

Mirakl Position on General Product Safety Regulation (GPSR)

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The value of the marketplace model for customers and retailers across Europe

Today, online platforms play a central role in the economy and in the daily lives of so many European citizens. We are ordering food, booking doctor appointments, hotel rooms and taxi rides through platforms. While many of these online platforms are operated by global tech giants headquartered overseas, more recently a powerful new model has arisen - born in Europe - focused on online **enterprise marketplaces**. A diverse array of companies across industries are launching enterprise marketplaces with high-quality, often local, third-party sellers for the benefit of European customers.

Enterprise marketplaces grew by more than 80 percent year-over-year in the fourth quarter of 2020 ^[1]. The marketplace model generates value for an entire ecosystem: operators, partners, and third-party sellers, while empowering thousands of small European businesses to not only survive during the pandemic, but compete more effectively in its wake.

At Mirakl, **we provide the technology, expertise and ecosystem to 300+ retailers and B2B players in more than 40 countries** to launch, operate and scale a marketplace. We are also empowering 50,000 small and medium enterprises selling on Mirakl-powered marketplaces.

We are convinced that marketplaces provide strong value for European citizens: a larger choice of products, transparent prices and quick delivery. This model answers a true demand from customers: speed, agility and scale. **We strongly believe that there is room for a European marketplace model that is supported by core values: responsible sales, high customer satisfaction, and the empowerment of local ecosystems of marketplace operators and third-party sellers.**

More than **95%** of sellers on European Mirakl-powered Marketplaces are based in Europe

¹ [2021 Enterprise Marketplace Index by Mirakl Reveals Marketplaces Grew at More than Double the Rate of Overall eCommerce in 2020](#)

Our position

Mirakl welcomes the European Commission's proposals to update and review the General Product Safety Directive to make it fit for the challenges posed by the growth of online sales.

It is crucial to harmonize market surveillance on product safety and ensure an even implementation across Member States, which is not currently the case. Creating the conditions for a more trusted eCommerce framework will be beneficial for all, from consumers to eCommerce operators, and third-party sellers on marketplaces.

As the platform economy continues to thrive and marketplaces become the new growth engine of the retail sector, the text should present a balanced approach to ensure that the independent retailers choosing the marketplace 'hybrid' model do not face a regulatory burden that prevents them from competing against the big tech 'gate keepers' . In particular the text should:

- **Safeguard the general principle of a limited liability** for the marketplace operator;
- Introduce a **risk-based approach** for online marketplaces obligations;
- **Facilitate the automation of information checking by designing the Safety Gate as a unique and modern interface** to avoid manual checking and removal of identified risky products;
- **Introduce a unique identification number for product**, mandatory condition of an automated and efficient process;
- **Reinforce the general principle of presumption of conformity** with safety requirements; and
- Ensure an alignment with existing and upcoming legislation, such as the Digital Services Act or the Artificial Intelligence Act to avoid the administrative burden of multiple regulations and the risk of inconsistent definitions and obligations.

At Mirakl, **we are deeply concerned that a more conservative approach (as expressed in some of the DSA provisions) will radically transform the marketplace model by shifting the responsibility for information displayed and products sold by third-party sellers on the platforms to the marketplace operator.** Adoption of such a position would mean that sellers would have to be audited as any direct supplier is, their products physically verified, and each and every product description checked by the marketplace operator. This level of liability for products placed on marketplace operators is unfeasible, difficult to implement and **exceeds the obligations applied to brick-and-mortar stores.**

Moreover, if such a position should be proposed and adopted, this would create a terrible threat to European sovereignty. The only businesses able to comply with such a regulation are the tech giants that can easily absorb the cost of compliance with such regulations. On the other hand, European retailers choosing to compete with the same tools will suffer from an unjustified entry barrier.

As a result :

- European innovation in large retailers will be diminished;
- European citizens will have no other option than to shop on the marketplaces of the big tech corporations; and
- European SMEs will have no other option but to sell their products on the same online marketplaces of the tech giants.

Online marketplaces obligations & liability

Recital 26 of the GPSR considers that “online marketplaces play a crucial role in the supply chain - allowing economic operators to reach an indefinite number of consumers - and therefore also in the product safety system”.

Recital 27 states that “given the important role played by online marketplaces when intermediating the sale of products between traders and consumers, such actors should have more responsibilities in tackling the sale of dangerous products online.

