears, to
10 public authorities, to be “an easier agenda to sell” (Interview#14) because it is supported not only by
11 civil society and labour but also by a business component.
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24 Our central claim is that the involvement of stronger and more coordinated BIs – as in the case of
25 the NIU nexus – is necessary to achieve more effective CSR regulation. However, the emergence of
26 NIU coalitions is subject to certain scope conditions. In particular, it requires that public authorities
27 include all BIs in the regulatory process. In particular, the regulator has to go beyond a zero-sum
28 approach to corporate accountability, such as shareholder-centred corporate governance, that
29 structurally divides unions and NGOs from shareholders. NIU coalitions are also based on the
30 precondition that unions and NGOs have sufficient organizational capabilities to perform regulatory
31 tasks such as monitoring and enforcing. In this sense, their emergence in Europe can be explained by
32 the relatively strong role played in many EU countries by trade unions and the presence of organized
33 civil society. Lastly, the emergence of NIU coalitions requires relatively well-developed financial
34 markets. As we have seen in our study, emerging financial markets, where basic financial services
35 are barely available, tend not to have a sufficiently strong presence of responsible investors.
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53 **6. Conclusions**

54 The longitudinal study has empirically examined the multiple intermediary roles that institutional
55 investors, trade unions and NGOs have played in the emergence of a European regime of CSR. We
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4 identified two regulatory cycles during the period 2000-2017. While cycle I ended with the manifest
5 capture of the regulatory process, cycle II led to the adoption of a series of CSR reforms. Our analysis
6 showed that, to a large extent, the different outcome can be attributed to a decisive involvement of
7
8 BIs in all the aspects of the regulatory process. In particular, the emergence of an NIU – NGO-
9 Investor-Union – nexus allowed the strong opposition of targets’ representatives to be overcome.
10
11 By combining the literature on regulatory intermediaries (König-Archibugi & Macdonald, 2017) with
12 insights from critical PCSR (Levy et al., 2016; Salles-Djelic and Etchanchu, 2017), the paper
13 contributes to a more dynamic and processual understanding of the role of BIs. Our findings redirect
14 attention away from managerial and corporate voluntary initiatives and suggest considering
15 unexplored political models of corporate accountability. In contrast to Scherer and Palazzo’s ideal
16 perspective on PCSR (2011), we are sceptical about the participation of fragmented and dispersed
17 stakeholders in CSR deliberative processes. We rather agree with Salles-Djelic and Etchanchu (2017:
18 657) that the key for effective corporate accountability lies in curbing managerial discretionary
19 power. In particular, in the European context, stronger and more coordinated BIs can play a crucial
20 role in effective CSR regulation.

21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 **References**

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Table 1. ECCJ and Eurosif: features, origins and structure.

	Eurosif	ECCJ
Key features	It is the leading pan-European network of responsible investors forums (SIFs) active in UK, France, the Netherland, Italy, Germany and Spain	ECCJ is the leading European coalition bringing together NGOs, trade unions, consumer organisations and academics promoting corporate accountability.
Origins & objectives	Founded in 2001 by national SIFs, supported by the EU Commission, it is now funded by its members. Aims to promote SRI and the integration of ESG into investment decisions.	Founded in 2006, following the failure of the EMSF, to bring a united civil society voice to the EU debates on corporate accountability. Financially supported by its members and some private foundations.
Governance & structure	Following a remarkable growth, its governance changed (2015) Under this new situation, when a national SIF exists locally, Eurosif membership stems from membership of a national SIF. It is organised through an Exec Team and a Board composed of SIFs representatives.	ECCJ coordinates 21 member groups representing over 250 organisations from 15 countries. It is run by a coordination office in Brussels and a Secretariat. Individual CSOs can only become direct members of ECCJ if no relevant platform exists yet in their country.

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4 **Table 2.** Two cycles in the EU regime of CSR.
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	Cycle I (2000-2009)	Cycle II (2009-2017)
<i>Contextual frame</i>	'Business' vs 'anti-business'	'short-term' vs 'long-term' business
<i>BIs inclusion in rule-making</i>	Formal engagement in EMSF.	Informal, multi-level engagement.
<i>Level of BIs collaboration</i>	Disengagement and division.	NIU coalitions. 'We add to each other's business case'
<i>BIs regulatory capability</i>	Fragmented initiatives to monitor targets. Limited capacity to influence rule-making.	More structured and integrated in all regulatory tasks (ANIME).
<i>Regulatory outcome</i>	Regulatory capture by targets.	Adoption of a series of CSR reforms.

Table 3. Selection of Extracts Associated with Micro-Dynamic 5: NIU Coalition Building

“(...) with EUROSIF we are just **very very close**. Strategically, **we work together** and **we are in contact**. (...) It is about the EU Commission that is going to launch a proposal on non-financial reporting, it is really a **strategical** [convergence]. I don’t see any other reason for that.” (interview#9)

“Also Eurosif is thinking that ‘comply-or-explain’ approach would be like going a couple of years backwards, so sometimes is pretty funny how **coalitions** are working.” (interview#9)

“(...) we have a lot of **affinity** with ECCJ. We actually wrote a letter together with ETUC and BEUC, asking for a joint meeting with Barnier to demonstrate that we push for the proposal. (...) we insist more on the materiality of the data and ECCJ would go, maybe, a bit further. But yes, there are a lot of **commonalities**.” (interview#18)

“The meeting with the Commissioner [Barnier] was, I think, a very key moment for this **collaboration** because it really proved to trade unions and investors that this kind of **collaboration** could help us being very **influential**. So, we repeated it in all the letters: letters to MEPs, letters to Member States, letters to the Commission.” (interview#26)

