

Live

FROM BRUSSELS

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

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TAXATION

□ *The VAT reduced rate saga goes on...*

Following an agreement reached at its meeting on 24 January 2006, the Council of Ministers for economic and financial affairs (ECOFIN) adopted on 14 February 2006 a Directive extending until 31 December 2010 the possibility for Member States to apply reduced VAT rates to the following labour-intensive services: small repair services, renovation of private homes, window cleaning and private household cleaning, domestic care services and hairdressing (Directive 2006/18/EC, O.J. L51 of 22 February 2006).

Under the current regime, the standard rate applies in principle to restaurant services. However, the 1992 Directive on VAT rates provided that *“Member States which at 1 January 1991 applied a reduced rate to restaurant services ... may continue to apply such a rate to such supplies”*.

Today, 8 of the former 15 Member States apply a reduced rate to restaurant services: Ireland, Portugal, Austria, Italy, Greece, Spain, The Netherlands and Luxembourg. As far as the 10 new EU countries are concerned, only 4 negotiated in their respective Accession Treaties the possibility of applying a reduced rate to restaurant services: Cyprus, Hungary, Poland and Slovenia. These arrangements are valid until 31 December 2007. Will this deadline bring about a review of the regime of VAT rates for restaurants at the end of 2007?

Although the new Directive 2006/18/EC extends the experiment of reduced VAT rates for the labour-intensive services mentioned above until end of December 2010, it 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.”* As this text is linking the fate of restaurant services to the labour-intensive services it covers, the implication could unfortunately be that there will be no global review of the rates of VAT for restaurants before 2010!

As already explained in previous issues of “Live from Brussels”, HOTREC and its member associations had put a lot of hope in the European Commission proposal of July 2003, which suggested including restaurant services in the list of goods and services (Annex H to the 1992 Directive on VAT rates) to which Member States may choose to apply a reduced rate of VAT. As no progress could be made on this proposal, HOTREC had then hoped that restaurant services would be added to the list of labour-intensive services for which the possibility of an experiment of a reduced rate was extended until end of 2010.

Unfortunately, once again, ECOFIN did not recognise the labour-intensity and potential for job creation of the restaurant sector. This is all the more disappointing as the European Commission and the European Parliament clearly expressed their support for giving all Member States this option, as “the nature of the services concerned and the rules applicable to the place of taxation mean that the risk of relocation is minimal”.

For more details on HOTREC and its position on VAT rates, see the brochure “A reduced VAT rate for hospitality and tourism in Europe – An urgent call for the adoption of the July 2003 Commission proposal in relation to VAT rates, September 2005”, available on the HOTREC website www.hotrec.org, section “Areas dealt with”, “Taxation”.

□ ***VAT – place of taxation of supply of services***

Under the current rules, in the absence of specific provisions, services supplied to taxable persons (business to business transactions) as well as to non-taxable persons (business to consumer transactions) are taxed at the place where the supplier is established. The amended Commission proposal for a Council Directive (COM(2005)334final) proposes a revision of the system, guided by the principle that the VAT should be imposed at the place of consumption.

What does this proposal imply for our sector?

In relation to accommodation, the services provided to both taxable and non-taxable persons will be taxed at the place of supply, i.e. the place where the property is located. In relation to restaurant services, the place of supply will be deemed to be the place where the services are physically carried out.

Concretely, for hotels and restaurants the new proposal will not change the current situation. But it will have an impact on some catering operations: for example, if a caterer prepares a meal for a party (e.g. wedding) being held in another country, then the VAT rule of the country where the party is taking place will apply and not the VAT rate of the country where the caterer has his establishment.

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

Like VAT rates, minimum excise duties are governed by a Directive of 1992. In January 2006, the European Commission launched an online consultation in view of a global revision of the current legal framework of excise duties. Comments are welcomed until 30 April 2006. The consultation is the first step towards a legislative proposal to be possibly issued early 2007.

The Commission should also issue by the summer 2006 a proposal to adjust the rates for alcoholic beverages. This adjustment was called for by ECOFIN in April 2005 “*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 is interesting to note that ECOFIN also recommended to the Commission to “*take into account the overall political sensitivity of this special issue*”. This political sensitivity was already referred to in 2002 and 2004 (see *Live from Brussels N25* and *N31*).

HOTREC is watching carefully the developments in relation to excise duties as they influence the price of drinks.

