

# The system of fixed book prices according to German law

The **statute governing fixed book price** ("Buchpreisbindungsgesetz") is relatively short; it consists of only 10 paragraphs.

§ 1 re-emphasizes that it is the overall intention of this law to protect **books as a cultural good**.

According to § 2, the law applies to **all kinds of books**. In addition, the rules cover music scores, maps and globes as well as substitutions or reproductions of books (but not audio books). It also applies to all products which directly substitute a book, and hence covers e-books also. The law applies to products which are destined for the German market, meaning books in German or foreign language books edited specifically for German readers (e.g. easy reader editions in another language, but with German vocabulary notes). Other foreign language books are not subject to the fixed price rules.

According to § 5, the publisher or importer of a book shall **set a fixed retail price** for the German territory.

§ 3 obliges any retailer to **apply the retail price** set by the publisher or importer. Consequently, the publisher himself is also required to apply the fixed price when selling directly to the consumer. However, the law does not prevent the publisher from **changing fixed prices** from time to time at his discretion. He is free to adjust the applicable fixed price according to market conditions or on the basis of any other considerations. The only requirement is that enough time is allowed between the announcement of a change in price and the date this change is to become effective in order for retailers to be able to adjust in time. Because of the characteristics of electronic retail, this allows e-book prices to be changed with a shorter notice period than physical books whose price tags require changing in book shops across the country.

The fixed price must be **communicated** in an appropriate manner so that every retailer may have access to the correct price. In Germany, this is usually achieved through publication in the books in print database ("**Verzeichnis lieferbarer Bücher**" [VIB]) where nearly all titles that are available in Germany are registered. Nevertheless, each publisher may choose any other means to disclose the prices for his books, as long as it is effective. If the VIB is used, the price indicated there is considered to be the correct price (reference price) in case any discrepancies should occur across different platforms.

According to § 8, publishers may **cancel the fixed price** if the edition in question has been on the market for more than 18 months. After this period of time, the publisher may announce (at any time) that the retail price of the book is no longer controlled. The retailer is then free to determine the price at his discretion. In practice, most publishers keep their prices fixed for a much longer period. Therefore, the so-called "**long sellers**", such as e.g. the works by Thomas Mann or Hermann Hesse, among many other older titles, are still sold at fixed prices.

According to § 5, the publishers may set different prices for different editions of one particular title. However, the editions must differ in terms of e.g. physical characteristics, such as paper type, font, or cover type. The particular **business model of German "book clubs"** also allows for cheaper "**book club**" versions of current titles to be marketed

by these clubs. The club edition must be published at a later time than the standard edition and must also differ to some extent in its physical qualities.

Besides regular retail prices, publishers may also fix certain **reduced prices**. The range of possible reduced prices is limited. The most important types are bulk sales, prices for full sets of serial publications, and special prices for subscriptions. Publishers are required to announce such discounted prices in the same way as ordinary fixed prices.

- Bulk reductions: If the publisher has set a lower price for bulk sales (perhaps on a scale depending on number of copies sold), the retailer is obliged to apply this price if the specified number of copies of a single title are sold to one consumer.
- Reductions for serial publications: A series of books consists of books by the same author, or dealing with the same topic, and which share the same appearance in terms of format and design. The publisher may fix a special price for consumers purchasing the entire series at the same time.
- Subscriptions: Preferential prices may be set for consumers agreeing to purchase future instalments of a title appearing at intervals in a number of volumes.

All these types of discounted prices must be observed by retailers (only) if they have been set by the publisher.

§ 7 stipulates two cases where the retailer is either obliged to grant **reductions for certain buyers** or is, exceptionally, permitted to do so within certain limits.

- The first case concerns purchase by public authorities of books for use in the classroom. This reduction is applicable where public authorities provide schools with books to be provided (lent) for free to students. The exact reduction depends on how many books are purchased by the public body (or the value of the order, depending on volume) and ranges between 8% and 15% with respect to the fixed retail price. These mandatory reductions are set directly by law.
- The second case is the sale of books to academic and public libraries. Retailers are permitted to grant reductions of up to 5% to publicly accessible academic libraries and of up to 10% for public libraries. In contrast to the reductions for school books, these reductions for libraries lie within the discretion of the vendor.

Finally, retailers are free to determine retail prices for damaged books.

A provision within § 7 permits **clearance sales** during a period of 30 days before the final closing of a book shop. This applies where an entire business is closing down, not just one branch of a chain of stores.

§ 5 mentions some **exceptions from the general rule** that the retailer may not deviate from fixed prices. For instance, retailers are not bound by the fixed price if the book is sold to a publisher, to another bookseller, or to one of their employees, provided that this book is not for further sale.

Besides these exceptions, the retailer must adhere to the fixed prices. Generally he is not allowed to undercut the fixed price indirectly by giving away any other goods to the customer on the occasion of a book purchase. One exception is made by the law: Retailers may grant goods on the occasion of a book purchase if they do not exceed a limit of 2% of the sale turnover in value.

**Cross-border sales** of books to consumers are generally not subject to fixed prices. But, according to § 4, the fixed price must be maintained in such cases where German books are exported to another country and then re-imported from this country with the intent of evading the rules of the system of fixed prices. A similar scenario would be a situation where the vendor is based outside Germany but the delivery takes place within the country. In other words, cross-border sales are subject to the fixed price if they can be shown to circumvent domestic fixed prices.

According to § 8, the legal department of the Börsenverein or a lawyer acting as a trustee on behalf of either the publishers or the booksellers may impose sanctions on any party acting in violation of this law. In terms of procedure, **enforcement** is achieved by serving a notice of violation requesting a declaration to cease and desist.