

Main EU developments over the last four months of interest to the hotel, restaurant and café sector

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Hotels, restaurants & cafés in Europe

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- *TV retransmission in hotel rooms is subject to copyright – according to ECJ’s Advocate General*

On 13 July 2006, Advocate General Ms Eleanor Sharpston delivered her opinion in Case 306/05 on whether TV retransmission in hotel rooms is subject to copyright or not. The case was referred to the European Court of Justice (ECJ) by the Provincial High Court of Barcelona in June 2005 in the course of proceedings between SGAE (a Spanish copyright management society) and Rafael Hotels. Under a Spanish Supreme Court Decision from 2003, hotels in Spain are at present not obliged to pay copyright fees for making TV programmes available in the guest rooms.

In order to verify the compatibility of this jurisprudence with EU law, the Barcelona High Court asked ECJ to clarify whether TV retransmission in hotel rooms constitutes a “communication to the public” which is protected under Directive 2001/29 (“Copyright Directive”).

The Advocate General’s opinion, which is a recommendation to the ECJ’s future ruling in the case, answers this question affirmatively. As “communication to the public” is not defined in the Directive, the Advocate General interprets this concept on the basis of the Berne Convention (last revised in 1971), whose provisions the EU is obliged to adhere to.

She finds that, under the Berne Convention, when a communication is made by an organisation other than the original one, a fresh authorisation is due from the right-holders. Applied to the case at hand, this means that a hotel which receives TV signals from a broadcaster must pay separate copyright fees for the retransmission of these signals into the guest rooms.

The Advocate-General further points out that a hotel’s provision of TV programmes is done with an economic benefit in mind and, in addition, that the potential audience reached – the hotel’s clients taken as a whole – is sufficiently great for this service to be considered as communication to the public.

She does not accept the argument that a hotel room is a private space and that, on this ground, TV retransmission into the hotel room would fall outside of communication to the public. In her opinion, under the Berne Convention, the term “public” does not refer to the place where the communication is received but to the absence of special personal relationships between a group of people and the organisation making the communication.

It should be emphasised that the Advocate General’s opinion is not binding on the ECJ. It is not known when the ECJ ruling will be made. It is likely to be from October onwards since the ECJ is closed for vacation until the beginning of September.

HOTREC and its member associations have long held that hotels should not have to pay copyright fees for making TV programmes available to their guests in the private sphere of a hotel room. The legislation and jurisprudence in a number of European countries (including Spain, Austria, Czech Republic, Germany, Ireland, Poland, and Portugal) have until now confirmed this point of view. If the Advocate General’s opinion is heeded by the ECJ, it is likely that these countries’ legislation/jurisprudence have to be reversed.

□ *Copyright users seminar in Brussels*

On 20 June 2006, HOTREC and its partners from the Copyright Users' Platform (CUP) held a seminar in Brussels entitled "*Time to review copyright management in Europe*". The seminar attracted well over one hundred and thirty participants from the EU institutions and various business sectors. Its aim was to bring a user perspective on copyright management to the attention of policy-makers. Each association behind the CUP had the opportunity to put forward the concerns of its particular industry, which were subsequently discussed by the following distinguished panellists:

- Klaus-Heiner Lehne, Member of the European Parliament;
- Jacqueline Minor and Jean-Eric de Cockborne from the European Commission; and
- Veronique Desbrosses, European Grouping of Societies of Authors and Composers (GESAC)

A CUP brochure was also distributed at the conference which sets out the concerns that users have in relation to copyright management, and calls for reform of the management structures both at European and national level.

HOTREC Chief Executive, Marguerite Sequaris, introduced the seminar and HOTREC President, Bernd Geyer, spoke at the event on behalf of the European hospitality industry. The other associations making up the CUP are:

- *Association of European Radios (AER)*
- *Association of Commercial Television (ACT)*
- *European Broadcasting Union (EBU)*
- *Performing Arts Employers Association League Europe (PEARLE)*
- *European Cable Communications Association (ECCA)*
- *European Information and Communications Technology and Consumer Electronics Industries Association (EICTA)*

The seminar can be seen as a first step for making the collective voice of copyright users heard in Brussels, and HOTREC hopes the CUP will be able to follow up with further joint action.

Please contact the HOTREC secretariat for copies of the CUP brochure.

