Internal Market Legislation and Dissensus over Liberal Democracy

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1 Introduction

As highlighted throughout this volume, the European Union has entered an era in which the values enshrined in Article 2 TEU—among them democracy, the rule of law, and human dignity—are increasingly contested, reflecting a broader dissensus over liberal and democratic principles in Europe and globally. Dissensus, in this context, is understood not merely as a divergence on specific policies but as a deeper conflict over fundamental norms and values (Brack & Coman, 2025). This chapter does not aim to revisit the causes and manifestations of this phenomenon, which are explored elsewhere in the handbook (see Zielonka in this Handbook; see Blokker in this Handbook), and instead focuses on one particular response used by the EU in this context: the leveraging of the EU's internal market powers to overcome disagreements as to the precise interpretation of the values of Article 2 TEU and the appropriate means of safeguarding them. In line with the objectives of this volume, this chapter seeks to understand how the EU has used internal market legislation to defend its values, and how, in turn, dissensus is reshaping the law of the internal market, one of the pillars of European integration. Our contribution is part of a growing scholarly interest in the role of the EU legislature

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in the development of EU law (see van den Brink, 2024; van den Brink & Passalacqua, 2024).

This chapter's main contention is that by approaching political conflicts through the narrow lens of obstacles to free movement—in this case, obstacles arising from national-level disagreements over values—the internal market may, at least in part, provide a mechanism to address dissensus and mitigate its effects. It offers a pragmatic path forward in an increasingly polarised European landscape. This approach is, nonetheless, not without risks. Relying on market-based powers to pursue value-driven objectives raises effectiveness and legitimacy concerns. We show this by examining three recent legislative acts adopted under Article 114 TFEU, the main legal basis for the EU's internal market: the Regulation on Political Advertising (RPA, Regulation 2024/900/EU), the European Media Freedom Act (EMFA, Regulation 2024/1083/EU), and the Corporate Sustainability Due Diligence Directive (CS3D, Directive 2024/1760/EU). We selected these three case studies because they cover different facets of the EU's foundational values: democracy and the integrity of elections, the autonomy of the media and the freedom of the press, and human dignity—broadly understood to encompass both fundamental human rights and environmental protection. The chapter begins with a short overview of the EU's internal market competence and its relationship to EU values. We propose a number of hypotheses, which are then tested in each of our case studies. We conclude with a reflection on the broader constitutional implications of this new legislative approach and its role for the future.

2 Pursuing Non-Market Values in EU Internal Market Legislation

What do EU values and the internal market have in common? Economic freedom, on the one hand, and democracy, the rule of law, and fundamental rights, on the other hand, could seem uneasy bedfellows. This is evident at the level of "negative" internal market integration—i.e. the removal of national laws that conflict with EU primary law—where, in a number of cases, the Court of Justice has been called to rule on the legality of national measures that restrict free movement but protect fundamental rights. This has resulted in conflicting outcomes. Cases such as *Omega* (Case C-36/02) and *Schmidberger* (Case C-112/00), in which fundamental rights prevailed over the internal market imperative, contrast with others, such as *Laval* (Case C-341/05) or *Viking* (Case C-438/05), in which the Court seemingly gave greater importance to the preservation of free movement. In all these cases, however, the internal market and fundamental rights were pitted against one another (see Garben, 2020). Increasingly, we see a different logic unfolding, one in which fundamental rights are used to assess the validity of member states' measures as an auxiliary rather than an impediment to internal market freedoms. This is especially visible in the context of the free movement of persons and the importance given to the right to private and family life enshrined in

Article 7 of the Charter (see Ristuccia, 2024). Cases such as *Nordic Info* (Case C-128/22) or *Mirin* (Case C-4/23) illustrate this new dynamic.

"Positive integration", however—the removal of barriers to trade through EU legislation—is where the most potential for the protection of EU values through the internal market lies. As Kosta shows in her authoritative book on the topic (Kosta, 2018), the use of internal market legislation to pursue objectives linked to the protection of fundamental rights is nothing new (see also Rizcallah, 2025). This has been especially visible in the fields most directly affected by economic activity, such as health, the environment, or social policy. A notable example is data protection law: prior to the introduction of an autonomous legal basis in the Lisbon Treaty, Article 16 TFEU, which underpins the General Data Protection Regulation (GDPR), the field was governed by Article 114 TFEU (see Sybe de Vries, 2015). What is new, however, is the use of internal market instruments to defend EU values more broadly, particularly democracy, thus extending regulatory intervention into areas marked by deep political and ideological divisions. How does this work in practice?

