

Model law on cross-border internet activities and virtual worlds

This model law boldly aims to regulate cross-border internet activities comprehensively, covering most their facets, including up to the level of complexity of “virtual worlds”. Our model law contains comprehensive lists of obligations for all actors from which legislators are invited to choose as appropriate. The model law also creates manifold interfaces with the national legal order into which it is to be embedded. Lastly, our model law establishes a system in which actors control each other so as to complement and even partly replace the work of enforcement authorities.

READ MORE.

More and more aspects of life are covered by the internet. This fact increases the number of relationships that arise between natural and legal persons. These relationships can arise via the internet in general, on platforms like LinkedIn, in internet games or in virtual worlds. The “metaverse” or similar “virtual worlds” aim to supplant the real world, creating even more complex legal relationships and encompassing ever more spheres of life, including professional contexts.

Where the natural or legal persons involved in internet relationships belong to the same jurisdiction/state, things are relatively easy: the domestic law applies. But what if the natural and legal persons live and operate in different jurisdictions and the platform owner in a third? Which law is applicable? How are the weaker persons in the respective relationships protected? How can the rights and obligations be enforced? These are just some of the many questions that arise with regard to international cyber relationships. Ever more legal questions and points to be regulated are emerging in the context of virtual worlds.

The goal of the model law is not to reinvent the wheel, but to describe a way to adapt the principles of international private law and the applicable national rules to the particularities of international internet-based relationships and to complement these provisions when needed. Therefore, we mainly suggest interface provisions that ensure the correct application and better functioning of international private law and the applicable national rules to the international internet-based relationships, including those in virtual worlds.

We also suspect that quite some national laws merit completion and clarification in view of the specificities of international internet relationships and virtual worlds. For example, the criteria determining whether a relationship is subject to social security obligations might not cover appropriately the situations in which the worker is located in another jurisdiction than the person commissioning the work, whilst the platform operates de facto from a third jurisdiction, but is legally based in a fourth.

Beyond the mere clarification, jurisdictions might also consider whether it is appropriate to formally withdraw or suspend the application of domestic law where the internet platform owner or virtual world owner has established an equivalent protection of the weaker party, e.g. by establishing an equivalent social security system. Such a step can be in the interest of all parties, including the jurisdiction/state, as we will see.

The Regulatory Institute is aware of the various piecemeal approaches of jurisdictions to regulate some aspects and types of internet-based international relationships. However, we consider that a more comprehensive and complete approach is needed to avoid numerous frictions and incompatibilities of national requirements. Moreover, a systematic presentation of aspects to be regulated could lead to a kind of informal harmonisation of national regulations.

However, the best possible way to regulate the internet will, in most cases, be to refer as much as possible to acts and provisions that apply anyway in the respective state and to modify these acts and provisions only to the extent necessary. Thus the act should primarily create an interface, a bridge. Such a bridge or interface act could pursue four goals:

- A. Clarifying the applicability of the rules already applicable to the internet context and rendering other rules applicable;
- B. Adapting and specifying all these rules to the specificities of international internet relationships and virtual worlds;
- C. Closing regulatory loopholes and addressing difficulties specific to international internet relationships and virtual worlds;
- D. Informing actors from abroad of these rules.

The last goal is important: economic actors and other actors from abroad who operate internationally have difficulties in identifying all the applicable acts and other rules in the various jurisdictions/states. Informing these actors is of utmost importance in terms of increasing the likelihood and the degree of compliance¹. Evidently, non-regulatory means of information might also be appropriate.

¹ In quite some jurisdictions acts may not contain provisions that merely inform. However, we suppose that most of the provisions below which refer to the rules already applicable to the internet context contain also an element falling under the cases A to C. Here, like for so many other parts and aspects of the following model law, we refer to the need for adaptation to the specific tradition and acts of the jurisdiction for which you work.

Chapter 1: Generalities	
1. Scope of application of Act	
<p>a. This Act applies to internet-based international relationships of natural or legal persons, where one natural or legal person has its residence or place of business on the territory of ... (your state, hereafter called "State X") [or possesses the nationality of ... (State X)].</p> <p>b. This Act also applies where legal or natural persons with a place of business or residence on the territory of ... (State X) [or having the nationality of ... (State X)] are targeted by actors from abroad via the internet, without yet a relationship being established.</p> <p>c. This Act [for its sections ...] also applies where actors with a place of business or residence on the territory of ... (State X) [or having the nationality of ... (State X)] target natural or legal persons abroad via the internet, without yet a relationship being established.]</p> <p>d. This Act also applies where none of the natural or legal persons has its residence or place of business on the territory of ... (State X) [or possesses the nationality of ... (State X)], but where real estate rights related to the territory of ... (State X) or rights formally registered by authorities of ... (State X) are touched upon.</p> <p>e. Where the place of residence or business of one of the persons involved is uncertain, whilst the other person has its place of residence or business on the territory of ... (State X) [or possesses the nationality of ... (State X)], this Act also applies.</p> <p>f. In derogation to Subsections a.</p>	<p>The scope of the act could be extended so as to also include domestic internet-based relationships, simply by deleting "international".</p> <p>The place of performance or of injury should not influence the applicability of the Act, we find, but that is one of the many choices to be made.</p> <p>This clause is important in order to effectively protect consumers, minors and other persons meriting protection.</p> <p>In terms of fairness and in view of obtaining reciprocal support from other states, it might be commendable to establish also requirements for the domestic actors who operate internationally. However, some parts of the act might not apply to these cases, so careful selection is needed.</p> <p>To be considered: shall national property rights be protected by the act, even though none of the persons involved has personal ties with the state you are legislating for?</p> <p>The model law and hence "this act" is not to be deemed applicable in cases where both persons involved fall under the domestic law. If this choice is kept, the clause in Subsection e. is useful to ensure that in case of uncertainty and thus likely existence of an international relationship, the act applies.</p> <p>Mirroring Subsection d. for the opposite</p>

<p>to e. this Act does not apply to real estate rights related to territories outside ... (State X) [or rights formally registered by authorities outside of ... (State X) and not valid in ... (State X) are touched upon.</p>	<p>case, it might be appropriate to exempt from the scope relationships that are linked to rights controlled by other states.</p>
<p>2. Definitions</p>	<p>The list of definitions should be complemented as it suits best. Traditions vary widely as to the number and preciseness of definitions. We therefore limited the number of definitions to the core.</p>
<p>a. International relationships: a relationship of natural or legal persons where at least one of person involved has a place of business or residence on the territory of ... (State X) or operates from that territory [including its economic zones on high sea, its ships and other naval vessels, oil platforms or other structures built on sea, and its planes, satellites or other flying objects under its jurisdiction], whilst at least one other natural or legal person involved has a place of business or residence abroad.</p> <p>b. Actor: a natural or legal person undertaking an activity that relates to spheres which are not under its ownership.</p> <p>c. Private actor: a natural person who is neither a non-profit professional actor nor an economic actor.</p> <p>d. Non-profit professional actor: an administration or not-for-profit legal person as defined in ... (e.g. law on legal persons, fiscal law) or a natural person, both when not pursuing own [or others'] financial interests otherwise than as a means to reach another [, idealistic] OR</p>	<p>This definition is not needed where the scope of the act is extended so as to include domestic internet-based relationships, see above 1.a.</p> <p>We suggest a typology of actors, and corresponding increasing ranges of obligations. 1st tier: private actors. 2nd tier: non-profit professional actors. 3rd tier: economic actors. 4th tier: platform owners. 5th tier: virtual world owners. This regulatory architecture can also be applied with modified or completely other definitions. It is very elegant in so far as it avoids duplications and it creates a logical framework.</p>

[non-financial] goal.

- e. Economic actor: natural or legal person mainly pursuing own [or others'] financial interests in the context of a professional activity. Consumers selling property they have previously used are not economic actors.
- f. Professional activity: repetitive activity which is part or an expression of a person's mission, regardless of whether the mission has been chosen voluntarily or whether it has been imposed by the legal order.
- g. Platform owner: natural or legal person owning or providing a digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether legal or natural persons, whether acting professionally or not) who interact through the service via the Internet, such as search engines, social media, creative content outlets, app stores, communications services, payment systems, networking and discussion forums, meeting forums, messaging platforms, matchmaking and transaction e-commerce platforms (subcategories: collaborative platforms, and marketplaces), other matchmaking platforms, file and media storage and sharing providers, streaming services, online advertising platforms, online games, gambling or betting platforms.
- h. Game: activity undertaken for fun, for competition or to enhance capabilities which is influenced by skill, knowledge or chance or a combination thereof.
- i. Virtual world owner: natural or legal person owning or offering for use a [web](#) or software-based

Useful clarification. Subject to the respective tradition, this sentence does not belong in "definitions".

This definition is broad so that pro bono associations are covered, regardless of whether the associations have employees / staff or not. If you find the definition to be too broad, in light of the corresponding obligations below, you might wish to exempt certain activities or simply change it.

This definition is based on the preparatory work of the [OECD](#).

In theory, platform owners do not need to be economic actors, whilst in reality most are. Still legislators might consider to exempt non-profit platform owners from certain obligations or to split the group of platform owners, and hence the definition, into two.

We refer to the ownership or the activity of providing a service so as to cover also situations where ownership cannot be determined easily, whilst ownership as such should also trigger certain obligations.

The term is of secondary importance, but is defined here as it is a tricky term used in the definition of "platform owner" and is also used later on.

Virtual worlds are a subset of platforms, and hence virtual world owners, as

platform that allows users to create or use avatars or representations of themselves, and through these avatars to meet, socialise and exchange or having professional or non-professional interactions with other users [similar to those that persons can have in the real world].

j. Virtual currencies:

- in-game-currencies,
- platform or virtual world specific currencies,
- non fungible token, or
- other virtual entities,

all of which express values in a way similar to currencies or which are used to compensate for a real or virtual service, activity, or right or the transfer of real or virtual valuables, including virtual property.

k. Virtual property:

- virtual real estate and other virtual physical spaces,
- virtual objects;
- virtual intellectual property, brands, designs or engineered technical solutions,
- real world intellectual property, brands, designs or engineered technical solutions where these rights also exist in virtual worlds, and
- other non-physical rights or assets, when located in virtual worlds,

all of which only when attributed to one or several natural or legal persons or avatars of these persons, be it directly, be it via legal persons only existing in the virtual world.

l. Assets: something valuable in the real or in a virtual world that

defined, are a subset of platform owners.

The term should be re-defined at the latest possible moment in view of ever new phenomena emerging.

This is the simplest situation: a physical space in a virtual world can be treated as a physical space in the real world.

Here we speak about rights that exist first in the virtual world and which are not destroyed by becoming, stronger real world rights, e.g. real world patents. Here we speak about rights which existed first in the real world or which emerged later in the real world than in the virtual world, but which are stronger than the virtual world rights.

This covers e.g. the right to use a certain facility, the right to attend a certain event or to accede a space.

