

In partnership with the Trinity College School of Law, the Coimisiún na Meán is publishing an essay on the topic of EU media regulation prepared by the top student taking the module EU Media Regulation, as part of the postgraduate LL.M programme in Trinity College. This initiative is designed to promote public debate about media policy and practice.

The 2026 winning essay is titled '*Media Freedom as Market Freedom? The questionable legal basis of the European Media Freedom Act*'. It was written by Aleksandra Jabłkowska, and is edited by Dr Ewa Komorek, adjunct assistant professor, Trinity College Dublin.

***‘Media Freedom as Market Freedom?
The questionable legal basis of the European Media
Freedom Act’***

Aleksandra Jablkowska

1. Introduction

*“In our opinion, the European Union (EU) has no competence under the treaties to define or regulate the concept of reliable news.”*¹

This statement by Katalin Molnar, deputy at the permanent representation of Hungary to the EU, encapsulates the fundamental legal challenge facing the European Media Freedom Act (EMFA).² Adopted in 2024 and applied from August 2025, the EMFA establishes a common framework to protect media freedom and pluralism across the EU’s internal market on the basis of Article 114 of the Treaty on the Functioning of the EU (TFEU).³ This legal basis has been the centre of debate on the competence of the EU to legislate in the field of media pluralism: can Article 114 TFEU bear the weight of the EMFA's predominantly cultural objectives? This essay argues that this legal basis is fundamentally misguided: the EMFA's predominant purpose is cultural, not economic, and Article 114 cannot bear this weight.

The importance of media pluralism cannot be overstated. As John Stuart Mill argued in ‘*On Liberty*’, truth emerges from free, transparent public discourse.⁴ Without media pluralism, freedom of expression is non-existent.⁵ Significantly, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have repeatedly recognised this right to receive diverse information and ideas.⁶ Yet the question of who should protect this right - the EU or its Member States (MS) - remains deeply contested.

On one side are the supporters of the Regulation's legal basis, motivated by the higher purpose of protecting democracy. Threats to media freedom in Europe are well-documented.⁷ In the 2023 Reporters Without Borders Press Freedom Index, Germany ranked 21st while Greece

¹ Hungary Rejects EU Push for Media Pluralism' (Euractiv, 28 November 2025) <https://www.euractiv.com/news/hungary-rejects-eu-push-for-media-pluralism/> accessed 18 April 2026

² Ibid.

³ Regulation (EU) 2024/1083 (European Media Freedom Act) [2024] OJ L, preamble, Art. 29

⁴ John Stuart Mill, *On Liberty* (Walter Scott Publishing Co 1901), 28-31

⁵ Komorek E, ‘The European Commission’s “Three-Step Approach” to Media Pluralism – A Conduit for the Protection of Freedom of Expression in the European Union?’ (2009) 2(1) Amsterdam Law Forum 49, 1

⁶ M Kozak, ‘The Media Pluralism Principle, The Financing of Public Broadcasters, and EU Law’ (2024) 25(1) German Law Journal, sect. C; Informationsverein Lentia and Others v Austria (Application nos 13914/88, 15041/89, 15717/89, 15779/89, 17207/90) (Judgment on Merits, 24 November 1993) para. ; Case C-283/11 Sky Österreich GmbH v Österreichischer Rundfunk [2013] ECR I-000, para. 5,66; Handyside v United Kingdom (App no 5493/72) (1976) Series A no 24, (1979-80) 1 EHRR 737, para. 49; Jersild v Denmark (App no 15890/89) (1994) Series A no 298, (1995) 19 EHRR 1

⁷ G Horton and A Assersen-Skadberg, ‘European Media Freedom Act: Can It Stop the Democratic Backsliding?’ (2026) 18(1) Journal of Media Law, 2

ranked 107th, exemplifying the vast differences between EU countries.⁸ Of particular concern to the EU are the cases of Poland and Hungary, where ruling parties implemented changes to media policy with severe implications for media freedom and pluralism.⁹ As a result, Hungary fell in the Freedom Index from 40th in 2012 to 85th place in 2022.¹⁰

Additionally, the importance of media pluralism has been recently shown during the Russia-Ukraine war, where the lack of access to free media and ever-present propaganda has led to majority support for the government among the Russian public.¹¹ Further concerns arose from the COVID-19 pandemic, the politicisation of media in Europe, and the rise of artificial intelligence.¹² As Koltay notes, the EMFA fills a gap: prior EU instruments had only addressed media pluralism indirectly.¹³ As such, the Regulation was welcomed by scholars, such as Lamour, as the solution to deteriorating media freedom in the EU.¹⁴