□ ***France introduces air ticket tax to finance development aid***

As reported previously in *Live from Brussels N34* and *N35*, ECOFIN has been discussing the possibility of introducing a levy on air tickets for the purpose of financing development

aid. While there is no consensus view on the matter among EU countries, France has decided to launch its own scheme in the hope that other countries will follow its example. On 22 December 2005, the French Parliament adopted a law introducing a tax on air tickets for flights departing from France. The levy, which will be effective as of 1 July 2006, amounts to €1 per economy class ticket and €10 per business or first class ticket as far as national or EU flights are concerned. The levy for international flights will be up to four times greater. In all, the French government estimates that the levy will produce €200 million of revenue annually for development purposes.

HOTREC does not oppose increased development aid as such but believes that development funding should come from the general state budget, not from a tax targeted on one single sector. It is unfair to make the tourism industry finance a development initiative which should rather be the concern of the whole of society.

The full HOTREC position on the question of air ticket tax, from October 2005, is available at www.hotrec.org, section "Areas dealt with", "Taxation".

INTERNAL MARKET FOR SERVICES

□ *Services Directive – major changes voted by European Parliament*

On 16 February 2006, the European Parliament voted in first reading on the Commission proposal for a Directive on an internal market in services (COM(2004)2). The vote resulted in substantial amendments to the Commission proposal. Most notably, the Parliament has deleted the controversial country of origin principle under which a business providing a service in another Member State would be subject to the legislation of its home country. In its place the Parliament has introduced an article entitled "*freedom to provide services*" which basically implies that companies must respect the rules of the host country but, in turn, these rules should be non-discriminatory, necessary, and proportional.

The Parliament also added a list of specific requirements which the host country may not impose on the service provider (e.g. to set up an establishment) unless justified on various public interest grounds (public policy, public security, environmental protection and public health). Several commentators already drew attention to the fact that this long list of possible justifications for requirements imposed on the service provider will undoubtedly give rise to a great number of requests for interpretation by the European Court of Justice ("*preliminary rulings*").

In another amendment the Parliament made clear that the Directive does not apply to or affect labour law.

Altogether, the Parliament's amendments have produced a text which has a much less liberal and market-friendly character than the Commission proposal. The Commission has declared it intends to put forward, probably in April 2006, a revised proposal based on the vote in the Parliament. It will then be the task of the Council of Ministers to look at the revised proposal and to determine if it can agree to the changes introduced by the Parliament. It is likely that the negotiations on the Services Directive will continue for the better part of 2006, if not longer.

HOTREC supports the objective of creating an internal market for services. This will make it easier for hotel and restaurant businesses to set up establishments in other Member States. Increased cross-border trade in services and economic activity in general is also likely to benefit the hospitality industry indirectly.

We have a concern, however, with a couple of aspects of the Commission proposal, which were, unfortunately, left intact in the Parliament's first reading. First, in recital no. 65 hotel classification is highlighted as an area where more transparency for consumers is needed. HOTREC believes it is unfair to single out the hotel business in this respect, especially given that HOTREC member associations are actively working on making information on the meaning of hotel stars easily available to consumers. Furthermore, as a result of a first benchmarking process, HOTREC recently issued "15 recommendations for the setting-up of and/or review of national/regional hotel classification systems in the Member States of the European Union" (please see www.hotrec.org, section "Area dealt with", "Standardisation").

A second aspect of the Commission proposal with which we disagree relates to Article 31 on the quality of services. In our view, quality is primarily an issue for businesses and not for policy-makers, and should hence be left to the market. In this respect, HOTREC associations have started to develop an umbrella quality scheme, which would not replace national quality schemes but provide a means of evaluating the latter (please see www.hotrec.org, section "Area dealt with", "Standardisation").

HOTREC particularly disagrees with the call, in Article 31, for more European standards to be developed in the area of services. In our view, the development of standards should be market-driven and therefore only take place at the initiative of the industry. Before issuing further mandates to the European standardisation body CEN, the Commission and the Member States should at the very least ensure that the working methods of this organisation are transparent and include true consultation with the industry (please see www.hotrec.org, section "Area dealt with", "Standardisation").

STANDARDISATION

□ ISO TC 228 to hold its first meeting in Tunis!

As explained in *Live from Brussels N32* and *N33*, on a proposal by AENOR (the Spanish standardisation body), the creation of a new field of activity for ISO (International Organisation for Standardisation) in relation to tourism and related activities, including hospitality activities, was approved in January 2005. Subsequently, the ISO Technical Management Board established a new technical committee "*ISO/TC 228 Tourism and related services*". The first meeting of this new committee is to take place on 27-28 March 2006 in Tunis.