<p>can be used for economic actions either directly or via exchange into a currency.</p> <p>m. Intermediaries: economic actors without whom a certain contractual or factual relationship would not exist, such as, subject to the case, website hosts, domain registrars, holders of internet nodes, advertisements services, search engines, web crawlers.</p> <p>n. Supervising authority: the authority in charge of supervising the application of this law, established by ... (this act or another act).</p> <p>o. Hate speech: all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.</p> <p>p. Terrorism: ... (select definition e.g. from OECD overview).</p>	<p>This group of persons needs to be defined and later to be referred to both in order to render certain obligations applicable and to reach effective enforcement towards other actors. In quite many situations, enforcement is only possible with the help of the intermediaries.</p>
<p>2. Empowerments to amend definition</p>	
<p>The Government is empowered to amend the definitions [of the various actors] in view of integrating technical progress and to reduce disproportionate burden.</p>	<p>Not in all jurisdictions, it would be lawful to empower the Government to amend such definitions. But in view of reaching a quick adaptation to new phenomena, such an empowerment would be useful.</p>
<p>3. Empowerment to attribute categories of actors to the defined types</p>	
<p>The Government is empowered to attribute by ... (decree, ordinance etc.) categories of actors to the five types of actors defined in Section 1 Subsections c, d, e, g or i.</p>	<p>Noting the frequency with which new types of actors emerge, and difficulty of attribution of such actors to the groups outlined in the act, it might be useful to empower the Government to create legal clarity not by changing the</p>

	definition, but by assigning new types of actors to one of the defined groups.
4. Expression of will and identification	
<p>a. In addition to handwritten signature, the following electronic means can be validly used to make legally binding declarations or expression of will[, unless special provisions set out in the laws of ... (State X) set up special formal requirements]:</p> <ul style="list-style-type: none"> - Electronic copy of a document with handwritten signature and date; - Click, where the click is preceded by the use of a password and of an electronic certificate [recognised by Supervising authority]; - Click, where the click is preceded by the use of a password and of a biometric identification [via an entrusted service provider]; - Click, where the click is preceded by the use of a password and an electronically readable ID-card. <p>b. Where the commercial value of the declaration does not go beyond ... , declarations are valid where one of the following means of identification have been used:</p> <ul style="list-style-type: none"> - Electronic certificate [recognised by supervising authority]; - Biometric identification [via an entrusted service provider]; - Use of an electronically readable ID-card; - Password [with confirmation code to email or mobile phone]. <p>c. The same requirement applies in medical matters and other matters related to the integrity of the body, in matters related to the well-being of minors, of elderly persons, of sick persons, of persons with disability and of other persons requiring particular protection.</p>	<p>Many states have adopted provisions for electronic signature for legally binding declarations. Where such provisions exist, they can simply be referred to. Where these provisions do not exist, they need to be established.</p> <p>One needs to be careful and thus more stringent for important declarations. The value might be a crucial criterion for importance.</p>

<p>5. Obligations and rights in general</p>	<p>This and the following sections need of course to be adapted to the international private law of your state. Some of the following provisions might just copy provisions of that international private law and thus “declarative”, some might be “constitutive”. It is commendable to mark the declarative provisions as declarative by referring to the respective constitutive provisions in other acts, so that, in case of update of the constitutive provisions, the updated version thereof applies.</p>
<p>a. Unless otherwise specified in the following or in other laws of State X [or in international agreements concluded by ... (State X) with direct effect on persons], natural and legal persons have, within the scope of this act, the obligations and the rights set out in the laws of ... (State X) where this Act applies.</p> <p>b. The laws of ... (State X) apply also between persons who are not visible themselves, but who operate avatars or other representations of themselves in virtual worlds; the avatars or other representations of persons are treated as extensions of the persons which form part of them. The Government / Supervising authority may exempt games fully or partly from the previous sentence by ... (decree, ordinance ...).</p> <p>c. Rights established in the real world are also valid in virtual worlds. Rights first established in virtual worlds are only valid in other virtual worlds or the real world once they have also been established in the real world;</p> <p>their validity starts with the validity of the right in the real world.</p>	<p>It is necessary to establish this basic rule to render the bulk of the national law applicable and thus reach the utmost legal protection.</p> <p>This provision clarifies that persons cannot hide behind avatars.</p> <p>This provision targets design rights, brands, patents and other intellectual property. It aims at keeping the primacy of the real world. One cannot be expected to enter all kinds of virtual worlds, e.g. to check whether a certain content or design (right) is claimed by another author. Important clarification as “who came first” decides often on “who has the right”. The choice made here is based</p>

	on the principle of primacy of the real world.
6. Deviating contractual provisions	
<p>a. Contractual provisions deviating from the laws applicable in accordance with Section 5 are only valid where they do not [go beyond the boundaries of what can be stipulated in contracts under the law of State X] OR [go against the <i>jus cogens</i> of State X].</p> <p>b. For all contracts between natural persons [acting outside a professional context (“consumers”)] with residence in [or nationality of] ... (State X) and economic actors, the following applies: Contractual provisions foreseeing the non-applicability of the law of ... (State X) or hindering ... (State X) to be the forum are not valid. OR Contractual provisions foreseeing the non-applicability of the law of ... (State X) or hindering ... (State X) to be the forum are only valid where they foresee instead the applicability of the private law of one of the following states: ... OR Contractual provisions foreseeing the non-applicability of the law of ... (State X) or hindering ... (State X) to be the forum are only valid where the following conditions are fulfilled: ... (adequate protection of consumers).</p> <p>c. The Government is empowered to amend this list, taking as sole criterion whether the law and the legal systems of states provide for minimum equivalent protection of the weaker party in the contractual relationship.</p>	<p>In particular foreign actors should be made aware of the limits to their contractual freedom. A precise reference is wishful.</p> <p>Quite some economic actors deliberately choose the law of states which does not or hardly protect consumers. Hence it seems necessary to establish limits to this practice.</p> <p>The strictest control is to simply render the domestic law applicable and thus not to give any choice to the economic actors.</p> <p>The second most controlled way is to list those states which have an equivalent level of consumer protection. Subject to the length of the list, it might be appropriate to shift it to an annex.</p> <p>The third way is to establish abstract criteria for the equivalence. This approach might lead to legal uncertainty and thus to disputes.</p> <p>This empowerment is only needed where the second option under b. has been chosen.</p>

<p>d. In all cases of uncertainty with regard to the applicable law and the forum, the weaker party in the contractual relationship may decide on the applicability of the law of ... (State X) and on whether ... (State X) shall be the forum.</p> <p>e. Even where, in accordance with the previous Subsections, the contractual law of ... (State X) is not applicable, the applicability of public law of ... (State X) remains untouched.</p> <p>f. Contracts or general business conditions [or similar sets of generally applicable provisions] deviating from the laws applicable in accordance with this Act that are applied to more than ... (e.g. 10.000) natural or legal persons with nationality of ... (State X) or having their residence in ... (State X) are only valid once approved by the Government / Supervising authority for containing a level of protection of consumers equivalent to the domestic level of protection. [An approval is deemed to be given where the Supervising authority has not reacted to their notification within 2 months.] The Government / Supervising authority shall assess the contracts or general business conditions [or similar sets of generally applicable provisions] for compatibility with this Act in its entirety.</p>	<p>Useful fall-back solution.</p> <p>Useful clarification, ensuring protection via national public law.</p> <p>Mass contracts might be worthwhile being subject to a screening. Much damage and many disputes can be avoided by such a preventive screening.</p> <p>Preferably, the criteria to be applied in the procedure are those set out in the act in its entirety. But in case of threat of overload, the range of criteria can be reduced.</p>
<p>7. Tort law</p>	<p>We deal here with civil law tort, not penal law. Tort law applies even where there is no contract between the parties involved.</p>
<p>a. The tort law of ... (State X) shall apply where this Act applies. Deviating contractual provisions or provisions otherwise reducing</p>	<p>Please check whether some provisions of your international private law need to be modified or whether this text needs to be adapted to match with provisions</p>

<p>or modifying tort law are not valid.</p> <p>b. Actions taken on the internet or via the internet are deemed to be taken on the territory of ... (State X) where this Act applies.</p> <p>c. Effects observed on the internet are deemed to have happened on the territory ... (State X) where this Act applies.</p> <p>d. Where the exact place is relevant for the application of tort law whilst there is uncertainty in that regard, it shall be [rebuttably] presumed that, for all actions taken in or via the internet, the action, its effect and the causality chain in between occurred on the territory of ... (State X).</p>	<p>of international private law. Please also check compatibility with international agreements in the field of tort law. The applicability of domestic tort law should not be hindered by the fact that the internet is not belonging to your state.</p> <p>Idem.</p> <p>This clause might be used to supplement Subsections b. and c. or as a replacement thereof.</p>
<p>8. Penal law</p>	
<p>a. Penal sanctions set out in this Act and in the following acts shall apply where this Act applies: ...</p> <p>b. Deviating contractual provisions or provisions aiming at modifying penal law or aiming at limiting choices of victims under penal law are not valid.</p>	<p>Please check whether provisions of your international penal law need to be modified or whether this text needs to be adapted to match with provisions of international private law. Please also check compatibility with international agreements in the field of penal law.</p> <p>Some penal law systems give the victims choices, e.g. on deciding whether an actor should be sued or not.</p>
<p>9. Fiscal law</p>	
<p>Acts on taxes[, customs and duties] only apply by virtue of their own provisions.</p>	<p>Contrary to other fields of public law, we deem it more appropriate not to modify the applicability of fiscal law. Fiscal law in most states already have specific provisions on applicability. These should suffice also in cases of internet activities.</p> <p>Moreover, quite some states are developing internet-specific fiscal rules to capture the cases where, by smart</p>

	<p>choice of formal places of business, taxation is circumvented. The taxation of internet activities has thus become a topic of specialisation that this generic model law should not encroach on.</p>
<p>10. Other public law</p>	
<p>a. Other public law of ... (State X) shall apply where this Act applies. OR The following acts shall apply where this Act applies: ...</p> <p>b. Deviating contractual provisions or provisions aiming at modifying [other public law] OR [the acts listed above] are not valid.</p>	<p>Please undertake a compatibility check similar to Sections 7 and 8.</p>
<p>11. Whistleblower and witness protection</p>	
<p>a. Actors shall protect their staff, regardless of whether they are employees or freelancers, against any discrimination or sanction where they have disclosed internally potentially unlawful or unethical practices.</p> <p>b. Actors shall also protect their staff in case of disclosure of potentially unlawful or unethical practices to the outside where: - sanctions against the whistleblower are very likely, - the internal disclosure was unsuccessful, or - the internal disclosure would most likely have been unsuccessful, namely where a general policy endorsing the problematic practices was adopted or where conscious decisions in favour of the problematic practices were taken.</p> <p>c. The disclosure of potentially unlawful or unethical practices to</p>	<p>This is an important side-measure, increasing the likelihood of compliance. For more details on whistleblowing, including suggestions for detailed provisions, see this article. We recommend placing the protection rules at the most general level and thus here in the first Chapter, because they should not only apply in the state enforcement case, but also in the context of private law-suits.</p> <p>We refer to “actors” which include private persons in view of covering also cases where e.g. a house employee notices unlawful practices, such as the use of child pornography.</p> <p>The principle of preferable internal clearance of problematic practices is to be balanced against the risk of sanctions against the whistleblowers. Therefore, an internal procedure is not appropriate in some cases.</p>

<p>the Supervising authority is not subject to the conditions set out in Subsection b. and may not be reprimanded in any form.</p>	
<p>12. Level, burden and means of proof</p>	
<p>a. The level of proof to be applied in application of this law is ... (“certainty”, “beyond a reasonable doubt”, “very high degree of likelihood”, “high degree of likelihood”, “X percent likelihood”.</p> <p>b. The burden of proof is with the party raising a claim. However, where defenders are economic actors they have the obligation to disclose internal mechanisms to the extent that statements on which claims are based can be verified.</p> <p>c. Acceptable means of proof are set out in ... (reference to an act). OR In application of this Act, the following means of proof are accepted: ...</p>	<p>States follow various traditions regarding the degree of certainty or the likelihood that a certain allegation or assumption can be used in law. This model law does not judge on the various traditions. However, we note a trend: the trend to shift from abstract standards of proof like “certainty” or “beyond a reasonable doubt” to more nuanced and quantified concepts like “high degree of likelihood”. See the Explanatory note 2 of our Model Law on Environmental Liability for more details.</p> <p>This rule creates a fair chance for the weaker party.</p> <p>We recommend (declaratory) references to an act on means of proof where such an act exists, but would prefer (constitutive) dedicated new provisions otherwise.</p>
<p>13. Presumption of targeting persons in ... (State X)</p>	
<p>It is presumed that professional actors target persons in ... (State X) where any of the following applies:</p> <p>a. They use one or several official languages of ... (State X) [unless they declare explicitly and in a well visible way that persons in ... (State X) are not targeted],</p> <p>b. They use or refer, as modes of payment, to the national currency of ... (State X) [or</p>	<p>This provision removes largely any doubts about whether a foreign actor is touching the legal sphere of your state.</p>

<p>crypto-currencies which are not linked to a foreign jurisdiction],</p> <p>c. They offer a service to persons staying in or with residence in ... (State X) or with nationality of ... (State X) or having an IP address related to ... (State X),</p> <p>d. They deliver items to persons staying in or with residence in ... (State X) or with nationality of ... (State X) or having an IP address related to ... (State X),</p> <p>e. [They do not impede access to persons with IP addresses of ... (State X)].</p>	
<p>14. Presumption of targeting persons from the territory of ... (State X)</p>	
<p>It is presumed that professional actors of ... (State X) target persons in a certain other state where any of the following applies:</p> <p>a. They use one or several official languages of that other state [unless they declare explicitly and in a well visible way that persons in that other state are not targeted],</p> <p>b. They use or refer, as modes of payment, to the national currency of that other state [or crypto-currencies which are not linked to a foreign jurisdiction],</p> <p>c. They offer a service to persons staying in or with residence in that other state or with nationality of that other state or having an IP address related to that other state,</p> <p>d. They deliver items to persons staying in or with residence in that other state or with nationality of that other state or having an IP address related to that other state,</p> <p>e. [They do not impede access to persons with IP addresses of that other state].</p>	<p>In case you wish to protect persons in other states from misbehaviour of domestic actors, you might wish to establish a similar, but inverted presumption as set out in Section 14. Such a protection might increase the readiness of other states to cooperate with your state in view of protecting your own citizens or inhabitants and legal persons.</p>

