

Seldia Contribution to the Public Consultation on the Digital Fairness Act

Executive summary

Seldia welcomes the opportunity to contribute to the public consultation on the Digital Fairness Act. We share the Commission's ambition to strengthen consumer protection and are particularly aligned with its priority to enhance the enforcement of consumer protection legislation.

This position paper complements Seldia's response to the public consultation questionnaire by offering a more detailed explanation of our views. However, before presenting our detailed suggestions, we would like to provide a summary of our key messages:

- **Enforcement of consumer protection rules:** effective enforcement of consumer protection rules is essential to guarantee consumers an adequate level of protection in their online interactions. To achieve this, the EU should strengthen coordination among Member States, enhance enforcement tools and resources, and make the revision of the Consumer Protection Cooperation Regulation (CPCR)¹ a pressing priority.
- **Dark patterns:** existing EU legislation already provides adequate provisions to address dark patterns. Rather than introducing new rules, the EU should develop coherent guidelines on the interplay between consumer protection rules and other legal frameworks to enhance legal certainty and ensure the effective protection of consumer rights.
- **Unfair personalisation practices:** restricting personalisation practices would not only hinder businesses, especially SMEs, but also limit consumer choice. We oppose restrictive measures such as an opt-in system.
- **Harmful practices by social media influencers:** influencer marketing is covered by a comprehensive legal framework, complemented by soft-law instruments, self-regulatory initiatives, training, and certifications. However, as not all Member States have followed the same approach, we recommend developing clear and simple guidelines on influencer marketing to achieve harmonisation.
- **Unfair marketing related to pricing:** given that the Unfair Commercial Practices Directive (UCPD)² already prohibits misleading practices, any further clarification could be offered through updated guidance to reflect evolving marketing practices, rather than through new rigid rules on pricing.

¹ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive).

- **Issues with digital contracts:** considering the current and recently revised legislation, it would be premature to introduce new measures at this stage.
- **Simplification measures:** simplifying information obligations by focusing on content that is truly relevant and useful for consumers, together with harmonised price reduction rules, would strengthen clarity and transparency across the EU.
- **Digitalisation information:** digital methods of providing and retrieving information should become the standard, enabling businesses to operate more efficiently and empowering consumers to make well-informed decisions.
- **Horizontal issues:** the existing legal framework should be maintained, avoiding disproportionate horizontal measures that could create legal uncertainty, increase costs, or limit the freedom of choice for businesses.

Introduction to the direct selling sector

Direct selling is part of the broader retail sector. However, direct selling operates in a unique way by offering personalised services and high-quality products usually without the additional investment costs associated with traditional retail. That is why we would like to provide an introduction to our sector and explain how it has evolved in recent years, as we believe that the specific characteristics of each sector should be taken into account by the European Commission.

Digitalisation has created numerous opportunities for businesses and consumers. Consumers now have access to a wide range of products and services, while businesses can reach a broader audience. The COVID-19 pandemic accelerated the digital transformation of direct selling companies. Direct sellers now conduct product demonstrations not only in people's homes but also through online events and social media interactions.

Influencer marketing has become a popular and effective promotional practice that is expected to grow at an average annual rate of 22.5% between 2024 and 2031³. Influencer marketing is particularly relevant for direct selling, as distributors actively promote and sell products online. A key distinction, however, is that our business model relies on independent distributors of products rather than traditional influencers. Most importantly, direct sellers are responsible for promotions both online and offline, and their responsibility must be identical in both channels.

In addition, the role of consumers has also evolved. Today, they play a more active role in their interactions with direct selling companies and direct sellers.

Enforcement of consumer protection rules

We believe that the key to increasing consumer protection lies not in introducing additional legislation, but in ensuring effective enforcement and harmonisation of the existing rules.

³ See the report by [KBV Research](https://www.kbvresearch.com/europe-influencer-marketing-platform-market/?utm), "Europe Influencer Marketing Platform Market", January 2025, available at <https://www.kbvresearch.com/europe-influencer-marketing-platform-market/?utm>.