On the other side are those who believe that the EU exceeded its competences, invoking Article 114, where a cultural legal basis would have been appropriate. The choice of a legal basis for an EU instrument is of constitutional importance as it ties with the procedural and structural limitations placed on the legislator.¹⁵ This follows from Article 5 Treaty on EU (TEU), which outlines the principle of conferral: the EU only possesses competences which the MS have voluntarily granted.¹⁶ Already in 2023, Cole and Etteldorf warned that the dual character of the media sector, with its economic and cultural components, requires close attention in the selection of a legal instrument.¹⁷ Fundamentally, a correct legal basis ensures legitimacy, legal certainty and the maintenance of the institutional balance.¹⁸

⁸Reporters Without Borders, 2023 World Press Freedom Index (2023) <https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry> accessed 18 April 2026

⁹Katarzyna Konarska, 'Re-transformation of the Polish and Hungarian Media Systems? Changes in Media Policy' (2022) 16(1) *Observatorio (OBS*)* 198, 203-21; Kozak (n 6), sect. B

¹⁰Free Press Unlimited, 'Hungary' <https://www.freepressunlimited.org/en/countries/hungary> accessed 18 April 2026

¹¹'Russian Field: Support for Non-Support of Peace and War' (Re: Russia, 3 September 2023) <https://re-russia.net/en/analytics/059/> accessed 20 April 2026; Gergely Ferenc Lendvai, 'Media in War: An Overview of the European Restrictions on Russian Media' (2023) 8 *European Papers* 1235, published online 24 January 2024, 1238

¹²FJ Cabrera Blázquez and others, *Governance and Independence of Public Service Media* (IRIS Plus, European Audiovisual Observatory, 2022), p. 14; Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, *Europe Press Freedom Report 2024: Confronting Political Pressure, Disinformation, and the Erosion of Media Independence* (Council of Europe, March 2025), 11-12

¹³A Koltay and R Francezel, 'European Union Media and Platform Regulations, the Autonomy of Member States and the Brussels Effect' (2025) *Southwestern Law Review*, 3-4

¹⁴C Lamour, 'Normalizing the Radical Right's Discourse on Press Freedom in the European Parliament: A Symbolic Interactionist Approach to the EMFA Debates' (2025) 60(4) *Government and Opposition*, 1383

¹⁵A Engel and A Zemskova, 'The Good, the Bad, or the Ugly? The Choice of Legal Basis in EU Digital Finance' (2025) 10(2) *European Papers*, sect. 1

¹⁶Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 2; Consolidated Version of the Treaty on European Union [2012] OJ C326/13, Art. 5

¹⁷MD Cole and C Etteldorf, *European Media Freedom Act: Background Analysis* (Study for the European Parliament's Committee on Culture and Education, PE 733.129, April 2023), 7

¹⁸Engel and A Zemskova (n 15), sect. 1

This essay argues that Article 114 TFEU is the incorrect legal basis for the EMFA. Applying the centre of gravity doctrine, the EMFA's core provisions protect media pluralism and journalistic freedom - objectives falling under Article 167 TFEU, where harmonisation is prohibited. This essay, first, establishes the legal framework for this analysis, second, presents the case against Article 114, third, examines the counter-arguments before finally comparing them and concluding.

2. The Legal Framework: Competence, Culture and the Internal Market

2.1 Historical Reluctance and the Shift to Intervention

Komorek argued in 2009 that the Commission wished to “*relieve itself of the duty to safeguard pluralism at European level*”.¹⁹ This Council’s 2013 call for non-legislative support in the sphere of media pluralism reflected the same reluctance among MS to pursue binding EU-level measures.²⁰

At the same time, the early 2010s saw a paradigm shift in the European Commission's approach to media pluralism.²¹ It initially relied on non-binding instruments, such as the Rule of Law Reports. Then, the legislators’ attention shifted to, first, audiovisual services, and later to digital services.²² Still, until EMFA, issues of media freedom remained within the MS regulatory competence.²³ The Regulation represents a shift to actively promoting the freedoms of both media services and their recipients across the EU.

