

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## COMMISSION COMMUNICATION TO THE COUNCIL

on the European dimension with regard to books

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## INTRODUCTION

1. Books constitute the archetypal medium for transmitting knowledge and thought, are a virtual symbol of culture and a vehicle for the most varied disciplines; at one and the same time, they represent a major product of economic activity and are produced, traded and consumed.

2. With the stocks held by public libraries and private individuals, and an annual output of about 250 000 titles (almost one half of world output) the European dimension with regard to books appears to be an objective reality but one which is complex and encumbered by a whole series of problems generated by the composite and multicultural nature of the Community, which are in some ways still poorly or insufficiently understood. It has to be borne in mind, too, that in terms of culture, Europe cannot be confined within the bounds of our ten, soon to be twelve, countries; this Europe remains dependent on other currents of thought, coexisting and interacting with the cultures of other countries outside the Community.

3. The detailed consultations in which the Commission has engaged with interested parties have enabled it to test the validity of what turns out to be a fundamental feature of the book trade: the area in which a book is normally distributed corresponds to the language-area to which it belongs. In the Community of Ten there are, at present, three major language areas<sup>1</sup> which correspond neither to the extensive market envisaged by the EEC Treaty for mass-consumption articles nor to national markets.

4. The Commission views the development of a European dimension with regard to books as a major objective and an essential component of Community action in the cultural sphere. The Commission's ultimate aim is to ensure that books can be more easily written, published, sold and read in the Community, and be made accessible to the greatest possible number of readers, both inside and outside their country of origin. Community action must take account of various factors, which relate in particular to:

- the creation of written works (copyright,<sup>1</sup> tax, and social security for authors);
- publishing and the book trade as such (book pricing, VAT, duty exemption and promotion of translation);
- preservation and dissemination (preservation of library collections; rationalization, computerization and interconnection of libraries, and improved access for the public);
- the promotion of reading and exchange of information (prizes, fairs, radio and television broadcasts, events and exhibitions).

5. To begin with, the Commission has selected the following priorities for study and action: creating a forum for consultation to improve exchange of information, book pricing, promotion of translation, measures to help libraries and simplifying customs formalities for books.

<sup>1</sup> The Commission has started looking into the question of copyright and how to protect it to a greater extent at Community level with a view to drawing up a green paper as a basis for future discussions in this sphere.

I. Creating a framework for discussion and consultation

6. The Commission is aware of the importance of a framework for discussion and consultation in order to better identify and assess the problems to be dealt with. It has already had wide-ranging consultations with the professional circles concerned, which have demonstrated the major interaction between the various economic and cultural factors that may affect the production and distribution of books.

The Commission is therefore planning to set up an Advisory Committee on Books which would consider the situation in this sector at regular intervals in order to advise it on possible action, with regard in particular to the writing, publishing, trading, distribution, marketing, translation and keeping of books and to getting libraries better interconnected and more efficiently used. The Committee could also consider how best to set about meeting readers' needs and increasing their interest.

It would consist of representatives of the circles concerned (authors, publishers, distributors, booksellers, readers) and government experts. In view of the kind of questions likely to be referred to it and the Community's desire for closer cooperation with the Council of Europe and the EFTA countries, the Committee would also include Council of Europe and EFTA representatives.

## II. Book pricing

7. As was stated in the introduction, the area in which a book is normally distributed corresponds to the language area to which it belongs. In the Community, such language areas correspond neither to the extensive market envisaged by the EEC Treaty for mass consumption articles nor to national markets.

There are three major language areas which straddle national borders:<sup>1</sup>

- English is spoken in the United Kingdom and Ireland;
- Dutch is spoken in the Netherlands and part of Belgium;
- French is spoken in France, part of Belgium<sup>2</sup> and Luxembourg.

<sup>1</sup>This classification does not include regions in which the language spoken is that of a small minority at domestic level but is the official language of another Member State.

<sup>2</sup>Inside these language areas, trade in books between Member States is very unbalanced in all three cases: naturally enough, more titles are exported from the UK to Ireland, from the Netherlands to Dutch-speaking Belgium or from France to French-speaking Belgium than in the opposite direction, although there are exceptions in particular categories (for example, Belgian publications appear to account for about half of the sales of strip-cartoon albums in France).

The proportion of trade between language areas is minimal. This prevents the development of a form of contact which could make a substantial contribution to cultural interpenetration in the Community.

The proposals put forward here regarding the simplification of customs formalities and the promotion of translation are intended to go some way towards remedying this situation.

