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REPORT

with recommendations to the Commission on the drawing-up of a directive of the European Parliament and of the Council on the fixing of book prices (2001/2061(INI))

Committee on Legal Affairs and the Internal Market

Rapporteur: Willy Rothley

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PROCEDURAL PAGE

At the sitting of 6 September 2001 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to submit a legislative initiative report, pursuant to Rules 59 and 163 of the Rules of Procedure, on the drawing-up of a directive of the European Parliament and of the Council on the fixing of book prices.

At the sitting of 4 October 2001 the President of Parliament announced that she had also referred the matter to the Committee on Culture, Youth, Education, the Media and Sport for its opinion.

The Committee on Legal Affairs and the Internal Market had appointed Willy Rothley rapporteur at its meeting of 11 September 2001.

The committee considered the draft report at its meetings of 17 September 2001, 16 October 2001, 26 November 2001, 23 January 2002 and 19 February 2002.

At the last meeting it adopted the motion for a resolution by 23 votes to 6, with no abstentions.

The following were present for the vote: Giuseppe Gargani, chairman; Ioannis Koukiadis and Bill Miller, vice-chairmen; Willi Rothley, rapporteur; Paolo Bartolozzi, Luis Berenguer Fuster, Maria Berger, Ward Beysen, Isabelle Caullery, Michel J.M. Dary (for François Zimeray pursuant to Rule 153(2)), Willy C.E.H. De Clercq, Bert Doorn, Raina A. Mercedes Echerer, Francesco Fiori, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José Maria Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Othmar Karas, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Manuel Medina Ortega, Angelika Niebler, Elena Ornella Paciotti, Marianne L.P. Thyssen, Rijk van Dam, Michiel van Hulten, Theresa Villiers, Diana Wallis and Stefano Zappalà.

The opinion of the Committee on Culture, Youth, Education, the Media and Sport is attached.

The report was tabled on 21 February 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution with recommendations to the Commission on the drawing-up of a directive of the European Parliament and of the Council on the fixing of book prices (2001/2061(INI))

The European Parliament,

- having regard to the Treaty establishing the European Communities and in particular Article 95,
 - having regard to Article 151 of the EC Treaty,
 - having regard to the Treaty establishing the European Communities and in particular Article 192 (2),
 - having regard to Rules 59 and 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Culture, Youth, Education, the Media and Sport (A5-0039/2002),
- A. whereas no provisions on the fixing of book prices exist at present,
- B. whereas no proposal pursuant to Rule 59 of the Rules of Procedure is being drawn up at present,
- C. Whereas in its resolution of 12 February 2001 on the application of national fixed book-price systems, the Council recalls the freedom of each Member State, in its policy on books and reading, to decide whether or not to apply a national statutory or contractual book-price system,
- D. whereas the European Parliament, the Council and the Commission have considered the importance of books and the fixing of book prices on a number of occasions¹,

¹ Resolution of the European Parliament of 13 February 1981 on the fixing of book prices (OJ C 50, 9.3.1981, p. 102).

Communication from the Commission to the Council of 25 May 1985 on the creation of a Community framework system for book prices (COM(1985)258).

Communication from the Commission to the Council of 27 November 1985 on the European dimension with regard to books (COM(1985)681).

Resolution of the European Parliament of 12 March 1987 on the fixing of book prices (OJ C 99, 13.4.1987, p. 172).

Resolution of the European Parliament of 10 July 1987 on the communication from the Commission to the Council on the European dimension with regard to books (OJ C 246, 14.9.1987, p. 136).

Resolution of the Council and of the Ministers of Culture meeting in the Council of 18 May 1989 on promoting books and reading (OJ C 183, 20.7.1989, p. 1).

E. whereas in its last resolution of 16 December 1999 the European Parliament declared as follows:

‘Whereas it views books as both economic and cultural assets,

Whereas it believes that the fixing of book prices, in which a number of Member States engage, safeguards the existence of numerous independent publishing houses, helps to preserve and promote varied literary production, freedom of opinion and independence of research, science and teaching and – in common cross-border linguistic areas – to promote the European idea and ensures, without direct or indirect government aid, a dense network of bookshops, giving the reader an extensive, high-quality and easily accessible supply of books’,

F. whereas the resolution called on the Commission

‘to recognise and leave untouched national and regional measures to promote books, including the fixing of book prices, which is better than any other system at improving the production and distribution of literary works without competition being eliminated’,

G. whereas the Commission is not at present preparing any legislative measures on the fixing of book prices,

1. Requests the Commission to submit to Parliament by the end of 2002, on the basis of Article 95 of the EC Treaty, a legislative proposal on the fixing of book prices, following the detailed recommendations below;
2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
3. Considers that the requested proposal will not have any financial implications;
4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and Council.

