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**Article**

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# Book Markets in Europe: Facing the Challenges of the Digital Single Market

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## Abstract

The aim of this article is to identify the challenges created by digitalization and the Digital Single Market for book markets in Europe. The research questions are, on the one hand, related to the nature of these challenges and the impact they have on European book markets, and on the other hand, the impact of the activities of EU institutions. This leads to the hypothesis that the digitization challenges that the book markets in Europe are facing are of a technological, economic, legal, political and judicial nature. Therefore, the key research method will be an analysis of these challenges and the (re)actions (under)taken by EU institutions. The book market in Europe is characterized by diversity and fragmentation in comparison with, for example, the American market, and is losing its share in the global book market with the development of book markets in emerging markets. Over the last decade, it shrank between 2008 and 2013 and started to rise again after 2014. In contrast to the European book market, the Polish book market is gradually decreasing. The e-book market, which developed dynamically between 2009 and 2014 (often at the expense of paper books), reached the level of about 6–7% of the entire book market in Europe. To meet the challenges of the ongoing digitization, the European Union has started to implement the Digital Single Market Strategy, which also affects the European book market through the directives and regulations adopted as part of the Strategy. European copyright law, by introducing exceptions and limitations, implemented to varying degrees in individual member states, affects the business models of European publishers. In addition, the activities of authors and publishers is influenced by the case law of the Court of Justice of the European Union (CJEU). Therefore, EU institutions, through the directive on copyright in the Digital Single Market, are trying to create an appropriate legal framework for out-of-commerce works or confirm the right to fair compensation for publishers. A separate issue remains e-lending, which is related to the possibility of borrowing e-books. The development of the e-book market was limited by different VAT rates of print and digital books, which was finally resolved by the European Par-

liament and the Council in 2017–2018. European institutions have an impact on the book market in Europe, where the European Commission has recently been trying to solve problems resulting from the interpretation of existing directives by the CJEU.

**Keywords:** book market, publishers, e-books, European Union, EU law, Digital Single Market, copyright, out-of-commerce works, e-lending, fair compensation, taxation

**JEL:** K24, L86, O34, Z11

## Introduction

The aim of this article is to identify the challenges created by digitalization and the Digital Single Market for book markets in Europe.

European book markets, unlike the U.S. market, are a mosaic of national markets, limited not only by economic or legal, but also by language or cultural barriers. A good example of this is the e-book market in Europe, which has a much smaller share in the book market than its American counterpart.

The Digital Single Market Strategy, related to the European Union's response to the digital revolution, envisages the modernization of European copyright law, which will have an impact on the legal framework of the European book markets. On the one hand, they are going to create new exceptions and limitations from copyright, which may pose a threat to the existing business models of European publishers – especially in the sphere of education and research. At the same time, the directive's proposals prepared by the European Commission may lead to the establishment of a European legal framework for the use of out-of-commerce works, restoring the right to fair compensation to publishers, or the equalization of VAT rates for paper and digital books.

The research questions are related to the nature of these factors and how the book markets in Europe are affected by these factors on the one hand, and how they are affected by the (re)actions undertaken by the EU institutions on the other hand. This leads to the hypothesis that the European book markets are facing digitization challenges of a technological, economic, legal, political and judicial nature.

The key research method will be the analysis of the existing development of each of the book market institutions, the emerging challenges and the remedies proposed in the directives proposals – especially from the point of view of the impact of existing and proposed legal regulations and rulings of the Court of Justice of the European Union (CJEU) on book markets in Europe. Also, the development of the e-book market in Europe, problems related to e-lending and taxation issues will be the subject of considerations.

