

**Comments of Transparency International Germany on
“Study on due diligence requirements through the supply chain”
released February 24, 2020 by Directorate General for Justice and Consumers
and invited to be sent to just-cg-op@ec.europa.eu
March 18, 2020**

The mandate for this Study derives from the Commission’s “Action Plan: Financing Sustainable Growth”¹, which refers to due diligence in the supply chain in general, as well as from a Report on Sustainable Finance of the European Parliament.² The latter Report calls for a proportionate mandatory due diligence framework³ based on the 2017 OECD Guidelines for Responsible Business Conduct (RBC) for Institutional Investors⁴, which in turn refer to areas covered by the OECD Guidelines for Multinational Enterprises. Those areas include Combating Bribery, Bribe Solicitation and Extortion (Chapter VII). The Study does not explain why, despite its general mandate, corruption prevention is excluded from its scope. In describing the context of the Study, its Terms of Reference refer to the Sustainable Development Goals and the need to respect people when it comes to the boundaries of economic value creation and business activities as well as to planetary boundaries that include environment and climate change (p. 36). We submit that corruption prevention would constitute an equally relevant boundary of economic value creation and business activity and ought to be included in the Study, all the more since it is included in Goal 16.

The Study does refer to corruption on p. 190 with regard to “Due Diligence and Corruption”. It states there:

As is evidenced from the country reports, corruption is commonly regulated at Member State level in terms of criminal law, and do not ordinarily provide remedies for victims. Moreover, the framework on which this study is based, including the evolution of the concept of due diligence from the UNGPs to the OECD Guidelines and the French Duty of Vigilance Law as set out in the European Parliament report, frame due diligence in terms of human rights and environmental harms, which are currently unregulated by

¹ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1404

² http://www.europarl.europa.eu/doceo/document/A-8-2018-0164_EN.html

³ Ibid. at para. 11

⁴ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

corruption regulation. As such, corruption due diligence falls outside of the focus of this study for the purposes of “human rights and environmental” due diligence.

This paragraph is not comprehensible, but it is clear that „corruption due diligence“ was not considered in the Study. What is not mentioned in the paragraph cited above is the Corporate Social Responsibility Directive of the EU.⁵ It sets up reporting requirements for companies with more than 500 employees on due diligence related to human rights and environmental, social and anti-corruption matters.

We find it necessary to include anti-corruption in a study on due diligence and ask that this be done as soon as possible in a separate study. Criminal laws proscribing bribery of public officials, or of business partners, do not reach beyond the first tier of the supply chain. This was confirmed by a legal opinion commissioned by Transparency International Germany.⁶ Due Diligence requirements in the deeper supply chain would add an important instrument for preventing corruption. The OECD Guidelines for Multinational Enterprises understand corporate responsibility comprehensively. The EU should not do less, at least not without further in-depth study. Meanwhile, any further deliberations of the Directorate General Justice and Consumers on due diligence requirements should include prevention of corruption.

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⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>

⁶ <https://www.transparency.de/publikationen/detail/article/einfuehrung-korruptionspraeventionsbezogener-pflichten-im-rahmen-eines-sorgfaltspflichtengesetzes-fuer/>