Communication from the Commission of 3 August 1989 on 'Books and reading: A cultural challenge for Europe' (COM(1989)258).

Resolution of the European Parliament of 21 January 1993 on the promotion of books and reading in Europe (OJ C 42, 15.2.1993, p. 182).

Council Decision of 22 September 1997 on cross-border fixed book prices in European linguistic areas (OJ C 305, 7.10.1997, p.2).

Resolution of the European Parliament of 20 November 1998 on the book pricing system adopted by Germany and Austria (OJ C 379, 7.12.1998, p. 391).

Resolution of the European Parliament of 16 December 1999 on book prices in Germany and Austria (OJ C 296, 18.10.2000, p. 143).

ANNEX TO THE MOTION FOR A RESOLUTION
DETAILED RECOMMENDATIONS ON THE DRAWING-UP OF A
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE FIXING OF BOOK PRICES

A. PRINCIPLES AND AIMS OF THE PROPOSAL

1. In spring 2000 the Commission decided, following a complaint from the firm *Libro* (Austria), that the cross-border fixing of book prices on a contractual basis - such as the collective written undertaking between Germany and Austria - was incompatible with EU competition law. However, there was no objection under competition law to a national system on a statutory basis, given the competency of Member States for cultural policy and provided there is no impact on trade between Member States. If it does not contravene Community law in general (e.g. the principle of free movement of goods). The cross-border arrangement had to be terminated by the end of June 2000.
2. Before the cross-border arrangement was terminated, Germany adopted a national contractual agreement (*Sammelrevers* 2000) and Austria adopted a law based on French law (the *Loi Lang*) with a limited duration of five years.
3. In its resolution of 16 December 1999 the European Parliament called on the Commission to '*take its decision in the Libro case in accordance with the principles of French law*'.
4. Most countries have a system of fixing of book prices.
 - a. Belgium

No system is currently in force, but a law is being drafted.
 - b. Denmark

A fixed book-price system has been in existence since 1830 (sectoral agreement). The future of the system is under discussion.
 - c. Germany

A fixed book-price system has been in existence since 1888 (sectoral agreement). In the Commission's opinion, the cross-border agreement with Austria is a violation of European competition law. Accordingly, there has only been a national system since 1 July 2000.
 - d. Finland

The fixed book-price system (sectoral agreement) was abolished in 1970.

e. France

Fixed book prices have been in force since 1 January 1982 pursuant to the law of 10 August 1981 (*Loi Lang*).

f. Greece

Fixed book prices have been the law since 1997.

g. United Kingdom

The net book agreement in force since 1 January 1900 was suspended by the Publishers' Association in 1995.

h. Ireland

The book trade was governed by the net book agreement until 1989. After the Commission had declared that cross-border fixed price arrangements contravened the law, the agreement was abandoned.

i. Italy

The sectoral agreement on fixed prices was terminated in 1996. Parliament is currently discussing a bill.

j. Luxembourg

There is a sectoral agreement on fixed prices, but it does not apply to imports. A bill is under discussion.

k. Netherlands

Fixed book prices since 1903 with a sectoral agreement since 1923.

l. Austria

According to the Commission, the cross-border price fixing agreement with Germany contravenes European competition law. Accordingly, there has been a national statutory system since 1 July 2000.

m. Portugal

Statutory fixed prices since 1996.

n. Sweden

Fixed prices were abolished in 1970.

o. Spain

Fixed prices were introduced by law in 1975 and extended by royal decree of 30 March 1990.

