

Amazon – Written contribution to the European Commission

TRIS procedure n° 2022/683/F

Over the past two decades, Amazon has been playing an active role for in promoting reading, developing online opportunities for the Book sector. Amazon adds a distinctive and complementary offer to that provided by the traditional sales channels, thereby enhancing access to culture, knowledge and entertainment for all Europeans, wherever they live.

As the French Government proceeded with the TRIS notification n°2022/683/F of a draft implementing order (“the Draft Order”) introducing a minimum shipping fee on Books (“the Measure”), this written contribution is meant to inform the European Commission’s analysis.

The Measure seems to us to be questionable from an EU law perspective and may eventually be ruled to contravene EU law, thereby creating a situation of major legal insecurity and uncertainty. And beyond legal considerations, the Measure appears fundamentally detrimental to consumers, to readers and to the Book industry. As a customer-centric company, Amazon champions consumer freedom and the principle of equal treatment among retailers, an essential factor of innovation and ever-improved, fairly priced goods and services, to the benefit of consumers.

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After summarizing the analysis already performed by the EU Commission as part of the TRIS procedure n°2021/351/F conducted on the Bill of 2021 strengthening the book economy and strengthening equity and trust between its players (“the Books Law”), which already outlined serious concerns on the compatibility of the legislation with the EU treaties and with the E-Commerce Directive (I), this contribution analyzes the Draft Order in light of the EU legal framework (II), and finds that:

- The proposed Measure establishes a breach of the E-Commerce Directive, which cannot be cured by the invoked policy objective of France.
- The Measure unduly infringes the freedom to provide services and the freedom of establishment guaranteed by the EU Treaties. Even under the cultural policy objective invoked, the economic situation of the Book sector in France indicates that the Measure is disproportionate and unjustified in the absence of supporting evidence or impact analysis.
- The procedure leading to the adoption of the Books Law and to the presentation of the Draft Order is flawed as procedural steps have not been respected.
- Most importantly, the Measure creates a precedent in discriminating between online and offline retail and restricting cross-border trade, paving the way for a fragmentation of the Single Market and eventually impacting consumers’ interests.

We thank the EU Commission for the consideration given to this written contribution.

I. Initial analysis of the EU Commission on the French Books Law of 2021

Back in 2021, the European Commission and the Estonian Government issued comments to the French Government regarding the draft Books Law providing for the present notified Draft Order. The Commission's comments were made public in February 2022 by French media¹. The EU Commission

¹ “According to the European Commission, the French anti-Amazon law may kill small bookstores”, [NextINpact](#) – Feb. 2022.

noted that the notified draft bill may constitute restrictions to Articles 49² and 56³ of the Treaty on the Functioning of the European Union on the freedom to provide information society services from other Member States, thus contravening EU Law.

Referring to the applicable EU legislation (TFEU, E-Commerce Directive), the Commission pointed out that it is up to the national authorities, when they adopt a measure derogating from EU Law, to prove that the measure is appropriate to ensure the achievement of the public policy objective pursued and does not go beyond what is necessary to achieve it, by means of an analysis of the appropriateness and proportionality of the measure. The Commission referred to the case law of the Court of Justice of the EU, according to which it is expected that measures that may prohibit or impede the free provision of services "*be applied in a non-discriminatory manner, be justified by overriding objectives, be suitable for securing the attainment of the objective which they pursue, and not go beyond what is necessary to attain it*".

The Commission raised doubts as to the appropriateness of the draft bill to achieve the stated overriding objectives of cultural interest:

- risk of undermining the objective of equal access of citizens to books;
- risk of penalizing small e-merchants in particular;
- risk of undermining the Fixed Price regulation, applicable under the same conditions to all sellers, regardless of their sales channel, and thus to undermine the objective of the Fixed Price to guarantee competition based on the quality of the service provided to consumers.

The Commission also asked for additional information on potential less restrictive means explored by the French authorities to achieve the stated objectives.

Finally, the Commission reminded the French authorities of the mandatory procedural steps, i.e. request the Member State of establishment of the targeted services to take action prior to the adoption of a measure affecting services based in other Member States.

