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- 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 annexed to this resolution;
 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.

ANNEX

DETAILED RECOMMENDATIONS FOR DRAWING UP
A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
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 'Sammelrevers' 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 'Sammelrevers' had to be terminated by the end of June 2000.
2. Before the 'Sammelrevers' was terminated at the end of June 2000, 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 Member States 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.

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(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.

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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 collapse.
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 constitute measures to promote cultural and linguistic diversity and to ensure the defence of pluralism within the meaning of Article 1(6) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market⁽¹⁾.

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;

⁽¹⁾ OJ L 178, 17.7.2000, p. 1.

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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 directly or indirectly:
 - 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 diversity and to ensure the defence of pluralism within the meaning of Article 1(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, book-shops, 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.

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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 State at a more favourable net price than to customers in the Member State from which he makes the offer or supplies the books, or if the bookseller does not offer customers in the latter Member State the books in question in the same form;
 - (d) if a bookseller offers books in a 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 bookseller's sales efforts) the offer is clearly addressed to customers in a Member State with fixed prices; or
 - (e) if books are sold to final purchasers of a Member State in that country 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. Such circumvention exists where 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.

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2. The retail price set by the importer must not be lower than the price set or 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. 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 of the European Communities.

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 the second sentence of paragraph 1, 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)