This first meeting will be crucial as it will decide on the work programme of TC 228.

The views of HOTREC, as expressed again at our seminar "A world of standards?" and our last General Assembly in October 2005, are that no standards should be developed for our sector, unless it specifically asks that this be done. The risk with standardisation bodies

is that they like to standardise... for the sake of it, without always making sure that the exercise fully corresponds to the wishes of the industry. This is why HOTREC asked for a liaison status in TC 228: the European hospitality sector wants to be able to keep an eye on what will be going on.

The fears of HOTREC vis-à-vis ISO are similar to its fears in relation to CEN, as described in the last paragraph of the previous article. Please also see the “HOTREC issue and position paper on the development of standards at European and international level” on our website www.hotrec.org, section “Areas dealt with”, Standardisation”.

COPYRIGHT

□ *TV in hotel rooms – communication to the public?*

In June 2005, a court in Spain requested a reference for a preliminary ruling of the European Court of Justice relating to proceedings between a Spanish collecting body (SEGEDA) and a hotel chain (Rafael Hotels) (Case 306/05). The question is whether Directive 2001/29 (“*Information society Directive*”) entails an obligation to pay copyright for hotels that have installed television sets in the hotel rooms to which are sent television signals by cable.

The answer to this question depends on whether a hotel’s retransmission of television signals to its rooms can be considered as “*communication to the public*” or not. The notion of “*public*” has not been defined at EU level, and is thus subject to differing interpretation in the Member States. In a preliminary ruling in 2000 on a similar case (Case 293/98), the Court made clear that the definition of “*public*” has been left to the Member States as far as Directive 1993/83 (on copyright and related rights applicable to satellite broadcasting and cable retransmission) is concerned.

It cannot be excluded that the Court will come to a different conclusion with regard to the so called Information Society Directive. However, this Directive does not define the concept of “*public*” either. It is worth recalling, as the Commission also did in a 2004 working paper, that in the negotiations leading up to this Directive, there was broad agreement on leaving the definition of “*public*” to the national level.

The Commission appears since then to have changed its position. It has recently explained to the Czech Republic that the Czech Copyright Act, under which television retransmission in hotel rooms is not regarded as communication to the public, does not comply with the Information Society Directive. It is likely that the Court’s expected ruling in the end will determine the outcome of the proceedings between the Commission and the Czech Republic.

HOTREC believes that the notion of “public” should remain outside the scope of EU competence. When making its preliminary ruling, the Court will hopefully take due account of the EU legislator’s choice not to define this notion, which enables each Member State to decide the matter for itself. In HOTREC’s view, a hotel room is not a public space and TV retransmission to hotel guests should not be subject to copyright and neighbouring rights.

□ *Collective management of online rights*

The European Commission issued, on 18 October 2005, a Recommendation on collective cross-border management of copyright and related rights for online music services (O.J. L 276 of 21 October 2005). The aim of the Recommendation is to stimulate the growth of such services by encouraging EU-wide licensing and to spur collecting bodies to compete for rightholders. To this end Member States and collecting bodies are asked to ensure that:

- rightholders are free to withdraw their online rights from their current collective rights manager and to entrust these to a rights manager of their choice anywhere in the EU;
- rightholders are free to define the territorial scope – including EU-wide – of the online license;
- multi-territorial online rights are withdrawn from any existing reciprocal representation agreements in the countries concerned. Irrespective of the country/countries they operate in, users will thus have to acquire the license from the collective rights manager directly representing the rightholder;
- collective rights managers grant commercial users licenses on the basis of objective criteria and without any discrimination among users;
- effective dispute resolution mechanisms are in place, in particular in relation to tariffs, licensing conditions, etc.

The Commission makes clear that it intends to assess the development of the online music sector in the light of the Recommendation, and leaves open the possibility for further action at EU level. The Recommendation received a mixed welcome with many collecting bodies rightly nervous of the consequences increased competition will have for some of them. A sense of disappointment prevailed among user organisations, which expected a legally binding instrument in the first place and also a greater focus on user interests (tariffs, one-stop-shop, etc.)

In line with the Recommendation, on the basis of EU competition rules, the Commission recently issued a Statement of Objections (SO) to the International Confederation of Societies of Authors and Composers (CISAC) and its European members. The SO only concerns relatively new forms of copyright exploitation: internet, satellite transmission, and cable retransmission of music. It does not apply to broadcasting of music in bars or restaurants. The Commission wants CISAC to get rid of a certain number of restrictive practices in terms of membership rules (rightholders can only be members of their national collecting body) and territorial restrictions (commercial users can only obtain a license from their domestic collecting body and the licence is only valid for that territory). CISAC members will have two months to defend themselves in writing.

