

Brussels, 13 April 2012

Position Paper Data Protection

Seldia, the European Direct Selling Association represents 22 European Union, national, Direct Selling Associations (DSAs) and, directly and indirectly through its corporate members, also represents over 1,000 direct selling businesses with annual sales in excess of 14.0 billion Euro and eleven million, independent, direct sellers working with those businesses.

Direct Selling companies operate data collection for commercial purposes; data is mainly collected via order forms by the direct sellers (controller) distributing the companies' products and processed by the direct selling company (joint -controller).

Recommendations

The direct selling industry welcomes the proposal of the European Commission to review the data protection directive. Our main recommendations would be the following:

1. Consent as general rule, but with exceptions

The direct selling industry supports the notion of consent as a safeguard for consumers regarding their personal data. However, consent should be reserved for special situations where sensitive data is processed and not be required for routine processing. Explicit and implicit consent should be mentioned and differentiate routine processing from sensitive data processing.

In addition, formal requirements related to consent shall remain appropriate and proportionate depending of the context and on the data processed and not impair on-going processing of data.

2. The right to access and the right to be forgotten shall remain proportionate

The right of access and the right to be forgotten should be ensured by data processing controllers. However, the proposal should take into account the amount of data processed by companies and adapt consequently the delay to communicate the information to the subject as well as to erase the data upon request. In direct selling, data gathering is often done through written order forms, which will have to be transmitted to direct selling companies. This process may take weeks.

3. Sensitive data shall be treated separately with additional safeguards

Requiring users to provide explicit prior consent for all processing operations fails to recognise technological and commercial realities. Sensitive data shall be protected with additional safeguards; among others express consent shall be required for processing it.

4. Any impact assessment shall be limited to "sensitive data"

The direct selling sector is not in favour of the provision related to the impact assessment as it would represent an additional administrative burden as well as extra costs for direct selling companies. Any impact assessment shall be limited to particular casualties where sensitive data related to personal preferences are processed. Any economic criteria shall be excluded from the casualties as it does not

represent a risk for the consumer engaged in a contract with a direct seller for the purchase of a good or service.

In many cases such personal data on consumer is collected for a commercial purpose to be able to ship a product or to collect a payment from a consumer deriving from his/her purchase. Such data collection shall not be considered a presenting a risk for consumers and thus not be subject of an impact assessment. In addition, such impact assessment would represent a cost for the companies that would potentially deter the conduct of any business in the internal market.

5. Any notification of a personal data breach shall be operated in a 'reasonable delay'

24 hours to notify a data breach by the controller is too restrictive and does not reflect the reality. The Commission shall reconsider the provision to allow data controllers to react in a within a reasonable delay to allow direct selling companies to properly assess the situation.

Data protection officers only for companies with 250 FTE

The European Commission proposal requires enterprises employing more than 250 persons to designate a data protection officer. This criterion shall be precise; it should be made clear that only enterprises with 250 employees **working full-time** shall designate a data protection officer. Independent direct sellers affiliated to a company should not be included in this number.

In addition, enterprises with a commercial entity in all the EU member states shall be entitled to have regional Data Protection Officers.

6. Increase the role of self-regulation (Code of conduct)

The direct selling industry is strongly engaged in self-regulation. We believe it is beneficial for both consumers and direct selling companies. The direct selling companies abide by national codes of conduct providing a safeguard against illegal practices. The Commission shall emphasise the role of codes of conduct to ensure proper data protection.

7. The national supervisory authority shall be competent to control the activity of a company in all member states

The direct selling industry supports the competence of national supervisory authorities. The provision establishing that the national supervisory authority is competent for the supervision of the processing activities of the controller in all 27 member states represents a valuable evolution for direct selling companies. This provision shall be upheld.
