

## Seldia Position Paper on the Digital Services Act

### Seldia Contribution to the Commission's Public Consultation

In view of the increasing digitalization, online sales of goods and services to consumers have become an essential part of the European economy. Although traditionally based on offline (face to face) transactions, the direct selling business - which Seldia represents - is also increasingly embracing the digital evolution.

Seldia welcomes the European Commission's intention to review the EU legislative framework on digital services and address the new challenges posed in the online environment. We believe that such a framework should be based on the following key objectives:

- Ensuring safety in the online environment
- Boosting consumer trust in online sales of goods and services
- Introducing a minimum of harmonized legal obligations for online intermediaries
- Setting up a level playing field between all businesses offering products, regardless whether they are established in the EU or outside of the EU
- Strengthening the internal market and enforcing the principle of the free movement of digital services

#### ➤ **Maintaining key principles of the e-Commerce Directive**

Known to be a cornerstone of the digital single market, the e-Commerce Directive has played a vital role in further encouraging companies to have an online business, thus contributing to the increase of cross-border sales of goods and services.

While reviewing the rules set out by the e-Commerce Directive, the European Commission should make sure that all the **internal market principles of the Directive** are not only maintained in the new legal framework but also strengthened and further enforced. These should include, among others: (a) the **country of origin principle**, whereby providers of online services are subject to the law of the Member State in which they are established and not the law of the Member States where the service is accessible (Article 3); (b) **prohibition of prior authorization** by Member States with regard to the taking up and pursuit of information society services (Article 4); (c) the requirement that all Member States allow in their legal systems contracts to be concluded by **electronic means** (Article 9); (d) EU rules on **commercial communications** (including online advertising and unsolicited commercial communications) (Articles 6-8). Should the Commission choose to introduce further rules on online advertising, these should be **harmonized and technology neutral**.

➤ **Protecting consumers from illegal products sold on online platforms**

Illegal products that are made available online not only compromise the trust of consumers in buying online but most importantly, can on certain occasions pose serious risks for their health and safety. According to a study<sup>1</sup> published in 2019 by the European Union's Intellectual Property Office (EUIPO), an analysis of RAPEX alerts from 2010 to 2017 showed that 97% of recorded dangerous counterfeit goods were assessed as posing a serious risk. Counterfeiting of products that are made available in online marketplaces has in fact been an issue for some of Seldia's members. In addition, non-compliant products that are also being sold in online marketplaces can equally harm consumers who may be exposed to potentially dangerous products<sup>2</sup>.

With these in mind, we believe that any new EU legislation should set out harmonized rules on minimum legal obligations for online platforms, with the aim of building a safe online environment and protecting consumers. These should include verifying the identity of the seller "know your merchant system" as well as informing customers as soon as they become aware that the latter have bought illegal goods.

We would also call for common EU rules and principles that will ensure a strong and transparent "notice and take-down" procedure.

➤ **Ensuring a level playing field in online sales**

According to the findings of the EUIOPA study already mentioned above, the largest source of dangerous counterfeit products reaching the EU and European consumers originate from outside the EU.<sup>3</sup>

At the same time and while companies marketing in the EU bear significant costs to ensure compliance with EU standards and consumer protection regulation, rogue traders bring to the online market non-compliant products that entail lower costs and therefore much cheaper prices, making their products more appealing to consumers. This has a significant impact on the competitiveness of those companies and the overall competitiveness of the EU.

It is our understanding that there are EU instruments (e.g. Consumer Protection Cooperation Regulation, Market Surveillance Regulation) available for Member State authorities to better tackle this issue, however, it appears that they are not adequately enforced. We would, therefore, encourage the European Commission to look into this issue and seek best possible ways to address this.

➤ **Self-employed individuals offering services on online platforms**

The rise of platform economy has opened up new job opportunities for people, offering to many of them easier access to the market, flexible working arrangements as well as supplementary income. At the same time, together with the benefits and opportunities, a number of challenges have emerged. In the light of the Covid-19 pandemic, which has already taken a significant toll on the European

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<sup>1</sup> Qualitative Study on Risks Posed by Counterfeits to Consumers, June 2019

<sup>2</sup> 19.12.2017 Staff Working document - Impact assessment on the proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products

<sup>3</sup> Page 39 of Qualitative Study on Risks Posed by Counterfeits to Consumers, June 2019: China was recorded as the largest source of dangerous counterfeit products within the EU with 73% originating from the country between 2010 and 2017 while the European Union accounts for 13% of products

economy, there is a need to assess opportunities for job creation, while striving for quality jobs, fair working conditions, and cross-border harmonisation.

While there is no official EU definition of platform work, we are aware of Eurofound's important work in determining common criteria and identifying different types of platform work, many of which share the characteristics of flexible work and supplementary income. Although according to the definition provided by the European agency, direct sellers are not platform workers, which we acknowledge, our business model equally encourages flexibility and provides direct sellers with the opportunity to gain supplementary income. In fact, flexibility is at the heart of direct selling, since most direct sellers have reportedly chosen a direct selling activity for the freedom and flexibility it gives them – from planning their work to building a career the way they want, at the pace they want. Moreover, 1 in 3 direct sellers appear to choose our sector because it offers the opportunity of long term supplementary income<sup>4</sup>.

Embracing the new reality set up by platform economy will certainly require that people are equipped with the right set of skills. With the increasing automation and the gradual disappearance of routine tasks, greater focus is expected to be placed on digital as well as soft skills, including communication skills, working within a team or leading a team<sup>5</sup>. In this regard, direct selling companies provide a number of training programmes to direct sellers (for example digital programmes, leadership education, effective communication), who can benefit from building new skills (reskilling), which they can then further use in any new job (transferrable skills).

Taking all the above into consideration, we believe that, although direct selling does not fall under the scope of the informal definition set up by Eurofound for platform workers, we could however provide important experience and feed into the discussions regarding better work conditions and reskilling of platform workers.

Seldia strongly supports the improvement of work conditions for platform workers. We also support the EU initiatives already adopted by the European Commission in this regard: both the Directive on Transparent and Predictable Working Conditions, which sets out minimum rights for employees and addresses protection of employees in more precarious jobs, and the Platform to Business Regulation introducing transparency requirements for online platforms towards business users are important instruments. It is, therefore, essential that they are properly implemented and enforced.

Given the fact that platform work is still a relatively new area with limited practical experience, there is new EU legislation in place that has only very recently started to apply (or on certain cases, has not even started to apply) as well as that platform work largely falls under the competence of Member States, we would highly recommend the adoption of a voluntary approach, based on the exchange of information and good practices among stakeholders and EU institutions.

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<sup>4</sup> 2018 Ipsos Socio-Economic Study on Direct Sellers in the European Union: <https://www.seldia.eu/images/pdf/Ipsos-presentation-at-the-conference.pdf>

<sup>5</sup> 2017 OECD Paper on Future of Work