

No 474398

FRENCH REPUBLIC

AMAZON EU LIMITED

ON BEHALF OF THE FRENCH PEOPLE

Mr Louis d'Humières
Reporting Judge (Rapporteur)

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 9th and 10th Chambers combined)

Ms Céline Guibé
Consultant Judge (Rapporteure publique)

Based on the report of the 9th Chamber
of the Litigation Section

Session of 15 April 2026
Decision of 13 May 2026

Having regard to the following proceedings:

By a decision of 17 May 2024, the Conseil d'État, ruling on an administrative claim concerning the appeal filed by Amazon EU seeking the quashing as ultra vires of the order of 4 April 2023 concerning the minimum pricing for book delivery services, stayed the proceedings until the Court of Justice of the European Union gave a preliminary ruling on the following questions:

(1) Must Article 1(4) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted as excluding from the scope of that directive a national measure governing the exercise, in the territory of the Member State, of a service activity with a view to protecting or promoting cultural diversity or must it be interpreted, in conjunction with Article 16(1)(b) of that directive, as meaning that the preservation or promotion of cultural diversity is capable of justifying an exemption from the prohibition on subjecting service providers established in another Member State to a requirement introduced by such national legislation?

(2) Does the assessment of the compatibility of such national legislation with the objectives pursued by Directive 2006/123/EC exclude the same examination in the light of the primary law of the European Union?

(3) If it is necessary to assess the compatibility of a national measure adopted with a view to protecting or promoting cultural diversity with the freedoms guaranteed by Articles 34 and 56 of the Treaty on the Functioning of the European Union, must a national measure that sets a minimum charge for the home delivery of a product be regarded as relating to

a selling arrangement for that product and, consequently, must it be assessed solely in the light of the free movement of goods, or should that legislation be assessed solely in the light of the freedom to provide services, in particular, having regard to the harm caused to the activity of selling that product online or to the distinct nature of the delivery service as compared with the sale of the product?

.....

Having regard to the other evidence adduced;

Having regard to:

- the Treaty on the Functioning of the European Union;
- the Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
- Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006;
- Decision 2006/515/EC of the Council of 18 May 2006;
- French Law no 81-766 of 10 August 1981;
- French Law no 2006-792 of 05 July 2006;
- French Law no 2014-779 of 08 July 2014;
- French Law no 2021-1901 of 30 December 2021;
- the judgment of the Court of Justice of the European Union of 18 December 2025 (C-366/24);
- the French Code of Administrative Justice;

Having heard, in open court:

- the report by Mr Louis d'Humières, Master of Petitions in extraordinary service,
- the legal opinions of Ms Céline Guibé, Consultant Judge;

SCP Célice, Texidor, Perier, counsel for Amazon EU, and SARL Cabinet Briard, Bonichot et Associés, counsel for Fnac Darty Participations et Services, the French National Publishers' Union, the French booksellers' unions and the cultural leisure goods distributors' unions, having addressed the court after the legal opinions;

Whereas:

1. Amazon EU has sought the quashing as ultra vires of the order of 4 April 2023 concerning the minimum pricing of the book delivery service. By a decision of 17 May 2024, the Conseil d'État, ruling on an administrative claim, stayed the proceedings until the Court of Justice of the European Union had ruled on the questions referred to it for a preliminary ruling. The Court of Justice of the European Union ruled on these questions in its judgment C-366/24 of 18 December 2025.

On the interventions:

2. Having regard to the nature and substance of the dispute, the National Publishers' Union, the French booksellers' and cultural leisure goods distributors' unions and Fnac Darty Participations et Services have demonstrated a sufficient interest in the maintenance of the challenged order. Their interventions are therefore admissible.

On the contested measure:

3. Pursuant to the first paragraph of Article 1 of the Law of 10 August 1981 on book prices, as amended by Article 1 of the Law of 30 December 2021 aimed at supporting the book industry and strengthening fairness and trust amongst its stakeholders: *“Any natural or legal person who publishes or imports books is required to set a retail price for the books they publish or import”*. The fourth paragraph of this same Article provides that: *“Retailers must charge an actual retail price of between 95% and 100% of the price set by the publisher or importer. Where the book is dispatched to the purchaser and is not collected from a bookshop, the selling price is that set by the publisher or importer. Under no circumstances may the book delivery service be offered by the retailer free of charge, either directly or indirectly, unless the book is collected from a bookselling outlet. It must be charged in accordance with a minimum rate set by order of the Ministers for Culture and the Economy, on the recommendation of the Regulatory Authority for Electronic Communications, Postal Services and Press Distribution. This order shall take account of the rates proposed by postal service providers in the retail book market and the need to maintain a dense network of retailers throughout the territory.”*

4. The challenged order of 4 April 2023 relating to the minimum charge for the book delivery service provides that: *“The minimum charge for the book delivery service referred to in the fourth paragraph of Article 1 of the Law of 10 August 1981 cited above is set at: / - €3 (inclusive of all taxes) for any order comprising one or more books whose purchase value in new books is less than €35 (including all taxes); / - more than €0 (inclusive of all taxes) for any order comprising one or more new books whose purchase value in new books is €35 or more (inclusive of all taxes). / (...)”*.