II. Analysis

We have several comments to make to the Commission in the context of the notification of the Draft Order setting out the minimum shipping fee on books. On a preliminary note, we fully agree with the Commission's conclusion that the Measure restricts the freedom to provide information society services (E-Commerce Directive) and constitutes *de facto* an indirect discrimination to the detriment of persons established in EU member states outside France. We therefore focus our comments in relation to the unjustified and disproportionate nature of the Measure.

1. On the infringement of the E-commerce Directive

The initial analysis of the EU Commission noted that e-merchants fall into the definition of information society services, and article 3 of the Directive enshrines the principle of freedom to provide cross-border services of the information society within the EU Single Market subject to limited, clearly defined exemptions.

According to Article 3(4)(a)(i) of the Directive, domestic measures undertaken by Member States may depart from the principle of freedom to provide services only when necessary for reasons of public policy, public health, public security, and consumer protection.

It follows that the French authorities cannot invoke its objective of cultural interest to justify a restriction on the freedom to provide information society services. Article 3(4)(a)(i) specifies a *numerus clausus* of objectives that Member States may invoke in derogation of the freedom to provide information society

² Principle of freedom of establishment.

³ Principle of prohibition for Member States to restrict freedom to provide services within the Union.

services. If France were to invoke other unrelated objectives such as “cultural interests”, the list of Article 3(4)(a)(i) would be deprived of purpose. “Cultural interests” do not fall into the scope of any of the exception categories and, in particular, does not constitute a “public policy” objective as per Article 3(4)(a)(i). As explained in this article, the “public policy” objective relates to public order and criminal justice.⁴ It does not constitute a “wild card” to be used by Member States to advance any policy objective to the detriment of the policy objectives pursued by the E-Commerce Directive. There is also consistent case law of the Court of Justice according to which “public policy” is a term narrowly construed, and not to be extended to include any policy consideration.⁵

It follows that the objective of cultural interest cannot give rise to restrictions on the freedom to provide information society services, and the Measure entails a clear breach of the E-Commerce Directive.

2. On the breach of the freedom to provide services and the freedom of establishment

Further to violating the E-Commerce Directive, the Measure is also in breach of the freedom to provide services (Article 56 TFEU), given that it discriminates against EU sellers established outside France in other Member States, which, as the Commission rightly pointed out in its comments, are less likely to possess the necessary physical infrastructure to offer viable alternative to mail delivery.

To examine a potential justification for such restriction, the Draft Order must be assessed in light of the specific policy objective pursued by the French legislator, that of “*preserving a rich and diversified cultural offer*”, notably through a “*diversity of forms of the book trade*”⁶.

However, factual data contradict the thesis that Amazon or any other service of the information society would prejudice or present a serious and grave risk of prejudice to the richness and diversity of literary creation or the diversity of forms of book trade.

- (i) **On the richness and diversity of literary creation:** Online commerce, and Amazon in particular, contribute to the achievement of the first objective set by the 1981 Law on the “Fixed Price of the Book”⁷ – that is, to ensure “*equal access to books for all citizens, which will be sold at the same price throughout the country*”. Indeed, Amazon complements bookstores in terms of selection. Our company sells all books, including long-tail, hard-to-find or highly specialized titles, as well as books in foreign languages. Many small publishers

⁴ Article 3(4)(a)(i) expressly states that the “public policy” objective refers “*in particular [to] the prevention, investigation, detection, and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons.*”

⁵ See indicatively, Case 177/83, Kohl v Ringelhan, ECLI:EU:C:1984:334, para. 19: “*Whatever interpretation is to be given to the term “public policy”, it cannot be extended so as to include considerations of consumer protection.*” See also, Case C-137/17, Van Gennip and Others, ECLI:EU:C:2018:771, paras 57-58: “*It is appropriate to add that, in accordance with the settled case-law of the Court, reliance on the exception of public policy and security constitutes a derogation from the fundamental principle of the free movement of goods, which must be interpreted strictly and the scope of which cannot be determined unilaterally by the Member States without any control by the institutions of the EU [...]. The Court’s case-law has accordingly made it clear that the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat to one of the fundamental interests of society.*”

⁶ From the FR Government’s message attached to the TRIS procedure, reflecting the stated objectives of the 2021 Law “Fairness in the Book sector”.

