MIRAKL

POSITION PAPER: EU ARTIFICIAL INTELLIGENCE ACT

Mirakl's position on the AI Act: A risk-based approach is necessary to foster Europe's innovation ecosystem.

Mirakl supports the aim of the AI Act: to provide a regulatory framework for the development, testing and use of AI in order to guarantee safety and the respect of fundamental rights. **The European Commission's approach, based on the level of risk posed by AI systems, balances the protection of European citizens with innovation built around risks which have been evaluated, identified and mitigated.**

Members of the European Parliament have now had an opportunity to examine the Commission proposal.

Mirakl understands and supports the concerns which have been raised in the European Parliament about uses of AI which can present risks for health and safety or fundamental rights. This justifies prohibiting such uses or limiting the use of systems by categorising them as "high risk".

Mirakl is however concerned that some of the wider amendments tabled in the European Parliament risk jeopardising the development of a European AI ecosystem. We believe that the AI Act should focus on a limited number of highly problematic use cases which can harm European citizens, and not on uses which could bring significant added value, particularly for online advertising and recommender systems.

Some of the amendments also seek to introduce burdensome regulation for AI systems in general, whatever the risk they present. Our position on the amendments is listed in the Annex to this document.

AI in advertising adds value for European consumers

1. Recommender systems are not generally driven by personal data alone

Mirakl is opposed to amendment 3241 which aims to classify online advertising by AI as high risk. Advertising for alternative products on marketplaces driven by AI does not represent a risk which can be classified as

"high" and it should not therefore be regulated as suggested in the amendment. In fact, AI is already a source of solutions which allows retailers to make customer offers which are

more relevant, offer better value and better meet the needs of the market and retailers.

Mirakl recently acquired the start-up business Target2Sell, which specialises in personalising eCommerce sites through AI. Target2Sell is an example of the responsible use of recommender systems for online advertising.

Target2Sell's algorithms are driven above all by product data. They make recommendations which are relevant to consumers based on semantic data (descriptions of products),

visual data (colour and shape of products), performance data (best-selling and most-viewed products) or so-called tracking data (which products or groups of products are purchased together).

Many algorithms are based on other sources of information (product feature data or performance data).

Target2sell has a strict separation (a so-called "Chinese wall") between recommender systems for different retailers.

2. Online advertising is already extensively regulated

European and national regulation already include effective measures which limit the potential risks posed by online advertising.

The processing of personal data which is used for online advertising based on AI is already extensively regulated by the EU General Data Protection Regulation (GDPR), the ePrivacy Directive and rules set by national data protection authorities. These safeguards together allow regulators to limit significantly the potential negative effects of online advertising.

The DSA will also increased the transparency of online advertising powered by AI as a result of its transparency obligations and the requirement to provide information about the

principal parameters used to determine the recipient of a specific ad and information about the content of the ad. The DSA also prohibits targeting advertising to children and limits the use of so-called dark patterns.

European rules already prohibit discrimination based on specific grounds (such as racial and ethnic origin, religion, gender, age, disability and sexual orientation).

National laws and regulations can also contain specific rules about (online) advertising, such as prohibitions on advertising alcohol, tobacco or gambling.
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3. Recommender systems can add substantial value

Recommender systems can add substantial value for consumers, retailers and society. By combining algorithms based on personal data with algorithms based on product data,

retailers can suggest alternative products which better meet consumer and societal needs and expectations. There are several opportunities:

- **Recommending a longer-lasting, safer alternative product**. By using Target2Sell's AI-powered solutions, sellers can already today propose alternatives to the products their customers want to buy. They can suggest a product of equivalent quality with a lower carbon footprint or a better Nutri-score, for example.
- **Identifying potential risks to consumers.** When a consumer shares their preferences, including their allergies, a recommender system can compare these data with intrinsic product data from the product catalogue and prevent the seller from offering to that consumer products which would be harmful to their health, while suggesting alternatives which meet their dietary requirements or preferences.