Article 114 TFEU is the EU's general legal basis for the internal market. It allows the EU to harmonise existing national laws to facilitate the establishment and functioning of the internal market. In practice, this means that the EU legislature is empowered to eliminate obstacles to free movement that result from regulatory differences at the national level (Case C-376/98 *Tobacco Advertising*). Consider, for example, the detrimental effect that divergence in rules for packaging or labelling may have on trade in food. Another example, this one in the field of EU values, is the European Accessibility Act (Directive 2019/882/EU). Accessibility requirements are technical requirements for products or services that make it possible for persons with disabilities or elderly people to use them. Differing rules on such requirements at the national level create obstacles to trade and generate costs for businesses. The adoption of common European rules helps to lift these obstacles and reduce these costs while at the same time promoting an EU-wide standard on accessibility, thus protecting the rights of the persons concerned consistently across the EU. In the three case studies that we have selected, this divergence in national standards can be seen as a specific example of the dissensus over EU values. Differing rules on media ownership or political advertising create obstacles to the cross-border provision of audiovisual media services. So do differing rules on the liability of companies for breaches of sustainability or human rights standards in their value chains. Because many obstacles at the national level arise from laws that pursue an objective *other* than the market—such as health or consumer protection, in the case of packaging or labelling rules—harmonisation under Article 114 TFEU allows the EU legislature to make inroads in areas that go beyond market-making in the strict sense. Are there limits to this practice? From a competence perspective, the practice raises at least two fundamental questions.

The first question is one of threshold: whether *any* obstacle to trade, however small, can justify the intervention of the legislature. To answer this question, we must return to the *Tobacco Advertising* judgement. In this case, the Court was asked to rule on the legality of a general ban on tobacco advertising under Article 114 TFEU. The Court established two conditions for the use of that provision: (i) there must be obstacles to free movement or significant distortions of competition at the national level due to a divergence in national laws, or the existence of such obstacles must be likely to arise; and (ii) the proposed EU measure must remove the obstacles in question. The Court did not dwell on what constituted a *significant* distortion of competition—in the case in question, such distortions were deemed not to exist—but it is clear that no such threshold exists for obstacles to free movement. It seems that any obstacle, however small, can prompt EU action, which is confirmed by the Court's approach to the concept of restriction of free movement under primary law (see e.g. Case C-177/82 *Van de Haar*, Case C-311/19 *Bonver Win*). Hence, the latitude of the EU legislature is large.

The second question is more fundamental. Are there limits to the areas in which the EU can exercise its competence? And does it matter if the non-market objective pursued by a piece of internal market legislation is actually the politically decisive objective? Here, the answer is a clear no. Since the *Tobacco Advertising* judgement, it has been firmly established that internal market legislation may be used for any non-market purpose, including the protection of EU values and fundamental rights, provided that the conditions for its use are fulfilled. The Court refuses to second-guess the motivations of the legislature and to weigh the relative importance of market and non-market objectives in a piece of legislation.

Taken together, these two aspects explain why Article 114 TFEU has effectively become a general power to regulate the internal market and, indeed, a general legislative competence for the EU. In particular, it allows the EU to act in areas in which it does not otherwise have a legislative competence, or in which its legislative competence excludes harmonisation. Health policy is a case in point (Delhomme, 2020), as are EU values. Indeed, the EU does not have general legislative competence allowing it to protect the values outlined in Article 2 of the TEU, whereas it does have competence to establish and regulate the functioning the internal market. It does have certain sector-specific competences, such as in the areas of combating discrimination (Article 19 TFEU) or personal data protection (Article 16 TFEU), but it lacks a transversal competence in this regard. The use of internal market legislation to compensate for the lack of direct competence in a given field has been described as a form of competence creep (European Council, 2001), to the extent that powers relating to the internal market are diverted from their primary goal and used to act in areas where Member States had sought to keep control. We consider that the text of Article 114 TFEU is open-ended and should allow the pursuit of diverse policy objectives, as long as a reasonable case can be made that a piece of legislation also serves to offer a level playing field to economic operators (see De Witte, 2012). We believe, as will be expanded below, that this is the case for the three pieces of legislation selected in this chapter. The EU's internal market powers allow, by their very nature, for a functional and ostensibly technocratic application of EU competences, steering clear of the most politically sensitive debates. This can be helpful in an era of dissensus. So can the recourse to a legal basis that requires only qualified majority voting (QMV), allowing legislation to continue even in cases of persisting dissensus. Finally, this practice contributes to a broader understanding of the internal market that goes beyond the mere facilitation of trade to encompass the foundations of the market and its regulation, giving ample scope to non-market objectives, be they social, environmental, or, indeed, linked to the protection of EU values. Can we truly envision a functioning common market without shared fundamental rules aimed at safeguarding these broader interests?