5. Following the Commission's decision in the *Libro* case, booksellers (including Internet booksellers) in Member States with a fixed price system are subject to conditions of competition which differ from those applying to importers, exporters and re-importers and Internet dealers supplying from a different country.
6. Importers, exporters and re-importers and Internet dealers supplying from a different country are not subject to fixed prices.
7. The resultant distortions of competition in the trade in books, as an economic commodity, are incompatible with an internal market and hence with Community law.
8. Article 95(1) of the EC Treaty is therefore the appropriate legal basis for the proposed directive.
9. The European Union does not have the power to take action against a national price-fixing system. Abolition of such a system would, moreover - and for the reasons mentioned above - jeopardise books as cultural assets and would violate Article 151(4) of the EC Treaty.
10. Following the Commission's decision in the *Libro* case, fixed book prices in the Member States are *de facto* at risk.
 - They can be undermined by imports or by exports and re-imports or by Internet commerce. Community law must draw up rules on competition guaranteeing that reliable national systems of book price fixing are not eroded.
 - Commercial undertakings which also trade in books will be constantly challenging national systems before the national and European courts in the hope that, sooner or later, they will achieve a breakthrough.
11. Hence the need for a directive creating a stable economic and statutory framework for existing or future national systems of fixed prices, without imposing additional obligations on Member States which do not have national systems of fixed prices, and guaranteeing legal certainty for all market operators.
12. It remains at the discretion of the Member States whether to provide for a fixed price system and whether such a system should be laid down by law or should be the subject of an agreement.
13. Fixed prices restrict price competition in the final sales price of the book. Fixed-price systems can set a definitive final sales price or permit the bookseller to offer a discount on this price.
14. Competition between publishers in the individual book segments (interbrand competition) and service and performance competition in book sales are unaffected.

15. Certain user groups - such as libraries, bookshops, schools and students - contribute to some extent towards disseminating the culture of books, or for reasons of education policy have a particular interest in discounts on books. Scope for offering these users a discount should be available. Member States should determine the details.
16. It needs to be made clear that fixed price systems which comply with the requirements of this directive are means to promote cultural and linguistic variety and to protect pluralism within the meaning of Article 1 No 6 of Directive 2000/31/EC of 8 June 2000 on electronic commerce.

B. ACTION TO PROPOSE

Article 1

For the purposes of this directive:

1. 'books' shall mean all printed works, or works reproduced in any other way, in particular of literature, music, art and photography, specialist periodicals (but excluding daily and weekly newspapers or popular magazines) and electronic publisher's products, provided they are a substitute for printed books;
2. 'final purchaser' shall mean a person who acquires a book for purposes other than resale;
3. 'final vendor' shall mean a person who sells books to final purchasers;
4. 'retail price' shall mean the sales price of the book to the final purchaser set by the publisher;
5. 'publisher' shall mean any person who reproduces and distributes books for commercial purposes;
6. 'associated enterprises' shall mean enterprises in respect of which another enterprise indirectly or directly
 - possesses more than half of the capital or assets or has more than half of the voting rights or
 - can appoint more than half of the members of the supervisory board or the bodies appointed for statutory representation or
 - is entitled to conduct the business of the enterprise.

Article 2

Every Member State shall be entitled to introduce by law or maintain, or permit on the basis of contractual agreements, fixed price systems for books in its territory.

Article 3

Fixed price systems may provide for one of the following:

1. the possibility of the publisher setting the retail price for books and making it incumbent on the final vendor, via contractual agreement, to maintain the retail price; or
2. the publisher's obligation, based on law or decree, to determine a retail price for books or for certain groups of books and the obligation of the final vendor to maintain the retail price determined by the publisher.

The choice of system shall be at the discretion of the Member State.

Article 4

1. Fixed price systems for books are permissible pursuant to this directive only if they have cultural policy objectives.
2. Member States' fixed price systems pursuant to this Directive are measures to promote cultural and linguistic variety and to protect pluralism within the meaning of Article 1 No. 6 of Directive 2000/31/EC of 8 June 2000 on electronic commerce.

Article 5

1. Fixed price systems shall provide for discounts for certain user groups, for example libraries, bookshops, educational establishments or subscribers.
2. Member States may determine the user groups entitled to a discount and the level of permissible discount on the retail price.
3. Member States may provide for other discounts.

Article 6

1. Cross-border sales of books to final purchasers or booksellers may be subject to fixed price agreements if they are intended to circumvent, or result in the circumvention of, domestic priced fixing.

2. Circumvention shall apply:
 - a) if the nature of the actual final purchaser is such that there are in fact no cross-border supplies;
 - b) if books are imported into one Member State by, or at the instigation of, the same person (including any enterprises associated with that person) and subsequently exported from that Member State to another Member State with fixed prices by means of sale to booksellers or final purchasers;
 - c) if a bookseller offers books to customers in another Member States at a more favourable net price than to customers in the Member State from which the offer is made or supplies the books, or if the dealer does not offer customers in the second Member State the books in question in the same form;
 - d) if a dealer offers books in one Member State without fixed prices, although from an economic point of view and on the basis of objective factors (national language, quantity offered, centre of the dealer's sales efforts) the offer is clearly addressed to customers in a Member State with fixed prices; or
 - e) if books are sold to end users of a Member State with the aid of technical facilities (e.g. Internet terminals) or by mail order and the books are imported from another Member State.
3. Circumvention of domestic fixed prices shall also apply if a bookseller obtains a competitive advantage merely by conducting a cross-border transaction which would not have been possible with domestic transactions either in the exporting or in the importing Member State. This applies if a book may only be sold in the exporting state at a fixed price which is not below the price fixed for the importing state.
4. Fixed price systems, even in the case of cross-border transactions, shall apply without distinction to any form of trade in books (local trade, Internet trade and mail order sales).

