

European Commission
Directorate-General Employment and Social Affairs
Rue de la Loi 200
B-1049 Brussels

March 29, 2007

Dear Sir/Madam,

Re: Green Paper “Modernising labour law to meet the challenges of the 21st century”

AVEDISCO¹ is the National Trade Association representing the direct selling industry in Italy.

The Association was founded in 1969 by leading Italian direct selling companies.

The direct selling sector, which generated in Italy last year a turnover of more than 2.3 billion € (excl. VAT), depends on flexible and self-employed direct selling salespeople. In 2006 approximately 310 thousands Italians were working in this branch of trade on a self-employed basis.

Direct selling is a form of retail trade. Direct selling companies do trade in a vast variety of goods and services. All these products are marketed directly to consumers, in a face-to-face manner, in particular in their homes or the homes of others. Direct selling typically occurs through explanation or demonstration of the products by salespersons referred to as direct sellers.

We are writing to you on behalf of a sector whose operation and economic success crucially depends on flexible and independent direct selling salespeople. In order to reconcile this flexibility with the flexicurity agenda of the European Commission, we feel compelled to provide you with insights into the peculiarities of our sector of trade and to comment on the labour law Green Paper that raises some questions of concern.

¹ The Direct Selling Association of Italy (<http://www.avedisco.it>)

While we welcome the broad debate on labour issues launched by the Green Paper for the implementation of the Lisbon agenda we wish above all to warn against a simplistic endorsement of legal concepts of labour law aiming to bring as many economic sectors under the tutelage of labour legislation. This, we fear, could potentially be disastrous for direct selling since self-employment is indispensable for the very existence of direct selling.

Salespeople active in direct selling practice commerce, mostly small-scale and often part-time, but independently and without being subject to the constraints of labour law. This is so because most salespeople in the direct selling industry are fundamentally entrepreneurs. Direct selling has always been that way and would not be feasible differently. Indeed, it is necessary to emphasise that independence and self-employment in direct selling is not the result of 'outsourcing' or 'restructuring' of our trading sector, but one of its main traits of character since its origins.

In our response to the Green Paper we have limited our observations to chapter 4.b) ("Uncertainties with regards to the law") and answers to questions 7 and 8. We have prepared a summary response containing the key messages we wish to communicate about ourselves and the status of direct sellers in our Country.

Thank you very much in advance for considering our observations in the formulation of your policies. Should you wish further information about our sector of trade, our office is available to provide this.

Yours faithfully,



Enrico Festa,
Chairman

Enclosures:

- AVEDISCO summary response to the Green Paper

DATE: 29 March 2007
TO: DG EMPL (empl-labour-law-green-paper@ec.europa.eu)
FROM: AVEDISCO
RE: **Modernising labour law to meet the challenges of the 21st century**

This is the summary response of the Italian direct selling industry united under the aegis of AVEDISCO² on Communication COM(2006) 708 final of 22 November 2006, hereinafter referred to as: 'the Green Paper.'

Summary Response

Direct selling trade

- Direct selling is Europe's largest provider of independent micro-enterprise³ opportunity. It is a marketing method for the distribution of goods and services to consumers and thus a form of retail trade. Being only a channel of distribution, direct selling is not, and never has been, defined as a concept of labour.
- Direct selling provides small-scale/micro-enterprise business opportunities for hundreds of thousands of Europeans. Low entry thresholds, a significant element of part-time activity and a high percentage of women entrepreneurs mark the business sector. As such, direct selling meets a demand for income opportunity, skill development, and self-directed economic activity on a temporary or permanent basis that cannot be addressed through regular employment.
- Direct selling attracts people seeking the opportunity for self-employment and entrepreneurship that are the main characteristics of the sector. They are not the result of recent-day restructuring, outsourcing or subcontracting, but inherent to the operation of a distribution channel from the days of traditional door-to-door sales. Self-employment is therefore indispensable for the very existence of direct selling.
- Direct selling companies trade in a vast variety of products with significant market shares in cosmetics and personal care, household products, wellness products, utilities, fashion articles, food and drink, household improvement as well as services.