15. Electronic notification pinboard	
<p>a. Where, for purposes of administrative or judicial procedures, natural or legal persons with residence or place of business outside ... (State X) cannot be reached by ordinary means, their name and available contact details shall, together with a short description of the matter in question and of the contact details of the respective administration or court, be published on the electronic procedure notification pinboard at ... (internet address of the pin-board).</p> <p>b. The pinboard can also be solicited by natural or legal persons covered by this Act where they have exhausted other means of contacting natural or legal persons with residence or place of business outside ... (State X). The following information shall be displayed in that case: ...</p> <p>c. Foreign natural or legal persons are deemed to be notified of the matter in question as of one month after the publication.</p>	<p>Both for state bodies and for private natural or legal persons, it might be difficult to reach foreign persons in a legally valid way. This Section closes the gap. It creates a means of notifying foreign persons of a matter where, otherwise, a legally valid notification is not possible.</p> <p>If you give to non-state actors the possibility to use the pin-board, you might need to decide on the respective information to be disclosed. This is delicate, particularly information that would ordinarily be confidential.</p>
Chapter 2: Obligations of actors	<p>We suggest a typology of actors, with corresponding increases of obligations.</p> <p>1st tier: private actors. 2nd tier: non-profit professional actors. 3rd tier: economic actors. 4th tier: platform owners. 5th tier: virtual world owners.</p> <p>This regulatory architecture can also be applied with modified or completely other definitions. It is very elegant in so far as it avoids duplications and it creates a logical framework.</p>
16. Obligations of private persons	<p>These are the obligations to be fulfilled by private actors and, by reference, also by all the other actors. Alternatively, this Section could be labelled "Obligations of</p>

	<p>all actors”. The following sections would need to be relabelled as well as “Additional obligations of ... “.</p>
<p>Private persons shall, when using the internet refrain from:</p> <ul style="list-style-type: none"> a. Producing, disseminating, watching or otherwise consuming pornography with persons below the age of ... (e.g. 18) or persons looking like persons below that age; b. Producing, disseminating, watching or otherwise consuming violent pornography or pornography with persons opposing or even just pretending to oppose the sexual contact; c. Producing, disseminating, watching or otherwise consuming pornography with animals; d. Producing, disseminating, watching or otherwise consuming representation of extreme violence or cruelty towards humans or animals[, unless the representation of violence or cruelty is justified in a documentary or artistic context]; e. Producing, disseminating, watching or otherwise consuming other illegal content as defined in ... (please cite the respective acts; think e.g. of terrorism, extremism, incitements to crime); f. Producing, disseminating, watching or otherwise consuming instructions or advice on how to produce, repair or disseminate weapons or other objects intended to harm, illegal goods, including illegal drugs; g. Extorting, threatening or intimidating persons, unless such threat or intimidation is a legitimate defence or otherwise legitimate in view of the legal order; 	<p>Like the entire Model Law, the list is deemed to be an inspiration. It is clear that the list needs adaptation to the specific state.</p> <p>This hinders the excuse “I thought s/he was an adult.”</p> <p>Even where the opposition is just pretending, the pornography incites a crime.</p> <p>E.g. a documentary movie on violence might show some short images of violence to illustrate certain forms.</p> <p>This is a generic fallback clause that requires precise references.</p> <p>The spreading of knowledge on how to produce weapons increases the likelihood of weapons to be used.</p> <p>On the internet, threats or intimidation against political, ideological or religious opponents are widespread.</p>

- h. Attacking the physical integrity of other persons remotely, even with the persons' consent, whilst remote medical and wellbeing treatments are authorised;
- i. Harassing or bullying persons;
- j. Insulting persons [in a way that denies the persons' human dignity, denigrates or belittles the persons], regardless of whether the persons are present or absent, whilst the dissemination of likely facts or of information necessitating an investigation by media or authorities and the evaluation of such information is legitimate;
- k. Defaming, slandering or producing or disseminating wrong accusations or fake news on other persons, whilst the dissemination of likely facts or of information necessitating an investigation by media or authorities and the evaluation of such information is legitimate;
- l. Disseminating fake news on themselves;
- m. Producing or disseminating political or societal fake news, whilst the dissemination of likely facts or of information necessitating an investigation by media or authorities is legitimate;
- n. Instigating hatred towards a person, a group of persons, a religion or a belief;
- o. Diminishing the values and symbols of religious groups, whilst fact-based statements are authorised;
- p. Diminishing the state's values and symbols, whilst a critical analysis of these values and symbols is authorised;
- q. Spying on other persons or investigating non-public information, namely by technical supervision techniques;

Attacking can happen by extreme noise, extreme light or by remotely steered machines, as they are already used in medicine.

Please consider inserting a definition.

Democracies do not work properly where critical information cannot be circulated and where such information cannot be evaluated and thus become a topic of political or societal debate.

Please consider inserting a definition of "fake news". Read also our article [Countering "fake" news](#).

E.g. fake news on oneself can trigger futile investigations by the police.

- r. Entering without permission protected areas on the internet;
- s. Disseminating or acquiring data permitting the illegal access to protected areas on the internet;
- t. Modifying without permission data possessed by others;
- u. Modifying without permission software, including software steering physical devices, which is protected by rights of others;
- v. Infringing on intellectual property rights in the meaning of ... (please cite the respective acts on copyright patents, brands, trademarks etc.), including those intellectual property rights which refer to goods in virtual worlds or other virtual property;
- w. Disseminating erroneous information or falsified documents in view of obtaining economic advantages;
- x. Falsifying virtual property and virtual documents;
- y. Unlawfully claiming ownership of virtual property;
- z. Gaining by force or fraud unlawful possession of virtual currencies, intra-platform rights, virtual world rights, bank account money or exchange tradable rights;
- aa. Using or disseminating illegal virtual or real currencies or tokens;
- bb. Using virtual or real currencies or tokens without respecting the applicable rules set out in ... (please refer to act);
- cc. Pretend being a certain other person, whilst the use of evident fake identities and avatars is permitted in the following contexts: games ... ;
- dd. Violating personality rights as defined in ... (please refer to act or court rulings);

We suppose that virtual worlds (will) create their own forms of attestations (e.g. a certain rating or virtual currency savings) and contracts. Generally: we can expect all kinds of real world misbehaviour to be copied into virtual worlds. Hence, even more detailed provisions might need to be developed over time.

<p>ee. Storing or disseminating data without respecting data protection rules set out in ... (please refer to act);</p> <p>ff. Suppressing or concealing gains or other income from platform or virtual world activities in view of tax obligations;</p> <p>gg. Omitting to declare gains or other income from platform or virtual world activities in tax procedures;</p> <p>hh. Instigating or assisting to concrete action violating any of the above obligations;</p> <p>ii. Instigation in abstract terms to violations of any of the above obligations.</p>	<p>Suppression and concealing can, e.g., happen by intermittency of other persons or foreign accounts.</p> <p>This behaviour should already be unlawful under fiscal law in abstract terms. However, specific warning or an additional obligation set up here could increase the level of compliance.</p>
<p>17. Obligations of non-profit professional actors</p>	
<p>Non-profit professional actors shall fulfil the obligations of private persons. In addition they shall:</p> <p>a. Fulfil the obligations regarding the storage and processing of data set out in ... (please refer to specific provisions of the applicable data protection act);</p> <p>b. Inform users of their website(s) on the use of cookies and offer them the choice mandatorily to be provided in accordance with ... (please refer to specific provisions of the act on cookies, if any);</p> <p>c. Indicate on their website(s) an editor and a natural person responsible for compliance and contact data, including a physical address, for both;</p> <p>d. Refrain from using fake identities and proxies, unless this is necessary for the fulfilment of tasks in the public interest;</p> <p>e. Refrain from using mind-reading technologies, unless the mind-reading has medical purposes, including</p>	<p>The reference to obligations of private persons avoids repetition and avoids that unintended loopholes emerge.</p> <p>The wording is such that a legal person, too, could be an editor. If this is not wished, the wording needs to be changed.</p> <p>The physical address is important for sending registered letters and thus to trigger legal effects.</p>

<p>compensation of a handicap, or aims at medical research;</p> <p>f. When they do so, disclose that they finance content or ads which might influence politics, the economy or the society by adding the label “paid for by ...”, and this also when they use proxies;</p> <p>g. [Where they are an institution established under public law or recognised by public law,] Inform the Supervising authority on infringements of obligations set out in this Chapter committed by others;</p> <p>h. Refrain from cooperating with persons who commit infringements of obligations set out in this Chapter, other than the obligations ... (list the least important obligations).</p>	<p>At least persons belonging to the public sphere should be obliged to report on infringements they become aware of. For other persons, the reporting obligations might be reduced to certain Subsections of sections 16 to 20.</p> <p>Here again, the violation of minor obligations could be exempted so as to avoid that infringements of minor obligations hinder cooperation.</p> <p>See also the next comment under Section 18.</p>
<p>18. Obligations of economic actors</p>	
<p>Economic actors shall fulfil the obligations of non-profit professional actors and thus also those of private persons. In addition they shall:</p> <p>a. Refrain from supporting, directly or indirectly, any infringement committed by others;</p> <p>b. Hinder infringements committed by others [and referred to in Sections ...] [where this is possible with a proportionate effort];</p> <p>c. Where they have a place of business in ... (State X), inform their employees and freelancers [residing outside ... (State X)] on basic labour and social rights of ... (State X) and refer them to the respective information websites established by the national labour and social administration;</p> <p>d. Where they have a place of business in ... (State X), register and insure their employees [and</p>	<p>Subsections f. and g. of Section 17 and Subsections a. and b. of this Section are the first applications of the principle of mutual compliance control of actors by actors. This principle is to be applied because authorities alone can never effectively control the billions or trillions of interactions happening on the internet and potentially affecting their citizens or inhabitants or legal persons with place of business on their territory. Ensuring compliance requires thus a system of mutual compliance control, with increasing compliance control tasks from the 1st to the 5th tier of actors.</p> <p>Without being informed, foreign employees and freelancers cannot know that they have labour and social rights.</p> <p>This is of course a major policy decision. Cons:</p>

freelancers] with the national labour and social administration, unless ... (exemptions foreseen by bilateral or international agreements, acceptance of a social insurance scheme of the platform accepted in accordance with Section X etc.);

e. Where their employees [or freelancers] have their residence in ... (State X), register and insure their employees [and freelancers] with the national labour and social administration, unless ... (exemptions foreseen by bilateral or international agreements, acceptance of a social insurance scheme of the platform accepted in accordance with Section 26 etc.);

f. Display "You are concluding a legally binding contract" or "Ready to conclude a legally binding contract?" prior to presenting the mechanism which concludes the contract;

g. Offer the right to cancel remotely concluded contracts within 2 weeks and inform about this right;

h. Provide the possibility to cancel, within a X-months-deadline, contracts with undetermined duration or duration longer than 12 months;

i. Inform consumers as defined in ... (Section ... of State X' consumer protection act) on the rights provided in ... (Section ...

- Burden for employers and administrations alike.
- Economic actors might have competition disadvantages when compared with those located elsewhere.

Pros:

- Less unfair competition for the domestic workforce: those working from abroad are also subject to social insurance fees.
- Income for the national social administration.
- Social protection for foreigners.
- Useful to attract highly performing foreigners for the national labour market.

Subsection e. covers the opposite case: the workforce is on the domestic territory, but not the employer.

Establishing this obligation imposes a heavy burden on foreign actors and the domestic administration alike, but ensures a level playing field.

Quite some users of the internet are drawn into contracts without being aware thereof; e.g. a certain search for a hotel risks being converted into the conclusion of a contract without further notice.

This is common practice in quite some states and also known as a cooling off period.

