

ECIPE PRESS RELEASE — NEW POLICY BRIEF

## “Too Big to Care” or “Too Big to Share”: The Digital Services Act and the Consequences of Reforming Intermediary Liability Rules

*By Fredrik Erixon, Director of ECIPE*

**Brussels, Belgium, 20th April 2021** - This paper reviews the Digital Services Act (DSA), a package of new rules for platforms proposed by the European Commission late last year. The paper takes stock of current and future situations for rules on content moderation and takedowns, and discusses how the DSA addresses the balance between the desired culture of openness online, on the one hand, and more pressures to take down not just illegal but harmful and objectionable content, on the other hand.

The DSA introduces a few new transparency rules that follow previous codes of conduct: they are straightforward and desirable. However, it also brings in new know-your-customer rules and exacerbate the ambiguity surrounding the definition of illegal content. These types of rules will most likely have the effect that platforms will minimize risk even more by taking down more content that is legal. Moreover, there is a risk that the DSA will create new access barriers to platforms – with the result of making it difficult for smaller sellers to engage in contracts on platforms. New regulatory demands to monitor and address “systemic risks” will likely have the same effect: platforms will reduce their exposure to penalty risks by taking down and denying access for content that is legal but associated with risks.

The DSA’s differentiation between large platforms and very large platforms is disingenuous and contradicts the purpose of many DSA rules. Obviously, exposing some platforms to harder rules will lead to content offshoring – a trend that is already big. Objectionable content – not to mention illegal content – will move from some platforms to others and lead extremists and others to build online environments where there is much mess content moderation. Furthermore, the new regulatory risks that come with being a very large platform will likely become an incentive for some large platforms to stay large – and not become very large. While the DSA is often billed as a package of regulations that will reduce the power of big platforms, it is more likely to lead to the exact opposite. Very large platforms have all the resources needed to comply with the new regulation while many other platforms don’t. As a result, the incumbency advantages of very large platforms are likely to get stronger.

Publication details:

*“Too Big to Care” or “Too Big to Share”: The Digital Services Act and the Consequences of Reforming Intermediary Liability Rules, ECIPE Policy Brief No. 5/2021*

Media Contact: info@ecipe.org at +32 2 289 13 50