Despite the importance of consumer protection, several challenges hinder effective enforcement within the EU. Different Member States have varying levels of commitment to consumer protection, leading to fragmented enforcement. Many regulatory bodies lack the resources to enforce consumer protection effectively. The complexity of consumer protection laws can make them difficult to enforce, resulting in confusion and inconsistent application. To address these challenges, Seldia proposes the following recommendations:

- Harmonise enforcement standards: establish clear and uniform enforcement standards for consumer protection across all Member States to create regulatory consistency and improve consumer confidence.
- Clarify legal convergence: develop guidance to ensure coherence between consumer protection law and the broader EU legal framework, including the Digital Services Act (DSA)⁴, the Artificial Intelligence Act (AI Act)⁵, and the General Data Protection Regulation (GDPR)⁶.
- Enhanced enforcement tools: provide regulatory bodies with stronger tools to investigate and penalise violations of consumer protection laws.
- Increase resources for regulatory bodies: allocate more resources to National Regulatory Bodies and the European Commission to ensure their capacity for effective enforcement.
- Cross border cooperation: encourage collaboration among Member States to share best practices and conduct joint enforcement actions where necessary.

In addition, the CPCR is a key instrument for ensuring the effective enforcement of EU consumer protection rules. The Commission should prioritise its revision to address existing enforcement challenges.

Dark patterns

We do not consider that additional legislation is necessary to tackle dark patterns, as existing legal instruments, including the UCPD, the Consumer Rights Directive (CRD)⁷, the DSA, the GDPR, and the AI Act, already provide adequate safeguards. However, given the broad and sometimes overlapping legal framework covering dark patterns, it would be coherent to develop new guidelines to clarify and consolidate the interplay between these instruments. Such guidelines would provide more legal certainty for both companies and National Authorities while effectively safeguarding consumer rights.

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

Unfair personalisation practices

Personalised advertising is already regulated, notably by the GDPR, the e-Privacy Directive⁸, and the DSA. In addition, other legal instruments like the UCPD address unfair practices related to personalised advertising. However, to ensure coherent application of this broad legal framework, while protecting consumers' rights effectively, we recommend that the Commission develop dedicated guidance.

We would also like to express our concerns regarding the potential introduction of an opt-in system to consent personalised advertising and pricing. Such a measure is difficult to implement and enforce, and it could reduce consumer satisfaction and significantly limit the ability to offer price reductions or tailored offers, with particularly negative consequences for SMEs.

Personalised advertising is a commonly used marketing strategy that enables retailers to offer customised products and services to consumers, making it a useful practice for both consumers and businesses. This is particularly relevant in the current commercial environment, where consumers are often faced with overwhelming choices. For this reason, the majority of consumers appreciate personalisation features that improve their shopping experience. A study by [IAB Europe](#)⁹ shows that 80% of consumers consider online advertisements at least occasionally useful and express a preference for fewer but more relevant ads, and over 50% of EU consumers prefer ads that are relevant to them over random ones. Consistent with these findings, a recent survey conducted by [Nextrade Group](#)¹⁰ revealed that over 70% European consumers find personalised services valuable, particularly for saving time and improving the customer experience.

In addition, SMEs rely heavily on personalised advertising and customised offers to compete with larger brands. Restricting these tools would further widen the gap between SMEs and large companies. An opt-in system would also reduce the reach of digital marketing campaigns, requiring SMEs to spend significantly more to achieve the same level of visibility. The relevance of personalised advertising for SMEs is recognised not only by SMEs themselves but also by consumers:

- A study by [CIPL](#)¹¹ shows that 80% of SMEs surveyed reported attracting more customers after adopting personalised advertising, and 73% considered that it would be difficult or even impossible to find the customers their business needs without personalised digital advertising.

⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

⁹ See the report by IAB Europe, April 2025, available at [IAB-Europe-Ad-Funding-Online-Services-Report-2025-FINAL.pdf](#).

¹⁰ See the results of the survey conducted by Nextrade Group, October 2025, available at https://www.nextradegroupllc.com/files/ugd/478c1a_fdc708c4a0744968fd5dec9291ddf6.pdf.

¹¹ See the study by CIPL (Centre for Information Policy Leadership), March 2025, available at https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_public_first_the_impact_of_digital_advertising_eu_competitiveness_study_mar25____.pdf.

- According to a study by [Ipsos](#)¹², 68% of EU consumers believe personalised ads help local small businesses connect with relevant customers and support small firms in attracting more business.