## Book markets in Europe

European and North American publishers used to control the global book publishing industry before it evolved into a truly global business at the beginning of the 21st century when the market for books and publishing expanded into a growing number of emerging economies (such as China and Brazil). In 2014, the USA, with a 26% share, was the largest book market in the world, followed by China (12%), which became the world's second-largest book market. In contrast, the combined size of the German, French and British book market had a total share of 15%. In spite of the importance of a few EU book publishers<sup>1</sup>, the fragmentation of the European book market, both along linguistic lines and in terms of structure, size and the role of the different players, is an inherent feature. Germany became the leading EU book publishing market in 2006, taking over this position from the United Kingdom. The German book market, like the French one, reflects its own national cultural traditions and identities, resulting in the implementation of specific book market conditions and a national book culture. This has evolved into a regulated market with the almost unanimous consensus in the professional book communities over the value of the book as a cultural, not a consumer good (Katsaorva 2016, pp. 3–5).

Publishers' net turnover from book sales in the European Union and the European Economic Area has risen since 2014, from €22 billion to an estimated €22.5 billion in 2016, after a negative trend between 2007 and 2013. The positive trend was supported by exchange rate effects, but on the other hand, several National book markets recorded a lower turnover than the previous year. The total book market value was estimated at €36–40 billion. Approximately 575,000 new titles were issued by European publishers in 2015 and, with very few exceptions, the production of titles has increased steadily over the last ten years. Additionally, European publishers held a total of about 22 million titles in stock (of which more than 4 million were in a digital format), where digital publishing (in different formats), the digitisation of back catalogues, the growth of print-on-demand services and the surge in self-published titles contributed to the ever-increasing figure (FEP 2017, p. 2).

The Polish book market has shrunk since 2011, despite increasing governmental financial expenditure for the promotion of reading. In 2015, the value of the Polish book market totalled PLN 2.41 billion (€566m) in wholesale prices and in comparison with 2011, when it totalled PLN 2.71 billion, market value fell by 11%. Although the number of published titles is rising (from 24,920 in 2011 to 34,920 in 2015), both print-runs (from 122.4 million copies in 2011 to 97.7 million copies in 2015) and average print-runs are falling (from 4,912 copies in 2011 to 2,798 copies in 2015). The fall in sales in the publishing sector was caused by a combination of factors of various

<sup>1</sup> In 2010 6–8 of 10 world leading publishing companies were headquartered in Europe: the British Pearson and Pearson Education, the Dutch Wolters Kluwer and Lexis Nexis, the German Bertelsman, the French Hachette Livre and the British-Dutch-US-American Reed Elsevier and Elsevier Science (Simon, de Prato 2012, p. 28).

kinds, which are leading to gradual changes in the retail sales sector. Another factor that has had a measurable effect on the drop in market value was the changes introduced by the Ministry of Education on the principles for the sale and use of school textbooks, which meant that both educational publishers and book distributors lost income in this sector (Dobrołęcki 2016, pp. 2–4).

## E-book sales in Europe

Although digital technologies have been present in the book value chain for a long time, it was not until 2007 that the e-book market emerged, as the technology was not ready before to provide the reader with a fully satisfactory reading experience. E-book sales took off, showing growth in double and even triple digits in some countries and sectors, and the digital share of the book market has grown, although it has slowed down in the last year or two. The e-book market is estimated to represent some 6–7% of the total book market in Europe, with significant differences between countries. In France and Spain, the e-book share in the book market is only 3%, while in Germany, Italy and the Netherlands it is around 4.5–5%. Only in the United Kingdom do e-books have an 11.5% share in the book market. However, the sales of digital products from publishers (such as databases and subscriptions) is higher in all these countries (e.g., in the United Kingdom it is around 17% and in Denmark, even 18%) (FEP 2017, pp. 4–5).

Even if e-book sales at the moment represent just a few percent of the revenue of their national book industry, e-books are seen to be in the middle of a complex economic, political, and cultural battlefield in which national governments and the leading global digital actors are fighting over power and control of the next decade's digital economy. However, only a few book markets – among them the United States, the United Kingdom, Germany, France, the Spanish language market, and China – are expected to be large enough to steer domestic developments (Katsarova 2016, p. 5).

The growth of the e-book market between 2009 and 2014 is likely to have contributed to the global shrinking of the book market. On the one hand, they replaced printed books to a certain degree, causing a decline in their sales, and on the other hand, e-books tend to have lower prices. The current recovery in the book market is driven mostly by the sales of printed books, as the sales of e-books have slowed down in the last two years (FEP 2017, p. 4).