In line with the "interface law concept", it is commendable to refer as much as possible and thus to integrate other relevant laws.

of State X' consumer protection act);

j. Respect maximum interest rates for credits set out in ... (act or ruling limiting maximum interest rates);

k. Request from their clients identification in accordance with Section 4.b, trace their commercial contacts and inform authorities thereon upon their request;

l. Verify that minors are empowered to act;

m. Refrain from concluding contracts with minors in the following cases: ... (reference to national legislation protecting minors);

n. [Where they have a place of business in ... (State X),] Register their professional activity in accordance with the following laws ... (laws on professional activities for notaries, attorneys/lawyers, fiscal advisors, auditors, entrusted bookkeepers, medical practitioners, pharmacists, ...) [unless their professional activity relates purely to situations, objects or persons outside ... (State X)];

o. [Where they have a place of business in ... (State X),] Respect the law ... on fair publicity;

p. [Where they have a place of business in ... (State X),] inform the responsible tax authority of their activity;

q. Where they provide, to clients with place of business or residence in ... (State X), services or products subject to the value added tax of ... (State X), register with the responsible tax authority;

Quite some states authorise minors from a certain age to conclude contracts of lesser importance.

A registration of all economic actors, including foreign ones, facilitates enforcement and thus increases the protection of citizens and inhabitants, but also of domestic economic actors.

Where economic activities are taxed even without place of business in a certain state, it might be of utmost importance to inform foreign actors on tax obligations.

- r. Request a tax and VAT number for activities subject to taxation by ... (State X);
- s. Refuse to cooperate with other economic actors where no required tax or VAT number is provided or where taxation obligations are not fulfilled;
- t. Where they provide, to clients with place of business or residence in ... (State X), services or other activities regulated by the following acts, fulfil the obligations set out therein: ... (list of acts);
- u. Where they provide, to clients with place of business or residence in ... (State X), products regulated by the following acts, fulfil the obligations set out therein: ... (list of acts);
- v. Ensure portability of personal data to other economic operators;
- w. Inform clients on their rights regarding the storage of data, including the right to export data and the right to withdraw given consent;
- x. Delete data on and provided by clients on their request, unless the storage of this data is required to ensure rights of the economic actors against their clients or to fulfil other obligations of the economic actors, namely towards authorities;
- y. Establish a system of fair **OR** ... (e.g. 50) % redistribution of wealth generated with the intellectual property of others;
- z. Refrain from selling (prescription) drugs, illegal drugs and arms, unless the special legal conditions therefore, as set out in ... (list the respective acts), are fulfilled;

Here again, we apply the principle of mutual control of actors.

Portability of obtained rankings ensures the freedom of clients to move on. Not easy to implement and to supervise.

Precise percentages are preferable. Not easy to implement and to supervise.

Here, there are plenty of choices to be made. Many combinations are possible.

<p>aa. Take up a liability insurance proportionate to the turn-over OR risks and covering the specific online related risks, and the risks linked to malpractice, non-fulfilment of contractual obligations, breach of confidentiality and data protection obligations[, where the following activities are executed: pharmacist, medical professions, lawyer, ...];</p> <p>bb. Where they have no place of business in ... (State X) [whilst having more than 1 million clients in total, 10.000 clients in ... (State X) or an annual turn-over of ... or more], nominate a representative for administrative and legal matters with place of business in ... (State X);</p> <p>cc. Where they have a place of business in ... (State X) [or where they had to nominate a representative for administrative and legal matters in accordance with the previous Subsection], accept on request of their clients the law of ... (State X) and ... (State X) as forum for lawsuits with their clients from ... (State X) and publicise this acceptance, and inform their clients on their clients' right to choose;</p> <p>dd. Where they choose, in contracts with their clients from ... (State X), for the law of ... (State X) and ... (State X) as forum for lawsuits, whilst not being obliged to do so in accordance with the previous Subsection, publicise the choice made by them;</p> <p>ee. Publicise which law applies and the forum in cases not covered by the previous two Subsections.</p>	<p>Both turn-over and risk based liability insurance volume can make sense.</p> <p>The obligation can be limited to certain particularly risky activities.</p> <p>Such a representative facilitates the communication of the authorities with the economic actor and also usually provides an implicit compliance control. The role of the representative can be strengthened by giving it the right to cancel the contract where the economic actor refuses to comply with the law and by attributing to him certain compliance verification tasks. The special burden for foreign actors is often justified as their compliance rate tends to be lower. Where domestic actors should also be checked and represented, one might oblige actors to nominate and to label a regulatory compliance expert.</p> <p>Important to facilitate lawsuits against foreign actors.</p> <p>dd. and ee. can be merged, if both provisions are kept.</p>
<p>19. Obligations of platform owners</p>	<p>Platform owners are not only responsible for their relations with clients, but also for the relationship</p>

	<p>between clients. Hence the number of obligations and the level of stringency of obligations has to increase substantially.</p>
<p>Platform owners shall fulfil the obligations of economic actors and thus also the obligations of non-profit professional actors and of private actors. In addition, they shall:</p> <ol style="list-style-type: none"> a. Ensure secure identity (ID) verification processes for all users or outsource ID verification to a reputable third party; b. Disclose to users and third parties that have a legitimate interest and to authorities the identity and contact data of other users; c. Provide insurance against loss of ID data and of other economically relevant data, including indirect losses of virtual or real property or rights; d. Verify the age of users where the age is relevant for any kind of legal aspect referred to in this Act or the acts referred to in this Act; e. Hinder minors to accede spaces or software where there is a considerable likelihood of grooming; f. Prevent to the extent possible and stop affirmed contacts between an adult and minors more than 2 years younger; g. Proactively search, including by software, for child abuse material to take this material down and to report to authorities; h. Verify that users fulfil their obligations to refrain from using fake identities and proxies, unless these fake identities and proxies are necessary for the fulfilment of tasks in the public interest; i. Establish a policy and use software to take down fake and 	<p>Necessary to ensure legal action amongst clients. Not easy to implement and to supervise.</p> <p>Idem.</p> <p>We talk here about any kind of protection of persons meriting special protection due to their age, not just about the legal ability to act.</p> <p>Here we start with a series of obligations to verify the compliance of clients / users. Such verification is not only useful for the authorities, but also for the other clients / users who risk to be victims of non-compliant behaviours or who risk to be subject to unfair competition.</p>

multiple identities and to counter trolls;

j. Verify that users make clear that they finance content or ads which might influence politics, the economy or the society by adding the label "paid for by ...", and this also when they use proxies

k. Verify that economic actors fulfil the obligations listed in ... (select the appropriate obligations of the previous section);

l. Tag and warn users where content might be problematic in view of one of the following characteristics:

- i. Representation of violence,
- ii. Sexual content,
- iii. Gaming or gambling,
- iv. Likely disinformation,
- v. Likely offensive statements,
- vi. Content likely to be generated by [automated] bots,
- vii. Content likely to have been generated by proxies

m. Ensure, as from six months before an election or a referendum / public vote that:

- i. Users obtain fair, clear and transparent information allowing the identification of the person that pays the platform for promoting certain content, and the use of their personal data in the context of promoting information content related to a public interest debate;
- ii. Effective measures combat the dissemination of false information relevant for the election,

Subject to the enforcement capacity of domestic authorities, more or less tasks should be imposed on platform owners.

Tagging and warning is a nice intermediate measure for cases where content is likely to be problematic, but where there is no certainty, either due to lacking evidence or because it is a borderline case in terms of gravity. Tagging and warning is also a suitable technique where regulators wish to act and reduce damage, but cannot or do not want to use bans.

This aims at countering manipulative information in the context of elections and referenda, and thus to protect democracy.

namely by allowing users to report such information;

iii. Users are informed on the origin, nature and modalities of content distribution;

iv. Particular transparency of their algorithms is provided, namely by aggregated statistics on the algorithms' functions. This applies in particular in case of algorithms-based promotion of content related to a debate of general interest by means of recommendation, ranking or referral of information;

n. Adopt notice-and-take-down procedures covering repeated fraud ("scamming") and all kinds of content-related infringements committed by users, as well as counter-notice mechanisms and instruments for contesting removal, which should ensure procedural fairness for all persons involved;

o. Provide transparency on content management, namely by specifying what type of content is prohibited and under which sanction;

p. Ensure a 'right to an explanation' and human oversight, where they adopt automated filtering and content recognition;

q. When becoming aware of potentially misleading information being displayed on the platform:
(i) verify whether the information is misleading and request its swift correction or removal by the author,
(ii) as last remedy, take it down itself, and this at the latest one week after becoming aware of

Here we start with the general content control to be provided by platform owners.

the potentially misleading information, and
(iii) inform persons affected by the misleading information where this is necessary and proportionate;

- r. Provide the right to verification by a human for any banning decision or decision reducing the activity on the platform;
- s. Apply particular care where take-down decisions might affect fundamental rights, namely freedom of speech and artistic freedom;
- t. Offer a fair platform-internal appeal procedure, controlled by humans, for all cases of take-down decisions;
- u. Inform users whose content was taken down about possible legal remedies at courts or with the Supervising authority;
- v. Report on their removal decisions and the follow-up thereto to the Supervising authority and to ... (administration or legal entity in charge of protecting fundamental rights);
- w. Report to the Supervising authority on their content management policies and mechanisms, give the Supervising authority ... weeks to react and follow the instructions of the authority;
- x. Provide algorithmic transparency, namely by disclosing the parameters determining rankings or other features influencing visibility or accessibility, and the relative importance of these parameters, whilst no trade secrets regarding the algorithms or information permitting the manipulation of the algorithms need to be disclosed;

Balancing decision to be made:
transparency versus trade secrets.

- y. Disclose in a visible way where rankings or other features impacting visibility or accessibility have been influenced by additional payments or financial or corporate ties;
- z. Establish in the following cases a review and reputational system:
 - (i) the respective type of activity is subject to a high percentage of non-conforming behaviour;
 - (ii) the respective type of activity has a high risk of damaging the physical or psychological integrity of persons;
 - (iii) ...
- aa. Respect the principles regarding review and reputational systems set out in Annex R "Review and Reputational Systems", regardless whether the system is mandatory or not;
- bb. Use algorithms that foster and promote diversity of content, where the platform covers politics, society, religion or spirituality[, whilst giving priority to the obligation to filter misleading and other non-compliant content];
- cc. Use algorithms that avoid confirmation of ghetto views;
- dd. Inform economic actors on their obligations set out in ... ;
- ee. Inform authorities [on request] on activities [of economic actors] which are subject to social security obligations;
- ff. Inform authorities [on request] on incomes and speculative wins of users **OR** economic actors;
- gg. Inform authorities [on request] on other activities or facts which are subject to taxation, namely ... (list most frequent activities or facts for better illustration);
- hh. Ensure that regulated professions can only be executed where the execution of these

A mandatory review and reputational system can help to reduce non-compliances.

Similar to the previous Subsection.

Either refer to previous Section or make a selection.

For this and the following Subsections, choose between information to be provided on request only or information to be provided proactively.

We thought about adding "towards clients in ... (State X)", but this limitation is in accordance with the scope of the

professions has been authorised [and where the following professional rules have been respected: ...];

- ii. Ensure that banking and other financial services may only be offered where these services have been authorised;
- jj. Protect assets, including virtual currencies against robbery, theft, extortion, illegal copying and fraud;
- kk. Permit co-ownership, meaning ownership by various persons of such assets;
- ll. Ensure that economic actors refund assets where they cannot be used anymore or where it would be fair to refund, e.g. in cases of legitimate move to another platform;
- mm. Create the basis for safe contractual acquisition and transfer of assets and, to that end, provide transparency regarding the ownership of assets;
- nn. Permit the transfer of such assets to beneficiaries or other legal successors, entrusted administrators and bailiffs of ... (State X);
- oo. Execute decisions of courts established in State X, including with regard to such assets;
- pp. Disclose on request to authorities and courts of ... (State X) these assets;
- qq. Either ban crediting or ensure that no user can request interest rates going beyond the maximum interest rates for credits set out in ... (act or ruling limiting maximum interest rates);
- rr. Verify that all economic actors respect the right of consumers to withdraw from a contract concluded online within ... weeks

model law or Act implicitly to apply to many other Subsections as well, wherefore it would be misleading to have it just here.