We would also like to highlight a specific characteristic of our sector that brings clear benefits to consumers. Direct selling companies set a recommended maximum price at which direct sellers may offer products or services. However, direct sellers have the flexibility to personalise pricing and offer discounts to their clients.

We therefore encourage the Commission to carefully assess the potential impact of any measures that could adversely affect businesses, particularly SMEs, and consumers, such as introducing strict requirements like an opt-in system for personalised advertising and pricing.

Harmful practices by social media influencers

Influencer marketing is covered by a comprehensive legal framework, including the UCPD, the Audiovisual Media Services Directive¹³, the DSA, and the e-Commerce Directive¹⁴, which contain provisions on transparency requirements, disclosure of commercial communications, and bans on hidden advertising. Apart from existing legislation:

- The European Commission [Influencer Legal Hub](#), [the Guidance on the interpretation and application of the UCPD](#), and the recent [Guidelines on measures to ensure a high level of privacy, safety and security for minors online](#) are great resources that provide clarity on the applicable rules.
- There are industry self-regulation initiatives, training, and certifications that complement the law (e.g. [the ICC Advertising and Marketing Communications Code](#)¹⁵, [EASA's Best Practice Recommendation on Influencer Marketing](#), [Seldia Guide on disclosure and recognisability of the commercial nature of direct selling social media content](#)¹⁶, and [adEthics](#)¹⁷), which should be considered valuable instruments to support compliance with consumer protection rules.

¹² See the results of the survey conducted by IPSO, June 2021, available at <https://www.ipsos.com/en-us/news-polls/ipsos-consumer-online-survey>.

¹³ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

¹⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

¹⁵ The latest revision of the ICC Code (2024) also applies to influencer marketing, see article 18.

¹⁶ We plan to integrate Seldia's Guidance on marketing via social media on our Code of Conduct.

¹⁷ [EASA](#) (The European Advertising Standards Alliance) and its network of self-regulatory organisations developed adEthics, to ensure influencers and creators understand the rules and principles of responsible advertising. The programme encompasses two complementary pillars: Training and Certification. By providing training and active oversight, the adEthics Programme supports the development of a more accountable, credible, and trustworthy influencer marketing landscape. Training equips creators with essential knowledge of responsible marketing communication, from disclosure rules to best practices. Certification ensures responsible communication through ongoing monitoring of the trained creators' content. The programme has been implemented in Austria, Belgium, France, Germany, Hungary, Italy, Romania, Spain, Sweden and The Netherlands. Over 5000 influencers have completed the training.

In addition, influencers are also regulated at national level. Although only France¹⁸ and Spain¹⁹ have specific legislation on influencers, all Member States have rules that apply to them, as all countries have implemented obligations deriving from EU law. Moreover, in almost all Member States, there are national soft-law instruments issued by self-regulatory bodies, as well as guidelines, recommendations, and codes developed by National Authorities²⁰.

As noted in the Digital Fairness Fitness Check report, not all Member States have followed the same approach creating fragmentation and legal uncertainty. Therefore, we recommend developing specific guidelines on influencer marketing to achieve harmonisation. For these guidelines:

- We urge the Commission not to put all influencers in the same box. Not all influencers have the same audience size or resources, and therefore it cannot be expected that they comply with the same obligations. We suggest that, for the dedicated guidelines on influencer marketing, the Commission follows the example of Spain²¹, Italy²² and the Netherlands²³, whose specific legislation, guidelines and code of conduct on influencers add/clarify requirements for influencers of “particular relevance”.
- We call on the Commission not to be too restrictive and rigid regarding how influencers display the promotion of products and services. Guidelines should be simple and provide examples to ensure the guidelines are understood and future-proof.

We are also concerned about one of the options in the second question of section 5 (Harmful practices by social media influencers), which opens the possibility of restricting influencers’ claims about dietary supplements to protect minors. This measure is completely disproportionate and unjustified. Food supplements provide science-based benefits, and it is a strictly regulated sector.

Food supplements are not only subject to rigorous safety and labelling requirements, but are also covered by legislation that protects consumers from unauthorised and prohibited claims on foods, including food supplements (e.g. the Nutrition and Health Claims made on foods Regulation²⁴, the

¹⁸ LOI n° 2023-451 du 9 juin 2023 visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux.