On the alleged failure to comply with Article 34 of the Treaty on the Functioning of the European Union:

5. Article 34 of the Treaty on the Functioning of the European Union provides as follows: *“Quantitative restrictions on imports, and all measures having equivalent effect shall be prohibited between Member States.”* It follows from these stipulations that quantitative import restrictions and any measures having equivalent effect are prohibited between Member States. However, a national regulation or practice constituting a measure having equivalent effect to quantitative restrictions may be justified by one of the grounds of general interest listed in Article 36 of the same Treaty or by overriding requirements. In either case, the national measure

must, in accordance with the principle of proportionality, be capable of ensuring the attainment of the objective pursued and must not go beyond what is necessary to attain it.

6. By its judgment of 18 December 2025, the Court of Justice of the European Union held that the imposition, by a national measure, of minimum delivery charges for books which are not collected from a bookselling outlet, insofar as it entails an increase in the overall price paid by the purchaser to take possession of the book outside such outlets, is likely to affect operators from other Member States to a greater extent, as they are less able to deliver books ordered online to those shops than operators in the first Member State, thus constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 34 of the Treaty on the Functioning of the European Union. It follows that the introduction, by virtue of the provisions of the fourth paragraph of Article 1 of the amended Law of 10 August 1981, and by the challenged order of a minimum price for the delivery service for new printed books that are not collected from a book retail outlet is liable to undermine the free movement of goods guaranteed by Article 34 of the Treaty.

7. However, under the stipulations of Article 4 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted at the UNESCO General Conference on 20 October 2005, approved, on behalf of the European Community, by Council Decision 2006/515/EC of 18 May 2006 and ratified by France under the Law of 5 July 2006, the parties to the Convention undertake, pursuant to Article 20 thereof, to take account of the relevant stipulations of the Convention when interpreting and applying other treaties to which they are Parties: “(...) / *Cultural diversity is made manifest (...) through diverse modes of artistic creation, production, dissemination, distribution and enjoyment of cultural expressions, whatever the means and technologies used.*” It also follows from the settled case law of the Court of Justice of the European Union that a cultural policy may constitute an overriding reason in the public interest justifying a restriction on a fundamental freedom guaranteed by the Treaty on the Functioning of the European Union, provided that it is appropriate for securing the attainment of the objective it pursues and does not go beyond what is necessary to attain it. In particular, in its judgment of 3 March 2011, *European Commission v Kingdom of Belgium* (C-134/10), the Court of Justice held that the maintenance of pluralism, as an aspect of cultural policy, is linked to the fundamental right to freedom of expression and that national authorities enjoy broad discretion in that regard. In its judgment of 30 April 2009, *Fachverband der Buch und Medienwirtschaft v LIBRO Handelsgesellschaft mbH* (C-531/07), the Court held that the protection of books as cultural assets may be regarded as an overriding reason in the public interest capable of justifying measures restricting the free movement of goods, provided that such measures are appropriate for attaining the objective set and do not go beyond what is necessary to attain it. Finally, in its resolution of 14 September 2023 on the future of the European book sector, the European Parliament emphasised that “fixed prices for books in some Member States serve as an instrument for safeguarding their cultural policies and can help to ensure editorial plurality, the plentiful supply of books and a diverse local network of independent booksellers, particularly in the light of growing online sales”, and expressed concern about the impact on these booksellers of the free or low-cost delivery offered by certain online book-selling platforms.

8. The evidence submitted, notably the information report drawn up by the Committee on Cultural and Educational Affairs of the National Assembly, registered on 11 April 2018, on the evaluation of the Law of 8 July 2014 governing the conditions for the distance-selling of books, as well as from the parliamentary proceedings from which the Law of 30 December 2021 resulted, shows that while the single pricing of books introduced by the Law of

10 August 1981 made it possible to ensure access to books at the same price throughout France and helped, despite the growth of online and digital book sales, to maintain a dense network of bookshops – which play a central role in promoting and disseminating editorial creation by offering readers an abundant and diverse range of books and contribute to cultural activity throughout the national territory – certain dominant players in online book sales developed a commercial strategy consisting, once the Law of 8 July 2014 had prohibited free postage, in charging a token amount for such charges. Considering that such a practice was liable to undermine the balance, essential to pluralism and cultural diversity, between and within the various book distribution channels in France, the legislator decided, in order to preserve that balance, to adopt the principle of a minimum charge for the delivery costs for new printed books which are not collected from a bookselling outlet. Such an objective of public interest is capable of justifying the restriction of the free movement of goods within the Union, provided that the measure is appropriate for ensuring the achievement of the objective pursued and that it is proportionate.

