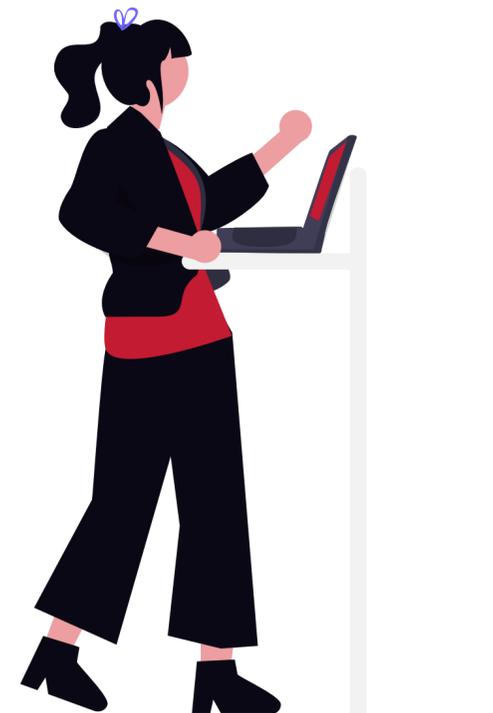


# RIGHTS VS RISKS

*THE DSA AS A HUMAN RIGHTS  
DUE DILIGENCE INSTRUMENT*

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**To what extent can the due diligence obligations enshrined in the DSA (incl. the systemic risks framework) effectively ensure human rights protection?**



# Roadmap

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- > *Similarities and differences between **UNGPs** and **DSA***
- > *Interpreting the **UNGPs** in content moderation:  
the case of the **OVERSIGHT BOARD***
- > *Framing **SYSTEMIC** risks*



# UNGPs v DSA

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The DSA incorporates many elements of the framework established by the UNGPs, creating a mandatory HRDD process for online platforms

**BUT**

Major difference between  
*adverse human rights impacts* and *systemic risks*



# UNGPs v DSA

Risk of *instrumentalisation* by platforms?

E.g. Meta's DSA and Human Rights Reports

DSA Systemic Risk report	Human Rights Report
<p><b>Hate Speech is associated with the Civic Discourse and Elections and Gender-based Violence Systemic Risk Areas in the DSA and NOT with the Fundamental Rights Risk Area</b></p>	<p><b>Hate speech as a risk for the right to freedom of expression, the right to equality and non-discrimination, the right to public participation, to vote, and to be elected, and the right to freedom of association and assembly</b></p>



# The practice of the Oversight Board

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- determination of whether a content moderation decision results in an adverse human rights impact is *highly contextual*.
- contextual assessment necessarily includes an assessment of *risks* that may contribute to that adverse human right impact.
- emphasis not on *systemic* risks *per se*, but rather on how the *systemic* nature of that risk may in fact contribute to and aggravate the adverse human right impact.



# The practice of the Oversight Board

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- risks are a factor for determining the extent to which the enjoyment of that right is reduced and become an integral part of the application of the “**three-part test**”
- risks may either be *broader risks* pertaining to the platform’s *operational context*, such as discrimination against specific minorities, or an electoral campaign or a national context where human rights are substantively restricted, but also to the platform’s *internal content moderation systems*
- establishing whether or not a risk reaches the level of *systemic* become highly crucial for the determination of the **necessity and proportionality of the mitigation measures** to be implemented, which need to ensure that fundamental rights are effectively protected.



# Framing *systemic risks*

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- Most VLOPs and VLOSEs, as mentioned, have already committed to respecting the UNGPs and conduct HRDD according to these standards.
- risk assessments required by the DSA, which entail an additional assessment of *systemic* risks, should therefore build on the architecture already put in place for general HRDD processes.
- The determination of whether some risks reach the level of *systemic* necessarily entails a preliminary evaluation of *all* adverse human rights impacts.



# Framing *systemic risks*

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- In the context of general HRDD, the determination of the *systemic* nature of the risk, stemming from and/or exacerbated by the *operational context* and/or the *internal content moderation systems*, is to be understood not as a factor for creating a hierarchy of risks, but rather as a fundamental element for the determination of appropriate mitigation measures.
- adverse human rights impacts should be treated as a cross-cutting issue across the entire list of systemic risks provided in the DSA.



# Framing *systemic risks*

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Importantly, understanding the DSA as a HRDD instrument also helps in emphasising that due diligence processes are not limited to risk assessments. Risk assessment, in fact, is not an end in itself. The identification of risks is only one part of a HRDD process, whose ultimate purpose is the prevention and mitigation of risks.



# Conclusion

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By treating human rights as a cross-cutting issue across all systemic risk areas, and by putting them at the centre of the delineation and implementation of mitigation measures, the DSA becomes an instrument that can effectively safeguards human rights and does not enable online platforms to evade their corporate responsibility to respect human rights.



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# Thank you!

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