

AIM high-level preliminary comments

Proposal for EU Directive on Corporate Sustainability Due Diligence

23 May 2022

AIM – the European Brands Association – is supportive of an EU harmonised legislative framework for human rights and environmental due diligence. We welcome the fact that the European Commission finally released its proposal for a Directive on Corporate Sustainability Due Diligence in late February 2022 but have a number of concerns on key aspects of the proposal.

We particularly recommend the following improvements:

- adopt a maximum harmonisation approach to the due diligence obligations set out in the proposed Directive to avoid fragmentation of requirements between Member States' national regimes, as well as to ensure legal certainty and a level playing field for companies operating across the EU single market;
- reframe the scope of the due diligence obligations in the proposed Directive to allow companies to prioritise their efforts based on the severity of actual or potential adverse impacts;
- resolve the ambiguity of the civil liability provision in the proposed Directive, which is based on unclear definitions and sets a scope of liability that exposes companies to heightened legal risks for harms beyond their control, potentially leading them to focus more on managing the risk of litigation rather than carrying out robust due diligence;
- ensure legal certainty by providing further clarity on the interaction between directors' duty of care (Article 25) and responsibility for setting up and overseeing due diligence (Article 26), as well as giving flexibility to companies as to which level the directors' duties shall apply;
- define what constitutes a "severe human rights and environmental harm" in an interpretative guidance, following constructive dialogue amongst all relevant stakeholders, and taking into account already existing instruments or standards;
- align the content and format of the reporting with regards to due diligence in the proposed Directive with those required by the Corporate Sustainability Reporting Directive, and provide the possibility for companies to refer to global consolidated reporting at group level;
- set minimum requirements for natural and legal persons to be entitled to bring administrative or legal complaints based on a strict "direct interest in acting" standard with a view to preventing frivolous or abusive complaints and lawsuits;
- require the issuance of guidance for assessing the fitness of industry schemes and multi-stakeholder initiatives as part of a company's overall due diligence approach with a view to ensuring effective due diligence;
- require the issuance of detailed guidance regarding pro-active engagement with affected or potentially affected stakeholders at key moments in a company's due diligence process clarifying that this complements reactive engagement with affected or potentially affected stakeholders through complaints procedures.

AIM will provide more detailed comments on the proposed CSDD Directive in due course.

About AIM

AIM is the European Brands Association representing brand manufacturers in Europe on key issues which affect their ability to design, distribute and market their brands.

AIM comprises 2500 businesses ranging from SMEs to multinationals, directly or indirectly through its corporate and national association members. Our members are united in their purpose to build strong, evocative brands, placing the consumer at the heart of everything they do.

AIM's mission is to create for brands an environment of fair and vigorous competition, fostering innovation and guaranteeing maximum value to consumers now and for generations to come. Building sustainable and trusted brands drives investment, creativity and innovation to meet and exceed consumer expectations. AIM's corporate members alone invested €14 billion in Research & Development in Europe in 2014, placing them fifth in the EU ranking of R&D investment.

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