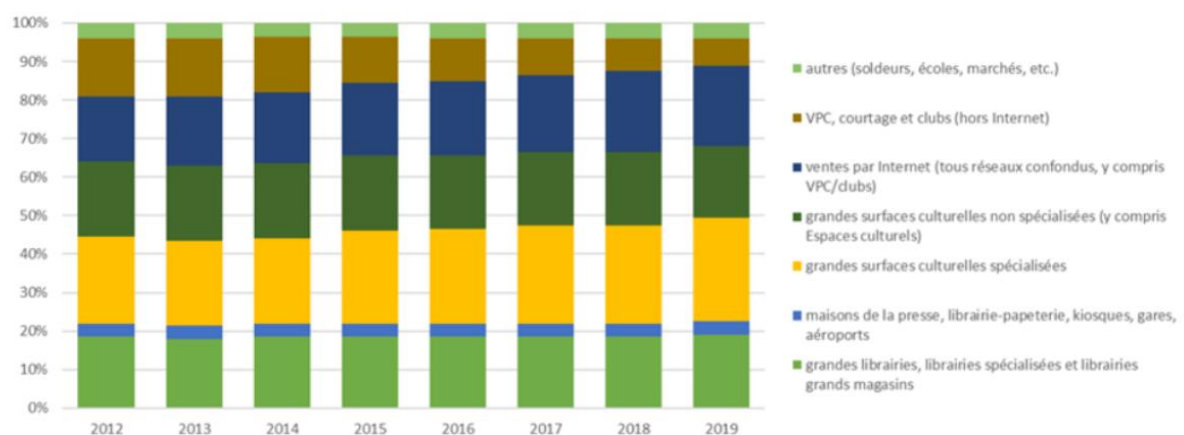
⁷ The 2021 “Fairness in the Books sector” comes as an amendment to the 1981 Law, whose objectives remain unchanged: ensuring equal access to books for all citizens; maintaining a dense network of retailers; promoting pluralism in literary creation and publishing.

and their authors rely greatly on Amazon to gain access to their readers⁸. Indeed, with a catalog of 10 million French-language titles and millions of foreign-language titles, Amazon complements the offer of physical retail outlets, which generally consists of a few thousand or tens of thousands of titles. French readers order 300,000 different titles per month from Amazon.fr on average. By contrast, bookstores offer a more limited selection, often in line with current trends. Besides, bookstores are very concentrated in large cities: inner Paris is reported to account for more than 20% of the total number of French bookstores, for only 3% of the population; and more than 90% of the 35,000 French municipalities do not have a bookstore on their territory. For the tens of millions of French people who do not have a bookstore near their home, or who are looking for a book that is not available in their nearest point of sale, equal access to books remained an aspiration rather than a reality until e-commerce arrived in the early 2000s. In a nutshell, e-commerce helps correct territorial disparities and allows lesser-known, more specialized, older titles to meet their readership.

Another example of Amazon's contribution to enhanced richness and diversity of literary creation is our direct publishing service. Kindle Direct Publishing (KDP) enables authors of all genres to self-publish and distribute their books to millions of readers around the world, choosing where they want to sell and earning up to 70% royalty on sales. Hundreds of European authors publishing through the KDP service surpassed €100,000 in royalties in 2020. KDP therefore reinvigorates the literary production and allows authors to gain recognition outside the traditional publishing channels. Aurélie Valognes and Agnès Martin-Lugand, now ranking among the top French best-selling authors, were discovered through their use of KDP. These self-published authors, who frequently only have online distribution channels, and do not have physical distribution alternatives, will be directly affected by the Measure with regard to their printed works.

- (ii) **On the diversity of forms of the book trade:** Amazon fully acknowledges the particular cultural and social importance of independent bookstores in France, and the concern to preserve a dense network of them. However, according to data published by the French Culture Ministry, we do not observe that e-commerce or Amazon's presence in France has weakened the network of independent bookstores. Indeed, France had some 2,800

Répartition des parts de marché des acteurs de la distribution de livres en France en 2019



Source : baromètre multi-clients Achats de livres Kantar TNS Sofres pour MC/DGMIC-SLL, panel de 3000 personnes de 15 ans et plus.