8. Most Member States (the exceptions being Greece and French-speaking Belgium) have systems in which retail prices, which also form the basis for the calculation of royalties, are fixed by the publisher, so as to take account of the specific features of book distribution:

- in France the obligation to set a retail price is imposed on the publisher by law;
- in Dutch-speaking Belgium, Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom a similar practice stems from agreements between publishers and booksellers.

It should be mentioned that in Denmark, Germany, Luxembourg, the Netherlands and the United Kingdom such agreements are authorized by way of exception to a general ban on resale price maintenance agreements.

In Greece and in French-speaking Belgium the bookseller is free to determine his own selling price.

9. Price-fixing systems are naturally more effective if they apply throughout the language area, because that is the real market on which competition for the most part operates.<sup>(1)</sup>

But such systems have cross-border effects which fall within the scope of the EEC Treaty, being caught by the rules of competition and by the rules on the free movement of goods. They may thus infringe Article 30 (Case 229/83 Leclerc v Au Blé Vert and Others, not yet reported) or Article 85 (Joined Cases 43/82 and 63/82 VBBB and VBBB v Commission [1984] ECR 19).

The Commission has no intention of intervening in the cultural policy choices made by Member States, always provided of course that these choices do not result in measures being taken which conflict with Community law.

10. In its previous Communication, the Commission outlined four arrangements which could form the basis of a Community framework system for book prices.

These are set out in Annex 1, with a summary of the comments made by the interested circles.

<sup>1</sup> It may be mentioned in this context that the "Net Book Agreement" which applies - optionally - in the UK and Ireland has been operating to the satisfaction of the trade in both Member States for over a century; it became a cross border agreement only when Ireland gained its independence in 1921.

11. The Commission has found that the price fixing arrangements applying to books in the Member States <sup>in general</sup> are operating satisfactorily, and that the majority of governments and those engaged in the trade wish to see them continue. A majority feels that binding legislation at Community level is consequently neither necessary nor advisable.

In the Commission's view it is, moreover, vital, in a sphere such as that of culture, that the Member States be able to pursue their common objectives by whatever means they consider most appropriate. But there must be no incompatibility with Community law.

The Commission's consultations have also confirmed that, in practice, the problem of the compatibility with Community law of the cross-border effects of price systems arises solely inside cross-border language areas.

The Commission feels that it would be more appropriate to deal with the small number of outstanding problems on a pragmatic basis. There might, for example, be adjustments inside the language areas, carried out by the national administrations concerned and by those administrations and the interested business circles. The Commission is fully prepared to provide assistance here.

These pragmatic solutions should be kept under constant review at Community level in order to ensure that they do allow the market to operate in proper compliance with the Treaty rules. The Book Committee described in Section I could play a useful role here.

Accordingly, the Commission considers it preferable, for the time being, not to formulate a proposal for a directive laying down a Community framework for book prices; legislation must not conflict with the general principles of the Treaty, and a directive therefore could not avoid modifying one or other aspect of the existing schemes.

### III. Promotion of translation

12. Nowadays, in a Community like ours with so many different cultures and languages, the dissemination of works written in the less widely-used languages comes up against practical difficulties, which we must endeavour to eliminate. Even more serious is the fact that obstacles also stand in the way of cross-penetration by works written in the best known languages.

The priorities for community action in the cultural sector must include steps to ensure that all Europeans can, in fact, have access in their own languages to at least some masterpieces - whether literary, scientific or from other spheres - that are particularly representative of European culture and also to promote, on a permanent basis, a common awareness of works written in all our countries.

13. Since 1982 the Commission has granted assistance towards the translation of the works of living authors written in one of the less widely-used official Community languages into such languages as English, French or German, but this is not enough.

In full knowledge of the major, complex problems involved here, the Commission accordingly proposes to create concerted arrangements for promoting translation in the Community.

14. A scheme could be established by agreement between governments, by an industry agreement (publishers) or through composite agreements.

Financing could be provided through contributions from publishing houses and from the Member States, supplemented by national and community public funds.

The assistance could be granted in the form of loans with or without interest, outright grants and scholarships.

Such a scheme should make it possible to:

- promote further training in universities or specialized centres such as those in Straehlen (Germany) or Arles (France);
- encourage multinational joint publications associating the publisher of an original work with those of the various translations;
- help to promote translation into all Community languages of a series of works of fundamental importance to European culture;
- promote the distribution of written works produced in the Community by ensuring that they are included, in translation, in libraries and in the written and audiovisual media through contributions towards purchases and incentives to write articles and produce radio and television broadcasts;
- award a prize enabling twelve award-winning books to be translated into all the official Community languages each year, the resulting translations to be distributed by means of a vast promotional campaign.