In Poland, Internet sales have rapidly grown in significance, but the income from this sector is not equal to the losses in the traditional sector, where a persistent decline in bookstore sales has been occurring (Dobrołęcki 2016, p. 3).

## The Digital Single Market strategy

A Connected Digital Single Market was announced by Jean-Claude Juncker in his Opening Statement in the European Parliament on 15 July 2014 (Juncker 2014). The European Commission unveiled its detailed plans to create a Digital Single Market (DSM) on 6 May 2015. By using the power of the EU's Single Market, the European Union is going to embrace the digital revolution and open up digital opportunities for its citizens and businesses. The aim of the DSM is to tear down regulatory walls and move from 28 national markets to a single one, which could contribute €415 billion per year to the European economy and create hundreds of thousands of new jobs. The adopted DSM Strategy includes a set of 16 targeted key actions and is built on three pillars. Pillar I : Better access for consumers and businesses to digital goods and services across Europe<sup>2</sup>; Pillar II : Creating the right conditions and a level playing field for digital networks and innovative services to flourish; and Pillar III : Maximising the growth potential of the digital economy (European Commission 2015).

The European Commission set out the proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market<sup>3</sup> (DSM) on 14 September 2016. The purpose of the copyright modernisation is to increase cultural diversity in Europe and content available online while bringing clearer rules for all online players. It will remove restrictions or legal uncertainty faced by the education, research and cultural sectors, which holds back their digital innovation when using copyright-protected content, including across borders. The directive will support creators, other rights holders and press publishers to negotiate the conditions and also payment for the online use of their works and performances. The presented copyright proposals had three main priorities: (1) To provide better choice and access to content online and across borders; (2) To improve copyright rules on research, education and the inclusion of disable people and (3) A fairer and sustainable marketplace for creators and the press (European Commission 2016).

Next to the Directive on copyright in the DSM proposal, as part of the implementation of the DSM strategy, in December 2015, the European Commission proposed a draft regulation that was adopted as regulation (EU) 2017/1128 on the cross-border portability of online content services in the internal market<sup>4</sup>. It introduces a common approach in the European Union to the cross-border portability of online content services, by ensuring that subscribers to portable online content services which are lawfully provided in their member state of residence can access and use those services

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2 One of the key actions under this pillar is a modern, more European copyright law, including legislative proposals to reduce the differences between national copyright regimes and allowing a wider online access to works across the EU. The aim is to improve access to cultural content online, nurturing cultural diversity and opening new opportunities for creators and the content industry.

3 COM(2016)593, <https://ec.europa.eu/digital-single-market/en/news/proposal-directive-european-parliament-and-council-copyright-digital-single-market> (accessed: 30.08.2018).

4 OJ L 168, 30.06.2017, pp. 1–11.

when temporarily present in another member state. Recital 29 of this regulation provides holders of copyright, related rights, or any other rights in the content of an on-line content service, particularly in the e-books sector, the ability to exercise contractual freedom to authorise such content to be provided, accessed and used under this regulation without verifying the member's state of residence.

## Exception and limitation in the European copyright law

EU law provides authors with exclusive rights to authorise or prohibit the direct or indirect, temporary or permanent reproduction of their works by any means and in any form, in whole or in part, in respect of the original and copies. However, directives 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society<sup>5</sup> and 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>6</sup> offer the possibility of exceptions and limitations of these rights under certain conditions.

Additionally, special provisions for the permitted use of, i.a., books are provided by directive 2012/28/EU on certain permitted uses of orphan works<sup>7</sup>. The obligations that the European Union has to meet under the Marrakesh Treaty<sup>8</sup> will be implemented under the directive (EU) 2017/1564 on permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC<sup>9</sup>, together with Regulation (EU) 2017/1563 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled<sup>10</sup>.

Although copyright exceptions currently allow the use of protected works without the authorisation of right holders for specific purposes and under specific conditions, most of the exceptions in European law are optional, do not have a cross-border effect or do not always cover digital uses. This is inhibiting new ways of using digital materials for education, research, preservation of cultural heritage and access to knowledge (European Commission 2017, p. 11).

