

PROPOSAL FOR DIRECTIVE ON IMPROVING WORKING CONDITIONS IN PLATFORM WORK

SELDIA'S POSITION ON EUROPEAN PARLIAMENT AMENDMENTS

Seldia was founded in 1968 to be the voice of the European Direct Selling sector. We represent 25 national associations, 15 companies, 13 service providers, as well as the voices of the independent entrepreneurs engaged in a direct selling activity. Direct selling is a method of retail and marketing of goods and services, directly to consumers, in their homes or at any other location, away from permanent retail premises. Our member companies provide products or services, which are sold by their independent distributors or independent commercial agents (direct sellers) directly to consumers.

Article 2 | Definitions of digital labour platforms and platform worker

- **Digital labour platforms**

MEPs have tabled a number of amendments, some of which aim at broadening the definition of digital labour platforms (AMs 481-511).

Some MEPs suggest that in order to qualify as a “digital labour platform” natural or legal persons should use “automated or semi-automated processes and algorithms for **intermediating**, supervising or organising in any way the work performed by individuals, irrespective of whether that work is performed online or in a certain location”.

Such a broad definition would inevitably extend the scope of the proposed rules to cover not only digital platforms but also various businesses and sectors, including the direct selling sector. Nowadays, direct selling companies use digital interfaces to facilitate the interaction between direct sellers and customers. For example, direct selling companies often provide IT tools to direct sellers for them to develop their own personalised webshop. Many direct selling companies develop online applications for direct sellers to support their business activities. Some of these apps help direct sellers to better manage orders, build relationships with customers and coordinate their own-business activity.

Direct selling companies do not use algorithms to organise, manage or supervise tasks performed by their direct seller. They do, however, provide their direct sellers with access to new or improved services and tools developed thanks to algorithms. For example, some direct selling companies have adjusted algorithms that calculate delivery costs in various European markets to help their sellers know in advance how much the delivery of a product to a consumer will cost.

Algorithmic management, a core characteristic of platform work, **does not apply to direct selling**. Contrary to platform work where algorithms determine the assignment of tasks, direct sellers are responsible for searching, acquiring business and retaining their customer base using their own marketing techniques.

For the reasons stated above, we disagree with amendments proposing to define “platform work” as “any work **enabled** through a digital labour platform”.

- **Platform worker**

Eurofound, the EU Agency for the improvement of living and working conditions, has carried out extensive research on the topic of platform work. According to Eurofound, one of the main characteristics of platform work is that work is provided **on demand**, namely at the request of the recipient of the service (e.g. customer). Equally, in its Resolution of 16 September 2021 adopted by a large majority, the European Parliament defines digital labour platforms as “companies which intermediate or offer, with a greater or lesser extent of control, **on-demand services**”. Likewise, the European Commission has included “*work provided at the request of the recipient of the service*” in the list of criteria defining “digital labour platforms” in its proposal.

Some amendments propose to move away from the well-established definitions of “platform work” and “digital labour platforms”, by broadening the scope of those definitions. They have done so by removing the requirement of “offering services on-demand”. This would effectively mean that many independent entrepreneurs providing services independently and through the intermediation of the platform would fall under the scope of the proposed rules.

Extending the scope of the proposed rules reframes the entire objective of the Commission proposed Directive: improving the working conditions of on-demand platform workers. No impact assessment has been done on the consequences of this extension.

RECOMMENDATION ON ARTICLE 2:

- Taking all the above into consideration, and in the **absence of an impact assessment, we recommend to oppose any amendments to the definition of digital labour platforms and platform workers** resulting in the extension of the scope of the entire directive.

Article 4 | Legal Presumption of Employment Status

We welcome the Commission’s approach to set out binding criteria aiming to help national authorities to assess whether there is an employment relationship between the platforms and their workers or not.

These criteria can help ensure legal certainty and harmonised working conditions for platform workers across the EU, regardless of where they are established. This is particularly important in light of the increasing number of national court rulings diverging in their assessment of the classification of platform workers.

We note the Rapporteur’s decision to extend the proposed list of criteria to guide Member States to assess an employment relationship (Amendment 762). The Rapporteur now suggests criteria having little to do with the nature of an employment relationship. For example, we do not see why “*providing the worker with tools, digital means, materials or machinery that are necessary for the performance of the work*” or “*providing the worker with training*” should be seen as establishing the presumption of employment status.

As explained above, direct selling companies support direct sellers' own businesses by offering access to business support tools such as online applications. In addition, companies make available free of charge training material (e.g. on marketing, compliance, social media) to their sellers **on a voluntary basis**, with the objective of helping direct sellers grow and succeed as entrepreneurs.

Direct selling companies with which direct sellers partner do not in any way supervise or control the execution of their business activity.

Considering the provision of training to self-employed workers as a presumption of employment status would also hinder the objectives of the European Skills Agenda and the Pact for Skills aiming to up-skill and re-skill Europeans for the digital and green transitions.

In this regard, we welcome amendments that have been tabled to specify that: *“Where a digital labour platform decides – on a purely voluntary basis or in agreement with the persons concerned – to pay for social protection, accident insurance or other forms of insurance, **training measures or similar benefits to self-employed persons** working through that platform, those benefits as such **should not be regarded as determining elements indicating the existence of an employment relationship**”*. We think this approach better reflects the current economic and market reality. It further acknowledges that certain companies choose to provide these additional benefits to self-employed workers as part of their overall strategy to collectively gain a competitive advantage.

Direct sellers are independent entrepreneurs (self-employed) who set their own schedule, place of work, time invested and marketing techniques. Direct selling companies provide direct sellers with goods, training and various tools to be successful. They do not impose on them obligations to make use of them. Direct sellers enjoy complete freedom and independence when building their own micro-business.

RECOMMENDATION ON ARTICLE 4:

- We call on the European Parliament to focus on the true nature of the working relationship between platforms and their on-demand workers.
- We recommend to support Amendments 769 and 770 which underline that, providing **benefits to self-employed people such as training measures should not serve** as an indication of an employment relationship.