Nonetheless, protecting EU values through internal market legislation is not without problems. To begin with, the presentation of issues linked to values through an economic lens, as tools to foster economic integration, can contribute to the degradation of certain values. As Davies rightly puts it, "if such measures are adopted but under a false label, as if they are all about promoting trade, making more of it and removing obstacles in a concrete, narrow, sense, this distorts the politics and legitimacy of the EU legislative process" (2017, 85). Values should be pursued in their own right. Furthermore, the use of indirect legal bases also has practical institutional consequences, affecting which voices might be heard in the policymaking process. The relevant measures might be discussed by the Council formation and European Parliament committee related to the internal market, and they would be initiated by another Directorate General (DG) in the European Commission rather than DG JUST. On a more practical level, legislating through the internal market tends to lead to the maximum harmonisation of instruments, leaving no room for divergent approaches by Member States and, more problematically, limiting the possibility to reach a higher level of protection. Indeed, it is part of the logic of the internal market not to allow fragmentation to recur once a common standard has been adopted at the EU level (Delhomme, 2024). This will be apparent from the case studies on political advertising and sustainable due diligence.

3 Protecting Election Integrity

Political advertising is a highly debated topic in relation to the protection of democratic processes, as it represents a powerful tool for influencing voter behaviour. Its use has been steadily increasing. The development of digital technologies has made the shaping of voter attitudes more sophisticated and far-reaching, creating significant challenges for liberal democracies. National responses to political advertising vary widely, reflecting divergent regulatory philosophies and practices across Member States and, to some extent, the existence of a dissensus. There are differences even as to what constitutes political advertising in the first place (Zeno van Drunen et al., 2022, 190).

As underlined in the literature, this can be explained by the fact that political advertising involves "a particularly complex balancing of interests and is tied to national culture and political history" (Zeno van Drunen et al., 2022, 189). The Grand Chamber of the European Court of Human Rights has previously noted the "lack of consensus" on the issue(*Animal Defenders International v United Kingdom*, n° 48876/08, para 123). The spectrum ranges from outright bans on political advertising on television or during electoral periods, as in Germany, to frameworks that largely leave political advertising self-regulated or unregulated, as is the case in the Netherlands (Zeno van Drunen et al., 2022, 182).

Rules on political advertising also have a strong economic dimension, which is increasingly cross-border in nature, as it involves a growing and diverse range of services, including political consultancies, advertising agencies, and public relations firms. Since political advertising is generally remunerated, the EU legislator has classified it as a service activity under Article 57 of the TFEU, justifying harmonisation under Article 114 TFEU (recital 3, Regulation 2024/900/EU). This approach aims to prevent discouraging providers of political advertising services from offering their services across borders due to regulatory fragmentation. Furthermore, in its 2020 European Democracy Action Plan, the European Commission stressed that "citizens, civil society, and responsible authorities must be able to see clearly the source and purpose of such advertising" (European Commission, 2020). It underscored the urgent need to counter information manipulation and interference in political advertising and to reinforce transparency as a key pillar of democracy. This situation demonstrates how values and the internal market are interconnected.