- **Spotlighting local products or products made by minority groups.** By relying on product data, sellers could promote local products, allowing a more local redistribution of value. They could also consider increasing the visibility of products made by companies with better working conditions or promoting diversity. For example, under its diversity policy, retailer J Crew uses a Mirakl-powered marketplace to promote black-owned businesses.
- **Substituting unavailable products.** At a time when there is high pressure on supply chains, recommender systems and tools are an excellent way for retailers to propose alternative substitute products which are of equivalent quality or function to products which are out of stock.

71% of consumers say they want the most personalised experience possible when they shop online. At a time when online competition is increasingly fierce, **the ability to propose personalised products and advertising tailored to the individual is a key factor for the consumer experience and therefore for growth of e-commerce businesses** (including for European retailers who are in direct competition with e-commerce giants from the USA and Asia).

71 % of consumers expect brands and companies to offer them personalised communication and products.

4. Classifying online advertising as high risk weakens the very notion of high-risk AI

Placing advertising powered by AI in the high-risk category would make the category extremely broad and devoid of substance. High-risk AI should be a category defined by proportionate criteria, and not a means of governing all forms of use of AI.

Classifying online advertising as high-risk would be likely to weaken over time the very notion of high-risk AI. **Amendment 3241 covers so much AI that it would even penalise European companies which take a responsible approach to advertising** using AI and non-personal data.

Many European companies (from large groups to SMEs) rely on AI to propose goods or services which are tailored to and desired by their customers and users. Placing online advertising in the high-risk AI system category would place substantial administrative burdens on innovative companies.

A broad definition of high-risk AI would also require regulators to dedicate significant resources to enforcement of the regulation.

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About Mirakl

Founded in 2012, Mirakl is a French company and a world leader in SAAS platform and marketplace solutions. Through its model, Mirakl helps B2B and B2C companies launch their marketplaces quickly and securely. Platforms offer a real competitive advance in eCommerce and the largest international brands rely on Mirakl technology, expertise and the quality of its Mirakl Connect ecosystem. Mirakl works with its clients to help them increase scale and agility with the aim of strengthening their market position. World leaders like ABB, Astore by AccorHotels, Best Buy Canada, Carrefour, Catch Group, Changi Airport, Darty, The Kroger Co., Leroy Merlin, Maisons du Monde, Metro and Toyota Material Handling choose Mirakl to accelerate their development. For more information on Mirakl and Mirakl Connect, visit www.mirakl.com

Annex: Mirakl's position on amendments

		Amendments supported	Amendments not recommended
AI Definition	Legal certainty & accommodation to future technological developments.	AM 355, 358	AM 904
	Clarity of AI Description	AM 906, 908, 910	
		AM 940	
	Scoping of AIA	AM 365	
	Alignment with international definitions to enable EU champions to compete at arm's length with their non-EU competitors.		
	Excluding B2B from the scope AIA when not impacting directly natural persons.	AM 875	
AI Prohibition	Ex-ante AI prohibition should remain exceptional - principle of proportionality	AM 424	AM 415, 1304, 1342, 1345, 1155, 1315
High-Risk AI Systems (Annex III)	AI systems used for fraud prevention, investigation, and detection do not necessarily convey high risks	AM 439	
	Defining significant harm as material harm to a person's life, health, and safety, or fundamental rights.	AM 940, 1413, 1436	
	Imposing to weigh benefits/risks when updating Annex III	AM 1498	
	AI used for Recommender systems		**AM 3240**
	AI systems used for online advertising		**AM 3241**
	Referring to the precautionary principle in the AIA		AM 783, 811, 812, 813
	Introduction of a set of horizontal principles applicable to all AI systems regardless of their risks		AM 1143, 1145, 1151, 1153, 1154, 116, 1144, 1150
	Transparency and non-discrimination requirements for recommender systems		AM 1146, 1147, 1151, 2279
Interplay with other laws	Coordination with existing sector specific legislations	AM 355	AM 841
	Coordination with GPDR and e-privacy directive	AM 611	AM 515, 1733, 1738
	Recommender systems & DSA		AM 1315, 2279, 3240, 3241