Therefore, Title II of the Directive on copyright in the DSM proposal (articles 3–6) contains measures to adopt compulsory exceptions and limitations to the digital and

<sup>5</sup> OJ L 167, 22.06.2001, pp. 10–19.

<sup>6</sup> OJ L 376, 27.12.2006, pp. 28–35.

<sup>7</sup> OJ L 299, 27.10.2012, pp. 5–12.

<sup>8</sup> The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled adopted on 27 June 2013, which was signed on behalf of the Union on 30 April 2014.

<sup>9</sup> OJ L 242, 20.09.2017, pp. 6–13.

<sup>10</sup> OJ L 242, 20.09.2017, pp. 1–5.

cross-border environment in the field of text and data mining, use of works and other subject-matter in digital and cross-border teaching activities and the preservation of cultural heritage.

## Out-of-commerce books

A good number of books published in Europe go out of commerce as publishers cannot maintain the costs of marketing and storing books in print if they do not continue to sell well. Even if publishers bring more books back into commerce through e-books and print on demand, many titles remain only in the collections and archives of Europe's libraries. One of the European Union's objectives is to enable the further development of European digital libraries and the Europeana (the EU digital platform for cultural heritage) and make European cultural heritage available online. Since November 2010, the European Commission has facilitated a dialogue between European authors, publishers, libraries and collective management organisations (CMOs). The outcome is a Memorandum of Understanding (MoU)<sup>11</sup>, where all involved stakeholder have agreed to a set of Key Principles that will give European libraries and similar cultural institutions the possibility to digitize and make available online out-of-commerce books and learned journals which are part of their collections on the basis of voluntary licensing agreements which fully respect copyright and recognise that rights holders should always have the first option to digitise and make available an out-of-commerce work. CMOs will play a key role in substantially facilitating the negotiation and acquisition of the licences that libraries and similar cultural institutions need to digitise and put online an important part of their archives (European Commission 2011).

While the European MoU stakeholder dialogue was still in progress, French publishers, authors, the Ministry of Culture, the French National Library and the Governmental Future Investment Committee concluded an appropriate sector-specific agreement regarding the mass digitization of out-of-commerce works published in the 20<sup>th</sup> century in France. The French agreement is based on the principles of the compulsory collective management of copyright, and one of its goals is to create an alternative to Google's digitization projects. The agreement was followed by a law on the digitisation of out-of-commerce 20<sup>th</sup>-century books passed on 22 February 2012<sup>12</sup>.

<sup>11</sup> *Memorandum of Understanding Key Principles on the Digitisation and Making Available of Out-of-Commerce Works*, Brussels, 20 September 2011, [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-info/20110920-mou\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-info/20110920-mou_en.pdf) (accessed: 31.08.2018).

<sup>12</sup> *Loi n° 2012-287, du 1er mars 2012, relative à l'exploitation numérique des livres indisponibles du XXe siècle*, JORF No. 53 of 1 March 2012, p. 3986. According to this law, a widely available list of out-of-commerce works is to be published and within six months of its publication, the authors and publishers will be able to withdraw their publications from this list by obtaining an exclusive 2-year period for their use. If they do not take advantage of this right in the half-year period, a CMO appointed by the Ministry of Culture will obtain the right to digitize and provide access to out-of-commerce works. However, publishers of paper editions of these works will have prior-



The regulation defines the rules of the compulsory collective management of copyright for 'out-of-print' books which were published in France before 1 January 2001 and are no longer commercially distributed by a publisher and are not currently published in print or in digital form (Maciejewski 2012, p. 17).