Despite concerning a domain traditionally regarded as highly sensitive and strongly tied to the sovereignty of Member States (Zeno van Drunen et al., 2022, 194), Regulation 2024/900/EU was thus adopted to establish harmonised rules aimed at "countering information manipulation and foreign interference in elections" (Council of the EU, 2024). This instrument introduces common rules to enhance transparency and accountability in political advertising across Member States. It applies to a wide range of communications, including issue-based ads and direct campaign messaging, that aim to influence elections, referenda, or political processes. The regulation mandates clear disclosures identifying political ads and their sponsors and providing transparency notices that detail funding, targeting methods, and objectives (Articles 7(1)(a–c), 12(3)(c), 12(5)). It also imposes restrictions on the use of sensitive data, such as ethnic origin or political beliefs, for targeted advertising (Articles 12(1) and (2)), in line with existing data protection laws such as the GDPR. The connection between the Regulation and the protection of values is clearly established, with Recital 4 of the Regulation highlighting that "the need to ensure transparency is a legitimate public goal, in conformity with the values shared by the Union and its Member States pursuant to Article 2 of the Treaty on European Union (TEU)". While the Regulation itself does not explicitly refer to the values outlined in Article 2 TEU, it emphasises the importance of the effective functioning of the internal market for political advertising and related services. Additionally, it underscores the necessity of safeguarding the fundamental rights and freedoms enshrined in the Charter of Fundamental Rights of the European Union, particularly the right to privacy and the protection of personal data (Article 1(4)).

This new instrument serves as a powerful example of how internal market policy is being extended to address issues related to the protection of democratic principles in response to the current dissensus surrounding the safeguarding of these values within the European Union. While the economic dimension remains a key justification for intervention under internal market rules, the legislator has clearly aimed to go beyond mere market considerations by ensuring a high level of protection for transparency and safeguarding elections from manipulation. Crucially, this also explains the choice of positive integration—the establishment of common, EU-wide rules—rather than negative integration, which merely removes obstacles to trade. The internal market policy is being redefined to better safeguard democratic principles. This approach successfully achieves a dual purpose: it eliminates economic barriers stemming from national regulatory fragmentation while also guaranteeing a high level of protection throughout the EU. In doing so, it helps bridge existing dissensus—not only to foster economic integration but also to uphold and safeguard liberal democratic values across Europe. It is noteworthy that, despite the differences in approaches across Member States and the sensitivity of the topic, the Regulation was adopted nearly unanimously, with only Hungary opposing it.

As highlighted at the beginning of this chapter, while the use of internal market legislation can contribute to strengthening the protection of values, the logic of eliminating economic barriers also implies a principle of maximum harmonisation of standards of protection. In this regard, Article 4 of the Regulation explicitly states that "Member States shall not maintain or introduce, on grounds related to the transparency of political advertising, provisions or measures diverging from those laid down in this Regulation". Furthermore, it adds that "the provision of political advertising services shall not be prohibited or restricted, including geographically, on grounds related to transparency when the requirements of this Regulation are complied with". This enshrines a dual logic of both "floor" and "ceiling" protection within the Regulation. This approach may lead to a reduction in certain national-level requirements. For instance, in France, the 2018 law on combating information manipulation imposes an obligation on major online platform operators to provide users, during the three months preceding elections, with "fair, clear, and transparent information on the identity of the natural person or corporate entity—including its registered office and corporate purpose—paying the platform for the promotion of content related to *a debate of general interest*" (see the definition of political advertising, Article 1(2) of the Regulation). However, the scope of this national rule will need to be adjusted to align with the EU Regulation, which applies only to advertising by, for, or on behalf of a political actor or that is “liable to influence” an election, referendum, legislative or regulatory process, or voting behaviour (Zeno van Drunen et al., 2022, 191 and *Loi n° 2018–1202 du 22 décembre 2018 relative à la lutte contre la manipulationde l’information*). While the use of internal market instruments may thus contribute to the strengthening of EU values, the economic logic underlying Article 114 TFEU may also prevent further national developments in that regard.

4 Protecting Media Freedom

The organisation of the media and the protection of its autonomy and independence are increasingly at the centre of public and academic debate. In several Member States, recent developments have raised concerns about political interference and the erosion of media freedom. These trends reveal a deeper dissensus regarding the role and regulation of the media in Europe and on the global stage.

In EU law, the regulation of media is not new. Media services are integral to the internal market, and their regulation has long been considered necessary for both economic and broader societal reasons. As the internal market becomes increasingly digital, a unified EU-wide approach to digital services, including media, has become essential. In this context, the EU had already adopted the Audiovisual Media Services Directive (Directive 2010/13/EU), which incorporated key principles such as media freedom, cultural diversity, and market integration (as reflected in Recital 53). However, recognising evolving challenges in the media landscape, the EU decided to go further by introducing the EMFA, grounded in Article 114 TFEU.