Finding an adequate legal basis had been a primary obstacle to EU action on media regulation. The Centre for Media Pluralism and Media Freedom (CMPF) identified Article 167(4) TFEU as a key instrument, but harmonisation is not possible under this Article.²⁴ Faced with this

¹⁹Komorek E. ‘Is Media Pluralism a Human Right? The European Court of Human Rights, the Council of Europe and the Issue of Media Pluralism’ [2009] EHRLR 3, p. 17; Komorek (n 5), p. 1, 5

²⁰ Council of the European Union, ‘Council Conclusions on Media Freedom and Pluralism in the Digital Environment’ [2014] OJ C 74/2, para. 24

²¹Komorek E. ‘The Problem Which Refuses to Go Away: Recent Developments in the EU Approach to Media Pluralism’ (2014) 19(2) Communications Law: Journal of Computer, Media and Telecommunications Law, p. 48

²² A Blagojević, ‘Normative Analysis of the European Media Freedom Act’ (2026) 5(1) SCIENCE International Journal, p. 45; European Commission, ‘2022 Rule of Law Report: Communication and Country Chapters’ (13 July 2022) <https://commission.europa.eu/...> accessed 18 April 2026

²³*Ibid.*, p. 45

²⁴ Centre for Media Pluralism and Media Freedom, ‘European Union Competencies in Respect of Media Pluralism and Media Freedom’ (RSCAS Policy Paper No 2013/01, European University Institute, February 2013), p. 5

limitation, the CMPF proposed either Article 114 or, failing that, Article 352 - the latter constrained by the need for unanimity.²⁵

2.2 The Principle of Conferral and Centre of Gravity Doctrine

Under Article 5 TEU, if a competence has not been conferred on the EU, it remains within the MS.²⁶ The internal market is a shared competence, while culture is an area within which the Union can carry out actions to support the MS.²⁷ This distinction is reflected in the key legal bases for the EMFA - Articles 114 and 167.

The former, Article 114, offers a foundation for measures that have as their object the establishment and functioning of the internal market.²⁸ Central to the Article's interpretation are its first words: "*Save where otherwise provided in the Treaties*".²⁹ For that reason, Article 114 is a *lex generalis* harmonisation power that can only be relied on where no more specific legal basis exists. Significantly, its associated procedure is Qualified Majority Voting (QMV), a fact that may incentivize an expansive reading of the Article.³⁰

Engel and Zemskova warn precisely that Article 114 should not be treated as a default legal basis due to its residual nature.³¹ The *Tobacco Advertising* case (C-376/98) clearly states that a reading of Article 114 to mean that it vests a general power to regulate the internal market would be incompatible with Article 5 TEU.³² This case law and academic interpretation, however, stand in tension with how Article 114 is commonly deployed in practice.³³

The latter, Article 167, grants the EU a supporting competence in the field of culture, meaning it cannot harmonise laws in that area.³⁴ The MS desire to retain their competence in this area is evident from the 29th Protocol to the Treaty of Amsterdam.³⁵ It confirmed that the MS retained

²⁵ Ibid., p. 65, 75

²⁶ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, Art 4, 5

²⁷ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 4, 6

²⁸ Ibid., Art. 114(1)

²⁹ Ibid.

³⁰ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 114(1)

³¹ Engel and A Zemskova (n 15), sect. 1-2

³² Case C-376/98 Germany v Parliament and Council [2000] ECR I-8419, para. 83

³³ A Cuyvers, 'The Legal Framework of the EU' in E Ugirashebuja and others (eds), *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (Brill Nijhoff 2017), p. 120; C Barnard, 'Competence Review: The Internal Market' (UK Government, BIS-13-1064, 2013), p. 28

³⁴ Ibid., Art. 167

³⁵ European Parliament, 'Treaty of Amsterdam' (About Parliament) <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-amsterdam> accessed 19 April 2026

the competence to fund PSB, as long it did not unduly distort competition in the internal market.³⁶

Taking those two possible bases into account, the primary way of determining the correct legal basis for EU acts is the ‘*centre of gravity*’ doctrine, under which the predominant purpose of the legislation dictates the legal basis.³⁷ As the CJEU confirmed in the *Weapons* case (C-482/17), if a measure has a twofold purpose or component, that measure must be founded on the legal basis required by the predominant purpose or component.³⁸ Thus, the EMFA's legal basis must align with its principal objective, rather than uncritically resorting to Article 114.