15. Following the discussions within the Council, the Commission plans to establish, as appropriate, the necessary contacts with the various organizations and authorities concerned in order to prepare a formal proposal.

#### IV. Measures to assist libraries

16. Libraries are a key element in the dissemination of books: their role is both direct and indirect.<sup>1</sup> This is true in particular of specialized works (notably scientific works). In addition, they constitute a very important market for the publishing industry.

In recent years the role of libraries has evolved. While continuing to preserve works, they are gradually taking on the role of an information service increasingly oriented towards users' requirements where the scope of their activities is not confined to books but encompasses other information media too.

A very important part in this development has been played by the introduction of new information technologies (e.g. on-line consultation of data basis). The variety and quality of the services that are available enhance cultural awareness and afford a basic tool for the education system.

In the past few years a growing disparity has been noted in certain cases between the services that are on offer and the level of public demand.

On the one hand, budget increases have not matched increasing book prices and operating expenditure and this has often resulted in a drop in purchases. On the other hand, users (particularly scientific and technical circles) call increasingly for ad hoc, rapid services (for example, the loan or purchase of international publications).

A rational solution to the problem would be more efficient use of existing resources at both national and international level.

<sup>1</sup> Statistics show that those countries with the highest lending rates also have very high book sales.

17. From this standpoint, in a resolution of 27 September 1985,<sup>1</sup> the ministers responsible for cultural affairs meeting within the Council requested the Member States and the Commission to take into consideration the desirability of swift action to help libraries. Such action should be aimed in particular at:

- increasing cooperation between libraries at Community level and drawing up a common programme aimed at establishing the most suitable procedures for promoting cooperation;
- defining and setting up with the principal libraries a system which, based on existing systems and forms of collaboration, would enable computerized catalogues to be linked up;
- \* preparing, in close cooperation with the Member States, a possible work programme designed to speed up the development of library activities both at the cultural level and as a major force on the information market.

Within the framework of Community action on specialized information,<sup>2</sup> the Commission has embarked upon its initial examination of the measures of primary importance which would be best suited to the existing situation and would best satisfy current requirements; the Commission intends to put forward practical proposals and prepare a programme for action at Community level before the end of 1986.

A first indication of possible measures is set out in the Commission's official response<sup>3</sup> to Parliament's resolution on the creation of a European Library adopted following the presentation of the report by Mr Schwencke.<sup>4</sup> The guidelines set out in that response tie in very closely with the objectives referred to in the Council resolution and cover various fields such as the training of library staff, the classification of works, inter-library loans, cataloguing, preservation of the literary heritage and other areas.

<sup>1</sup> OJ No C 271, 23.10.1985, p. 1.

<sup>2</sup> OJ No L 314, 4.12.1984, p. 19.

<sup>3</sup> being finalized

<sup>4</sup> OJ No C 117, 30.4.1984, pp. 161-164.

18. One of the aims of the measures proposed by the Commission will be to create circumstances more favourable to the dissemination of books at Community level and to develop a European dimension in regard to this sector. More specifically, the establishment of a network of interlinked catalogues and a system of inter-library loans that is more efficient than the present one will encourage the dissemination of works produced in a particular Member State and make works better known in their original language.

V. Simplifying customs formalities for books

19. During the recent consultations, trade circles emphasized the difficulties they encounter as a result of VAT being levied in the country of destination when books are sent from one country to another by post (generally in small quantities). This makes it necessary to carry out customs clearance formalities entailing costs which are often disproportionate to the value of the consignment.

The Commission does not suggest introducing in advance harmonized VAT rates and other simplified procedures planned with a view to securing progress towards the establishment of the internal market.

It believes, however, that practical progress could be achieved in the very near future without in any way changing either existing VAT rates or the system of taxation in the country of destination. This would consist in entrusting the postal authorities in the country of destination with the task of recovering VAT and paying it to the competent tax authority so as to obviate the need for consignments of books to clear customs.

20. The Commission also wishes to draw the attention of ministers responsible for cultural affairs to its proposal concerning tax relief on books sent in small consignments having a total value not exceeding 22 ECU.<sup>1</sup>

Adoption of such a measure would, in practice, have limited budgetary implications, but would make a substantial contribution towards the free movement of books in the Community.