The French regulation was examined by the CJEU at the request made in the course of proceedings between, on the one hand, Mr M. Soulier and Ms S. Doke and, on the other, the Prime Minister of France and the French Minister for Culture and Communication concerning the legality of Decree No. 2013–182 of 27 February 2013, implementing Articles L. 134–1 to L. 134–9 of the French Intellectual Property Code and relating to the digital exploitation of out-of-print 20<sup>th</sup> century books<sup>13</sup>. The CJEU recognized in its judgment from 16 November 2016 in case C–301/15<sup>14</sup>, that directive 2001/29/EC precludes national legislation, such as the French regulation in the field of out-of-print books, that gives an approved collecting society the right to authorize the reproduction and communication to the public in digital form of 'out-of-print' books, while allowing the authors of those books, or their successors in title, to oppose or put an end to that practice, on the conditions that that legislation lays down.

To solve this problem, Title III Chapter 1 of the Directive on copyright in the DSM proposal regulates out-of-commerce works (articles 7–9): their use by cultural heritage institutions, cross-border uses and stakeholders dialogue mechanism.

## E-lending of e-books

The digitization of books also has an impact on libraries and e-lending. While print books are conventionally sold or donated to libraries, which by invoking the first sale/exhaustion doctrine<sup>15</sup> could lend their legally purchased print copies, e-books, in contrast, are generally licensed<sup>16</sup>, not sold, by publishers to libraries and consumers. Many

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ity for the first two months after the transfer of rights to the CMO to gain a 10-year exclusive license for these works, which they must begin to use within three years. Obtaining such a license by the publisher may be opposed by the author, if the publishing agreement between him and this publishing house has already expired. If the publisher was not interested in withdrawing his publications from the list of out-of-commerce works by obtaining an exclusive license, the CMO is free to grant a 5-year non-exclusive license for these titles to any other entity, e.g., another publisher.

<sup>13</sup> Décret n° 2013–182, du 27 février 2013, portant application des articles L. 134–1 à L. 134–9 du code de la propriété intellectuelle et relatif à l'exploitation numérique des livres indisponibles du XX<sup>ème</sup> siècle, JORF No. 51 of 1 March 2013, p. 3835.

<sup>14</sup> See Marc Soulier, Sara Doke v. Premier ministre, Ministre de la Culture et de la Communication (C–301/15), 16 November 2016 (CJEU).

<sup>15</sup> The 'exhaustion' or 'first sale' doctrine creates a basic exception to the copyright-holder's distribution right, which grants the owners of copies of copyrighted works the right to re-sell, lend, give away, or even destroy their personal copies of works. The doctrine prevents the copyright-holder from restraining the free transferability of goods (Katsarova 2016, pp. 9–11).

<sup>16</sup> Traditionally, the purchase of digital goods operates under a licence agreement and the consumers do not own the works they purchase and therefore, do not have the right to resell that good.

publishers do not issue licences for lending e-books, and interlibrary loans are generally not permitted for e-books. There are also restrictions on the number of times an e-book can circulate and/or the number of time it can remain within a collection before a library's licence expires. Although the CJEU reasoned in July 2012 that exhaustion applies to software<sup>17</sup>, it was uncertain if this decision applies to other digital goods. Even a German district court determined that exhaustion does not apply to e-books in March 2013<sup>18</sup>. Therefore, only a decision of the CJEU could expand the rule of exhaustion to all digital goods in the EU in the absence of new legislation (Katsarova 2016, pp. 9–11).

Finally, in its judgement from 10 November 2016 in case C–174/15<sup>19</sup>, the CJEU recognized that directive 2006/115/EC must be interpreted as meaning that the concept of 'lending' within the meaning of those provisions covers the lending of a digital copy of a book, where that lending is carried out by placing that copy on the server of a public library and allowing a user to reproduce that copy by downloading it onto his own computer, bearing in mind that only one copy may be downloaded during the lending period and that, after that period has expired, the downloaded copy can no longer be used by that user. The CJEU decided that a public library is allowed to make available a digital copy of a book which had been put into circulation by a first sale or other transfer of ownership of that copy in the European Union by the holder of the right of distribution to the public, or with his consent, and the copy could not be obtained from an illegal source.

## Fair compensation of authors and publishers

Article 5(2) of Directive 2001/29/EC allows member states to introduce exceptions or limitations to the reproduction right in certain cases. Among them are the 'reprographic copy'<sup>20</sup> and 'private copy'<sup>21</sup> exceptions, provided that the right holders receive fair compensation.