The Regulation’s explicit objective is to ensure the proper functioning of media services within the internal market while simultaneously protecting the shared values of the EU and its Member States, such as fundamental rights and media independence (Recital 2). This is not only a matter of maintaining market efficiency but also of safeguarding fundamental values and shared interests within the scope of the Regulation. In this regard, Article 1 of the Regulation explicitly states that it “lays down common rules for the proper functioning of the internal market for media services [...], while safeguarding the independence and pluralism of media services”. Article 3 further reinforces this principle by stating that “Member States shall respect the right of recipients of media services to have access to a plurality of editorially independent media content and ensure that framework conditions are in place in line with this Regulation to safeguard that right, to the benefit of free and democratic discourse”. The Regulation introduces both precise obligations for Member States and certain minimum protection standards, particularly concerning the recipients of media services (Recital 8) and the protection of journalistic sources (Recital 23). It also establishes an independent European Media Services Committee responsible for monitoring media independence within the EU. The EMFA tries to strike a delicate balance between fostering a well-functioning internal market for media services and safeguarding fundamental values such as media pluralism and freedom. Yet this text undoubtedly harmonises certain standards of fundamental rights regarding the freedom of the press, freedom of expression, and freedom of receiving information, which are protected in Article 11 of the Charter of Fundamental Rights. This harmonisation notably includes the minimum safeguards required with regard to the appointment and dismissal of people managing public service media providers, the allocation of public funds to media service providers, and the duties of media service providers in terms of transparency.

The proper functioning of the media market is intrinsically tied to the preservation of media independence. After all, a market cannot truly be free or shielded from state influence if the media itself lacks independence. While this may seem obvious, media independence is increasingly being challenged across Europe. The question of how the media should be organised and how its independence should be safeguarded remains highly contentious among Member States (Lünemann, 2023). As pressures on the press intensify, from both political and economic forces, the lack of consensus on this fundamental principle underscores the urgency of ensuring a free and independent media landscape across Member States. This also serves as a clear example of how internal market policy can be used to overcome divisions, particularly because legislative action on the basis of Article 114 TFEU does not require unanimity. However, this approach has not been without controversy. Media regulation is inherently complex due to its dual nature, which encompasses both economic considerations and vital cultural aspects. At the EU level, Article 167 of the TFEU grants Member States primary competence over cultural matters. Nevertheless, this does not, in our view, preclude the EU from leveraging the internal market legal basis to regulate certain aspects of media services, provided such measures are essential to ensuring the well-functioning of the internal market, even if they indirectly affect cultural issues.

As previously underlined, Article 114 TFEU can be invoked to justify regulations that have broader societal implications beyond purely economic concerns. The legal constraints deriving from this provision have nonetheless been a key consideration in the adoption process of the EMFA. To justify its reliance on Article 114, the European Commission conducted extensive consultations and impact assessments, ensuring compliance with the principles of subsidiarity and proportionality. Initially, the Regulatory Scrutiny Board of the Commission issued a negative opinion on the proposal, notably because the single market failures and regulatory gaps that the EMFA aimed to fill were not sufficiently explained (Regulatory Scrutiny Board, 2022). Following revisions and refinements, a subsequent positive opinion was secured that validated the Commission's approach while recommending specific improvements (Regulatory Scrutiny Board, 2022). This did not prevent Hungary from challenging the Regulation before the Court of Justice, arguing that the true primary objective of the Regulation was to foster the fundamental values of the European Union, for which Article 114 TFEU does not provide an appropriate legal basis (Case C-486/24). Hungary was the only Member State to vote against the Directive, with all 26 other Member States voting in favour. On the basis of the current Court of Justice's interpretation of that provision, that challenge is, however, very unlikely to succeed.

5 Protecting Human Dignity

In recent years, there has been a growing awareness of the role that companies can and should play to limit the impact of their transnational activities on human rights and the environment. Holding companies accountable for damages that occur outside the EU is a powerful way to ensure that environmental and human rights standards are upheld everywhere in the world. This model is not without controversy, however, regarding the regulatory burden that it creates for businesses and its extraterritorial implications, i.e. the question of whether it is the EU's role to "export" its values outside its territory.

