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**The EU Corporate Sustainability Due Diligence Directive as an Alternative Legal Framework to Bridge the Identified Gaps at the Regional Level in the Gulf of Guinea?** The Case of Marine Resource Exploitation by European Multinationals and Their Subcontractors

Harvey Mpoto Bombaka

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# **The EU Corporate Sustainability Due Diligence Directive as an Alternative Legal Framework to Bridge the Identified Gaps at the Regional Level in the Gulf of Guinea?**

## **The Case of Marine Resource Exploitation by European Multinationals and Their Subcontractors**

Harvey Mpoto Bombaka\*

### **Between economic exploitation and socio-environmental issues**

The Gulf of Guinea remains a highly strategic region, home to many commercial activities, including the exploitation of living and non-living marine resources, maritime transport and international trade in general. The region comprises sixteen coastal states: Angola, Benin, Cameroon, Congo, DR Congo, Côte d'Ivoire, Gabon, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Sao Tomé and Príncipe, Senegal, Sierra Leone and Togo. The area is rich in hydrocarbons and fishery resources, making it a prime target for a large number of international economic operators, including European multinationals engaged in various economic activities.

However, these intensive exploitation activities are not without consequences: the high concentration of activities leads to an increase in marine pollution, endangering biodiversity and marine ecosystems; the uncontrolled exploitation of fisheries resources leads to a reduction in fish stocks, with a de facto impact on the livelihoods of local populations; the economic activities of multinationals often generate social conflicts, making the working conditions of local employees even more precarious. Confronted with such challenges, adequate and effective legal regulation is required to direct economic activities and impose compliance with human rights and the environment.

In this regard, the EU-CSDDD, which entered into force on May 24, 2024, could be an efficient lever for imposing cumbersome obligations on multinationals and subcontractors. Indeed, due to the adoption of the EU-CSDDD, European multinationals and their subcontractors will be under the legal obligation to implement due diligence obligations regarding the environment and human rights. However, even if this directive constitutes a regulatory breakthrough of utmost significance, its efficiency remains limited due to structural and legal issues.

At the same time, a debate has recently emerged around the «Omnibus» initiative proposed by European Commission President Ursula von der Leyen, which aims to simplify existing regulations in order to reduce the administrative burden on businesses. This initiative could have repercussions on the implementation of the Duty of Care Directive, particularly with regard to companies' reporting obligations. These few lines aim to first

\* PhD – International Law (Aix Marseille University/ University of Brasília). Associate Professor (University Centre of Brasília, Brazil)

highlight the progress made by the European directive on the responsibility of multinational enterprises operating in the Gulf of Guinea. They will then examine the structural limitations and challenges raised by the European directive on the responsibility of multinational enterprises. Finally, they propose ways to improve the protection of the rights of local communities and marine ecosystems, taking into account current discussions around the Omnibus Initiative.

## **The European Directive: a new legal architecture for corporate liability?**

The EU-CSDDD is in line with international efforts to regulate the business practices of multinational corporations. Going further, the EU CSDDD is aligned with a number of international instruments such as: the UN Guiding Principles on Business and Human Rights, adopted in 2011, which introduce the concepts of human rights and environmental due diligence; the ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy, adopted in 2017, which recommends responsible labor and employment practices, etc.

Until now, most of the instruments identified at the international level lacked binding force, making their implementation largely dependent on the goodwill of companies. The EU-CSDDD fills this gap by establishing a binding legal obligation extending to all activities of European multinationals, including those of their subsidiaries and subcontractors in third countries, such as those in the Gulf of Guinea. Article 1.1.a of the Directive extends due diligence obligations to business relationships established outside the European Union. Article 6.1 requires companies to assess the potential or actual negative impacts of their operations on human rights and the environment, including those of their subsidiaries and established business relationships. The EU-CSDDD also relies on several mechanisms to render effective the obligations imposed on multinationals. Article 8.1 imposes increased vigilance on companies throughout their entire supply chains, obliging them to detect, prevent, and mitigate violations of fundamental rights and environmental standards. Additionally, Article 17 foresees a system of sanctions for non-compliance with these commitments.

Sanctions ranging from administrative fines to civil and criminal penalties are contemplated. Article 22 also allows access to justice for victims and enables local communities that have suffered due to the behavior of European multinationals to sue and be compensated.

In a context in which sea pollution, overfishing and workers' exploitation are the rule, the European directive is a significant step forward. However, there are limitations to its scope and enforcement mechanisms that can reduce its effectiveness.

## **The limits of the directive: an insufficient legal tool for the Gulf of Guinea?**

One of the main weaknesses of the EU-CSDDD is its narrow scope. The directive only applies to firms with more than 1,000 employees and with an annual turnover of more than €450 million. The restriction leaves out a vast majority of SMEs, particularly those at the center of the exploitation activities of marine resources in the Gulf of Guinea. The directive, therefore, only applies to a limited number of economic actors, particularly in its general impact.