3. The Case Against Article 114 as the Legal Basis for the EMFA

3.1 The Predominant Purpose is Cultural, not Economic

The first argument against Article 114 is best summarised by MEP Gilles Lebront: “*You say that media freedom is in danger. That is true, but in this case, it is the European Union that is threatening it.*”³⁹

The opponents of EMFA’s current legal basis argue that its centre of gravity does not lie with the internal market. Cole and Etteldorf illustrate this by noting that while Article 1 of EMFA refers to the internal market, the recitals and explanatory memorandum focus solely on the cultural aspect.⁴⁰ They highlight that while DSA and DMA (based on Article 114) were primarily concerned with economic aspects of protecting consumers and competition, EMFA focuses on media services.⁴¹

Even scholars sympathetic to the EMFA cite protecting media pluralism, editorial independence and journalists as its primary rationales - not market integration.⁴² Additionally, even the European Committee of the Regions and the European Economic and Social

³⁶ Protocol (No 29) on the System of Public Broadcasting in the Member States [2008] OJ C115/309

³⁷ Opinion of AG Szpunar in Joined Cases C-360/15 and C-31/16, *College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV and Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam* (ECLI:EU:C:2017:379) (18 May 2017), para. 90-92

³⁸ Case C-482/17 *Czech Republic v Parliament and Council* [2019] ECR I-1035, para 31

³⁹ European Parliament, ‘Verbatim Report of Proceedings – European Media Freedom Act (Debate)’ (Plenary Sitting, 3 October 2023) https://www.europarl.europa.eu/doceo/document/CRE-9-2023-10-03-ITM-005_EN.html accessed 18 April 2026; Lamour (n 14), 1356-7

⁴⁰ Cole and Etteldorf (n 17), 15

⁴¹ MD Cole and C Etteldorf, *The European Media Freedom Act Unpacked* (IRIS, European Audiovisual Observatory, 2024), 4

⁴² Blagojevic (n 35), 46 and 50

Committee questioned the appropriateness of Art. 114 as the sole legal basis of EMFA due to the important function of media services in the cultural sector.⁴³

This cultural orientation, critics argue, cannot be disguised by invoking Article 2 TEU. While Article 2 TEU enshrines the rule of law as one of the foundational values of the EU, it does not constitute a competence title.⁴⁴ Using it to justify the EMFA, Caspar contends, reflects a political strategy of endlessly expanding European values.⁴⁵ The claim that media can affect the internal market, Caspar adds, appears limitless.⁴⁶ A cultural dimension is inherent to the media sector, and invoking Article 114 stretches the Treaty's intended scope.⁴⁷

Koltay and Francezel concur: Article 114 cannot be invoked where the predominant focus is cultural.⁴⁸ An approach where any economic dimension means Art. 114 can be used as a legal basis could effectively disregard the principle of enumerated powers.⁴⁹ As Jürgen Habermas stresses, modern legal norms should have a rational basis that makes it “*possible for persons to accept them as legitimate and thus deserving of obedience.*” - a standard that, according to the opponents of EMFA’s current legal basis, the Regulation fails to meet.⁵⁰

An additional point of tension lies in the EU’s choice of the form of regulation instead of a directive. A directive would have offered Member States greater leeway in achieving the prescribed aim and would better respect their retained competence in cultural matters.⁵¹ Instead, the EU not only chose a legal basis that does not require unanimity but also a legal form that bypasses MS transposition.

⁴³ European Committee of the Regions, ‘Opinion on EMFA’ (COR 2022/05388) [2023] OJ C188/79, sect. 2 para. 8; EESC Opinion on the EMFA (COM(2022) 457 final) [2023] OJ C100/111, para. 2.8

⁴⁴ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, Art. 2

⁴⁵ Y Caspar, ‘European Media Freedom Act: Legally Flawed, Politically Dangerous’ (Centre for European Studies, December 2024), p. 3, 5

⁴⁶ Ibid.