² The Direct Selling Association of Italy (<http://www.avedisco.it>)

³ As defined in Articles 1 and 2(1) and (3) of Title I of the Annex to Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium sized enterprises (OJ L 124, 20.5.2003, p. 36).

Direct selling and direct sellers

- Direct sellers facilitate or assist in the sale of products of a company away from business premises, typically in the consumer's home, or the home of another consumer or at the consumer's place of work.
- Direct sellers normally are natural persons, although they may also be legal persons, who are members of the distribution system of a direct selling company.
- Direct sellers pursue their independent activity in order to develop entrepreneurial skills. They direct their businesses and are able to develop their working schedule according to their needs and wishes in a flexible way and their incomes are dependent on the efforts they invest in.
- Many direct sellers sell products of more than just one company and apply their skills to their advantage for a multitude of partners.
- Direct sellers can stay in the sales structure of one or several member companies as long as they wish, and they earn income according to the time and sales efforts they wish to dedicate to their activity.
- The situation of direct sellers is neither "precarious" nor "informal." Direct sellers do not operate in a grey area of labour law but in the clarity of trade law. Their rights and obligations are not only addressed through existing commercial and trade law, but also through the codes of conduct of direct selling associations, as well as through their contracts with direct selling companies.
- Direct sellers pursue their activity not in order to participate in the labour market but to practise commerce. They are thus "outsiders" of labour but "insiders" of trade

Direct selling and flexicurity

- Direct selling teaches business skills. It often helps to make inactive people active and allows people employed in other sectors to tap a second source of income. Direct selling so injects a spirit of entrepreneurship in the population.
- Direct selling is indiscriminate. It enables all people irrespective of age, gender, ethnicity or disability to earn extra income. The large numbers of female direct sellers make it particularly useful to teach women business skills.
- Direct selling entrepreneurship encourages life-long learning enabling people to acquire new skills. Its side benefit can also be to help people to enter or to re-enter the labour market and allowing for gradual changes between activity-inactivity. In this way, direct selling already makes an important contribution to promote flexicurity.
- Direct selling is flexible to adapt to the life-styles of the men and women active in the sector with phases of high and low activity. The liberties of direct selling allow balancing family life and professional activity. In particular it provides an entry-gate for women seeking a professional activity.

- Direct selling provides income earnings opportunities for the mature market, thus enabling those who had reached retirement age to supplement their retirement benefits and enjoy a life-style during their senior years they might not otherwise enjoy.

Economically dependent work and direct selling

- The notion of economically dependent work relies on a single principal/single source of income combination. But, as an issue for labour regulation, it also tacitly includes as a third criterion, which is that the self-employed person earns his/her living from this activity. This criterion would exclude the large number of direct sellers whose activity is not aimed at replacing or substituting employment. More than half of direct sellers engage in direct selling activity as a way to supplement existing income from other household sources.
- Linked to the issue mentioned in the previous paragraph one has to observe that the notion of economically dependent work lacks so far a suitable definition of ‘earning.’ Earnings from one source may look as a situation of dependence, but might not at all mean dependence. Thresholds of income might become an indicator to distinguish supplementary income from principal family income.
- Although it is the case that some direct sellers are able to entirely replace ordinary employment income with income from direct selling activity, for most direct sellers, the supplementary income earned from direct selling activity is not intended to replace ordinary employment income or provide a full replacement income on its own.

Regulation of direct sellers in Italy

- In Italy, direct sellers are classified as “dealers” or “business solicitors”. They perform an activity of commercial intermediation, rather than trade. In that direct sellers are similar to commercial agents (Directive 86/653/EEC).
- Given that direct sellers and commercial agents operate under the same genus of commercial intermediation, both figures have their own peculiarities in that, contrary to the direct seller, the commercial agent is enrolled in the Chamber of Commerce and his contractual relationship with the company is characterised by the “obligation to perform” in terms of results and behaviour and by the “stability” of the relationship.
- Some direct sellers are nevertheless qualified as commercial agents depending upon the activity they undertake on behalf of the direct selling company as well as the nature of the contractual relationship with the company.
- The Italian legislator did validate this situation with Law 17 August 2005 no. 173 and did retain the ability of direct sellers to operate also as independent business solicitors, with maximum flexibility to determine their own levels of commitment, hours of operation, sales methodology, and resource investment, etc.