HOTREC regrets that the Commission chose to address online licensing only in the Recommendation, thus ignoring the economically more important area of off-line licensing for music, not least in the hospitality industry. As the Recommendation does not cover off-line licensing, it is not of direct relevance to HOTREC. Nevertheless, to the extent it could set a precedent for collective management in our sector, we have concerns about undermining the one-stop-shop principle by ending reciprocal representation agreements between collecting bodies. We also doubt the new system would bring about reduced tariffs or less complex licensing conditions.

In spite of these concerns, we are happy that the Commission is at least attempting to introduce competition between collecting bodies. We hope that further steps will be taken if the Recommendation does not prove to be effective.

Together with a number of other user organisations at European level, HOTREC aims to explain the concerns of copyright users to the EU institutions at a conference to take place in June 2006. More information about this will be made available soon.

SOCIAL AFFAIRS

- ***Optical radiation: Parliament and Council agree to exclude sunshine from Directive***

On 14 February 2006, the European Parliament confirmed, in third reading, the agreement made in conciliation committee with the Council of Ministers in December last year to delete all references to sunshine in the draft Directive on the protection of workers against optical radiation.

HOTREC is pleased that the Parliament and the Council have been able to reach agreement. The solution of leaving the regulation of employers' responsibility for protecting their workers from sunshine was a sensible one. HOTREC and its Member Associations had previously expressed to Members of the European Parliament the unnecessary burden which otherwise would have been placed on employers in the hospitality industry across Europe.

- ***Working time: Council struggling for an agreement***

On 8-9 December 2005, the Employment and Social Affairs Council failed again to reach agreement on a common position on the amendment of the working time Directive 2003/88/EC. The key issues still to be resolved are the opt-out – i.e. the possibility for workers to work more than the general limit of 48h a week – and the question of whether to calculate the maximum weekly working time as per employment contract or as per worker.

The UK Presidency proposed a compromise according to which the opt-out would be reduced to 65h per week calculated over a reference period of three months. However, this did not receive widespread support from the other Member States.

The Council will, therefore, have to continue discussing the working time Directive during the Austrian Presidency in the first half of 2006, but it is unlikely that any rapid progress will be made. The Austrian Presidency has decided to postpone discussions at ministerial level until June 2006 in view of the important differences which remain over this dossier.

It is important to keep in mind that the Council and Parliament must agree jointly on amendments to the Directive. In the Parliament's first reading of 11 May 2005, it suggested that the opt-out should be phased out in the 36 months following the entry into force of the amended Directive. It also made clear that the maximum weekly working time of 48h should apply also to workers with more than one contract of employment.

HOTREC hopes that a reasonable agreement on the working time Directive can be reached in good time. We maintain that sufficient flexibility for employers and workers must be safeguarded. This implies notably that the reference period for calculating maximum weekly working time should be extended to 12 months and that the opt-out should remain in its current form.

□ ***What are the priorities in the Council for 2006?***

The Austrian EU Presidency started on 1 January 2006 and will run for six months. It will be succeeded by the Finnish Presidency during the remainder of 2006. The two Presidencies have adopted a common operational programme where they explain which issues they will deal with. Under social affairs the Presidencies will, notably:

- seek the final adoption of the amended working time Directive 2003/88/EC;
- take up the issue of labour law on the basis of the (forthcoming) green paper of the Commission; and
- start work on the expected Commission proposal amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens at work (of interest to HOTREC in case the proposal covers second-hand smoking);

The Presidencies also mention that a Communication from the Commission on a new EU strategy on health and safety at work is expected in late 2006. Under the title of health and safety the EU has adopted a large number of Directives, including on noise in the workplace, optical radiation (see article above), heavy loads, visual display units, etc. The Communication is likely to outline further initiatives to be taken in this area.

HOTREC intends to follow closely the development of the above-mentioned dossiers during 2006 as they may have direct implications for the hospitality industry.

□ ***From East to West – Commission report on migration inside the EU***

Since the EU enlargement of 1 May 2004 most “old” Member States (EU15) have chosen to apply transitional arrangements with regard to the right of the workers from the eight East- and Central European accession countries (EU8) to enter their labour markets. Only in three of the EU15 – Ireland, Sweden, and the UK – have workers from the EU8 been allowed to take up employment without requesting a work permit.