This and the following Subsections are evidently necessary for the virtual world. But as they are also relevant for some of the classic platforms, we better place them here.

established by ... (act protecting consumers);

ss. Verify that economic actors take back unsafe products, refund the payment and stop selling the products;

tt. Ensure that no contracts are concluded according to which platform-internal debts [between clients] can be pursued outside the platform;

uu. Ensure that platform-internal securities for debts are either banned or proportionate, whilst essential rights to use the platform may not be handed over as security;

vv. Ensure that communication between users [leading to the conclusion of a contract or regarding the execution of a contract] is recorded for at least ... years, but no longer than ... years;

ww. Unless there are imperative grounds like an imminent risk or legal obligations: give a ... weeks notice to all users concerned by unilateral change of terms of use or contractual conditions;

xx. Inform all users concerned by such changes by means of a copy of the revised text with highlighted changes, a user friendly explanation for the layperson of what has been changed and information about the users' rights set out in the following subsection;

yy. After such changes being notified to the users: recognise the resiliation of the contract by the users expressed within two months after the notice of the change, be the resiliation with immediate effect, be it with effect to a point in time chosen by the users;

Control of debt practices is evidently much more difficult than in real life. Therefore, users of platforms can more easily slip into debts and even unfair debts. Accordingly, their real life fortune needs to be protected against debts spilling-over into real life.

Traceability to be balanced against data protection.

zz. Refund in that case periodic fees proportionally, together with any assets;

aaa. Respect the obligations set out in ... (national law against money laundering and financing of terrorism);

bbb. Publish virtual and real currency transfer and exchange fees and rates margins, both for inward and outward exchanges and transfers;

ccc. Publish interest rates and fees for the storage of virtual and real currencies;

ddd. Expand the mass of virtual currencies only to the extent that the expansion does not cause a devaluation or inflation;

eee. Ensure convertibility into ... (the national currency of State X) of virtual currencies;

fff. Ensure intra-platform transferability of virtual currencies, and this even where the intra-platform transaction is compensated by an extra-platform transfer of ... (the national currency of State X) [or other virtual or real currencies];

ggg. Permit, for users from ... (State X), the use solely of currencies and virtual currencies authorised by ... (State X);

hhh. Inform users of the likely applicability of the law of ... (State X) where at least one of the two natural or legal persons involved has connections to ... (State X), and refer in particular to this Act, both via a dedicated window requesting an agreement click prior to disappearance;

iii. Establish a database of harassing, frauding ("scamming"), other criminal and otherwise badly operating actors and their real-world identities and

In case of absence refer to the respective [model laws referred to on this site](#) which might be better accessible via our [Model Laws Library](#).

Platform internal virtual currencies can be emitted endlessly so as to devalue any assets and cause inflation or devaluation of the virtual currencies, making the users poorer and the platform owners richer.

exchange respective data with peer platform owners;

jjj. Inform all users by a dedicated pop-up window on the existence of such a database and the exchange of respective data with peers;

kkk. Establish a proportionate intra-platform punishment system sanctioning behaviours that damage others;

lll. Ensure that minors are banned from activities which are not suitable for them [in accordance with ... (reference to national legislation protecting minors)];

mmm. Ensure that minors cannot sign contracts or give agreements where they are not specifically empowered to do so by law or by the natural person legally caring for them;

nnn. Warn against the risk of online, online gaming, gambling or betting addiction and refer, for clients from ... (State X), to the following specialised assistance offers: ... ;

ooo. Limit, in case of game and game-like platforms, the maximum daily hours per user [or IP-address] to ... hours;

ppp. Apply artificial intelligence tools to monitor addiction and post traumatic stress disorder and offer personalised aid in these regards, including automatised step-by-step reduction of maximum times in case of addiction and filtering of content prone to retraumatisation;

qqq. Offer the possibility for users to ban other users from communicating with them;

rrr. Request every month consent to violent, sexual or other content which might cause disorders;

This is not a duplication of Section 18, Subsection m. because this subsection ll. covers the relationship with other users as well.

This is not a duplication of Section 18, Subsection l. because this Subsection mmm. covers the relationship with other users as well.

- sss. Support victims of illicit practices where these victims prefer to initiate an ordinary judicial procedure;
- ttt. Effectively protect against and police illicit practices [listed at Subsection ...] by an intra-platform authority empowered to stop activities infringing this or other acts, and to sanction or ban persons;
- uuu. Establish and publicise a mechanism permitting users to alert the platform owner to trigger its actions in accordance with the previous point;
- vvv. Inform the authorities of ... (State X) even without request in case of the following illicit practices:
- ... (list various Subsections from this and previous Sections);
 - Preparation of criminal acts;
 - Establishment of slavery-like long-term service or labour contracts;
 - ...
- www. Establish a mechanism to settle disputes regarding the mutual reputational or quality rating of users and protect those persons rating other users in good faith. The mechanism shall be:
- (i) legitimate,
 - (ii) transparent,
 - (iii) fair in terms of obligations to be fulfilled by the parties,
 - (iv) accountable,
 - (v) accessible,
 - (vi) well known by users,
 - (vii) providing adequate assistance for those who may face particular barriers to access,
 - (viii) predictable in terms of procedures and outcomes,

(ix) equitable, and
(x) providing reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

xxx. Establish a mechanism to settle other disputes that fulfils the requirements of the previous Subsection;

yyy. Effectively protect private law claims by a [mandatory] internal arbitration procedure, including for most frequent cases like fraud, non-payment, non-delivery of goods, services or rights, delayed goods, services or rights, deficient goods, services or rights; whilst goods, services and rights may relate both to the real world and the platform or virtual world;

zzz. Effectively protect labour rights by a [mandatory] internal arbitration procedure and by hindering enslaving long-term service or labour contracts, contracts with unfairly low salaries and contracts with obliging to work more than 10 hours per day;

aaaa. Effectively protect social [security] rights by a [mandatory] internal arbitration procedure;

bbbb. On the request of the social security authority, refrain from displaying, to users located in ... (State X), offers of employers who systematically withhold social security contributions or who do not fulfil other obligations under the social security act.

cccc. Effectively protect against defamation, insults and other penal offences by a [mandatory] internal arbitration procedure;

dddd. Effectively eliminate content that promotes or executes

violence, self-harm, harming others, cyberbullying, racism, or discrimination based on religion, [political views within the range of views acceptable in the constitutional order of ... (State X),] sexual orientation, nationality or origin;

eeee. Ensure the enforcement of the results of the arbitrage procedures referred to in this Section;

ffff. Effectively sue other actors in ordinary judicial procedures where these other actors:

- ...;
- ...;

gggg. Apply the data protection law set out in ... and protect in particular medical data, data on the body of persons and data on their personal behaviour²;

hhhh. Refrain from sharing any medical data, data on the body of persons and on their behaviour with third parties unless otherwise specified by law, whilst the sharing of such data by the users themselves may be enabled;

iiii. Apply the provisions ... on artificial intelligence set out in ... (cite the act);

jjjj. Inform users on the possible applicability of fiscal law inter alia of ... (State X) by a dedicated pop-up window;

Most states have no entire act covering artificial intelligence, but, if anything at all, just some dedicated provisions. See our [model law on artificial intelligence](#) which indicates the aspects that merit being regulated. Where there is no separate act on artificial intelligence, parts of our artificial intelligence model

² Alternatively, some or all of the following rights can be referred to: • The right to be informed: an individual must be given certain information about the collection and use of their personal data. • The right of access: an individual can request to see the personal data held about them. • The right to rectification: an individual can request incorrect or incomplete information to be amended. • The right to erasure (also known as “the right to be forgotten”): an individual can request deletion of their personal data and the prevention of its processing in certain circumstances. • The right to restrict processing: an individual may be entitled to restrict the way their data is processed. • The right to data portability: an individual may obtain and reuse personal data they have provided to a controller for their own purposes across different services. • The right to object: an individual can object to the processing of their personal data in certain circumstances. • Rights in relation to automated decision making and profiling: including safeguards to prevent potentially damaging decisions being taken without human intervention. (Box 2 of the House of Lords report “[Regulating in a Digital World](#)”).

<p>kkkk. Apply the fiscal law of ... (State X) and cooperate with fiscal authorities of ... (State X) also with regard to the fulfilment of fiscal obligations of users;</p> <p>llll. Apply the following further acts: ...</p> <p>mmmm. Declare to be liable regardless of fault for cases of non-fulfilment of the obligations set out in Subsections: ... ;</p> <p>nnnn. Take up liability insurance in ... (State X) or in ... (list of some other trustworthy states) to cover liability claims against the platform in case of non-fulfilment of any of the obligations referred to in the previous Subsection, based on result-based liability, regardless of fault;</p> <p>oooo. Agree with the liability insurance company that users of the platform are authorised to sue the liability insurance directly at the place of business of the liability insurance company, and inform users of that right.</p>	<p>law could be copied into an Annex to the act.</p> <p>The right to sue the insurance company directly might facilitate the pursuit of the rights in some cases.</p>
<p>20. Obligations of virtual world owners</p>	<p>This Section initially contained many more obligations. But following thorough analysis, it turned out that most of the obligations initially conceived for virtual worlds already make sense for some types of platforms which are not virtual worlds. Accordingly, the list here shrank and the list under the previous Section grew substantially.</p>
<p>Virtual world owners, including owners of game virtual worlds, shall fulfil the obligations of platform owners, and thus also the obligations of economic operators, non-profit professional actors and of private actors. In addition, they shall:</p> <ol style="list-style-type: none"> a. Protect virtual property against robbery, theft, extortion, illegal copying and fraud; b. Permit co-ownership, meaning ownership by various persons, 	<p>The users of virtual worlds have no means to control their virtual world property, and states cannot do so either. Hence, the virtual world owners need to ensure that virtual property is appropriately protected. They need to assume a state-like role with regard the virtual property, similar to platform owners already assuming some policing functions. Thus, with ever more complexity and virtualisation, the control of users and of states dwindles, and this</p>

of virtual property [and common public property of virtual property];

- c. Provide transparency regarding the ownership of virtual property;
- d. Create the basis for safe contractual acquisition and transfer of virtual property;
- e. Permit the transfer of virtual property to beneficiaries or other legal successors, entrusted administrators and bailiffs of ... (State X);
- f. Execute decisions of courts established in ... (State X), including with regard to virtual property;
- g. Disclose on request to authorities and courts of State X such virtual property;

- h. Create safe spaces for mental wellbeing where no physical or communication assault **OR** unwanted contact can happen;
- i. Establish a “safe mobile surrounding zone” option hindering certain or all other avatars to enter into virtual physical contact with one’s own avatar even when moving in the virtual world;
- j. Provide the possibility to hinder certain persons or avatars to

needs to be compensated by those who operate platforms or virtual worlds.

The term virtual property goes quite beyond “assets”, see under definitions.

Despite all virtualisation, there is no reason to exempt virtual worlds from the ordinary legal order of states. E.g.:

- If person A misbehaves in a virtual world towards person B, it must be possible for person B to obtain an injunction order from an ordinary court, and that injunction order needs to be executed by the virtual world owner;
- If a debtor only has virtual property, it must be possible to monetise that property with the help of the virtual world owner, even where the debt has arisen in the real world.

The last three obligations are specific to virtual worlds (versus ordinary platforms) in so far as they only make sense in a virtual space.

“Unwanted contact” goes further and encompasses “physical or communication assault”.