The Gulf of Guinea is marked by a highly fragmented supply chain, which consists of a network of actors of different legal statuses. Major multinationals, especially European, subcontract most of their activities to a multitude of foreign and local subcontractors. This structural complexity enables European multinationals to scatter their responsibility, asserting that the abuses in the field are the business of independent third parties. By focusing mainly on large business enterprises, the EU-CSDDD directive does not reach these multi-layered subcontracting chains, thus limiting its efficacy in extending to the actual exploitation practices of marine resources in the Gulf of Guinea.

Another key concern is the exclusion of the financial sector from the directive's scope. Under pressure from France and Luxembourg, the EU chose not to subject financial institutions to the same due diligence requirements as industrial companies. Yet the financial sector has a central role to play in the financing of extractive and polluting industries. In the Gulf of Guinea, where bank investments underpin the oil, gas, and fishing in-

dustries, this is a serious loophole. While the directive does call on parent companies to oversee the conduct of their subsidiaries and subcontractors, its application is still complex. In international business law, the principle of autonomy of moral persons makes it difficult to directly challenge the responsibility of parent companies for the abuses committed by their business partners. Multinationals can therefore structure their supply chains in a manner that minimizes their responsibility, and it will be hard to implement the directive in a region such as the Gulf of Guinea, where supply chains are extremely fragmented.

### **Towards a far-reaching reform or a dilution of the EU-CSDDD? Obstacles to a more efficient regulation**

To reinforce the efficiency of the EU-CSDDD directive, several improvements can be envisaged. First, it would be appropriate to broaden its scope to more companies by reducing the thresholds for turnover and number of employees. This extension would allow for better coverage of SMEs, which are major actors in the exploitation of the natural resources of the Gulf of Guinea. The limitation to large companies excludes a great number of economic actors engaged in the exploitation of marine resources, including first-tier and second-tier subcontractors. This amendment would allow for wider application of the due diligence requirement, in particular by avoiding that multinationals circumvent their obligations by outsourcing risks to smaller actors.

In addition, the inclusion of the financial sector in the due diligence scheme is essential. Banks and investment funds are important financiers of companies with high environmental and social impact operations, including in the Gulf of Guinea. By not including such players, the directive leaves intact a financing lever of potentially detrimental practices. The better option is to impose transparency and monitoring requirements on banks and investors for the projects they finance, in order to avoid their support for companies engaged in sea pollution, overfishing of fish stocks, or abuse of human rights.

Reinforce cooperation, which would mean establishing firm partnerships between the European Union

and the governments of the Gulf of Guinea states to harmonize legal frameworks and ensure the effective application of the directive. This implies technical and financial assistance to the local governments to reinforce their monitoring and enforcement capacity for environmental and social norms. Moreover, enhancing traceability implies setting up more rigorous control mechanisms to detect and prevent abuses in the supply chains. It is necessary to oblige companies to report on detailed transparency, including independent audits, to verify compliance with due diligence requirements. Last but not least, closer cooperation with African regional organizations will enable the adaptation of European demands to the local economic and legal context, ensuring more effective and equitable application.

Yet, there is a wider debate ongoing in the European institutions, fueled by the **Omnibus initiative**, that challenges the directive's approach in its entirety. Some Member States and economic interest groups are demanding a full revision of the text. They find that the directive, as it is, is too restrictive for European companies and may negatively affect their global competitiveness. This position threatens the very existence of the directive, as it may lead to a significant dilution of the due diligence requirements and, consequently, a backward step in the expected protection of the Gulf of Guinea's people and ecosystems.

To this end, it is essential that reforms to the directive are not undertaken at the cost of its fundamental goals. Instead of stripping it of substance in the name of a thorough overhaul, the European Union must work to fill its gaps while making it more applicable to field realities. In this sense, the pursuit of cooperation between the EU and the Gulf of Guinea States appears to be an indispensable improvement avenue. Technical and financial assistance to the States concerned can make the implementation of the directive more flexible to local realities and provide for more efficient monitoring of its application. In the same way, harmonization between European and African legal frameworks governing the regulation of natural resource governance can reinforce the effectiveness of control mechanisms and avoid regulatory distortions.

The future of the EU-CSDDD directive will thus be tied to that of the ability of European decision-makers to balance the need to safeguard human rights and ecosystems and economic constraints. The directive

needs reform, but this must be aimed at making it more effective and not weakening it under pressure from certain lobby groups. At a time when environmental and social challenges are becoming increasingly alarming, it is crucial that Europe holds a high level of expectation and ensures full accountability of European businesses, particularly in extremely vulnerable areas of the Gulf of Guinea.

## Conclusion

The EU-CSDDD requirement is a welcome development in the regulation of the responsibility of multinational corporations, particularly in regions like the Gulf of Guinea. Its success will nevertheless hinge on the broadening of its field of application, the inclusion of the financial sector, and the consolidation of international cooperation mechanisms. Its fate is uncertain, however, with the controversy surrounding the Omnibus initiative, which demands a complete revision of the text. Such scrutiny threatens to dilute the due diligence requirements and reduce the impact of the directive in safeguarding marine resources and local populations. The European Union will therefore have to choose between consolidating such regulation to advance corporate responsibility or succumbing indeed to economic pressures, at the peril of compromising its sustainability objectives.



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