STANDARDISATION

- *Will ISO tourism standards apply to hotels and restaurants?*
- *Creation of ISO working group on spa services*

The Technical Committee (TC) 228 was set up by ISO in January 2005 to develop standards for tourism and related services. Recently there have been two main developments:

Committee scope

- A Task Force meeting in Madrid on 1 June 2006 agreed on a new scope for the TC 228 which excludes accommodation and catering from the standardisation work of the committee. The new scope needs to be approved by a 2/3 majority of the TC's permanent (P-) members in a vote by correspondence. The vote will be concluded on 15 September 2006. There are 44 P-members in TC 228, of which 19 are standardisation bodies from Europe. If 2/3 of the P-membership do not give their support to the new scope the issue will be re-discussed at the next TC 228 meeting in Thailand (preliminary date: 27-28 February 2007);

Working group for spa standards

- The TC 228 decided, in a vote by correspondence concluded on 26 July, to set up a working group on spa services. The decision was taken by 17 votes in favour, 9 against, and 2 abstentions. As opposed to deciding on a TC's scope, a simple majority of voting P-members is sufficient for setting up a new working group.

Most HOTREC member associations are opposed to the development of international standards covering hotels and restaurants. The vote on the TC 228 scope is, however, in the hands of the national standardisation bodies that have requested P-member status. HOTREC member associations can therefore influence the outcome only via these standardisation bodies. It remains to be seen whether a sufficient number of P-members will listen to the majority view in the hospitality industry regarding international tourism standards.

HOTREC has expressed its opposition, as a liaison member of TC 228, to the setting up of a working group on spa services. As there is a trend for hotels to offer various types of treatments that could be seen as falling under the broad term of "spa services", there is a risk that a part of the hospitality industry would be affected by any international standards that were to be developed for spas. Most HOTREC associations would object to such a development.

TAXATION

□ A new chance for reduced VAT rates?

As explained in *Live from Brussels N° 36*, the new Directive 2006/18/EC - extending until end of December 2010 the experiment of reduced VAT rates for the following labour-intensive services: small repair services, renovation of private homes, window cleaning and private household cleaning, domestic care services and hairdressing - also provides that "by 30 June 2007 at the latest the Commission shall present to the European Parliament and the Council an overall assessment report on the impact of reduced rates applying to locally supplied services, including restaurant services, notably in terms of job creation, economic growth and the proper functioning of the internal market, based on a study carried out by an independent economic think-tank."

On 11 August 2006, the European Commission announced the award of the contract for a study on reduced rates of VAT applied to goods and services in the Member States of the European Union to Copenhagen Economics ApS for a value of €387.700. The study should in principle be completed within 9 months from the award of the contract. It is intended to help the European Commission in the preparation of the report it owes to the European Parliament and the European Council by end of June 2007. This report will be made public, but not necessarily the study.

HOTREC and its member associations are re-launching their campaign in favour of a reduced VAT rate for all hospitality services (accommodation and restaurant services). HOTREC will organise an event on the subject matter in Budapest on Friday 19 January 2007. The objective will be to present to the European Commission and the national governments an overview of the arguments, economic analyses and case studies developed at national level in favour of a reduced VAT rate for hospitality services. Commissioner Kovács, in charge of taxation, will be the guest of honour of this internal conference.

□ ***Increase of excise duties on alcohol beverages?***

As explained in *Live from Brussels N° 31 and 36*, the current EU legislation on excise duties on alcohol and alcoholic beverages entered into force in 1993 and has not been amended since. Directive 1992/84 of 19 October 1992 imposed a minimum excise duty of 1,87 € per hl/degree of alcohol for beer (or 0,09 € per liter of beer at 5°) but applied a zero minimum rate to wine. This has resulted in a great diversity within the Community in the levels of taxation applied.

In April 2005, the Council of Ministers for Economic and Financial Affairs (ECOFIN) had called for a re-evaluation of the excises “*in order to avoid a fall in the real value of the Community minimum rates, providing transitional periods and derogations for those Member States who may have difficulties in increasing their rates*”. It was interesting to note that ECOFIN also recommended to the European Commission to “*take into account the overall political sensitivity of this special issue*”. In response to this call, the European Commission is working on a draft proposal which should be ready in September 2006.