On 13 June 2024, the CS3D was adopted after a heavy political battle. The Directive aims to foster sustainable and responsible corporate behaviour across companies' global value chains. While previous legislation already required companies to account for their environmental and social performance (see Directive (EU) 2022/2464 on corporate sustainability reporting), the CS3D fundamentally changes the standard, requiring companies not only to monitor adverse impacts on human rights and the environment but also to prevent and eliminate them (Sinnig & Zetzsche, 2025). These three obligations—to prevent, to monitor, and to eliminate—constitute the concept of "due diligence". The Directive is also the first due diligence instrument to contain two complementary public and private enforcement mechanisms (Bueno et al., 2024), which are inspired by pre-existing German and French legislation, respectively (Patz, 2022; Sinnig & Zetzsche, 2025). National authorities are empowered to investigate breaches of the CS3D obligations, whether on their own motion or in response to substantiated concerns communicated to them, and to impose penalties. In addition, the Directive introduces a private liability mechanism for natural or legal persons who have suffered damage arising from a company's failure to comply with its due diligence obligations.

The CS3D is avowedly geared towards the protection of EU values, particularly respect for human dignity and human rights, of which environmental protection is arguably a component (Article 37 of the EU Charter of Fundamental Rights). Compared to the RPA and the EMFA, the CS3D's extraterritorial reach is evident. It seeks, first and foremost, to address human rights violations taking place outside of the EU, where companies can take advantage of limited environmental and social standards. In this regard, Recital 1 mentions "the universality and indivisibility of human rights", which "should guide the Union's action on the international scene" and contribute to "the sustainable economic, social and environmental development of developing countries". These extraterritorial implications have prompted criticisms as to the possible neo-colonial nature of the Directive (Thorens et al., 2025). At the same time, although it is much less visible through the text of the Directive, the CS3D is clearly an internal market instrument. Indeed, it also meets a need for legal certainty for companies, as several Member States have passed legislation on mandatory due diligence in recent years, with great differences in terms of scope, standards, and enforcement mechanisms. The fragmentation of the internal market that results from these differences—which might be considered dissensus—is clear. Of the three pieces of legislation reviewed in this chapter, the CS3D is thus arguably the one in which market and non-market objectives are most intertwined. This might explain why the EU's competence to adopt such a text was never contested.

If there was no major legal hurdle to the adoption of CS3D, the same cannot be said of political hurdles. The Commission's proposal, which was published on 23 February 2022 following several years of consultation at the EU level, attracted considerable public attention. After intense inter-institutional negotiations, the Parliament and Council reached a provisional agreement on 14 December 2023, under the Spanish presidency. The text on which they compromised failed to secure a majority in the Council due to the opposition of several Member States. The Belgian presidency proposed a number of changes and gained the Council's approval for the final text on 24 May 2024. Nonetheless, there were only 17 votes in favour of the text and 10 abstentions, which reflects a much higher degree of dissensus than for the EMFA and the Directive on Political Advertising.

The resulting political compromise has attracted major criticisms from civil society organisations, although the original proposal from the Commission had already been widely criticised as insufficient (McCullagh, 2024; Patz, 2022). One of the main points of criticism concerns the personal scope of the Directive. It applies to very large EU companies employing more than 1000 employees and generating a net worldwide annual turnover of 450,000,000 euros, up from an original threshold of 500 employees and 150,000,000 euros in the Commission's proposal (European Commission, 2019). It is estimated that the changes led to a significant decrease in the total number of EU companies covered by the CS3D, from roughly 16,000 to under 5500. This represents only 0.05% of all EU companies. Another hard-fought compromise concerns the scope of due diligence obligations beyond a company's own operations. Under the CS3D, such obligations cover not only a company's operations and the operations of its subsidiaries but also that of its business partners in its so-called "chain of activities". The concept of a "chain of activities" is narrower than that of a "value chain", which is used in international standards and was retained in the original proposal (Bueno et al., 2024). Finally, the recent proposal for an Omnibus Directive (European Commission, 2025) that seeks to diminish the administrative burden on companies resulting from EU rules on sustainability, further weakening the Directive's obligations, should be considered. Companies will, for instance, only be required to conduct due diligence in relation to harm that is attributable to *direct* business partners, not to all of their business partners. All of these factors show the high degree of dissensus that has surrounded the adoption of the CS3D and the limits of EU internal market legislation as a way to bridge dissensus.