Article 7

Booksellers shall cooperate in an examination of whether fixed prices have been contravened. Member States may enact laws on the details of such examination or leave it to contractual agreements.

Article 8

Fixed price systems may provide for domestic booksellers in an exporting state being allowed, or obliged, to pass on to their final purchasers specific purchasing advantages through a corresponding discount on the fixed retail price. Quantity discounts offered by domestic and foreign publishing houses do not constitute such specific purchasing advantages.

Article 9

1. Every publisher and importer of a book shall be obliged, pursuant to a statutory system of fixed book prices, to set and to publish a retail price for books they publish or import for the territory of the Member State.
2. The retail price set by the importer must not be below the price set or recommended by the publisher of the country of origin or importing country or for the Member State in which the books are placed on the market. The price recommended by the publisher of the country of origin for the importing country or for the Member State in which the books are placed on the market may be identical to the price fixed for the country of origin.

However, in the case of books published in, or imported from, a Member State, the specific purchasing advantages obtained in the exporting country may or must be taken into consideration, pursuant to Article 8, when the price is set, provided the Member State has rules to that effect.

Article 10

1. Contractual fixed-price systems for books may be permitted by Member States if the fixed price agreements are concluded vertically between a domestic publisher or sole importer and domestic or foreign booksellers for sales to final purchasers in the Member State in question. Publishers from other Member States may take part in a contractual fixed-price system, provided there is no noticeable restriction on competition or trade within the meaning of decisions of the Court of Justice.
2. By signing the agreement on fixed prices, booksellers undertake to the publisher or sole importer to maintain the retail price set by the publisher or sole importer in the case of sales to final purchasers in the Member State in question.
3. Member States may provide that booksellers subject to the agreement in an exporting State may or must pass on to their final purchasers specific purchasing advantages pursuant to Article 8.
4. Notwithstanding paragraph 1, sentence 2, imports of books from other Member States may only be included in a contractual fixed price system if this is justified pursuant to this Directive to protect that system from contravention.
5. Reimported books may be included in a contractual fixed price system if the acts of exporting and subsequent importing serve to contravene the fixed priced system.

Article 11

Member States shall take measures for effective monitoring by their national authorities of abusive practices. Such practices shall include, in particular, a fixed price system which treats differently, either directly or indirectly, similar enterprises without any objectively justified reasons.

Article 12

(Entry into force)

21 November 2001

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Legal Affairs and the Internal Market

on the fixing of book prices

Draftsman: Raina A. Mercedes Echerer

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Raina A. Mercedes Echerer draftsman at its meeting of 18 September 2001.

The committee considered the draft opinion at its meetings of 7 and 21 November 2001.

At the latter meeting it adopted the following conclusions by 16 votes to 0 with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Ulpu Iivari, vice-chairman; Raina A. Mercedes Echerer, draftsman; Ole Andreasen, Pedro Aparicio Sánchez, Christine de Veyrac, Geneviève Fraisse, Maria Martens, Raimon Obiols i Germà (for Giorgio Ruffolo), Barbara O'Toole, Doris Pack, Roy Perry, Christa Prets, Marieke Sanders-ten Holte, Luckas Vander Taelen, Theresa Zabell and Sabine Zissener.

SHORT JUSTIFICATION

1. *Background*

All the institutions of the European Union agree that books are not just a saleable commodity but embody cultural values and uphold freedom of opinion, freedom to teach and freedom to conduct research. Works of literature make an important contribution to cultural diversity, which underpins the whole edifice of the European Union, and must therefore be protected and promoted. Most Member States, therefore, have a system of fixed book prices, in the firm conviction that price fixing is the only means of ensuring that there is no decline in the number of separate titles published and that cultural diversity is maintained. Publishers are thereby encouraged to publish not only commercially successful books, but also smaller runs of works with high cultural value. This makes it possible to maintain high literary standards. Price fixing also provides consumers with a more extensive supply network, as it enables a larger number of bookshops to survive in the market.