Commissioner Kovacs, in charge of taxation, explained in a recent interview that the revision will include a re-evaluation of excise taxes, which will be similar to the increase in inflation observed since 1992 (between 1992 and 2005, inflation amounted to 31%). Transitional arrangements until 2010 should facilitate the adaptation to the rise. Commissioner Kovacs also specified that the zero minimum rate on wine would not change.

HOTREC is watching carefully the developments on this issue as excise duties influence directly the price of drinks served.

□ ***Aviation and climate change: emission trading more likely than fuel tax***

The EU institutions have over the last year considered the best ways of dealing with aviation and climate change. On 4 July 2006, the European Parliament adopted a resolution (A6-0201/2006) which states that rapidly increasing airline emissions are contributing to climate change and that the EU must show leadership by tackling the problem. This resolution was a response to a European Commission communication (COM (2005) 495) adopted in September 2005.

As air fuel is not currently taxed, the European Parliament resolution advocates the introduction of a kerosene tax on all domestic and intra-EU flights. It further suggests that the European Commission and the Member States should revise the air service agreements with third countries to ensure that fuel taxation also becomes possible for international flights. However, the European Parliament asks that special attention is paid to the situation of the most isolated territories which are particularly dependent on air transport services.

The European Commission takes a much more cautious approach to the issue of kerosene taxation. It stresses that the ongoing revision of bilateral air service agreements to allow for kerosene taxation is a lengthy process and can not be considered as a policy priority.

Besides taxing air fuel, the European Parliament favours the introduction of a separate emission trading scheme for the aviation sector, which is not currently included in the EU Emissions Trading Scheme (ETS) set up under the Kyoto Protocol. It suggests that a pilot phase could be launched from 2008.

The European Commission does not seem to favour the setting up of a separate scheme for the aviation sector. However, it states its intention of putting forward, by the end of 2006, a legislative proposal for including the aviation sector in the EU ETS. In December 2005, the Council of Ministers expressed its support for this objective.

The European Commission argues that extending emissions trading to aviation would not necessarily imply a rise in ticket prices – or at the most a very modest rise. Any effect on tourism or peripheral regions would therefore be limited, according to the European Commission.

Once the European Commission adopts its proposal, it will have to be negotiated and accepted jointly by the European Parliament and the Council under the co-decision procedure. On the current timetable it is unlikely that the aviation sector would be brought into the ETS before 2009.

Whereas a kerosene tax for non-domestic flights is unlikely to be introduced, despite the European Parliament's favourable position, there is a strong intent from the European Commission and the Member States to include the aviation sector in the EU ETS. The cost for the aviation sector – and the impact on tourism – will depend on the exact modalities of the scheme, which remain to be seen. The European Low Fares Airline Association (ELFAA) has disputed the European Commission's initial assessment that tourism would not be significantly affected.

□ ***Taxes to be included in air ticket prices***

On 18 July 2006, the European Commission adopted a proposal (COM (2006) 396) for a Regulation on common rules for the operation of air transport services in the European Community. One of the proposed measures seeks to help passengers compare air fares by imposing that published fares should include all applicable taxes, charges, and fees. The aim is to avoid misleading advertisement which distorts competition and leads to higher average prices for passengers.

The European Commission proposal also prohibits price discrimination between passengers solely on the basis of their place of residence within the EU. The European Parliament and the Council will have to approve the proposal before the Regulation can enter into force.

HOTREC is in favour of a competitive market for air transport. Price transparency signifies more competition and lower ticket prices, which benefit tourists that are an important part of the hospitality sector's customer base.

PAYMENTS

□ *Payments within the EU soon easier and cheaper?*

As reported in *Live from Brussels N° 37*, the European Commission presented in April 2006 its preliminary findings of a sector inquiry into payment cards. The interim report identified evidence that hotels and restaurants are amongst the sectors paying the highest average MSCs (*merchant service charge – a merchant is defined as the entity which accepts payments by means of cards*).

Following the interim report, the European Commission launched a public consultation. The comments received from some 66 parties are listed on the European Commission website: http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/rep_report_1.html. They were discussed at a public hearing on 17 July 2006. The next and final stage in the process is the publication of the European Commission's final report and recommendations, due at the end of 2006.