⁴⁷ Ibid., p. 4

⁴⁸ A Koltay and R Francezel, ‘European Union Media and Platform Regulations, the Autonomy of Member States and the Brussels Effect’ (2025) Southwestern Law Review, 45

⁴⁹ Mark D Cole, ‘Acting on Media Freedom: The Proposed European Media Freedom Act (EMFA) of the European Union’ (2024) 55(2) University of the Pacific Law Review, 295

⁵⁰ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, MIT Press 1996), p. xxv

⁵¹ Case C-486/24 Hungary v European Parliament and Council

3.2 The Internal Market Link is Insufficiently Established

The cultural predominance argument is further reinforced by the Regulation's failure to substantiate a genuine internal market connection. Accordingly, the Draft Impact Assessment for the EMFA received a negative opinion from the Regulatory Scrutiny Board due to its insufficient substantiation of Article 114 as the sole legal foundation.⁵² Under the Weapons case, a measure adopted on the basis of Art. 114 must have at its object the genuine improvement of the conditions for an internal market, not merely find disparities between national rules.⁵³ Etteldorf does not believe this requirement to be met. She states that while local stations broadcasting to small local groups have no relevance for the internal market, the same is true, to an extent, for public service media in general, which only provide cross-border offerings in exceptional cases.⁵⁴ These observations suggest that EMFA's internal market justification is empirically and doctrinally weak.

3.3 Hungary's Pending Challenge

On the basis of these arguments, Hungary has challenged the EMFA's legal basis before the CJEU (C-486/24), seeking annulment of the Regulation.⁵⁵ It argues that while media services are of both economic and cultural nature, the EMFA does not actually govern the economic aspects of these services.⁵⁶ Consequently, Article 114 cannot be considered an appropriate legal basis; Article 167(5) would be the relevant provision instead.⁵⁷ Hungary further invokes established case law that mere divergence between national rules cannot justify recourse to Article 114.⁵⁸ Additionally, it claims that the Regulation contravenes Articles 4 and 5 TEU, as the matter falls within MS competence.⁵⁹ A spokesperson for Hungary told *Politico* that the country fears EU action beyond its legislative competence would upset the balance of powers established in the EU treaties to the detriment of the MS.⁶⁰

⁵²European Commission, 'Regulatory Scrutiny Board Opinion' (SEC(2022) 322 final, 27 July 2022) (accompanying COM(2022) 457 final), 8

⁵³Case C-482/17 *Czech Republic v Parliament and Council* [2019] ECR I-1035, para 37

⁵⁴C Etteldorf, 'Why the Words "But" and "However" Determine the EMFA's Legal Basis' (Verfassungsblog, 13 June 2023) <https://verfassungsblog.de/why-the-words-but-and-however-determine-the-emfa-legal-basis/> accessed 18 April 2026, sect. 2

⁵⁵Case C-486/24 *Hungary v European Parliament and Council*

⁵⁶Ibid.

⁵⁷Ibid.

⁵⁸Ibid.; Case C-482/17 *Czech Republic v Parliament and Council* [2019] ECR I-1035, para 37

⁵⁹Ibid.

⁶⁰M Waxman, 'Hungary Takes EU to Court over Media Freedom' (Politico, 15 July 2024) <https://www.politico.eu/article/hungary-take-eu-court-over-media-freedom-viktor-orban/> accessed 18 April 2026

4. The Counter-arguments: Defending Article 114

4.1 The Excusable Necessity Argument or the Internal Market Justification?

The first counter-argument is best represented by the statement of Vice-President for Values and Transparency, Věra Jourová, who remarked: “*Democracy cannot be taken for granted; it needs to be nurtured and protected.*”⁶¹ This view is shared by the president of the European Commission, Ursula von der Leyen.⁶² Scholars like Blagojević and Tambini agree that media freedom is an indicator of a democratic society.⁶³

Proponents of EMFA’s current legal basis thus believe that protecting democracy and freedom of expression is necessary for the unwritten social contract among European people.⁶⁴ This follows the philosophy of Thomas Hobbes, who believed that society enters an unwritten ‘*social contract*’ understanding that it is in everyone’s interest to enforce rules that ensure safety and security for everyone.⁶⁵ The right to freedom of expression and information, enshrined in the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the EU (CFREU), can be seen as a legally binding expression of this ‘*contract*’.⁶⁶

In light of the importance of media freedom to democracy in the EU, Longo poses the argument that only allowing EU institutions for a crisis-driven enforcement mechanism would not protect citizens’ freedoms adequately.⁶⁷ He further argues that the production and consumption of multimedia content has become supranational and, as such, required EU-level protection.⁶⁸ Thus, he concludes that in light of the EU having used its other competences to enhance the protection of media freedom across the MS, its use of a broad interpretation of Article 114 is justified for safeguarding vital European values.⁶⁹ Similarly, Brogi likewise argues that Article 114 can be used due to a lack of another appropriate legal basis.⁷⁰ Proponents of the current