⁸ Among many examples: niche publishing house [Gisserot](#) makes most of its sales in museum bookshops and also relies on Amazon – whereas mainstream, traditional bookstores decline to feature its titles in their selection.

independent booksellers in 1995, five years before Amazon arrived in France, a figure that increased to about 3,500 in 2022. In 2000, the year Amazon arrived in France, Sofres Survey Institute estimated that bookstores⁹ accounted for 20.8% of retail book sales¹⁰. In 2012, the same institute estimated this share at 22%, and then at 22.5% in 2019¹¹. On the most recent period, the latest annual study of the National Book Center shows that the share of bookstores' clients in total sales remains stable, whereas the share of online retailers' clients declined between 2019 and 2021¹². To sum up, after more than twenty years of e-commerce and Amazon's presence in France, there is a perennial stability between the diverse distribution channels and, in particular, the number of bookstores and the share of books sold in bookstores have not decreased. The idea that Amazon or online commerce is causing a decline in independent physical bookstores is therefore not supported by the facts.

As a matter of fact, Amazon has contributed to more diversity in the forms of book trade in France and in Europe. Our company has established the online channel as a convenient way to shop, responding to consumers' expectations and constraints. In a 2021 survey, 68% of French consumers rated our company as "useful", and, in another survey of September 2022, designated Amazon as the #1 non-food retailer protecting their purchasing power. 45% of French people who buy books online do so because of the geographical distance from physical points of sales, according to an Ifop survey of 2021. This proportion even reaches 81% in rural areas. This explains why almost half of the books (46%) purchased on Amazon.fr are bought by residents of towns below 10,000 inhabitants¹³, and more than 20% of books are purchased by residents of municipalities below 2,000 inhabitants. Our figures are in line with the findings of the National Book Center (FR Culture Ministry), according to which 40% readers who do not buy their books from bookshops do not have a bookshop near their home¹⁴. Amazon also broadened the diversity of trade forms in the print book segment through our activities of print-on-demand available for Kindle self-published works and third-party publishers.

In light of the above, there is no grounds to establish that Amazon or any other information society service "*prejudices the [cultural policy] objectives [of preserving the diversity of literary creation and the diversity of forms of book trade] or presents a serious and grave risk of prejudice to those objectives*".

- (iii) **On the proportionality of the Measure:** France has for long implemented specific, heavy derogatory measures in the cultural sector (the Book single price law of 1981, the Audiovisual law of 1986). Any assessment of the proportionality of the contemplated Measures should consider such propensity to overregulate the cultural and media sector.

By introducing a minimum shipping fee on all shipments of goods containing 35€ or less in value of Books, the Measure will have an inflationary effect on the price of Books, especially at a time when the purchasing power of French consumers is hit by staggering inflation¹⁵. This can only exacerbate the effects that the current inflationary crisis has on the cultural and leisure expenditures of consumers and, consequently, on the preservation of cultural and linguistic diversity. The cost impact would be high, particularly on intermediate and

⁹ Excluding cultural megastores and hypermarkets.

¹⁰ FR Ministry of Culture, "[Key figures of the Book sector in 2000 – 2001](#)"

¹¹ FR Ministry of Culture, "[Key figures of the Book sector in 2018 – 2019](#)"

¹² National Book Center (FR Culture Ministry), "[The French and the practice of reading in 2021](#)"

¹³ Source: Amazon

¹⁴ National Book Center (FR Culture Ministry), "[The French and the practice of reading in 2021](#)"

¹⁵ Over the past year, inflation hit 7.1% in France, 10.7% on average in the Euro Zone, according to Eurostat's latest estimate.

low-income households: a minimum fee of 3€ would increase by 40% the price of a standard pocket book (“livre de poche”) sold at 7.50€¹⁶. Knowing that more than 400 million books are sold every year in France, 17% of which online according to a Kantar-TNS-Sofres survey ordered by the Ministry of Culture, the Measure would represent an additional expense of several hundred million euros for French readers. Moreover, it must be considered that, in its latest annual study, the National Book Center called out the fact that avid readers tend to buy more books in the current period, whereas the French generally read less, both in terms of time devoted to reading and of total number of active readers. The decline of the practice of reading is therefore the main risk for bookstores’ long-term viability. As we have shown, the online channel is complementary to the offline channel, primarily in terms of access and selection. Burdening the online sale of printed books will only accelerate the decline of the practice of reading, instead of supporting the print book segment and its physical retailers.