Alongside this activity, the European Commission is pursuing its review of individual payment card systems under EU competition rules. On 30 June 2006, it sent a confidential "statement of objections" to MasterCard as it had taken the preliminary view that MasterCard restricts competition between member banks by pre-determining a minimum price which retailers must pay for accepting MasterCard and Maestro branded payment cards. The European Commission also cautioned that if it decided to rule against the group, it could prohibit MasterCard's interchange fees.

Credit card systems also continue to be examined under the national competition laws of various European countries. The latest news in this respect is the announcement by the Office of Fair Trading in the UK in June 2006 that it would scrutinise the interchange fee arrangements of both MasterCard and Visa as they could infringe UK competition law.

Apart from the competition law issues raised by payment cards, the European Commission has also decided to tackle the overall payment system in the EU. On 1 December 2005, it proposed a Directive "*on payment services in the internal market*" (COM (2005)603final). In sum, its aim is to create a Single Payment Market as there are currently 25 different sets of national rules which hinder cross-border payments in terms of cost and security. One of the advantages would be that consumers can use direct debit services (a common and cost-efficient mean of payments for gas, water or telephone bills) on a cross-border basis.

On 26 April 2006, the European Central Bank issued its opinion on the proposed Directive and, in broad terms, welcomed it. On 11 May 2006, the European Parliament published a draft report on the proposed Directive, prepared by MEP Jean-Paul Gauzès. In a nutshell, the European Parliament approves the European Commission's initiative in principle and supports the introduction of a full legal framework for payment services within the EU. Nevertheless, the European Parliament has suggested over 500 amendments. The first reading of the proposed Directive is planned to be concluded on 11 October 2006. The text will then have to be examined by the Council of Ministers.

Easy, cheap and transparent payment systems are crucial for our sector, as every hospitality enterprise has to deal with a multitude of transactions, mainly in relation to consumers, on a daily basis. This is why HOTREC welcomed the finding of the interim report referred to above that restaurants and hotels are particularly hit by the fees charged for accepting payments by means of cards and hopes that the European Commission will find ways to correct this situation. It also welcomes the new legal initiative for an internal market of payment services.

HOTREC is organising an internal seminar on the subject matter on 19 October 2006 in Berlin.

HEALTH

□ *Towards an EU non-smoking policy?*

In June 2006, the Directorate General for Health and Consumer Protection (DG SANCO) of the European Commission circulated an informal consultation document on smoke-free environments. It invited comments from stakeholders which could stimulate European Commission thinking on the subject in view of a green paper (a formal consultative document) that it plans to adopt in the autumn of 2006.

The consultation document describes passive smoking as a major health hazard which kills almost 80 000 adults each year in the EU-25. According to studies quoted, the highest concentrations of tobacco smoke are found in hospitality venues such as bars and discotheques. Introducing smoke-free environments in public places – including hospitality establishments – would bring about health benefits and would also lead to economic savings and contribute to “de-normalising” smoking in society.

The document sets out three options for EU policy:

- continue promoting smoke-free environments through means other than regulation (e.g. information campaigns);
- propose a total ban on smoking in all enclosed workplaces, including hospitality venues;
- provide exemptions from a smoking ban for certain types of venues (e.g. licensed hospitality premises or hospitality establishments which do not serve food).

The total ban on smoking is seen as the most effective option, but it is admitted that it would likely raise strong opposition in some Member States. The document dispels the argument that a total ban would have a negative economic impact on the hospitality industry, underlining that available evidence from countries which have banned smoking already suggests otherwise.

The document does not express a clear preference for any particular policy tool (self-regulation, recommendation, or legislation). It concedes that there are advantages and drawbacks with each. There is a recognition that the legislative route, on the basis of Treaty article 137 (health and safety at work), might be relatively lengthy, but, on the other hand, is the one most likely of ensuring adequate protection for workers.

HOTREC has explained to the European Commission that it does not consider any EU legislative measure regarding non-smoking to be consistent with the principle of subsidiarity. It is indeed surprising that the document of the European Commission does not for one moment consider whether EU regulation in this area would be in line with subsidiarity. Previously the European Commission was discussing EU measures against smoking in the workplace in the context of the consultation on the revision of the “carcinogens” Directive 2004/37 (see Live from Brussels N° 35). It seems that the European Commission no longer intends to pursue non-smoking through the revision of this Directive. However, this has yet to be confirmed.