¹⁹ Real Decreto 444/2024, de 30 de abril, por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia de los servicios de intercambio de vídeos a través de plataforma, en desarrollo del artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual.

²⁰ To learn about national self-regulatory initiatives and guidelines, a great source is the study by the [European Audiovisual Observatory](#) on [national rules applicable to influencers](#).

²¹ The Spanish Law on influencers which establishes the requirements to be considered an influencer with significant online presence includes criteria on income (more than 300.000 euros), audience (1 million followers on one platform or 2 million total in several platforms), and number of content (more than 24 videos in the previous year).

²² The Italian Guidelines and Code of Conduct on influencers apply to influencers who have at least 500,000 subscribers on at least one of the social media or video sharing platforms used, or average of one million monthly views on at least one of the social media or video platforms used.

²³ In the Netherlands, only creators of content that have 100,000 or more followers are required to register with the Dutch Media Authority.

²⁴ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods.

Food Supplements Directive²⁵, and the UCPD). For instance, Calcium and vitamin D²⁶ can be used to reduce the risk of osteoporosis, folic acid²⁷ to reduce the risk of certain birth defects such as spina bifida, and DHA and EPA to reduce high cholesterol²⁸, abnormal blood pressure and triglycerides.

In addition, [IADSA](#) (International Alliance of Dietary/Food Supplements Associations) has developed [Guidelines on influencer marketing of food supplements](#), and the food supplements associations ([FSE](#), Food Supplements Europe, and [EHPM](#), European Federation of Associations of Health Product Manufacturers), and their local members, are actively engaged in developing specialised advertising guidelines for commercial communications on social media as well as training programmes for influencers with a particular focus in protecting minors.

Therefore, additional restrictions to protect minors from claims made by influencers on dietary supplements are not necessary. What is needed is proper enforcement against misleading or unauthorised claims made by influencers. Moreover, imposing stricter restrictions on the promotion of food supplements by influencers than on advertising in traditional audiovisual media services would be disproportionate and inconsistent with harmonised EU law. Influencers as part of the ecosystem of video-sharing platform services should therefore be regulated on the same basis as traditional audiovisual media services such as TV broadcasting to ensure equality and consistency across communication channels.

Another option that we would like the Commission to carefully consider is the one outlined in the second question of section 5 (Harmful practices by social media influencers), which states that brands and agencies should take measures to ensure that influencers comply with legal obligations. Any obligations placed on companies in relation to influencers should be proportional, realistic, and consistent with the offline environment. For example, imposing an obligation on agencies and brands to monitor compliance, as some stakeholders have suggested, would place an enormous and unworkable burden on companies. In addition, any measures should take into account all business models, including direct selling. Sellers are responsible for their promotional activities, not the brands, regardless of the channel used for direct selling.

Unfair marketing related to pricing

We do not consider that new rules on pricing are necessary, as the UCPD already addresses misleading and harmful commercial practices. Any further clarification on misleading practices

²⁵ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements.

²⁶ Calcium and Vitamin D are listed among the permitted health claim for reducing the loss of bone mineral in post-menopausal women which is a risk factor for osteoporosis. Low bone mineral density is a risk factor for osteoporotic bone fractures, Annex I of Commission Regulation EU No. 1228/2014 of 17 November 2014 authorising and refusing to authorise certain health claims made on foods and referring to the reduction of disease risk.

²⁷ Folic acid is listed among the permitted health claims in the Annex of Commission Regulation EU No 1135/2014 of 24 October 2014 on the authorisation of a health claim made on foods and referring to the reduction of disease risk.

²⁸ DHA and EPA are listed among the permitted health claims in the Annex of Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health.

should be achieved through updated guidance. Preserving flexibility within the existing framework is also essential, given that marketing strategies continue to evolve. A rigid or overly prescriptive approach could limit this adaptability.

Issues with digital contracts

Provisions ensuring easy withdrawals systems and preventing difficulties in unsubscribing already exist under the CRD, UCPD and the DSA. In addition, the Distance Marketing of Financial Services Directive²⁹ introduces specific measures addressing the concerns raised in the consultation. Since Member States are only required to transpose these provisions by December 2025 and apply them from June 2026, introducing new rules would be premature.

Simplification measures

We support the Commission's prioritisation of simplification in the new legislative term. But we believe more can be done to reduce unnecessary reporting obligations for companies and to simplify consumer policies.