<p>enter into virtual physical contact with oneself or one's own avatar, in whatever forms of virtual physical contact are possible in the respective virtual world.</p>	
<p>21. Intermediaries</p>	
<p>a. Intermediaries are obliged to comply with requests for cooperation issued by authorities [in accordance with Chapter 5] or by natural and legal persons covered by this Act where these requests are legitimate in view of the enforcement of obligations set out in this Chapter. They are in particular obliged to release data on the identity of actors who behaved unlawfully or unethically and to provide means of proof for this behaviour.</p> <p>b. For the relationship with intermediaries, the law of ... (State X) applies and ... (State X) is the forum, unless the parties have validly opted otherwise.</p>	<p>Intermediaries should have certain obligations of cooperation in order to reach effective enforcement towards other actors. In quite many situations, enforcement is only possible with the help of the intermediaries.</p>
<p>22. Empowerment to finetune obligations of actors</p>	
<p>a. The Government is empowered to reduce by ... (decree, ordinance etc.) certain obligations of actors or to exempt certain subtypes of actors from certain obligations where the fulfilment of obligations would be disproportionate for that specific subtype of actors.</p> <p>b. The Government is empowered to finetune by ... (decree, ordinance etc.) obligations of actors in view of eliminating legal uncertainties and to reach adaptation to technical progress.</p> <p>c. [The Government is empowered to add by ... (decree, ordinance etc.) new obligations of actors that are similar to the ones</p>	<p>We recognise that the list of obligations, namely of platform owners, is very long; maybe it is too long and some obligations turn out not to be relevant in practice or not easily implementable. In view of this, we recommend broad requirements for reduction, finetuning, but also extension of obligations e.g. in view of closing regulatory loopholes.</p>

<p>established in this Act where this is necessary to close regulatory loopholes or to ensure an efficient assurance of compliance.]</p> <p>d. [In the framework of this Section the Government may use mechanisms of co-regulation, namely the formal validation by ... (decree, ordinance etc.) of agreements concluded by the respective industries on one side and representatives of user groups on the other.]</p>	<p>There is much literature on co-regulation; see as introduction this Annex of an OECD document. It works in some sectors and jurisdictions, but not in others. We are not in a position to recommend generally the use of co-regulation, nor should we generally warn against it.</p>
<p>Chapter 3: Private law contracts, labour and social security law</p>	<p>In terms of order, it is debatable whether this Chapter 3 or Chapter 2 should come first, as Chapter 2 is content-wise closer to Chapter 1 than Chapter 3. However, in terms of facilitating the understanding of the overall regulatory system, it is preferable to present the obligations in Chapter 2 first.</p>
<p>23. Formal requirements</p>	
<p>The formal requirements set out in ... (e.g. civil code requirements for the conclusion of contracts) apply to private law contracts covered by this Act. In addition, the following specific formal requirements apply:</p> <p>a. Contracts falling under the definition of “work” in the meaning of ... (labour law act) shall contain a clause informing the worker[, if not residing in ... (State X),] about the major rights of workers presented in/at ... (act or website informing on workers’ rights) and where the worker has been registered in one of the suitable social insurance schemes in accordance with Sections 25 or 26.</p> <p>b. Contracts on the medical treatment or medical advice may only be concluded where the party providing the treatment or advice or the natural person</p>	<p>To be decided: shall non-compliant contracts be invalid, with the consequence that the weaker party, too, loses some rights? We think this legal consequence would go too far.</p> <p>As from this Subsection, we deem non-validity of contracts to be the most suitable legal consequence.</p>

acting on its behalf has the one of the following formal qualifications: at least five years successful studies of medicine and entitlement to practise the profession of medical doctor or at least three years successful health-related studies and entitlement to practise certain healing or care treatments.

- c. Contracts on machine-related body-related treatments are only valid where the machinery fulfils the requirements set out in ... (act of State X or of another state's act on machinery) and where the person steering the machine is professionally qualified to do so.
- d. Contracts on human organs and tissues are only valid where the requirements of ... (act of State X or of another state on human organs and tissues) are fulfilled.
- e. Contracts on sexual services are only valid where the person providing the services is self-employed and not controlled by another person.
- f. Contracts on psychological advice or treatment are only valid where where the party providing the treatment or advice or the natural person acting on its behalf has the one of the following formal qualifications: at least four years successful studies of psychology or psychiatry and entitlement to practise the respective psychological profession.
- g. Contracts on legal advice regarding the legal order of ... (State X) are only valid where the party providing the treatment or advice or the natural person acting on its behalf has the one of the following formal qualifications: ... (list of legal

We are not yet aware of such contracts yet, but we expect them to emerge quickly, the more so as there are already contracts on remote medical treatment.

There are quite some good national laws on countering trafficking of human organs and tissues in certain states. If your state does not have one, please check whether you can refer to one of them.

Like for medical treatment, a minimum qualification should be required for the activities in this and the following Subsections.

<p>qualifications empowering to provide legal advice, if possible with reference to more specific acts).</p> <p>h. Contracts on fiscal advice regarding the fiscal law of ... (State X) are only valid where the party providing the treatment or advice or the natural person acting on its behalf has the one of the following formal qualifications: ... (list of fiscal qualifications empowering to provide fiscal advice, if possible with reference to more specific acts).</p> <p>i. Contracts on legal or fiscal advice with regard to the legal order or fiscal law of another state are only valid where the party providing the advice or the natural person acting on its behalf has the qualifications necessary to provide advice in that other state.</p> <p>j. Contracts aiming at providing advice or other support for activities which are illegal in ... (State X) are themselves illegal.</p> <p>k. [Contracts aiming at providing advice or other support for activities which are illegal in states respecting the rule of law and human rights are themselves illegal. The list of these states is provided in Annex S "States". The list may be amended by government ordinance.]</p> <p>l. [Contracts aiming at activities which are geographically or otherwise attributable to ... (State X), but have effects on persons in another state and which are illegal in that other state are illegal where that other state is listed in Annex S.]</p>	<p>When expecting support of other states for the enforcement of this and other national acts, it might be advisable to also protect foreign legal orders to the extent that these respect principles of rule of law and human rights.</p>
<p>24. Labour contracts</p>	

a. The labour law of ... (State X) applies where either party has its place of business or residence in ... (State X).

b. However, parties may agree to apply the law of the state where the other party has its place of business or residence provided that the state is listed in Annex S as a state also having adequate protection of workers.

c. Where the parties have validly agreed to apply the law of the other party's state, that state shall also be the forum for mediation and lawsuits, unless the parties have agreed otherwise. The parties may not agree on a third state as a forum [unless that state is also listed in Annex S].

d. When deciding on whether to list states in Annex S under Subsection b., the Government / Supervising authority shall assess whether the states fulfil the following requirements:

(i) They protect workers in a similar and similarly effective way than in ... (State X). The similarity will be assessed in particular with regard to the following provisions in the labour code / the following rulings in labour law proceedings: ...

(ii) Their judicial system is independent, effective and also accessible in labour law disputes;

(iii) They are states listed in Annex S as states respecting the rule of law principle and human rights.

e. The criteria for assuming an internet-based work relationship deviate from the ordinary criteria for labour or work relationships in the following way:

...

The Annex S ("States") has already been referred to in Section 23 Subsections k. and l.

Ordinary criteria for qualifying a certain contractual relationship as "work" do not necessarily fit in the case of internet-based contracts on activities executed by one side for the other side. Please check which criteria are applied in your state normally, eliminate the ones that are not appropriate (e.g. presence at a certain physical workplace) and complement the remaining criteria if necessary.

<p>(iv) They are a state listed in Annex S as states respecting the rule of law principle and human rights.</p> <p>d. The requirement of Subsection d.(iv) does not apply where there is a bilateral or multilateral agreement on social security which foresees that parties involved in a work contract may choose the social security law of one of the two states involved.</p> <p>e. Contrary to provision X of social security act Y (providing that the employer shall register the work relationship), the worker, too, may / shall register the work relationship, the salary and the monthly hours into the database of the national social security system, provided that the social security law of ... (State X) applies.</p> <p>f. Where the social security law of State X applies, the worker may / shall alert the social security authority [via the dedicated alert portal ...] if there is a delay of more than 6 weeks for the payment of contributions into the social security system.</p>	<p>This exemption clause is necessary to avoid a conflict with international public law obligations.</p> <p>Employers might be particularly tempted to hide internet-based work relationships from social security systems. Hence the worker should at least have the possibility to register his work as well.</p> <p>For the same reason, an alert option should be provided.</p> <p>It is advisable to decide whether the general alert portal for this Act is appropriate also to process social security related alerts.</p>
<p>26. Social security [and labour law] established by platforms or virtual worlds</p>	
<p>a. The application of social security acts Y [and of national labour law] is not mandatory where the internet platform owner has established a social security system that fulfils the following conditions and where the fulfilment of these conditions has been stated by Supervising authority:</p> <p>i. The social security system covers all cases where the worker has its residence on the national territory and where the relationship qualifies as work relationship under national law;</p> <p>ii. The social security system ensures continuity of salary payments in case of sickness for up to ... (e.g. two) weeks per</p>	<p>States will face tremendous difficulties in enforcing their social security (and labour) law without the help of the owners of the platforms and virtual worlds, even when disposing of a few mechanisms for requesting enforcement with their help, see Chapter 5. Therefore, states might decide to “suspend” their own law and enforcement, if the “law” established by the platform owners is at least equivalent to the domestic law and if that “law” is well enough enforced.</p> <p>Such suspension might be in the interest of the states. The states have difficulties in terms of enforcement of their law with regard to internet-based</p>

sickness and ... (e.g. four) weeks per year in total where there is proof for the sickness by certification of a physician;

iii. The social security system ensures paid leave ... (e.g. six) weeks before the estimated date of birth of the employee's child until the date of birth and ... (e.g. six) weeks thereafter;

iv. The social security system ensures at least one month of unemployment insurance coverage for ... (e.g. six) months of employment in the last year, with insurance payments of at least ... (e.g. 60%) of the salary;

v. The platform owner deducts and saves ... (e.g. 10%) of the gross salary for its pension fund;

vi. The social security system covers occupational disability and ensures at least ... (e.g. 60%) payment of the average salary of the last ... (e.g. six) months of employment, provided an occupational disability has been stated by two independent physicians during the employment [or at the latest ... (e.g. one year) thereafter];

vii. Social security rights and savings aiming at the coverage of these rights in accordance with the previous Subsections are effectively transferable to the national social insurance system, by virtue of a convention with the social security authority, or on request of the employee after at least one year of employment;

viii. Employers offering work on the platform or in the virtual world are effectively controlled by the platform owner, who is also responsible and liable for the enforcement of obligations of employers;

international relationships. Instead of seeing their "ideal" law not being enforced, they might prefer to push the platforms' policies upwards to an effective and sufficient / fair enough protection of the weaker parties and reserve their limited enforcement capacities for other policy fields.

If states wish to suspend their law, they need to set up acceptability criteria for what is a fair intra-platform law and enforcement. The aspects listed on the left might help to identify appropriate acceptability criteria.

The analysis of the aspects listed on the left might also be helpful for the owners of internet platforms when developing a regulatory strategy. By covering most aspects and obligations with effective internal policies, they can increase the likelihood of states recognising the level of protection of the weaker parties to be sufficient / fair enough so that the application of national law can be withdrawn or suspended. Such withdrawal or suspension is in the interest of the platform owners, in so far as their business will be less hampered by constraining national law: imagine how cumbersome it would be for economic operators to fulfil legal requirements of 50+ states.

Thus there is a potential win-win for states and platform owners alike.

Such a convention can be in the interest of all three parties: the platform owner is discharged; the national security system increases its funds; the worker might receive more via the national security system and might avoid duplication.

<p>ix. The platform owner is, together with the employer, liable for the fulfilment of the obligations of the employer.</p> <p>b. Social security authorities shall inform the workers prior to requesting the transfer of their social security rights and savings from the platform to the national social security system by virtue of a convention concluded in accordance with Subsection a.vii. The worker can oppose the transfer within ... (e.g. four) weeks after the notification.</p>	
<p>27. Full invalidity of contracts</p>	
<p>In addition to the cases of invalidity listed in Section 23 Subsections b. to l., contracts are fully invalid where:</p> <p>a. The execution of the contract would lead to an infringement of penal, fiscal or ... law;</p> <p>b. The execution of the contract would lead to a violation of obligations set out in Chapter 2.</p> <p>c. No labour law protection or no social security is provided at all, whilst the contract is a work contract.</p>	
<p>28. Partial invalidity of contracts</p>	
<p>a. Work contracts which are in contradiction with Sections 24. to 26. are partially invalid.</p> <p>b. Partial invalidity is furthermore given where the contracts violate the following provisions: ...</p> <p>c. Regardless of the reason, of partial invalidity: Partial invalidity of contracts does not hinder the applicability of the remaining parts of the contracts, unless one of the parties would not have concluded the contract without the invalid part [or the partial invalidity is linked to one of the following reasons:</p>	<p>One might wish to finetune this reference.</p> <p>We suggest not to limit Subsection b. to work contracts. Please check your domestic public or civil law provisions: should their violation trigger partial invalidity?</p>