FUNDS

□ *EU funding for regional development and tourism*

The European Parliament and the Council adopted, on 5 July 2006, a Regulation on the European Regional Development fund (ERDF) for 2007-2013. The ERDF is one of the EU’s structural funds and finances projects that promote economic and social cohesion within the EU. Funding is available for investment that maintains or creates new jobs, infrastructure, and the business activities of small and medium-sized enterprises. A large number of sectors benefit from the funding – including tourism.

The resources are split along the following three objectives:

- “Convergence” objective – to speed up the economic convergence of less-developed regions (where GDP per capita is less than 75% of the enlarged EU);
- “Regional competitiveness and employment objective” – to help anticipate economic and social change, and support innovation, etc, in regions that are not eligible for funding under the convergence objective;
- “European territorial cooperation” objective – to strengthen cross-border cooperation in the EU.

Under the European Commission’s original proposal, submitted in July 2004, only the convergence and cooperation objectives would give funding to tourism projects. However, as reported in *Live from Brussels No. 34*, the European Parliament amended the legislation to make tourism eligible for funding also under the competitiveness objective. This amendment was accepted by the European Commission and the Council, and thus became part of the final text. As a result, a much larger number of regions in the EU will be able to apply for EU funding for tourism projects.

HOTREC welcomes the inclusion of tourism as eligible for funding under all three objectives of the Regional Development Fund. Tourism has a huge potential in Europe and it is appropriate that EU funding helps it achieve this potential in the broadest manner possible.

For more information about funding opportunities, contact information to the managing authority in each Member State is provided via the following link:

http://ec.europa.eu/regional_policy/manage/authority/authority_en.cfm

INTERNAL MARKET FOR SERVICES

□ *Services Directive – first reading completed*

On 24 July 2006, the Council adopted a common position on the Services Directive. This followed the resolution of the European Parliament and the European Commission's redrafted proposal, which we reported on in *Live from Brussels N° 37*. As a result, the first reading of the Services Directive has been completed. The European Parliament will start the second reading after the summer break and will have to finish within three months of receiving the text from the Council.

As far as the provisions regarding quality of services are concerned, the Council text reaffirms the need to improve transparency in service provision, with hotel classification mentioned as a special area of concern. It also maintains the references to the development of European standards for services.

The Council's common position is very close to the first reading of the European Parliament. The European Commission has issued a communication (COM (2006) 424) expressing its support for the common position.

As the so-called co-decision procedure applies, the Council and the Parliament must agree on a common text. The Commissioner for the internal market, Charles McCreevy, has expressed hope of reaching a final agreement between the EU institutions by the end of the year.

HOTREC welcomes the progress made by the EU institutions on the Services Directive. The implementation of this legislation should have a positive impact on growth and employment. Increased cross-border trade in services and economic activity in general is also likely to benefit the hospitality industry indirectly.

We regret nonetheless that the concerns of the hospitality industry in relation to European standards for services have not been listened to. As long as the standardisation bodies do not reform their working methods in the direction of increased transparency and consultation with industry, they should not be mandated to develop service standards.

BETTER UNDERSTANDING OF THE SECTOR

□ *EU officials experience life in SMEs*

The European Commission's DG Enterprise has launched a scheme entitled "*Enterprise Experience*" which aims at giving European Commission staff a better understanding of the needs and circumstances of small and medium-sized companies. Starting in the autumn of this year, 300 officials at DG Enterprise will be sent out to SMEs across the EU for a one-week traineeship. In the host company they will shadow key personnel and experience the different functions and departments of the company. The expectation is that they will also be able to give something back to the company by explaining, for instance, EU policies of importance to businesses.

Companies with less than 250 staff can volunteer to take part in the programme. More information about the scheme and an application form can be found at the website of DG Enterprise: http://ec.europa.eu/enterprise/exp_prog/index.htm

HOTREC welcomes this initiative for giving EU officials a hands-on experience of the daily business reality of SMEs. In the pilot phase of the scheme, EU officials spent a week with companies operating in sectors as diverse as textiles, steel, and bakery. As the scheme is rolled out more broadly perhaps also hospitality enterprises would be interested in hosting an EU official and giving him/her a better understanding of our sector?

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