⁶¹European Commission, 'European Democracy Action Plan: Making EU Democracies Stronger' (Press Release IP/20/2250, 3 December 2020), p. 1

⁶² European Commission, 'Rule of Law: First Annual Report on the Rule of Law Situation across the European Union' (Press Release IP/20/1756, 30 September 2020) https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1756 accessed 1 April 2026

⁶³ Blagojevic (n 35), 45; D Tambini, 'A Theory of Media Freedom' (2021) 13(2) Journal of Media Law, “conclusion” section

⁶⁴ E Longo, 'Grounding Media Freedom in the EU: The Legal Basis of the EMFA' (2025) 7(1) Rivista Italiana di Informatica e Diritto, 116

⁶⁵ Friend C, 'Social Contract Theory' (Internet Encyclopedia of Philosophy) <https://iep.utm.edu/soc-cont/> accessed 19 April 2026

⁶⁶ Charter of Fundamental Rights of the European Union [2000] OJ C364/01, Art. 11; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), Art. 10

⁶⁷ Longo (n 66), 116

⁶⁸ Ibid., 119

⁶⁹ Ibid., 121

⁷⁰ Brogi (n 25), 18-19

legal basis therefore, regard Article 114 as an excusable necessity in the absence of a more suitable means of promoting media freedom within the EU.

The Commission's own impact assessment articulates a more orthodox internal market justification for the Regulation. It states that the general objective of EMFA is to improve the functioning of the internal media market, which would foster quality media services and strengthen the integrity of the internal market as a whole.⁷¹ As outlined in the impact assessment, the Commission believes that EU action would reduce the burden on market players from complying with different MS regimes, increase predictability and certainty promoting fair competition and cross-border investment.⁷² Brogi agrees with the arguments of the Commission, stating that Article 114 can be used due to the existence of disparity between national laws that can thus have a direct effect on the internal market or competition.⁷³

4.2 Analogy to the Conditionality Regulation

Poland and Hungary have already previously alleged that a Directive was based on an incorrect legal basis in the case of the Conditionality Regulation (Regulation 2020/2092).⁷⁴ The states argued that the Regulation centred on the rule of law, not financial rules as needed for a legal basis under Article 322 TFEU.⁷⁵ The Court found that the Regulation's legal basis was valid as its purpose was the protection of the EU budget from financial risks stemming from rule of law breaches.⁷⁶ This shows that the CJEU could be willing to accept a legal basis that links a fundamental value objective to an economic or budgetary competence.

This case can be seen in comparison to the current challenge of Hungary against EMFA.⁷⁷ The rule of law situation in Hungary and Poland has recently prompted the EU to act on multiple occasions. Notably, it initiated hearings against the country's potential breaches of EU values and against their failure to fulfil refugee relocation quotas.⁷⁸ As a result, Hungary and Poland saw Regulation 2020/2092 as a new form of political pressure directed against them.⁷⁹ Their

⁷¹ European Commission, 'Impact Assessment Report' (SWD(2022) 286 final, Part 3/3), 1

⁷² Ibid.

⁷³ Brogi (n 25), 18-19

⁷⁴ Case C-156/21 Hungary v European Parliament and Council [2022] ECLI:EU:C:2022:97

⁷⁵ Ibid., para. 67

⁷⁶ Ibid., para. 153

⁷⁷ Case C-486/24 Hungary v European Parliament and Council; Case C-715/17 Commission v Poland [2020] ECLI:EU:C:2020:257 (Joined Cases C-715/17, C-718/17 and C-719/17)

⁷⁸ European Parliament Resolution on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary [2020] OJ C 270/91

⁷⁹ European Parliament, 'Application of Regulation (EU, Euratom) 2020/2092, the rule of law conditionality mechanism (continuation of debate)' (Verbatim Report of Proceedings, 11 March 2021) the remarks of Angel Dzhambazki (ECR).

legal challenge could thus be seen as an attempt at avoiding responsibility for violations of EU values, rather than a real concern about the appropriateness of its legal basis. Even if Hungary's motives are suspect, the legal basis question must be resolved on its own terms. Nevertheless, for proponents of the EMFA, the parallel invites scepticism about the good faith of Hungary's challenge.