Article 3 of the GPSR proposed the definition of ‘economic operator’ which means the manufacturer, the authorized representative, the importer, the distributor, the fulfillment service provider or any other natural or legal person who is subject to obligations in relation to the manufacture of products, making them available on the market in accordance with this Regulation.

- Mirakl welcomes the fact that the GPSR upholds the eCommerce Directive limited liability approach on online marketplaces which has also been adopted in the Digital Services Act. **A marketplace operator cannot and should not be responsible for the goods and products sold by distant (third-party) sellers on the platform.** The marketplace operator acts as a mere technical services provider and has no physical control on the product. **However, Mirakl shares the view that marketplace operators should act with due diligence obligations for all online marketplaces should be established in relation to the content hosted.**
- As a marketplace allows distant sellers and consumers to conclude distant contracts, they technically have no control on the product sold if it is not in their inventory and therefore cannot be held responsible for the sale of non-compliant products or services over which they have no control. **A marketplace is not the ‘economic operator’ and should not substitute itself to the first. They cannot also become a substitute for the economic operator even when there is no importer or manufacturer in the EU or in case of default of the economic operator.**

Article 20 of the GPSR proposes specific obligations for online marketplaces related to product safety. Among them, market surveillance authorities will be able to impose on marketplaces the removal of specific illegal content (meaning a dangerous product), the disablement of access to it or the display of a warning. These measures should be taken without undue delay and within two working days from the receipt of the injunction at the latest (**article 20 – paragraph 2**).

Moreover, **article 20 – paragraph 4** imposes on online marketplaces to give “*an appropriate answer without undue delay, and in any event within five working days [...] to notices related to product safety issues*” received in accordance with Article 14 of the Digital Services Act.

Finally, **article 20 – paragraph 6 (d & e)** introduces the requirement for economic operators to allow authorities to access their interfaces so that online tools can be deployed to detect compliance issues and to consent to data scraping by authorities.

- Article 20 – paragraph 4 requires marketplace operators to “give an appropriate answer” to notification received in accordance with article 14 of the Digital Services Act. Mirakl asks to precise what “an appropriate answer” refers to in order to avoid any legal uncertainty and recommends adopting a risk-based approach in order to adapt the measures expected to each trader and to the products’ level of risks.
- Mirakl also wants to alert policymakers that **article 20– paragraph 6** (points d and e) from the Commission may expose sensitive business information and cybersecurity breaches while lowering user experience standards. The conditions under which Authorities will access the platforms and use the information should be specified in the regulation.
- The Rapporteur proposal to add the obligation for marketplace operators to inform consumers of the measures taken with regard to dangerous products is welcomed; however, it should be specified that this is only a best effort obligation based on the contact information provided by consumers. The same should apply to the obligation to inform sellers of the consumers notification received by marketplace operators regarding their products (article 20 – paragraph 6 – amended point a bis and b bis)
- Mirakl believes that the Rapporteur proposal to add an article 20-2 stating that the order to remove an illegal content shall “contain a statement of reasons and specify one or more exact uniform resource locators and, where necessary, additional information enabling the identification of the illegal content concerned” is very much needed, so that online marketplaces will have sufficient details in market authorities’ reports. This will also allow the distant sellers (third-party) to receive an appropriate feedback and empower them to improve their assortment.

Market surveillance and Safety Gate

Article 20 proposes that the Union rapid alert system for dangerous products would be renamed Safety Gate. The same article proposes specific obligations for online marketplaces related to product safety. Among them, market surveillance authorities will be able to impose on marketplaces the removal of specific illegal content (meaning a dangerous product), the disablement to the access to it or the display of a warning. These measures should be taken without undue delay and within two working days from the receipt of the injunction at the latest (**article 20– paragraph 2**)