When positive integration stalls in this way, serious doubts arise as to the merits of taking action at the EU level. This is further compounded by the fact that the Directive contains a (partial) maximum harmonisation clause (Article 4), which directs that Member States shall not lay down human rights and environmental due diligence obligations diverging from those contained in the Directive. This clause does not cover all of the Directive's provisions. The proposal for an Omnibus Directive (European Commission, 2025) further extends the scope of maximum harmonisation, with the stated goal of avoiding "gold-plating" and ensuring a level playing field across the internal market, thus responding to the demands of business organisations. This is a clear example of the limits of pursuing an agenda on values through an internal market instrument. Ultimately, protecting the EU's values may require limits on business freedom and activities, carrying the risk of fragmentation.

6 Conclusion

Our three case studies illustrate how the EU has used its internal market powers to legislate in the highly contentious field of EU values. In doing so, it provides an answer to the EU's value crisis, even if only a partial and not entirely satisfactory one. We consider it a welcome development. The three areas that we have selected—the transparency of political advertising, media freedom, and due diligence on sustainability—illustrate the extent to which economic and non-economic matters are intertwined. The use of Article 114 TFEU to legislate in an area in which the EU does not possess direct legislative powers is not only a convenient way to overcome the limits of the EU's competence framework; it is justified by the fact that the dissensus over values at the national level also creates obstacles to free movement in the EU internal market. This is especially visible as regards the cross-border provision of audiovisual media services, which is impeded by diverging rules on transparency and independence. In the field of due diligence, the need for a level playing field for companies is equally clear. To us, none of the three instruments surveyed here raise competence concerns under the Court's current interpretation of Article 114 TFEU. Hungary's challenge to the EMFA should be seen for what it really is: an attempt to take down a piece of legislation with which Hungary disagrees politically, rather than a solid legal case. We are convinced that the EU internal market is so profoundly integrated today that its proper functioning can only rely on a shared foundation of common values. This is not merely a question of economic coordination but of ensuring the market's long-term stability through a unified economic framework. That is why harmonising certain value-related issues is not only justified but essential.

Our enquiry also shows that all three instruments are very clear about their relevance to the EU's policy on values and do not "hide" behind their internal market cloak. This is an interesting observation in comparison to Kosta's (2018) findings that fundamental rights concerns were long incorporated in internal market legislation in more covert ways. She found that the main factors determining how visible fundamental rights were in a given piece of legislation were the political context and how salient certain issues were at the EU level. This finding is corroborated here. The three texts we analysed were all adopted in a highly politicised context, which made it impossible not to address their values-related characters upfront. In that regard, the RPA should be distinguished from the EMFA and the CS3D as the only instrument that potentially also *undermines* EU values, specifically freedom of expression. The Regulation addresses that aspect to make sure that rules on transparency do not threaten the freedom of expression and of information.

For us, the issue is not that the EU uses its internal market powers in areas related to EU values but rather that the recourse to such powers is the *only* option. As highlighted in this chapter, using Article 114 TFEU creates political and legal problems. It frames the regulatory conversation in a way that favours economic and business concerns and gives them a certain visibility in the law. The limits of Article 114 TFEU, even if easily overcome, still exist. It is interesting here to compare the EMFA to the RPA and the CS3D. In the first case, the legislature responded to competence concerns by inserting a number of recitals (Recitals 4, 5, and 6) devoted to the issue of market fragmentation and justifying the recourse to Article 114 TFEU. These concerns were largely absent from the discussion on the two other pieces of legislation. There is an inherent value to pursuing an agenda on values that does not depend on the contribution that a piece of legislation makes to free movement, an agenda that puts, to quote Michael J. Sandel, a moral limit on markets (2012). Furthermore, as we have shown, the natural dynamic for maximum harmonisation, the one that is most protective of business interests, is inherently at odds with the protection of non-market interests. Granting the EU an autonomous legal basis on values could alleviate some of these concerns, allowing the legislature some flexibility depending on which needs a proposed action is most meant to fulfil: those of the internal market or those of values.

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