5. Analysis: EMFA's Dual Character

Applying the '*centre of gravity*' test from *Weapons* and AG Szpunar's Opinion in *Joined Cases C-360/15 and C-31/16*, the predominant purpose of the EMFA appears to be the protection of media pluralism as a democratic and cultural value.⁸⁰ The Commission attempted to marry the cultural and internal market aspects of media law, as shown by the preamble to the EMFA: "*rule of law constitutes an essential feature of a well-functioning internal market for media services*."⁸¹ Nevertheless, the references to the internal market throughout the EMFA seem barely incidental and insufficient for the use of Article 114 as a legal basis.

EMFA's binding articles, for example, Articles 3 and 6, focus predominantly on the rule of law and democracy.⁸² In addition, a prominent example of a clumsy attempt to integrate internal market considerations is Article 4. It opens by enshrining the right of media services to exercise their economic activities in the internal market without restrictions, yet the remainder of the article focuses on the protection of free journalism and does not reference the internal market again.⁸³ References to the internal market are more commonly made in section 5 of the Regulation. For example, Articles 22 and 23 outline an assessment and actions related to media market concentrations that are likely to affect the functioning of the market.⁸⁴ Nonetheless, a few market-focused provisions cannot bear the weight of Article 114 when the EMFA's binding articles, recitals, and predominant purpose are overwhelmingly cultural and democratic. The centre of gravity remains with Article 167.

⁸⁰ Opinion of AG Szpunar in *Joined Cases C-360/15 and C-31/16*, *College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV and Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam* (ECLI:EU:C:2017:379) (18 May 2017), Para. 90-92 ; Annegret Engel, 'The CJEU's Centre of Gravity Theory in Legal Basis Litigation: A Flawed Concept' in *The Reasoning of the Court of Justice of the EU: A Normative Assessment* (Oxford University Press, 2026) 234, doi:10.1093/9780198983002.003.0013, sect. 2

⁸¹ Regulation (EU) 2024/1083 (European Media Freedom Act) [2024] OJ L, preamble

⁸² *Ibid.*, Art. 3, 5, 6

⁸³ *Ibid.*, Art. 4

⁸⁴ *Ibid.*, Art. 22, 23

Nevertheless, I am not convinced by Etteldorf's argument that public service media do not have an impact on the internal market and only provide cross-border services exceptionally.⁸⁵ Differences between national legislation contribute to increased administrative and economic cost for cross-border businesses, like many media companies.⁸⁶ At the same time, this fact must be shown through the provisions of EMFA. The Commission's own impact assessment has been rejected by the Regulatory Scrutiny Board, because the EMFA's internal market connection was insufficient. In this light, it is shocking that little change has been made between the Proposal and the EMFA currently in force.⁸⁷ A key example here is Article 4 of EMFA, which despite its potential to introduce a more 'economic' focus, did not change between the proposal and the final version of the EMFA.⁸⁸

Facing a lack of an appropriate legal basis and CMPF's recommendations, it is understandable why the Commission turned to Article 114.⁸⁹ Article 352 would have allowed the EU to act without an internal market link, but its requirement of unanimity was impossible to reach given the contentious nature of media regulation in the EU.⁹⁰ This essay recognises that where inference in media freedom comes directly from a state, it is unlikely to be addressed voluntarily and effectively at the national level.⁹¹ It is also clear that the freedom of expression and information is essential to democracy.⁹² Intrinsically, EMFA's incorrect legal basis is a deliberate constitutional evasion. The Commission knew Article 167 prohibits harmonisation and Article 352 requires unanimity. It chose Article 114 because QMV made adoption possible, not because the internal market link was genuine.