Fair compensation for authors and publishers of the book industry is based on text and image (T&I) levies – copyright fees paid for the use of T&I works under exceptions or limitations to the exclusive right of reproduction in copyright law – which are different from audio and audio-visual private copying levies. In 2016, T&I levies

<sup>17</sup> See *UsedSoft GmbH v. Oracle International Corp.* (C-128/11), 3 July 2012 (CJEU).

<sup>18</sup> (4 O 191/11), 5 March 2013 (Landgericht Bielefeld).

<sup>19</sup> See *Vereniging Openbare Bibliotheken v. Stichting Leenrecht* (C-174/15), 10 November 2016 (CJEU).

<sup>20</sup> Article 5(2)(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music.

<sup>21</sup> Article 5(2)(b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial.

existed in 16 European Union Member States and seven non-EU European countries. The T&I levies consist primarily of a fee, known as the equipment levy, paid by the manufacturers or importers of devices or media that can be used to make such copies. The equipment levies amounted to approx. €345 million worldwide in 2015 (96% of all T&I levies). The equipment levy applies primarily to devices or media that can be used to copy T&I works only (either alone or in conjunction with other devices or media, such as copiers, scanners and multifunctional or stand-alone printers). The levy on such devices or media is normally collected by Reproduction Rights Organizations (RRO) and CMOs in the T&I sector, and distributed to authors and publishers either directly or through other representative organizations.<sup>22</sup> In many countries, the equipment levy is supplemented by an ‘operator fee,’ which is a periodical fee paid by large-scale operators or providers of copying devices, such as copy shops or public libraries. Worldwide, operator fees amounted to €14.5 million (IFRRO/WIPO 2017, p. 6).

An efficient system of remunerating both authors and publishers was challenged recently in Belgium and Germany. Following a request made in proceedings between Hewlett-Packard Belgium SPRL and Reprobel SCRL concerning the recovery of sums by Reprobel from Hewlett-Packard corresponding to the fair compensation owed under exceptions to the reproduction right, the CJEU considered in its judgment from 12 November 2015 in case C-572/13, that Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29/EC preclude national legislation which authorises the Member State in question to allocate a part of the fair compensation payable to rightsholders to the publishers of works created by authors, those publishers being under no obligation to ensure that the authors benefit, even indirectly, from some of the compensation of which they have been deprived.

This CJEU judgement was followed by a judgement of the German Federal Court from 21 April 2016 in the so-called Vogel-Case<sup>23</sup>, where it decided that VG Wort, a German RRO, is not entitled to pay a flat rate of half of the remunerations to publishers and that the RRO should distribute the funds collected on the basis of the collective management of copyrights and claims entrusted to it solely for the benefit of the holders of these rights and claims. In so doing, the RRO should allocate resources to the benefit of those entitled in the proportion in which these revenues result from the collective management of rights and the realization of claims of individual entitled persons. Therefore, it cannot be reconciled with the fact that VG Wort paid a lump sum of remuneration to publishers without taking into account whether and to what extent revenues from rights management resulted from the rights and claims entrusted by the publishers.

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<sup>22</sup> There are also countries, where RROs receive a share of the money for the copying of T&I works as part of the private copying levy, which is normally collected by a different CMO.

<sup>23</sup> See *Verlegeranteil (Urteil des Bundesgerichtshofs vom 21. April 2016 - Verlegeranteil)*. (BGH I ZR 198/13), 21 April 2016 (German Federal Court).

Both the CJEU and German Federal Court judgements posed a serious threat to the well-established model of cooperation and remuneration of authors and publishers in Europe. A remedy – in accordance with EU law – enabling the further functioning of the publishing market was art. 12 of the Directive on copyright in the DSM proposal. Where an author has transferred or licensed a right to a publisher, it allows member states to provide that such a transfer or licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.