Consumers today are often faced with information that is often excessively complex and overwhelming. We support efforts to reduce and simplify obligations under the CRD. A more effective approach would be to focus on information that is truly relevant and useful for consumers. For example, under the CRD, for off-premises contracts, traders are required to provide both pre-contractual and contractual information. The obligation to provide the same information twice is burdensome, especially considering that it is a repetition.

In addition, the public consultation mentions ending the current fragmentation of national rules on price reductions for perishable goods under the Price Indication Directive³⁰ by fully exempting all food products regardless of their characteristics, as a potential simplification measure. In this respect, Member States apply different rules on how price reductions are displayed, creating legal uncertainty and higher compliance costs for traders operating across borders. Ending the current fragmentation of national rules on price reductions for all products would provide a clear, consistent framework across the EU, making discounts transparent and comparable for consumers.

Digitalised information

As consumers increasingly use digital tools to purchase products, we believe that consumer information should also adapt to these habits, making it easier for both companies and consumers. Digital methods of providing and retrieving information should become the standard. All digital

²⁹ Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC.

³⁰ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

formats, such as QR codes, barcodes, and smart labels, should be recognised as valid alternatives to printed materials. In addition, the Digital Product Passport is an excellent opportunity to modernise and digitalise product information for consumers while promoting sustainable consumption choices.

Horizontal issues

Fairness by design

The proposal in the consultation to introduce a “fairness by design” obligation should be avoided, as it could not only affect the freedom of choice for businesses but also create legal uncertainty. In addition, we do not believe it is necessary to introduce such an obligation, as it would add little beyond the general fairness clause under article. 5.2. of the UCPD. However, if the Commission decides to move forward with this proposal, detailed and practical guidance will be essential to ensure:

- Practical and realistic standards that traders can apply.
- Clear explanations of how this new obligation would interact with the fairness principle under the GDPR to promote consistency and avoid overlap.

Reverse burden of proof

In section 9 (Horizontal issues), there is an option allowing stakeholders to indicate that the burden of proof should be reversed in cases where consumers, interested parties, or authorities have disproportionate difficulty in obtaining information to prove a trader’s wrongdoing. We support maintaining the existing legal framework and avoiding additional regulatory measures that could impose disproportionate costs and create legal uncertainty for companies.

Vulnerable and average consumers

We are also concerned that the definition of average consumer could be revised. It is well known that this concept under the UCPD serves as the benchmark for assessing the impact of a commercial practice. According to the current rules, an average consumer is “reasonably well-informed and reasonably observant and circumspect”.

National Courts and Authorities have been interpreting this definition by taking into account the generally presumed consumers' expectations in a given situation. This rather broad and flexible definition enables them to adjust the concept to the present market realities.

When it comes to vulnerable consumers, the characteristics that define vulnerability in article 5.3 of UCPD are indicative and non-exhaustive, as indicated by recital 19. The Commission, in its guidance on the UCPD, highlights that the concept of vulnerability under the UCPD is dynamic and situational, meaning, for instance, that a consumer may be vulnerable in one situation but not in others. That being said, updating the definition to include new criteria of vulnerability would not resolve the situational

nature of the issue described above.

Taking all the above into account and in view of the constantly changing market reality, we do not support a regulatory change in the definition of average and vulnerable consumers. A more flexible approach, whereby courts are able to interpret the definitions and adjust them to the given circumstances seems to be the best way forward.

Conclusion

At Seldia, we are committed to supporting the EU's consumer policy objectives. However, we firmly believe that the key to improving consumer protection lies in the robust enforcement of existing legislation, which should be achieved through the revision of the CPR.

It is also important to preserve the principle-based nature of the UCPD. Non-binding guidance should remain the preferred tool to promote legal certainty and consistent interpretation, while legislative intervention should be reserved for regulating gaps or unaddressed issues that are clearly necessary and proportionate and substantiated with strong empirical evidence and data.

About Seldia

Seldia advocates for a responsible and ethical consumer-driven direct selling industry in the EU, representing almost 200 European companies that are members of our National Direct Selling Association network. We have been the leading association representing the European Direct Selling sector towards EU institutions since 1968, encompassing 13 leading companies, 25 National Direct Selling Associations, 10 service providers, and 5.3 million independent entrepreneurs across Europe.