The Measure would also distort competition between (French and foreign) online and (French) physical merchants, although they compete on the same market segment – in this case the printed book segment, as unreservedly admitted by competition authorities.¹⁶ Indeed, the French Books Law of 2021 was based on the erroneous assumption, in our view, that practicing low fees on book shipping constitutes a distortion of competition between professional online sellers and offline sellers performing occasional online sales by Postal shipments. Albeit an erroneous assumption on the merits, it still speaks to the competitive relationship between the two channels.

Accordingly, competition must be assessed between a physical bookseller selling through the physical channel and an online seller selling through the online channel, each in their own business model and operational structure. In this sense, imposing a charge on the service of shipping would amount to imposing a charge on an offline seller for the infrastructure and services offered in the store. We concur with the Commission’s analysis in its 2021 comments on the draft Books Law that the Fixed Book Price is meant to apply uniformly to all sellers regardless of their sales channel, in order to let the competitive game play out based on the quality of service rather than based on price. With a minimum shipping fee, online sellers would automatically be burdened with an undue charge on the price. Online sellers would also be prohibited from absorbing this burden since they have to respect both the fixed price of the book and the fixed price of shipping. As a result, online consumers would experience significant inflation in their book purchases, contrary to offline consumers. This would result in a distortion of competition between online and offline books sales. This distortion would lead to a degraded consumer welfare, which we consider to be the best indicator of healthy competition. We also note that consumer welfare is the primary tenet of economic regulation in the free trade EU Internal Market.

Furthermore, sales channels have a high and increasing degree of overlap: physical bookstores have online offerings, or use third party online marketplaces (including but not limited to Amazon), white label online retail services like Shopify are growing rapidly, as are social media sales channels, which all have very low barriers to entry (if any). A minimum

¹⁶ Note that, even from the point of view of competition law, recent case law suggests that there are no distinct markets between online and offline sales of books. Egmont/Bonnier (2007/COMP/M.4611) notes “the market investigation did not bring forward any element on the basis of which a distinct “distant sale” market, including book clubs, mail orders and sales via Internet, could be identified within the overall market for the sale of books to final consumers” and “the overall market for sale of books to final consumers will include the “distant sale” segment”. Bertelsmann/Planeta/Circulo (COMP/M.5838) subsequently references and supports that decision, as do Ahold/Flevo (COMP/M.6543) and the French Competition Authority (19-DCC-132, Fnac-Darty / Nature & Découverte).

shipping fee would hurt these “blended” booksellers equally, and is potentially a barrier to entry and barrier to innovation for new hybrid models.

As for the question of whether Amazon practices “*aggressive pricing*” on delivery as stated by the French legislator: Amazon has invested billions of euros in Europe over the past 20 years to enable a quality, fast and cost-effective shipping service serving our European consumers, and do not believe that such local investment in jobs and infrastructure, nor our continuous effort to bring innovation and new services in Europe, qualify as inflicting unfair competition on offline retailers. Implementing a distortion against online retailers is not only unnecessary – as shown by the stability of independent booksellers’ market share over the past two decades – but would also set a dangerous precedent to fair and free competition between online and offline retailers. In the books segment, other European companies have emerged in online book sales over the past decade, including French cultural megastores Fnac and Cultura, and pure-players such as Bol.com (based in the Netherlands and also operating in Belgium) and Adlibris (based in Sweden and also targeting Norway and Finland). A minimum shipping fee would weaken the economics of online books sellers by unduly penalizing them compared to (French) physical competitors. And the Measure will introduce a legally unsound precedent beyond the Book sector, as it is not bound to the Fixed Price of the Book, but to a fixed price of shipping meant to level off shipping prices charged by online and offline sales professionals. Setting a separate price on top of the fixed price of the book amounts to considering that shipping and delivery are a service separate from the sale, inducing a major difference of treatment compared to the offline sale segment, where it was never considered that the in-store service and all relating costs incurred by the seller should be considered a chargeable, separate service from the purchase of the product itself. When “free” delivery of books was challenged by the Booksellers' Association back in 2008 on the grounds of constituting a bonus to the Fixed Price of the Book, the French Court of Cassation had therefore ruled¹⁷ that shipping and delivery were in essence included in the act of online purchasing, regardless of the product at stake (“*the bearing by the seller of the cost of fulfilling his obligation to deliver the product sold does not constitute a bonus within the meaning of the provisions of the Consumer Code*”).