As national retail price maintenance systems for books fall within the province of the Member States alone, there is no need for the Commission to become involved. Problems arise only if transnational fixed-price systems for books are set up, as has occurred in certain common-language areas. In such cases, price fixing conflicts with EU competition law, and is regarded by the Commission as inimical to the internal market.

The European Parliament has made its views on this subject quite clear, calling on the Commission, in its resolution of 20 November 1998, to allow fixed-price systems for books to continue to operate, particularly in common linguistic areas. The same resolution also called for the introduction of a binding arrangement to allow not just national price-fixing systems for books but also bilateral agreements on fixed book prices inside common linguistic areas to be accepted as compatible with EU competition law.

A resolution of the Council of Ministers of Cultural Affairs of 23 November 2000 emphasised the importance of recognising the significance of books as cultural assets.

2. *Recent developments: the proceedings brought by the Commission against German publishers*

The continuing controversy about fixed book prices flared up again in July 2001 when the Commission brought cartel proceedings against a number of German publishing houses. This action was triggered by the Austrian bookseller, Libro, which had advertised German-published books at reduced prices on the Internet, whereupon various publishing houses imposed a deliveries boycott on the firm, to which Libro responded by lodging a complaint with the Commission.

The Commission currently takes the view that the conduct of the German publishers is incompatible with the amended version of the 'Sammelrevers' (collective undertaking) proposed in the spring of 2000 by German and Austrian publishers, which the Commission had previously approved. That agreement limited the application of fixed book prices to Germany. Cross-border sales (including Internet sales) were therefore not to be subject to fixed book prices, unless publications were exported solely for the purpose of being re-imported and thus circumventing the price-fixing systems.

3. *The Legal Affairs Committee's legislative initiative*

The Legal Affairs Committee has now taken the initiative of recommending that the Commission draw up a directive on the fixing of book prices. The proposed directive is intended to establish a stable economic and statutory framework for national systems of fixed book prices and guarantee legal certainty for all market operators.

The rapporteur of the Legal Affairs Committee bases his argument on the following premises:

- Following the Commission's decision in the Libro case, fixed book prices are de facto at risk.
- As a consequence of the Commission's decision in the Libro case, booksellers in Member States with a fixed price system are subject to conditions of competition which differ from those applying to importers, exporters and re-importers and Internet dealers supplying the same market from a different country.
- This is a distortion of competition which is incompatible with a functioning internal market and Community law and it would therefore be appropriate to issue a directive on the basis of Article 95(1) of the EC Treaty.

The key elements of the proposed directive are as follows:

Member States would have the right to set up fixed-price systems for books by law or on the basis of contractual agreements.

It would be possible for cross-border sales of books to end purchasers or booksellers to be subject to fixed price systems if they were intended to circumvent, or resulted in the circumvention of, domestic fixed pricing.

It should be possible to offer discounts to certain end users acquiring books for cultural purposes, provided however that the specified minimum price was not undercut.

4. *Assessment*

The draft directive produced by the Legal Affairs Committee goes well beyond the current situation, where the Commission and concerned parties (in the case of the German-speaking area, under the terms of the 'Sammelrevers') had agreed to limit fixed prices for books to the national level. For, under Article 6 of the proposed directive, it would be possible for cross-border sales of books to be subject to price fixing not only if such sales were deliberately intended to circumvent fixed prices, but also if the circumvention of the rules was merely a side-effect of such sales. This would make it possible to achieve more effective protection of books as a cultural asset also in cross-border common language areas. The Committee on Culture, Youth, Education, the Media and Sport therefore supports the legislative initiative of the Committee on Legal Affairs and the Internal Market in all essential points.

CONCLUSIONS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. To incorporate the following reference in its resolution:

‘- having regard to Article 151 of the EC Treaty,’

2. To incorporate a new recital Ba in its motion for a resolution:

‘whereas, in its last resolution of 12 February 2001 on the application of national fixed book-price systems, the Council noted that each Member State was free, in its policy on books and reading, to decide whether or not to apply a national statutory or contractual book-price system,’

3. To reword Article 5(1) of the proposed directive (annex to the motion for a resolution, section B) as follows:

‘Fixed price systems shall provide for discounts for certain user groups, for example libraries, bookshops, *educational establishments* or subscribers’, to ensure that private educational institutions are also able to take advantage of discounts in line with the objective of lifelong learning.