- Mirakl flags to the public decision-makers that the implementation of the measures required by injunction within the two days’ delay granted by article 20– paragraph 2 **would only be possible with a fully automated Safety Gate acting as the unique source of information within the EU and accessible via an open and up to date API.**
- Moreover, the designation of the products covered by an injunction should be sufficiently precise in order to allow marketplace operators to easily identify them (the URL address may in some cases not be sufficient). The required content of these injunctions should be specified in the regulation and the marketplace operators should not be held liable in case the injunction does not specify the required content.
- In the article 20– paragraph 2, the Commission considered that each state member authority “may” transmit the order of its injunctions “by means of the Safety Gate portal”. This formulation also allows competent authorities to use their own system to transmit content removal orders. **The success of the GPSR will lie in a single portal with up to date technology and accessibility.**
- Product identification through a unique number is also a requirement to maximize the use of the Safety gate, to prevent the introduction of dangerous products (ex-ante) and recall products that have been identified as dangerous (ex-post). **The usage of an international standard such as the GTIN (Global Trade Identification Number) can ease the workflow.**

Risk-based approach / Information obligation

Article 20 paragraph 5 requires online marketplaces to allow sellers to provide and ensure the display of information to customers allowing them to identify and contact the manufacturer of the product or the economic operator, the product and any security warning.

This is specified in the paragraph (36) of the recitals, however, this should also be specified in **article 20 paragraph 5**. They need to display some new data on safety information, including product batch/serial number (**article 18-c**). Those are not always readily available or exist in a form that are not easily usable for marketplaces and retailers.

- While Mirakl supports any effort to make sure that unsafe products are not made available both online and offline, it wants to stress out the necessity to safeguard channel neutrality as retailers are increasingly becoming omnichannel. **Therefore, creating an artificial separation between online and offline retail could lead to higher costs, barriers for innovation and for SMEs which want to step into the platform economy.**
- **We believe that obligations on marketplaces and retailers should be based on a risk-based approach**, focusing on high-risk products. Hence, Mirakl supports the Rapporteur amendment on article 2–5 aiming at introducing a risk-based approach on higher risk products.
- The online marketplace **should not and cannot be liable for the completeness, correctness and the accuracy of the information itself, as the obligation to ensure the traceability of products remains with the trader.**
- Finally, considering the display of safety information, we generally agreed on the principle but we are also pointing to the fact that **batch/serial numbers are not always readily available** or exist in a form that is not easily usable for marketplaces and retailers.

Mirakl is empowering **50,000** small and medium enterprises to thrive on the platform economy

Definition of “safe product”

Article 3-2 of the Commission proposal defines a “safe product” as “any product which, under normal or reasonably foreseeable conditions of use or misuse, including the actual duration of use, does not present any risk or only the minimum risks compatible with the product's use [...]”

- Mirakl welcomes the fact that the EC proposal on GPSR expands existing definitions and introduces new ones. Yet, Mirakl wants to pinpoint that **economic operators will not be able to forecast all the risk implied by the “misuse” of their products and should be accountable only for normal or reasonably foreseeable use of their products.** Additionally, the “actual duration” is not fully controllable by economic operators and evaluation of risks should be based on the “recommended duration” of use..
- Mirakl suggests **removing the words “misuse” and “actual duration” from the definition of 'safe product'** which could lead to undue burden on stakeholders in particular the European SMEs that are selling on marketplaces. To date, on mirakl-powered marketplaces deployed in Europe, 95% of the third-party sellers are themselves Europeans.

Penalties and implementation timeline

Article 40 lays down the rules on penalties and defines the criteria upon which Member States can establish their amount. In particular, **article 40 paragraph 4** requires country penalty law to have a maximum fine that is at least 4% of the company's Member State (or if multiple Member States, then all such states') turnover.

- **Article 40-4** implies that State Members will have room to define the amount of penalties. Hence, Mirakl wants to warn over the **risk of fragmentation as Member States will be able to act on their own and in a disproportionate manner by imposing very heavy fines.**
- Mirakl calls policymakers to ensure that **finances are defined in a proportionate manner and that any mitigating actions taken by marketplaces before or after the event are taken into consideration.**

Article 47 sets out a 6-month timeline for entry into application of the Regulation

- Mirakl argues that some of the new requirements and obligations will lead to a lot of work, technical developments and investment from stakeholders (examples : time to update labeling, websites and IT systems). The GPSR will have a huge impact on economic operators and SMEs.
- Mirakl believes that a 6-month timeline for entry into force is unrealistic and urge policymakers to adopt a longer transition period, to allow stakeholders to prepare and ensure the necessary resources are implemented. Thus, Mirakl fully supports the Rapporteur's proposal to extend the implementation period of the GPSR to 12 months.

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