Finally, despite request from the Commission in its 2021 comments on the draft Books Law, the French authorities have not, to our knowledge, provided any analysis justifying the proportionality of the envisaged Measure with regard to its public policy objectives. From the perspective of sectoral economic indicators, it can be established that the deterioration of literary diversity or of a dense network of book retailers is not demonstrated as compared to the early 2000s when e-commerce was barely starting in Europe. The policy objective pursued here by the French authorities is therefore not corrective, but a preventive one. A restrictive measure such as the minimum shipping fee impairs (i) the freedom to consume and provide delivery services across the Single Market, (ii) the freedom establishment, (iii) the freedom of enterprise and (iv) fair competition among retailers. Any such measure should only come as a last resort in case of a demonstrated risk or harm, after incentives and support measures have been exhausted – such as subsidies (e.g. special tariffs for postal shipments like in Germany or like the subsidized postal tariff in place in France for international shipments of books), or investment in infrastructure modernization and skills and regulatory relief. However, France has not exhausted the measures proportionate to a preventive policy objective, before adopting this minimum shipping fee on books. Restricting the freedom of enterprise, freedom of trade, freedom of establishment and freedom to provide services, absent of the justification of a demonstrated risk or harm, go against Article 60 of the Treaty on the Functioning of the European Union according to

¹⁷ Cour de cassation, civile, Chambre commerciale, 6 mai 2008, [07-16.381](#)

which Member States pursue “*the liberalization of services beyond the extent required by EU Law when the situation of the economic sector concerned so permits*”.

3. On the infringement of the applicable procedural steps

In its initial comments dated September, 2021, the Commission asked for additional details to better understand the extent to which the French authorities considered less restrictive means of achieving the stated objectives. The Commission also recalled the mandatory procedural steps provided in Article 3, paragraph 4 b) of the E-Commerce Directive to be applied by a member State before taking any measure against information society services. These procedural steps are two-fold: (i) obligation for Member State to request the Member State of establishment of the targeted service to take action prior to the adoption of a measure affecting the said service (first indent); and (ii) obligation for Member State to notify the Commission and the Member State of establishment of the targeted service of its intention to take such measures (second indent). This later notification is completely different from the TRIS notification¹⁸.

In its comments issued in 2021, the Commission again pointed out that the French authorities have not considered any less restrictive means of achieving the stated objectives. Moreover, France failed to implement the mandatory procedural steps consisting in asking the Member State of establishment of the targeted services to take action prior to the adoption of a measure affecting services based in other Member States and, later on, to notify other Member States and to the Commission of its intention to take the measures at stake.

Considering the hindrance to consumer freedoms and the freedom to provide services that are at stake, and in view of the above-mentioned European laws, France is compelled to demonstrate that the minimum shipping fee Measure is justified by cultural and economic imperatives and taken after all other possible remedies to support booksellers have been exhausted. The same observation was raised by the French Council of State in its opinion on the initial draft Books law – but the French Parliament and Government did not follow the recommendation to request an opinion from the French Competition Authority and to perform an economic impact study, in particular to ascertain that the Measure is proportionate to the objective in the light of the constitutional principle of freedom of enterprise¹⁹. Such study has not been conducted, and France has therefore taken a potentially unconstitutional measure in addition to potentially breaching procedural rules and the principles of the European Single Market. This is why we encourage the European Commission and other Member States to call on France to exhaust all alternatives before imposing a minimum shipping fee on books. We are convinced that there are alternatives to effectively support independent bookstores in their capacity to win and retain customers without cutting into the purchasing power of the French readers who rely in part or in whole on online booksellers to access books. The following points could constitute alternative measures suggested to the French authorities, to be applied prior to any further restrictions on the purchase and sale of books.