In view of the delays within the Council on economic and financial affairs and the importance of the measure in regard to imbuing the book sector with a European dimension, it would be useful if the ministers responsible for cultural affairs could express their desire and interest that the Council adopt this Commission proposal as soon as possible.

<sup>1</sup> OJ No C 3, 6.1.1984, p. 1. This proposal applies also to newspapers, magazines and other periodicals and brochures, provided that the consignment is taxed in the Member State of dispatch, even where it is sent by a taxable person (for example, by a publisher or bookseller).

### Conclusions

The Council is asked to take note of this communication and approve its tenor.

In particular it is asked to signify its agreement to

- (i) the institution of concerted arrangements for promoting translation in the Community, for which the Commission will be submitting detailed proposals in the first half of 1986;
- (ii) making it unnecessary for consignments of books to clear customs by having VAT recovered by the postal authorities in the country of destination, practical proposals in this connection to be submitted by the Commission in the first half of 1986;
- (iii) tax relief on books sent in small consignments having a total value not exceeding 22 Ecus.

The Council notes that the Commission is planning

- (i) to set up an Advisory Committee on Books;
- (ii) in accordance with the Council's resolution of 27 September 1985, to submit a number of practical proposals for measures to assist libraries, together with a 1986 Community action programme.

As concerns book pricing, the Council notes that

- (i) the Commission intends not to submit a proposal for a directive laying down a Community framework for book prices;
- (ii) the Member States and most of the book trade want the present book pricing arrangements in the majority of the Community countries to continue;
- (iii) with regard to the small number of problems outstanding in the language areas the Commission will work for a pragmatic solution in compliance with Community law.

a. Complete freedom to determine prices (cf. Greece and French-speaking Belgium)

The directive would oblige the Member States to discontinue or to obtain the discontinuation of the existing systems, both as concerns national and imported books. A system of this kind implying complete free price competition, will allow the consumers to take advantage of lower prices for books. In theory, this would favour the reading of "easy" books as well as "difficult" ones.

This system is, of course, compatible with Community law.

However, authors, publishers, booksellers and Government experts, oppose this system because, inter alia, it enables some distributors to charge very low prices on bestsellers, to the detriment of small bookshops, which either go out of business or are rendered incapable of using sales of such books to offset the cost of holding a stock of works which sell more slowly. Such a system would eventually also have adverse effects on publishing, where there is the same balance between slow and fast-selling titles.

It should be noted that the consumer's organisations do not favour a system of this kind even if, in the first instance, this seems to be in line with the interests they represent. They are only opposed to a Community framework which could set for the future the existing systems and would exclude the possibility of evolving towards more freedom in price fixing.

b. An obligation on the publisher to sell a book at the same price to all buyers in the Community (this system is not applied in any Member State).

This solution would be compatible with the principles established by the Commission and the Court as concerns free competition for books as it would concern exclusively the prices which the publishers apply for their direct buyers.

The directive would thus require publishers to sell their books in principle at the same price to all customers. They could not therefore sell them at a lower price, for example to book clubs or to wholesalers in other Member States.

The arguments in favour of this system are as follows:

- it would encourage the publishing of cultural books, since the poor return on "difficult" books could be made up by higher profit margins on books printed in large numbers;
- it would leave national systems of fixing book prices intact. At a purely national level, therefore, it would still be possible to fix the retail prices of books to protect booksellers; it would only be in intra-Community trade that this would not apply;
- freely determined retail prices in intra-Community trade would have only a negligible impact on purely national systems, since:
  - competition operates mainly between different copies of the same book and probably to a very limited extent between low-priced foreign books and national books;
  - experience in the Netherlands since 1979 has shown that the maintenance of the purely national system in that country has never been jeopardized by the fact that imports and re-imports were excluded from it;
  - the obligation on publishers to apply the same selling price to different buyers throughout the Community will considerably reduce the economic benefit to be gained from re-importing books.
- a system of this kind would rule out the danger that a precedent would be set for a system of retail price maintenance in other sectors (for example, pharmaceutical products and insurance), a danger which must be removed at all costs;
- its implementation would be unlikely to raise practical difficulties, since it would simply be necessary to stipulate that publishers could not apply a discriminatory pricing policy towards their buyers. It would be necessary to check that these provisions were observed only in the country of the publisher (for example, through checks on his invoices).