“[With Francois Passant, former Eurosif Director] we were regularly in touch (...) we managed to easily **exchange information, share our contacts** with MEPs, **invite each other** to some of the key meetings. I think that really helped.” (interview#26)

“(...) investors became **very helpful** for NGOs and unions because they are the ones that are in **between civil society and business**.” (interview#26)

“[Unions] were not as active as us but definitely at the **key moments**, they were always there to **support**.” (interview#26)

“it’s mainly **based on issues**, really. Not membership. Although I think it makes sense because, for instance, most of these **NGOs are also members of my SIFs** (...) frankly, the reason why we still **collaborate** so much [with NGOs] is because **we add to each other’s business case** and **we lobby for the same idea** so it really makes sense, also, when we go to regulators that we join the group together.” (interview#30)

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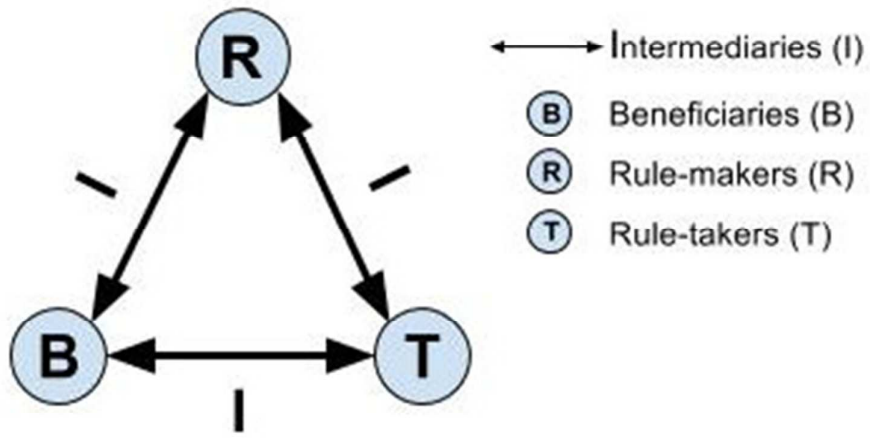


Figure 1. Extended RIT model to include Beneficiaries

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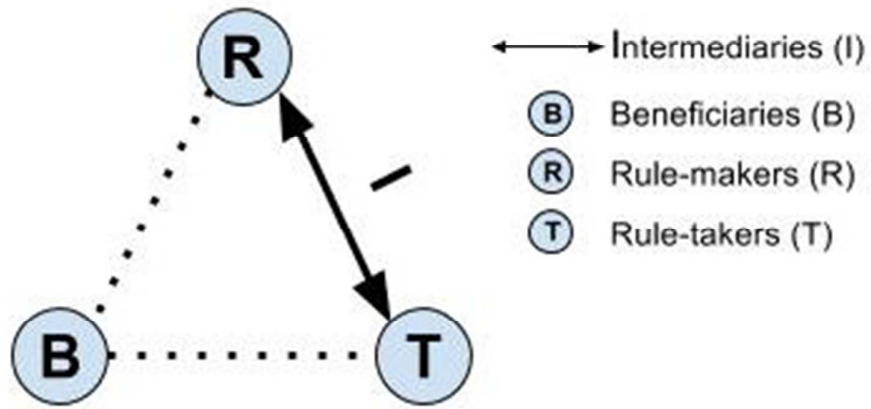


Figure 2. Isolation of beneficiaries due to weak intermediation

Annex. List of interviews

#	ORGANISATION	DATE	#	ORGANISATION	DATE
1	EU Commission	22/04/2010	21	Sustainalytics (Eurosif)	23/06/2016
2	EU Commission	30/04/2010	22	WHEB (Eurosif)	14/07/2016
3	Global Reporting Initiative	08/04/2011	23	Oekom (Eurosif)	14/07/2016
4	SOMO (ECCJ)	15/04/2011	24	SRI expert	19/07/2016
5	Aegon Asset Management (Eurosif)	02/06/2011	25	MSCI (Eurosif)	14/09/2016
6	APG (Eurosif)	06/06/2011	26	ECCJ (coordinator)	16/10/2016
7	European Trade Union Institute	08/06/2011	27	ChristianAid (member of ECCJ)	11/10/2016
8	European Trade Union Confederation	15/06/2011	28	Frank Bold (member of ECCJ)	17/10/2016
9	ECCJ	17/06/2011	29	EU Commission	25/10/2016
10	EU Commission	26/06/2012	30	EUROSIF	05/12/2016
11	EU Commission	23/07/2012	31	CORE Coalition (ECCJ)	15/05/2017
12	EU Commission	25/07/2012	32	EU Commission	03/04/2017
13	EU Commission	30/07/2012	33	SpainSIF (Eurosif)	21/04/2017
14	EU Commission	08/08/2012	34	CDSE (ECCJ)	05/04/2017
15	SRI expert (former MSCI, Eurosif)	07/09/2012	35	FIR (Eurosif)	02/05/2017
16	European Trade Union Confederation	02/11/2012	36	Trade Union Confederation	12/04/2017
17	EU Commission	03/11/2012	37	ERIN /ShareAction (ECCJ/Eurosif)	20/04/2017
18	EUROSIF	22/01/2013	38	Trade Union Confederation	08/05/2017
19	Transparency International (NGO)	24/01/2013	39	EU Commission	10/05/2017
20	Forum citoyen pour la RSE (member of ECCJ)	01/03/2013	40	ShareAction (ECCJ/Eurosif)	10/05/2017
			41	VBDO (Eurosif)	16/05/2017
			42	Business and Human Rights expert	19/05/2017