## Different VAT rates of print and digital books

The Council Directive 2006/112/EC on the common system of value added tax<sup>24</sup>, as amended by Council Directive 2010/88/EU<sup>25</sup> (VAT Directive) requires Member States to have a minimum standard VAT rate of 15% and it entitles them to a maximum of two reduced rates – not lower than 5% – on goods and services included on a restrictive list annexed to the Directive. The reduced VAT rates are a form of subsidy which can be of substantial value to its beneficiaries, depending on the difference between standard rates and reduced rates. Although an e-book is generally defined as the electronic counterpart to a printed book, for legal and tax purposes, it is the format used that determines the VAT rate applied. E-books are classified as ‘electronically supplied services,’ where only a standard VAT rate is applicable. On the other hand, digital content delivered on a physical medium – e.g., books on CD-ROMs or USB sticks – qualifies for a reduced VAT rate. All EU countries, except Denmark and Bulgaria, apply reduced VAT rates to print books, and the United Kingdom and Ireland even use a zero rate. In contrast, the VAT Directive excludes all electronically supplied services from the scope of reduced rates because of the risks of distortion on the internal market. While the average VAT rate for print books across the EU is 7.6%, the corresponding rate for e-books stands at 19.9%<sup>26</sup>. Therefore, France, Luxembourg and Italy decided to levy reduced VAT rates on e-books (Katsarova 2016, p. 7).

The European Commission undertook action against the French Republic and the Grand Duchy of Luxembourg for failure to fulfil their EU law obligations, and the CJEU declared in its judgments from 5 March 2015 in two separate cases, C-479/13<sup>27</sup> and C-502/13<sup>28</sup>, that by applying a reduced rate of value added tax to the supply of digital or electronic books, both countries failed to fulfil their obligations under the VAT

<sup>24</sup> OJ L 347, 11.12.2006, pp. 1–118.

<sup>25</sup> OJ L 326, 10.12.2010, pp. 1–2.

<sup>26</sup> The widest difference between print and e-book VAT is found in Ireland (0–23%), Hungary (5–27%), the UK (0–20%) and Croatia (5–25%).

<sup>27</sup> See *European Commission v. French Republic* (C-479/13), 5 March 2015 (CJEU).

<sup>28</sup> See *European Commission v. Grand Duchy of Luxembourg* (C-502/13), 5 March 2015 (CJEU).

Directive, read in conjunction with Annexes II and III to that directive and Council Implementing Regulation (EU) No. 282/2011 laying down implementing measures for Directive 2006/112/EC<sup>29</sup>.

However, the European Commission proposed a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals<sup>30</sup> on 1 December 2016. Although the proposal was already agreed to at the technical level and EU finance ministers were only expected to give their official approval at a meeting in Luxembourg in June 2017, the Czech Republic blocked the directive to force the European Commission to allow member states to conduct 10-year “pilot projects,” to test the reverse charging mechanism to fight VAT fraud (Conte 2017). Finally, the Council reached a political agreement on 2 October 2018 and adopted a directive allowing the alignment of VAT rules for electronic and physical publications on 6 November 2018 and that member states will also be able to apply reduced, super-reduced or zero VAT rates to electronic publications (European Council 2018).

## Conclusions

The book markets in Europe have benefited from a positive economic trend since 2014 after years of declining revenues. However, this is a general trend, and the situation on particular markets, such as the Polish book market, may be different. While paper books are experiencing a period of re-growth, the e-book market, dynamically growing since 2007, has stagnated.

The average share of e-books in the European book market is far lower than the share of e-books on the US market. This is not only due to economic and legal barriers, but also to the linguistic and cultural diversity of Europe. The diversification of VAT rates on books on a given material carrier and electronic books does not have a positive effect on the development of the European e-book market. Attempts to change this situation, taken by France and Luxembourg, for example, ended with the proceedings of the European Commission and negative judgements of the CJEU. On the other hand, attempts to amend the unfavourable VAT Directive ended for a long time in failure due to the Czech Republic blocking the final amending project.

Activities carried out within the DSM strategy related to the modernization of European copyright have been largely reduced to the introduction of new mandatory exceptions and limitations, rather than creating provisions conducive to the development of European book markets. The case law of the CJEU also makes life more difficult for European publishers, as exemplified by judgments related to e-lending or depriving publishers of the right to fair compensation.