This system is nevertheless rejected by the vast majority of representatives of publishers, booksellers and in particular by the Government experts of a Member State, on the grounds that :

- the publisher could no longer offer his purchasers quantity or quality discounts on the basis of their efforts to ensure optimal distribution of a book ;
- as concerns imported books, it would not prevent large stores from concentrating on the sale of bestsellers and giving large retail discounts on them.

This could only damage the professional bookseller, who is unable to offer the same kind of discount because his profit margin on fast selling books enables him to maintain a stock of slower moving titles.

(c) Giving Member States the option of allowing publishers to set a retail price (which would then apply throughout the Community, according to a mechanism to be determined) (similar systems are applied in respect of prices of domestically produced books in Dutch-speaking Belgium, Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom).

This system would be acceptable to the majority of the trade circles and Government experts concerned, because it in fact amounts to recognizing existing practices, and would allow each Member State to maintain its system unchanged.

But as it would not change the existing situation it would not resolve the problem of the incompatibility of certain national measures or agreements with Articles 30 and 85 of the EEC Treaty. If Member States were free to establish a retail price fixing system or not as they saw fit, there is no reason why the disparities which currently exist between systems inside one and the same language area should disappear.

The difficulties associated with differing rates of VAT<sup>1</sup> and fluctuating exchange rates would also have to be resolved.

<sup>1</sup> The rates of VAT on books are very different from one Member State to another:

22% in Denmark; 7% in France and Germany; 6% in Belgium and Luxembourg; 5% in the Netherlands; 2% in Italy; 0% in the United Kingdom and Ireland; and no VAT in Greece.

d. Obliging Member States to apply the system under (c), with some flexibility for the bookseller (system applied in France)

A system of this kind would imply :

- the retail price to be charged by booksellers throughout the Community would be fixed by the publisher;
- the price fixed by the publisher can be either a minimum price calculated in such a way as to allow a sufficient margin for retailers, who would be free to charge higher prices, or else a prescribed price on which retailers could grant appreciable discounts;
- strict limitation of the period during which the price would be charged. The period during which the publisher fixes the retail price for the whole Community should in fact be a maximum, at the end of which freedom in regard to pricing is restored, and not, as in the case of certain national systems (United Kingdom for example), a minimum period at the end of which the publisher may either allow a return to unrestricted pricing or extend the prescribed price.

The fact that the pricing system envisaged would have to be a common one does not mean that it would necessarily have to be absolutely rigid, thus denying the publisher any freedom to differentiate the retail prices he fixes for the various Member States. But he could be allowed only a very narrow latitude here, solely in order to take account of objective differences relating to the situation and structure of the market in the Member States concerned (transport costs or other particular requirements).

A Community framework for book pricing systems developed on these lines would in no way preclude limiting its scope wherever justified by market conditions.

- First of all, there is no reason why certain particular channels of book distribution should not be exempted from the Community pricing rules, in line with practices which are fairly widespread in the application of national pricing systems at present. In particular,

such exemptions might be laid down for:

- paperbacks;
  - book club editions;
  - books supplied to public libraries;
  - school books.
- Community pricing rules need not necessarily be exactly the same for every book published in the Community. Depending on the cultural field they deal with, or the language they are written in, the potential area of distribution of books published in the different Member States may be restricted to the Member State of production or may include readers in the other Member States or certain other Member States. There may also be situations where the fixing of a single price for the whole Community would be pointless. There is nothing in Community law to prevent exemptions or more flexible rules in certain situations on the express condition that there are objective considerations which justify them. Limited exceptions on grounds of this kind are not likely to pose a threat to the unity of the common market. The books in question would obviously have to be able to circulate in the Community without price constraints in such situations.

The following points may be put forward in favour of such a system:

- the possibility it affords of achieving the objectives pursued as regards price security at the two levels where this is considered necessary: publishers and booksellers;
- the fact that, by introducing a single retail price for the entire Community, it allows the Treaty rules on the free movement of goods to be respected;
- the fact that the leeway granted to booksellers as regards charging publisher's fixed price and the strict limits as to the period during which that price is to be charged guarantee that the principles of competition are respected.

A system of this kind can have, in principle, the agreement of authors, publishers and booksellers, subject to the fact that - apart from Belgium and France - they prefer to maintain their existing systems.

For the same reason, the vast majority of Government experts - with the exception of a Member State and a new Member State - as well as representatives from the large and medium-size distributors, do not feel the need for such a Community framework. They feel that the Treaty provides for the means to deal with infringements of competition and of free movement of goods.

The consumers organisations, of course, firmly oppose the system.