<p>- ...]</p>	
<p>Chapter 4: Private enforcement</p>	
<p>29. Law-suits for injunction and compensation</p>	<p>Private enforcement by law-suits for injunction and compensation are a cornerstone for effective compliance assurance. Its importance increases as states fail more and more to enforce their laws by their own administrative means, given that ever more economic and societal aspects emerge and thus need to be regulated, whilst the personnel in charge of state enforcement is not proportionally increased.</p>
<p>a. Competitors of economic actors[, public consumer protection bodies and associations recognised for defending the public interest] may sue by injunction economic actors for the cessation of an infringement, at the ... (court / tribunal).</p> <p>b. The injunction procedure may only be launched after first having requested the injunction in writing without success and giving a ... (e.g. four) weeks deadline. Success is given where the infringing actor recognises in writing the right to injunction and effectively and definitively stops the infringement.</p> <p>c. However, Subsection b. does not apply in cases where a definitive or continued damage would be caused by respecting the waiting period of ... weeks.</p> <p>d. Any successful injunction claim gives right to compensation for the actual damage or a minimum compensation of ... (e.g. 1/100) of the annual turn-over of the infringing actor[, with a minimum of ... and a ceiling of ...].</p> <p>e. Natural or legal persons who have been damaged by an infringement of this Act may,</p>	<p>Injunction by competitors, consumer protection bodies and public interest associations is a useful tool to increase compliance, in particular where authorities are weak. However, it works only to the extent that the judicial system is effective.</p> <p>An obligatory pre-trial procedure can be useful. It reduces the burden of courts. But it also can be an additional obstacle to those seeking injunction or compensation.</p> <p>It should be possible to go against infringements, e.g. slandering and intellectual property right violations immediately as the damage is done continuously and in an irreparable way.</p> <p>A curve according to which the compensation increases degressively (becoming more and more flat) might be regarded as more appropriate.</p>

<p>regardless of a preceding injunction procedure, request compensation of their damage from the infringing actor.</p>	
<p>30. Forum</p>	
<p>a. For all lawsuits in accordance with this Chapter ... (State X) has jurisdiction, unless directly applicable international agreements or the national transposition of not directly applicable international agreements provide otherwise.</p> <p>b. Private agreements derogating from the previous Subsection are nil.</p>	<p>If possible, add (at least for information) precise references to relevant laws and agreements.</p> <p>It is important to avoid that the cornerstone of enforcement, the private enforcement, is circumvented.</p>
<p>31. Prescription</p>	
<p>All rights referred to in this Chapter are prescribed within ... (e.g. 1) years after the rights holder took note of the respective circumstances, and at the latest ... (e.g. 3) years after the circumstances occurred.</p>	<p>At the end of this Model Law, we suggest a general provision on prescription with a longer prescription period. Please decide whether you need a specific (shorter) prescription period here.</p>
<p>32. Interim measures</p>	
<p>In addition to the provisions to the reasons and conditions set out in ... (act regulating interim measures of courts in general), courts may take interim measures where:</p> <p>a. The infringing actors [are likely to] OR [might] conceal facts;</p> <p>b. The infringing actors [are likely to] OR [might] become untraceable;</p> <p>c. [Due to the dynamics of the internet] the damage risks to be unprovable or unrecoverable without immediate measures.</p>	<p>The fluidity of internet actions might trigger the need to complement the ordinary rules for court interim measures.</p>
<p>33. Multiple claimants [and courts]</p>	
<p>a. [Within the same court,] The lawsuits / procedures of multiple claimants against the same defendant relating to the same /</p>	<p>Please check whether you need provisions of this kind or whether generic rules suffice. To combine lawsuits / procedures might seem</p>

<p>parallel / similar injunction or damage(s) shall be combined[, unless this leads to a substantive delay of one of the lawsuits].</p> <p>b. [Different courts may combine lawsuits / procedures relating to the same / parallel / similar damage(s) or declare one of the courts solely responsible where this leads to a more efficient and fair processing.]</p> <p>c. Rights referred to this act may be ceded / may not be ceded / may be ceded under the condition that ... (e.g. the recipient does not act professionally). Claimants may in particular transfer their rights to associations for joint pursuit or may request to be represented by associations.</p> <p>d. Representation by associations is exempt from the requirement of mandatory representation by attorneys.</p> <p>e. The court may, on request of claimants or on its own initiative, suspend cases until the first case against the same defendant relating to the same damage has ended with a ruling that has exhausted all appeals, which covers questions of principle also relevant for the suspended cases.</p>	<p>simple and logical, however, it becomes complicated or even unfair where the lawsuits are raised at different points in time so that the combination leads to delays for the more advanced lawsuits. Moreover, it should be clarified whether the obligation to combine lawsuits / procedures applies only within one court or whether it applies also where different courts process parallel lawsuits. To avoid contradictory rulings, combining lawsuits / procedures seems useful. But it might also render the access to the court more difficult for claimants where the local court is not responsible anymore. Please reflect on two levels:</p> <ul style="list-style-type: none"> - When <i>shall</i> lawsuits / procedures be combined? - When <i>may</i> lawsuits / procedures be combined? <p>These two Subclauses might not be needed in most jurisdictions, but are pertinent where rules protect the profession of attorneys from competition by non-attorneys.</p> <p>This provision increases the court's efficiency. However, it is also problematic insofar as the claimants of the suspended cases are curtailed of their procedural rights: they cannot intervene in the precedent setting case. Combining lawsuits / procedures seems to be a less invasive way of rationalisation.</p>
<p>34. Judicial enforcement assistance</p>	
<p>a. Courts may decide to enforce foreign private law court rulings against economic actors who</p>	<p>Judicial enforcement assistance is in the state's own interest if the state can expect cooperation and assistance in</p>

<p>violated the law of the other jurisdiction where the provisions of that other jurisdiction and their application are not more severe than domestic provisions and their ordinary application.</p> <p>b. Where the provisions of the other jurisdiction are more severe than the domestic provisions, courts may only enforce the provisions to the degree that corresponds to the domestic provisions.</p> <p>c. Handing over of information, of property, of assets and of persons to the other jurisdiction may not lead to a treatment more severe than under the domestic legal order.</p>	<p>return.</p> <p>It might be necessary or at least advisable to limit the enforcement to a degree which is acceptable under the domestic legal order.</p> <p>Where the assistance consists just in handing over of information, of property, of assets and of persons, there is a high risk that the other state applies its own rules even where these rules are disproportionately severe. Hence a special protection clause is needed.</p>
<p>Chapter 5: State enforcement</p>	
<p>35. Reporting to authorities</p>	
<p>a. All natural and legal persons are authorised to report possible infringements committed by economic actors to the Supervising authority.</p> <p>b. Natural and legal persons OR professional actors OR economic actors shall report to the Supervising authority in the following cases:</p> <p>(i) Activities indicating the planification of a crime in the meaning of ... (penal code);</p> <p>(ii) Information about a crime committed in the past;</p> <p>(iii) [Systematic] Non-fulfilment of obligations set out in Sections ... Points ...</p> <p>c. Natural and legal persons reporting in good faith to authorities shall not be punishable or subject to any sanctions of civil, administrative or penal order. The same applies to testifying persons.</p>	<p>Please select the Sections / Subsections above which you deem particularly important.</p>

36. Information obligations of [other] authorities	
<p>Authorities [other than the Supervising authority] shall report to the Supervising authority whenever they observe a likely infringement of obligations set out in ... (select the s above which you deem particularly important). They shall also communicate information on request of the Supervising authority.</p>	
37. Incidents and alert portal	
<p>a. The Supervising authority shall provide an electronic interface for the, if so desired, anonymous deposit of information on infringements. It shall evaluate this information and may to that end use artificial intelligence.</p> <p>b. Any confirmed information on infringements shall, regardless of its origin, be listed in a public incidents and alert portal. That portal may contain a non-public section for confidential information and the authority's own investigation.</p>	<p>The Supervising authority should create such an interface in order to be better informed, even where it cannot give an individual follow-up to all cases.</p> <p>Transparency with regard to confirmed incidents and infringements might have a deterring and sanctioning effect, but might also warn competitors who do not wish to be "named and shamed".</p>
38. Rating and labelling	
<p>a. The Supervising authority may establish a rating of economic actors in terms of frequency of infringements and protection of weaker contractual partners or users.</p> <p>b. Economic actors are obliged to publish and to label on their own websites and their entries on others' websites the obtained rating in a well visible way.</p>	<p>Such a rating and labelling system is an incentive for compliance and risk avoidance.</p> <p>This system is enhanced by the obligation to publish and to label the rating.</p>
39. Monitoring	
<p>The Supervising authority shall establish and publish every ... years a report on the compliance of natural and legal persons OR economic actors and</p>	<p>The obligation to publish a report is an incentive for good administrative practice.</p>

<p>the measures taken and intended by the Supervising authority in view of increasing the compliance.</p>	
<p>40. Reporting</p>	
<p>The Supervising authority and the responsible ministry shall at least every second year inform the Parliament on new economic and technological developments, the issues caused by them and the appropriateness of this law.</p>	<p>A rather short reporting cycle is useful in this quickly evolving economic and technological context.</p>
<p>41. Empowerments of the Supervising authority</p>	
<p>The Supervising authority may state with binding effect whether this Act has been fulfilled or violated by an actor or intermediary and may request certain remedies to be taken in the latter case. In addition, it has the following empowerments with regard to all actors and intermediaries:</p> <ul style="list-style-type: none"> a. Requesting information related to the internet activities covered by this Act, and this also where the informant is a third party or located in a third country or both; b. Communicating warnings and recommendations to the population; c. Requesting actors and intermediaries as well, as the media and internet service providers of both, to communicate warnings and recommendations to their clients, users or other persons with whom they are in contact; d. Blocking or removing content from internet websites offering services covered by this Act; e. Confiscating a domain and requesting the domain registrar to cooperate for this confiscation; f. Blocking temporarily the use of a certain domain and requesting 	<p>As usual in our model laws, we suggest a rather extended list of empowerments. An extended list of empowerments helps to ensure compliance in virtually all situations, whilst limited empowerments are more likely to cover all situations.</p> <p>The confiscation of a domain is justified where the domain has been used for systematic criminal action. Blocking temporarily the use of a domain is in most cases sufficient to force the domain owner to bring his</p>

the domain registrar to cooperate for this temporary blocking;

- g. Interrupting or fully controlling telephone, media and internet services of continuously infringing actors or ordering respective service providers to do so;
- h. Requesting to take certain steps in order to stop an infringement or to reduce the likelihood of further infringements;
- i. Recovering from actors and intermediaries costs triggered by the investigation and enforcement;
- j. Imposing administrative sanctions on actors and intermediaries who do not respect the obligations and other provisions set out in this law, with an upper limit of ... (e.g. twice) times the annual turn-over;
- k. Imposing administrative sanctions on natural and legal persons who contributed to an infringement;
- l. Enforcing financial obligations and financial sanctions or penalties via confiscation of property and assets;
- m. Warning contractual partners of the infringing actor or intermediaries against the consequences of a continued cooperation;
- n. Obliging contractual partners of infringing actors and intermediaries to stop, limit or modify their cooperation;
- o. Obliging to display legal information on their website or in their software;
- p. Obliging to inform users of committed infringements affecting them and of the rights triggered by the infringements;
- q. Compelling the attendance of witnesses, including third parties.

activities into compliance.

No duplication with Section 45: Section 45 deals with penal and their collateral sanctions, whereas this Subsection deals with pure administrative sanctions.

The real criminals shield often behind a legal person or a chain of legal persons.

- to provide evidence under subpoena, when there are reasons to believe or there is evidence of infringement;
- r. Creating financial or other incentives for persons to provide or confirm information;
 - s. Inspecting, without notice, offices, other non-private spaces and, with authorisation of a judge, also private spaces from where activities covered by this Act are conducted or where objects, data or software can be found that relate to those activities;
 - t. Taking copies of and analyse data and software used for the activities covered by this Act;
 - u. Supervising the software whilst being in operation;
 - v. Confiscating documents, data and software in offices, other non-private spaces and, with authorisation of a judge, also in private spaces;
 - w. Confiscating property and assets of infringing actors or intermediaries where they have [presumably] been acquainted via non-conforming activities;
 - x. Requesting securities (as guarantee for the fulfilment of non-financial obligations);
 - y. Publishing a blacklist of natural and legal persons who committed or contributed to infringements;
 - z. Excluding those persons from public tenders and grants;
 - aa. Extending the measures (a) to (z) above to agents of the infringing person;
 - bb. Extending the measures (a) to (z) to mother and sister companies of the infringing legal person and their agents;
 - cc. Extending the measures (a) to (z) to commercial partners of the

The confiscation here is a quasi-sanction, also aiming at the neutralisation of unlawful gains and deterrence generally.