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<sup>29</sup> OJ L 77, 23.03.2011, pp. 1-22.

<sup>30</sup> COM/2016/0758 final - 2016/0374 (CNS).

On the other hand, the legislative proposals of the European Commission undertaken as part of the DSM strategy, restoring fair compensation for publishers, setting out the conditions for using out-of-commerce works or striving for the equalization of VAT rates for paper and digital books, can be assessed as positive. Unfortunately, each time they remove restrictions which resulted from previously established Community directives, which have been shown in the rulings of the CJEU.

The Directive on copyright in the DSM proposal, currently in the trilogue between the Commission, Parliament and Council, after the vote in the European Parliament on 12 September 2018, will create a new legal framework for European book markets on the one hand, but on the other hand, it will implement further exceptions and limitation that may undermine the business models developed by European publishers in recent years. From this point of view, we can undoubtedly talk about significant challenges for the European book markets related to the realization of the DSM strategy.

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## Streszczenie

### Rynki książki w Europie wobec wyzwań Jednolitego Rynku Cyfrowego

Celem niniejszego artykułu jest identyfikacja wyzwań związanych z cyfryzacją i jednolitym rynkiem cyfrowym dla rynków książek w Europie. Pytania badawcze są związane z charakterem tych wyzwań i wpływem na europejskie rynki książki z jednej strony tych wyzwań, a z drugiej działań instytucji unijnych. Prowadzi to do hipotezy, że rynki książki w Europie stoją przed wyzwaniami związanymi z cyfryzacją o charakterze technologicznym, ekonomicznym, prawnym, politycznym i sądowniczym. W związku z tym kluczową metodą badawczą będzie analiza tych wyzwań i działań podejmowanych przez instytucje UE. Rynek książki w Europie charakteryzuje się zróżnicowaniem i fragmentacją w porównaniu z np. rynkiem amerykańskim i wobec rozwoju rynków książki w tzw. gospodarkach wschodzących traci udział w światowym rynku książki. W ciągu ostatniej dekady kurczył się w latach 2008–2013, żeby odnotować odbicie po 2014 r. Na jego tle polski rynek książki sukcesywnie maleje. Rynek e-booków, dynamiczny rozwijający się w latach 2009–2014 (często kosztem książek papierowych), osiągnął poziom ok. 6–7% całego rynku książki w Europie. Wobec postępujących procesów cyfryzacji Unia Europejska przystąpiła do realizacji Strategii Jednolitego Rynku

Cyfrowego, który wpływa również na europejski rynek książki poprzez przyjmowane w jego ramach dyrektywy i rozporządzenia wspólnotowe. Kształtują one europejskie prawo autorskie, które wprowadzając wyjątki i ograniczenia, implementowane w różnym stopniu w poszczególnych krajach członkowskich, oddziałują na modele biznesowe europejskich wydawców. Dodatkowo na działalność autorów i wydawców wpływ ma orzecznictwo Trybunału Sprawiedliwości Unii Europejskiej. W związku z tym instytucje unijne, poprzez dyrektywę w sprawie praw autorskich na jednolitym rynku cyfrowym, starają się stworzyć odpowiednie ramy prawne dla utworów niedostępnych w obrocie handlowym czy potwierdzające prawo do godziwej rekompensaty za dozwolony użytek prywatny wydawców. Oddzielną kwestią pozostaje tzw. e-lending związany z możliwością wypożyczania książek elektronicznych. Rozwój rynku publikacji elektronicznych ograniczał brak możliwości stosowania preferencyjnych stawek VAT, co zostało ostatecznie rozwiązane przez Parlament Europejski i Radę w latach 2017–2018. Instytucje europejskie wywierają wpływ na rynek książki w Europie, gdzie ostatnio Komisja Europejska stara się rozwiązać problemy wynikłe z interpretacji dotychczasowych dyrektyw przez Trybunał Sprawiedliwości UE.

**Słowa kluczowe:** rynek książki, e-booki, prawo europejskie, Jednolity Rynek Cyfrowy, prawo autorskie