The EMFA is therefore politically rational but constitutionally illegitimate. As Engel and Zemskova noted, the choice of a legal basis should not lie solely in the procedural requirements tied to it.⁹³ The importance of democracy in the EU cannot change the fact that Article 2 TEU

⁸⁵ Etteldorf (n 53); 'Polish Radio Joins A European Perspective' (A European Perspective, 27 June 2025) <https://www.europeanperspective.net/news/2025/06/polish-radio-joins-a-european-perspective> accessed 23 April 2026; A European Perspective, 'From Covid-19 to Europe at War: "A European Perspective" Connecting a Continent through Trusted News' (31 May 2023) <https://www.europeanperspective.net/news/2023/05/from-covid-19-to-europe-at-war-a-european-perspective-connecting-a-continent-through-trusted-news> accessed 23 April 2026

⁸⁶ Centre for Media Pluralism and Media Freedom, 'European Union Competencies in Respect of Media Pluralism and Media Freedom' (RSCAS Policy Paper No 2013/01, European University Institute, February 2013), 74

⁸⁷ European Commission, 'Regulatory Scrutiny Board Opinion' (SEC(2022) 322 final, 27 July 2022) (accompanying COM(2022) 457 final), 8

⁸⁸ Regulation (EU) 2024/1083 (European Media Freedom Act) [2024] OJ L, Art. 4; European Commission, 'EMFA Proposal' COM(2022) 457 final, Art. 4

⁸⁹ Centre for Media Pluralism and Media Freedom, 'European Union Competencies in Respect of Media Pluralism and Media Freedom' (RSCAS Policy Paper No 2013/01, European University Institute, February 2013), p. 65, 75

⁹⁰ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 352

⁹¹ Ibid.

⁹² Charter of Fundamental Rights of the European Union [2000] OJ C364/01, Art. 11; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), Art. 10

⁹³ Engel and A Zemskova (n 15), sect. 4

is not a competence title.⁹⁴ This essay similarly declines to ground the EMFA in an '*unwritten social contract*' of Europeans, as Longo suggests.⁹⁵ The social contract theory has been criticised for giving legitimacy to governments acquiring too much power under the pretence of protecting the public, the exact critique EMFA is currently facing.⁹⁶ Instead, this essay stands with Habermas - without a legitimate legal basis, people will not accept EMFA as deserving of obedience.⁹⁷

This stance informs the conclusion that, as EMFA's principal objective is furthering media pluralism and journalistic freedom, its centre of gravity lies with Article 167. If EMFA cannot be based on Article 114, but instead on Article 167, this would mean it must be annulled, as 'culture' remains a Member State competence.⁹⁸ Hungary's pending challenge will ultimately test whether the CJEU prioritises constitutional limits over policy outcomes.

6. Conclusion

While free public discourse and media pluralism are essential to democracy, respecting the EU's constitutional framework is also essential for upholding the rule of law within the Union.⁹⁹ The EMFA's predominant purpose is cultural, placing its centre of gravity under Article 167 TFEU, rather than Article 114. Choosing an incorrect legal basis undermines legitimacy, institutional balance, and the rule of law within the Union. This carries significant negative consequences for its implementation, evidenced by the limited and uneven nature of concrete Member State reforms following its entry into force.¹⁰⁰ Hungary's current challenge to EMFA further highlights that choosing an incorrect legal basis risks annulment of the Regulation.¹⁰¹ If Article 114 cannot bear the weight assigned to it and EMFA is annulled, this would ultimately harm rather than help the cause of media freedom in Europe.

There are three remedies to the current weakness of EMFA's legal basis. First, the EMFA's predominantly cultural provisions can be severed, while preserving those with a genuine

⁹⁴ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, Art. 2

⁹⁵ Longo (n 66), 116

⁹⁶ Ibid.

⁹⁷ Habermas (n 50), xxv

⁹⁸ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 4, 6

⁹⁹ John Stuart Mill (n 4), 28-30

¹⁰⁰ Centre for Media Pluralism and Media Freedom, 'Implementation of the Media Freedom Act: Elda Brogi Presents Preliminary Findings of Study' (EMFA Observatory Blog, 15 December 2025) <https://cmpf.eui.eu/implementation-of-the-media-freedom-act-elda-brogi-presents-preliminary-findings-of-study/> accessed 23 April 2026

¹⁰¹ Case C-486/24 Hungary v European Parliament and Council

internal market connection. Supporting measures under Article 167 would permit monitoring and non-binding recommendations, making this solution lawful but weak. Second, EMFA could be based on Article 352, as it does not require a market link. At the same time, unanimity is unlikely to be reached, making this solution unviable. Instead, a key remedy would be revising EMFA to better reflect the economic legal basis under Art. 114. This would require rewording the ‘culture’ focused Articles and strengthening the Recital’s economic justification. Such an approach would preserve the EU’s rule of law ambitions while firmly placing the gravity of EMFA’s provisions within Article 114.