9. However, the evidence submitted, notably the evaluation report on the charging of minimum delivery costs for new printed books, submitted to Parliament by the Government in October 2025, and the public notices issued by the Book Ombudsman (Médiateur du livre) on 12 February and 27 May 2025 concerning the free delivery of books to collection points and the conditions for compliance with Article 1 of the Law of 10 August 1981, shows that the minimum delivery charge for new printed books which are not collected from a bookselling outlet, introduced by the challenged provisions, has, since its adoption, made it possible to preserve the density of the network of book retailers throughout France and to develop the diversity of players in online book sales. While the applicant company maintains that the proportion of book sales through bookselling outlets has remained stable since 2002 and that such a measure was therefore unnecessary, it is apparent from the same documents that the existence of a large number of bookshops in France is the result of a long-standing, consistent and multifaceted public policy of support, of which the challenged minimum charging of delivery costs for new printed books that are not collected from a book retail outlet forms part. The evidence also shows that despite the increase in the price of new printed books purchased online caused by the contested measure, persons with limited purchasing power and those living far from urban areas have continued to make a growing proportion of their book purchases from the dominant players in online sales, to the detriment of book club websites in particular, and that the density of the nationwide network of book retailers makes it possible, for the most part, for books purchased online to be collected free of charge. Finally, the circumstances that, first, the contested measure is likely to benefit not only independent bookshops but also large cultural retail chains with both a powerful online sales service and a substantial network of physical book outlets, and, second, that the applicant company's extensive publishing catalogue would, in itself, guarantee cultural diversity as much as, if not more, than bookselling outlets, are not such as to call into question the appropriateness of the contested measure for attaining the objective pursued, which consists, as stated above, in guaranteeing pluralism and cultural diversity by preserving a variety of book distribution channels and developing diversity among the operators within those various channels.

10. Furthermore, the evidence submitted does not show that the minimum delivery charge for books not collected from a bookselling outlet – which, in practice, is limited solely to purchases of new printed books with a total value of less than €35 inclusive of all taxes – goes beyond what is necessary to achieve the objective pursued. Nor does the evidence show that less restrictive measures – such as a mechanism for charging postage costs based on the availability of titles, categories or book formats through the various sales channels, which was

ruled out in view of the operational obstacles to its implementation, or a measure reducing postal rates for independent bookshops, which would in any event be costly for public finances – would have made it possible, under conditions equivalent to the contested measure, to preserve the density of the network of book retail outlets in France by encouraging attendance at those venues for the dissemination of, and access to, culture and creative works, and to develop the diversity of players in online book sales.

11. Since the contested measure is thus capable of ensuring, in a consistent and systematic manner, the attainment of the objective of protecting and promoting pluralism and cultural diversity, without going beyond what is necessary to achieve that objective, the plea alleging that the contested provisions infringe the free movement of goods guaranteed by Article 34 of the Treaty on the Functioning of the European Union must be dismissed.

Concerning the alleged infringement of Article 56 of the Treaty on the Functioning of the European Union:

12. By its judgment of 18 December 2025, the Court of Justice of the European Union ruled that the legislation of a Member State setting minimum charges which book retailers must charge purchasers for the delivery of books that are not collected from a bookselling outlet must be examined solely by reference to the free movement of goods guaranteed by Article 34 of the Treaty on the Functioning of the European Union. Accordingly, the plea alleging that the provisions of the fourth paragraph of Article 1 of the Law of 10 August 1981 and the challenged order infringe the freedom to provide services guaranteed by Article 56 of that Treaty must therefore be dismissed.

On the alleged infringement of the objectives of Directive 2006/123/EC:

13. Under Article 1(4) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market: “*This Directive does not affect measures taken at Community level or at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism.*”

14. By its judgment of 18 December 2025, the Court of Justice of the European Union ruled that Article 1(4) of Directive 2006/123/EC, as cited above, must be interpreted as excluding from the scope of that directive a measure taken by a Member State with a view to protecting or promoting cultural or linguistic diversity. Consequently, having regard to the points made in paragraph 8, the plea alleging that the provisions of the fourth paragraph of Article 1 of the Law of 10 August 1981 and of the challenged order fail to comply with the objectives pursued by that Directive must be dismissed.

15. It follows from all of the foregoing that the application brought by Amazon EU must be dismissed, including its submissions made under Article L. 761-1 of the French Code of Administrative Justice.

OPERATIVE PROVISIONS:

Article 1: The interventions of Fnac Darty Participations et Services, the French National Publishers' Union, the French Booksellers' Unions and the Cultural Leisure Distributors' Union are admitted.

Article 2: The application of Amazon EU is dismissed.

Article 3: This decision shall be notified to Amazon EU, the French Minister for Culture, Fnac Darty Participations et Services, the French National Publishers' Union, the French Booksellers' Union and the Union of Cultural Leisure Distributors.