Unexplored alternative Measures to the minimum shipping fee:

State subsidies or tax reductions could be granted to independent bookstores to compensate for part of their shipping costs. We note that the French Authorities did subsidize the shipping fees on books in November and December 2020²⁰, during the Covid pandemics, which confirms that this measure is technically implementable. The budgetary cost would be limited and this measure would effectively support the booksellers’ online sales without affecting the purchasing power of readers.

¹⁸ See Opinion of AG H. Saugmandsgaard Øe (para. 117) in Case C-649/18 (A vs. Daniel B.).

¹⁹ Opinion of the French Council of State on the draft Books Law, March 2021 <http://www.senat.fr/leg/pp120-252-avis-ce.pdf>

²⁰ [Press release](#) from the Culture and Economy Ministers, November 2020

Reduced postal rates (as French independent bookstores call for) – As suggested by the French Council of State in its opinion on the initial draft Books Law, a solution to encourage bookstores would consist in reducing postal tariffs for bookstores, potentially by means of State subsidization. Such mechanism is already implemented in Germany, in accordance with the EU rules on State aids. As it turns out, the French public postal service also offers a special rate to publishers and booksellers for the shipment of books, but exclusively to foreign countries: with this special rate, a bookseller can currently send an average book (below 500g) to London for 1.49€ and to Tokyo or New York for 2.6€. If a subsidized postal rate were implemented, it would be relatively inexpensive (in the order of a million euros per year). Amazon would not benefit from it as we have developed our own logistics network in France. This cost is to be compared to the tens – or even hundreds – of millions of euros of reduction in purchasing power that would result from the minimum fee. We note that the association of French independent bookstores keeps calling for such subsidized tariffs²¹.

Digitizing booksellers – The Economy Ministry is pursuing a very active policy of digitizing VSEs and SMEs, and encouraging merchants to turn to online channels as a complement to physical sales. Subsidies granted to the 3,000 French independent bookstores to help them go online would likely cost less than some hundred millions paid by customers on minimum shipping fees. Mutualized digitization resources, including for delivery services, could also be considered through the already-existing platform of 1,200 independent booksellers created by the Booksellers' Association.²² Amazon is supporting this digitization policy objective with our Small Business Accelerator²³ training, a full course offered for free to all entrepreneurs wishing to start or develop an independent business online. In addition, investment in booksellers' logistics (inventory management, use of “phygital” methods to combine in-store experience with the convenience digital services) would help to overcome booksellers' shortcomings in the area of stock availability. Phygital methods can for instance include: interactive map to locate the availability of a book in a given city; live stock visualization, in-store purchase of e-books, and click & collect.

Conclusion

Considering the above, the introduction of a minimum shipping fee on books is based on the erroneous assumption that there would be structurally unfair competition between the offline sales channel and the online sales channel at equal product price – a starting assumption that runs counter to economic evidence. The minimum shipping fee would create a major discrimination against e-commerce players, particularly those established outside France, in favor of offline retailers that will necessarily have a physical presence in France and would essentially be French companies.

This measure infringes the fundamental rules of European law guaranteeing the cohesion of the EU Single Market and the benefit for European consumers of a free economy, as enshrined in the Treaties and in the E-Commerce Directive. More specifically, it impairs (i) the freedom to consume and provide delivery services across the Single Market, (ii) the freedom of establishment, (iii) the freedom of enterprise and (iv) fair competition among retailers. Finally, it also establishes a clear violation of the E-Commerce Directive and, in any event, comes without justification of the cultural policy objective and proportionality of the means undertaken, and to the detriment of readers' purchasing power, access to reading and freedom to purchase.

Should the EU Commission share the analysis on infringement of European law, it would be advisable to communicate such analysis to the French authorities under the form of a detailed opinion. Indeed,

²¹ [Statement](#) by Syndicat de la Librairie Française, September 2022

²² <https://www.librairiesindependantes.com/>

²³ <https://www.accelerateur-du-numerique.fr/>

should the French Government proceed with the Measure, the latter would set a harmful and legally unsound precedent in discriminating online against offline e-merchants, hence hindering innovative players, restricting consumer freedoms and welfare, and opening the door to a profound fragmentation of the EU Single Market.

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