- The above mentioned national law extensively regulates the relationship between direct sellers and companies and provides a well balanced panel of relative duties and rights.
- Moreover, since 1996 with Law 8 August 1995 no. 335, direct sellers were included in the National Social Security System that provides, in addition to a pension plan, coverage for illness and maternity.
- Linked to the flexibility mentioned in the previous paragraph and to the capacity of direct selling to adapt to life-style of people acting in the sector, one has to observe that in Italy, among over two hundred thousands direct sellers the large majority are women (77% of which 45% housewife), those who operate on a part-time basis are 74% and 55% of part-timers are employed in a traditional company thus supplementing their family income with a direct selling activity.
- All the above has overall proved to be the most favourable solution for the promotion of direct selling industry in Italy and for the benefit of its direct sellers.

In particular: Commercial Agents

- We do not subscribe to the statement in the Green Paper where it cites the Commercial Agents Directive 86/653/EEC as an example “how Internal Market rules can closely resemble aspects of labour law” (p. 12). In our view the Directive is an example for a workable solution in the contractual relationship between a commercial agent and a principal and is clearly intended to remove such relationship from any labour law context. We find it therefore in a way confusing that the Directive is mentioned in the Green Paper and would hope that a follow-up Commission Communication would clarify that it is not part of the labour law and flexicurity agenda of the Commission.

Employment in direct selling companies

- Notwithstanding that the independence and entrepreneurial classification of direct sellers is critical to the business model and success, the direct selling industry does also provide significant levels of employment in the European Union. For example, factory workers in production units manufacturing the products direct sellers are selling. They are distributed in logistic centres managed by the administrative staff of direct selling companies. The jobs of these employees (estimated at 2,000 across Italy) depend on the flexibility of the salespeople who, by generating revenues for themselves, and sustaining the people in direct selling companies. This direct and indirect contribution of the direct selling industry to employment of factory workers, logistics workers and administrative labour is further augmented by the demand for professional labour from the services sectors including advertising, marketing, legal, tax, accounting, product design and testing, management services, media and public relations, etc. Application of labour law concepts to entrepreneurial direct sellers and the relationship between such direct sellers and direct selling companies which would decimate the direct selling industry would also unintentionally and drastically *reduce* overall high-value employment in Italy which is currently being provided directly and indirectly by direct selling companies.

After all that has been stated above, we are responding as follows to Questions 7 and 8 of the Green Paper:

7. Is greater clarity needed in Member States' legal definitions of employment and self-employment to facilitate bona fide transitions from employment to self-employment and vice versa?

- Member States have their own historically developed definitions of employment/self-employment. Therefore, it is difficult to rationalize these definitions as each Member State has determined various forms of employment and self-employment based on different applicable standards and cultural specificities and values. Thus a distinction and clarification in the area of employment/self-employment as well as economically dependent work in the European Union should remain in the competence of every Member State.
In Italy the false self-employment, the so called “grey area of labour”, was tackled with sufficient clarity by Law 14 February 2003 no. 30 (nicknamed Biagi Law).

8. Is there a need for a ‘floor of rights’ dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

- On an EC level a definition of a floor of rights seem to be not only impossible but also not recommendable. Employees and self-employed/entrepreneurs create fundamentally different relationships one governed by labour and the other by commercial and/or trade law. Creating common rights would create confusion in the aforementioned relationships. In addition it would generate a negative impact on the favourable solution found in Italian legislation for the promotion of direct selling and for the benefit of direct sellers as well as on the overall high-value employment which is currently being provided directly and indirectly by direct selling companies.

The respondent

AVEDISCO – Associazione Vendite Dirette Servizio Consumatori

Viale Andrea Doria, 8

I-20124 Milano

Tel: +39-02-6702744

Fax: +39-02-67479024

E-mail: avedisco@avedisco.it

Website: www.avedisco.it