<p>infringing person where these have contributed to the infringement; and</p> <p>dd. Delegating these empowerments to other OR local authorities and requesting these authorities to use these empowerments in a certain way for specific matters.</p>	<p>In larger states, it might be helpful to clarify to what extent other or at least local authorities normally in charge of enforcement can or shall use empowerments of the central Supervising authority. Please check whether a particular interface is needed for police and customs authorities' empowerments.</p>
<p>42. Intra-state enforcement support</p>	
<p>Local authorities OR Local, police and customs authorities OR All authorities [other than the Supervising authority] shall respond to requests for support of the Supervising authority and follow the instructions of the Supervising authority, both when aiming at the implementation of this Act. [This applies in particular where empowerments have been delegated to them in accordance with Section 41 Subsection dd.]</p>	<p>Please decide which authorities shall be obliged to support the enforcement for which the Supervising authority is in charge as lead.</p> <p>The part in square brackets is logically superfluous, but helps to illustrate and to clarify.</p>
<p>43. Enforcement of foreign authority or public law court decisions</p>	<p>Enforcement on the territory of another jurisdiction is often only possible where there is reciprocity of support, which requires that enforcement empowerments may also be used in favour of a foreign jurisdiction.</p>
<p>The Supervising authority may use the empowerments listed in Section 41 to enforce foreign public law administrative decisions, court rulings and interim measures, provided that the state requesting assistance is listed in Annex S and provides also enforcement assistance to the Supervising authority and to domestic public law courts.</p>	<p>There can be mutual assistance between the two jurisdictions based on formal agreements under international public law or based on practical arrangements between administrations. The latter are more flexible and easier to negotiate, but are not legally binding. Nonetheless they can be very useful if both sides voluntarily apply them as if they were binding. To do so, they must have, on both sides, the necessary (unilateral) empowerments. The technique consists in establishing unilateral empowerments to act for the other jurisdiction whilst de facto requesting mutuality. However, there is</p>

	<p>a risk in case of power discrepancy between two jurisdictions. Where there are other jurisdictions potentially so powerful to be able to oblige the domestic jurisdiction to act on their behalf without ensuring reciprocity, it might, subject to the case, be wise not to install empowerments for action on behalf of other jurisdictions. Otherwise, unilateral empowerment serves only the other jurisdiction which has power supremacy.</p> <p>We recommend setting up two conditions:</p> <ul style="list-style-type: none"> - A certain level of respect of rule of law and of human rights, which is reflected by the listing in Annex S, and - Reciprocity.
<p>44. International cooperation</p>	
<p>a. The Supervising authority may cooperate with its peers in partner jurisdictions and with international organisations. It may share with peers [and international organisations] information, including sensitive information, on actors and intermediaries where this is necessary to pursue the goals of this Act OR to implement this Act.</p> <p>b. The Supervising authority may take the following measures with regard to international organisations and foreign national authorities, under the condition that the same measures of international cooperation are reciprocated:</p> <ul style="list-style-type: none"> (i) Permitting international or foreign national officers to take part in operations of the Supervising authority or local enforcement authorities; (ii) Disclosing confidential information not covered by Subsection a.; 	<p>Cooperation between states fails easily where there is no empowerment to share information. As sensitive information is particularly delicate, we suggest here a separate empowerment, whilst this empowerment could of course also be embedded in the list of empowerments of Subsection b.</p>

- (iii) Establishing joint expert committees and data exchange needed for that purpose;
- (iv) Investigating or enforcing on the territory of the other jurisdiction;
- (v) Empowering foreign national authorities to carry out investigations on the territory of ... (State X) provided that human rights, the rule of law and domestic principles of legality will be respected by the foreign national authority;
- (vi) Requesting foreign national authorities to enforce on their territory obligations under this Regulation, provided that human rights, the rule of law and domestic principles of legality will be respected by the requesting jurisdiction;
- (vii) Enforcing in accordance with the previous Section or requesting local enforcement authorities to enforce foreign measures provided that human rights, the rule of law and basic principles of fairness have been respected by the requesting jurisdiction;
- (viii) Permitting foreign national authorities to investigate their cases in ... (State X) provided that the rule of law and basic principles of fairness have been respected by the other jurisdiction;
- (ix) Recognising foreign certificates or approvals testifying the professional qualification of actors; and
- (x) Making administrative agreements on cooperation with regard to all the above and collateral organisational aspects.

45. Sanctions and fines

a. In case of deliberate infringement

There are evidently many ways to

of the obligations set out in this law, the following penal sanctions apply to the natural persons responsible for the infringement, regardless of whether they are employees[or freelancers] of the infringing legal person or contractors or staff of contractors:

(i) For infringements of Sections from ... to ... years of imprisonment and/or a fine of up to triple their annual net salary or income.

(ii) For infringements of Sections up to ... years of imprisonment or a fine of up to double their annual net salary or income.

b. In case of unintentional non-compliance of obligations [or where the deliberate character of the infringement cannot be proven], the following penal sanctions apply to the natural persons responsible for the infringement, regardless of whether they are employees or freelancers of the infringing legal person or contractors or staff of contractors:

(i) For infringements of Sections a fine of up to their annual net salary or income.

(ii) For infringements of Sections up to ... years of imprisonment or a fine of up to 1/2 their annual net salary or income.

c. In addition to or instead of the sanctions listed in Subsections a. and b., the Supervising authority may impose the following collateral sanctions against the infringing legal persons:

(i) Fines of up to three times their annual budget or turn-over;

(ii) Exclusion from public tenders for up to ... years; and

(iii) Citation in the public list of law infringing / criminal economic

design a system of sanctions. Hence, the provisions should only be regarded as inspiration for the development of provisions fitting to the respective domestic penal practice. We recommend distinguishing between deliberate and unintentional infringements. The part in square brackets might be necessary or not. We avoid here the term “negligent” which is often understood as implying the violation of a duty of care and therefore renders sanctioning more difficult. However, in some jurisdictions, it would not be appropriate to sideline this duty of care aspect. Only for deliberate infringements of the most important obligations, a minimum imprisonment sanction seems appropriate. For this and the following point below, we would not deem imprisonment to be appropriate.

actors for up to ... years.

d. As a side measure to sanctions imposed under Subsections a., b. and c., the Supervising authority may also:

(i) Publish the names and further data permitting the identification of natural or legal persons who have deliberately infringed this law;

(ii) Confiscate or destroy, as sanction and thus regardless of their illegal character, a proportionate amount of property or assets, and this in particular where fines are not paid;

(iii) Suspend the commercial licences of the infringing persons; and

(iv) In case of particular grave or repetitive deliberate infringements close the facilities of the infringing persons.

e. Sanctions and the collateral measures set out in this section may be extended to parent or subsidiary companies or other legal or natural persons and the staff of all these persons if these legal or natural persons controlled the infringing person to such an extent that they were in reality responsible for the infringement.

f. The Supervising authority may oblige any natural or legal person to cooperate for purposes of enforcement of sanctions and collateral measures set out in this section, including with regard to the disclosure of confidential information, the hand-over of property or assets of all forms, the temporary closure of websites, the suspension of services supporting the economic activity of the infringing persons.

Some legal persons are in reality controlled by another legal person. Some legal persons create companies as shields or shell companies without assets to pay sanctions. This provision empowers the authorities to counter this situation.

We have, above in Section 41, listed a full range of empowerments serving the enforcement of obligations of this law. However, these empowerments do not cover the enforcement of sanctions and their collateral measures. Hence, separate empowerments are needed in order to enforce the sanctions with the help of third persons.

46. Prescription	
<p>a. All rights and obligations contained in this Act are prescribed within ... (e.g. 3) years after the rights holder took note of the respective circumstances, and at the latest ... (e.g. 10) years after the circumstances occurred.</p> <p>b. Crimes sanctioned in accordance with Chapter 7 are prescribed in ... years.</p>	
47. Legal remedies	
<p>a. Decisions of the Supervising authority taken in accordance with this law may be challenged within X months in writing and by [authenticated] electronic email at ... (higher administration, ministry or court).</p> <p>b. [Remedies against the decisions of the ... (supervising administration, ministry) shall be addressed at ... (one or several courts)].</p>	<p>Such provisions are evidently not necessary where generic administrative law contains sufficient provisions.</p> <p>To permit specialisation, one single court might be preferable.</p>
48. Adaptation to technical progress and closing of regulatory loopholes	
<p>a. The Government may adapt this law to technical progress and may close regulatory loopholes, whilst respecting the principles set out in this law.</p> <p>b. Adaptations of this law to technical progress and closing loopholes may be revoked, suspended or limited by decision of a 1/2 OR 2/3 majority of the Parliament.</p>	<p>The fast evolving topic renders such an empowerment useful. Contrary to the empowerment for (executing) decrees or other subordinate legislation, below, the level of intervention is the level of the law itself.</p> <p>Nonetheless, Parliamentary control might need to be ascertained. Here we present the technique: broad empowerment, but ex post control by the Parliament.</p>
49. Government decrees	
<p>a. The Government may issue decrees setting out details on the execution of the empowerments</p>	<p>Decrees, subordinate legislation or similar regulatory tools of the Government can complement the law</p>

<p>and on the management of this Act. [Where there is no urgency, it shall give the Parliament one month notice prior to adoption and shall take account of the reaction of the Parliament.]</p> <p>b. The decrees may / may not further restrain data protection law and the protection of confidential information.</p> <p>c. The decrees may / may not further limit other rights of legal and natural persons.</p> <p>d. The Parliament may revoke, suspend or modify the decrees adopted by the Government by ordinary majority decision.</p>	<p>appropriately. However, given the very sensitive character of the matter, it might also be deemed appropriate to give the Parliament the possibility to informally react to a decree project. This is also helpful where, as suggested below, the Parliament can formally revoke a decree. The informal reaction at an earlier stage can help to avoid a later conflict which would let the Parliament revoke the decree.</p> <p>As stated above, the rights-sensitive character of the matter might be regarded as justifying a tight control of the Government by the Parliament.</p>
<p>50. Entry into force and application date</p>	
<p>This Act enters into force as of ... It applies in its entirety as from ... However, Sections ... [Subsections ...] apply only as from ...</p>	<p>Split application dates can, e.g., be useful to give certain actors enough lead-time to implement technically complicated solutions necessary to fulfil certain obligations.</p>
<p>Annex R: Review and reputational systems</p>	
<ol style="list-style-type: none"> 1. Reviews and reputational point ratings shall be published without undue delay. 2. The most recent reviews or ratings shall be displayed first[, unless there is a justified reason to change the order. Where such a reason exists, users shall be enabled to view the ratings in their historic order on request, with the most recent reviews or ratings coming first.]. 3. The date of the reviews shall be displayed. 4. All reviews or reputational point ratings shall be taken into 	

account, unless there is evidence for bad faith action, payment or other rewarding in return for the review or rating or lack of own genuine experience of the reviewer or rater.

5. The platform owner may limit the possibility to review or to rate to those users who have for sure such genuine experience.
6. If the platform owner claims that reviews or ratings are based on a genuine experience, it shall ensure that this is the case.
7. If the platform owner rejects or removes a review or rating, it shall inform the author without undue delay about the reasons thereof.
8. Reviews shall be published in their entirety, including media uploaded as means of proof.
9. If the system displays reviews and ratings solely for a certain period of time, the period shall be disclosed to users. It shall be one year or longer.
10. Where individual ratings are merged into a consolidated rating, the consolidated rating shall be the average of all individual ratings. However, older ratings may be discounted by maximum ... (e.g. 5) percent per full month.
11. The total number of individual ratings merged into a consolidated rating shall be obvious.
12. The person concerned by a review shall be allowed to respond free of charge to the review and to have this response

<p>published together with the review.</p> <p>13. The person concerned shall be allowed to trigger the dispute settlement mechanism referred to in Section 19 Subsection www.</p> <p>14. Where the person concerned is likely to gain cause in the dispute settlement mechanism, the platform owner may temporarily eliminate the review until there is a final result of the dispute settlement mechanism or a court ruling, a court interim measure or a decision by the Supervising authority in accordance with Section 41 1st sentence.</p> <p>15. Reviews and ratings shall at any time be offered for export to another platform in a commonly used machine readable format. The export shall be for free. Requests for export shall be processed within one week.</p> <p>16. Reviews or ratings imported from another platform shall be labelled as such. Where imported reviews or ratings are merged with reviews or ratings from the displaying platform, the reviews and ratings shall be labelled as “partly stemming from ... “ (the exporting platform).</p>	
---	--

Annex S: States respecting human rights and the rule of law			
State (official name)	Respect of human rights + rule of law (Section 23 Subsections k. and l.)	Equivalent protection of workers (Section 24 Subsection b.)	Equivalent social security (Section 25 Subsection b.)
...	y/n	y/n	y/n

