

ANNEX II – A sectorally adaptable, risk-based duty of care standard (model)

Horizontal Responsibility Principles					
Duty of Care Standards – vertically adaptable (examples)					
	Economic Harms – Trademarks	Economic Harms – Copyright ('best efforts')	Consumer protection – Product safety	Public security/democracy – Terrorist content	Personality rights – Hate speech
Identification & Evaluation of Risk Drivers	Seller provenance; seller legal status; product categories/ product popularity; brand exposure; recommendation algorithms; product information governance; ads & payment integration	content popularity/commercial value ('red flags'); service type (e.g. live stream); recommendation algorithms; & payment integration	Product category exposure; product display, etc	Content types/services (live streaming, video, text); user anonymity/characteristics; content popularity/recommendation algorithms;	Content types/services (live streaming, video, text); user anonymity/characteristics; content popularity/recommendation algorithms;
Risk Control (high risks)	Prospective Risk-based seller onboarding/ education; Sanction processes Risk-based monitoring; NTD	Prospective Empowerment; copyright exceptions (rightsholders, users) Sanction processes Risk-based monitoring; NTD	Prospective differentiated onboarding/ verification User / MSA empowerment Monitoring	Prospective Anonymity management empowerment and education Retrospective Risk-based monitoring (e.g. sanctioned entities) Hash database filtering	Prospective Anonymity management empowerment tools (flagging) processes, NTD Retrospective Risk-based monitoring Sanction processes, NTD
Transparency and Reporting Obligations	Clear Standard T & Cs Regular standardised reporting on Takedowns (automated/ NTD) Counterclaims, Seller Suspensions, etc	Clear Standard T & Cs Regular standardised reporting on Takedowns (automated/ NTD) Counterclaims & Copyright Exceptions Management	Clear Standard T & Cs Regular standardised reporting on recalls actioned, safety escalations, product removals Risk management audits	Clear Standard T & Cs Regular standardised reporting on Takedowns (automated/ NTD) Counterclaims/ reinstatements; Regular algorithm audits Risk management audits	Clear Standard T & Cs Regular standardised reporting on Takedowns (automated/ NTD) Counterclaims/ reinstatements; Regular algorithm audits Risk management audits
Horizontal Act – "New ECD" (e.g. Digital Services Act, or other) - lays down Principles of Duty of Care Standards as means of attaining a safe harbour immunity for hosting providers (online platforms/search engines) - references sectoral legislation that contains specific harms focussed duty of care standards - sectoral acts to include essential requirements tied to specific harms & provide reference to sectoral (technical) duty of care standards that provides proof/assumption of compliance					
	IPRED (2004/48) Reference Duty of Care (Technical Standard) relating to economic harms caused through trademark infringements	DSMD (2019/790) ('best efforts') Infosec Directive (2001/29) IPRED (2004/48) Reference Duty of Care (Technical Standard) relating to economic harms caused through copyright infringements	MSR (2019/1020) Reference Duty of Care (Technical Standard) relating to consumer protection caused through unsafe & compliance products	Proposer regulation on terrorist content online and Regulation 2019/1148 Reference Duty of Care (Technical Standard) relating to public safety and democracy harms	National legislation Reference Duty of Care (Technical Standard) relating to harms to personality rights