On 8 February the Commission issued a report on the functioning of the transitional arrangements. The report makes the following observations:

- there is no evidence of a direct link between the magnitude of mobility from EU8 and the transitional arrangements in place: flows into the countries with open labour markets, in particular the UK and Sweden, are comparable if not lower to those countries with restrictions in place;
- mobility flows are ultimately driven by factors related to supply and demand conditions;
- unemployment rates have dropped significantly in EU8 since enlargement. There is no reason to expect increased pressure to move outside EU8 countries;
- employment rates of EU8 workers in EU15 is comparable, if not higher, to nationals. EU8 workers therefore largely make a positive contribution to labour market performance and do not burden the public finances;

- in general, EU8 and EU15 workers do not compete for similar jobs. EU8 nationals therefore contribute to EU15 economies in a complementary way.

The Commission recommends that Member States carefully consider, in light of the report and the situation on their labour markets, whether continued restrictions on the free movement of workers are necessary.

EU15 Member States must notify the Commission by 30 April if they intend to maintain their transitional arrangements. Under the Accession Treaties, the transitional arrangements can at most be extended until 2011. Spain, Portugal and Finland are reportedly considering opening their labour markets for EU8 workers as of 1 May. Germany, Belgium and Austria are likely to maintain their labour market restrictions.

In the context of their sectoral social dialogue, HOTREC and EFFAT have reported regularly on labour flows from EU8 within the hospitality industry, with a particular focus on Ireland, Sweden and the UK. Ireland has welcomed some 160 000 workers from the new Member States, of which 7 000 had found jobs in restaurants. Sweden has issued less than 10 000 residence permits to workers from the new Member States. It is not known in which sectors – hospitality or other – these workers have found employment. The UK has received 300 000 workers, a fourth of which joined the hospitality industry.

□ ***Commission plan on legal migration from outside the EU***

Against a background of predicted decline in the EU working age population from 2011 onwards, the Commission has come forward with a policy plan on legal migration (COM (2005)669), published on 21 December 2005. While immigration from outside of the EU is not the only – or the most important – response to the challenge of demographic ageing the Commission believes that it can help cope with bottlenecks in the labour market.

The policy plan outlines a number of initiatives that the Commission plans to adopt over the coming years. To start with, the Commission will propose, in 2007, a framework Directive covering the rights of third-country nationals which already have legal employment in the EU but are not yet entitled to long-term residency status. In order to simplify procedures for immigrants and employers, the Directive would also establish a joint work/residence permit containing biometric identifiers for immigrant workers.

The Commission will then propose four specific Directives on the conditions of entry and residence for the following categories of workers:

- highly skilled workers (in 2007);
- seasonal workers (in 2008);
- intra-corporate transferees (in 2009); and
- remunerated trainees (in 2009).

For each of these categories, Member States competence to determine the volume of persons to be admitted will remain unaffected.

As far as the Directive on seasonal workers is concerned, the Commission notes that mainly the agriculture, building and tourism sectors are in demand of seasonal labour, but that illegal employment is currently widespread. The scheme which the Commission has

in mind would include a residence/work permit allowing the third-country nationals to work for a certain number of months per year for 4-5 years. Entry and exit stamps would be used to prevent abuses.

The Commission points out that the positive benefits of a seasonal workers' scheme would be many – both for the manpower itself, the countries of origin, and the sectors concerned. In addition, seasonal workers rarely compete with EU workers as few EU citizens are willing to engage in seasonal activities, according to the Commission.

Before launching any of the above initiatives, the Commission explains that it will carry out impact assessment studies and consult with relevant experts, including the social partners.

HOTREC will follow closely the development of the policy on legal migration to the extent that it concerns the hospitality industry.

CONTRACTUAL RELATIONS

□ *Law applicable to international contracts*

The European Commission plans to update and transform the so-called “*Rome Convention on the law applicable to contractual relations*” of 1980 – an international treaty, which is in force in the “old” 15 Member States of the EU - into a Community instrument. For that purpose, it presented on 15 December 2005 a proposal for a Regulation on the law applicable to contractual obligations – the so-called “*Rome I*” Regulation (COM(2005)650final). The “*Rome I*” proposal harmonises the rules that determine which of the various legal systems involved will apply to an international contract.

The proposal should not be confused with two earlier initiatives to which it can be considered a follow-up:

- the “*Rome II*” proposal, which harmonises the rules on the law applicable to non-contractual liability (COM(2003)427 final);
- and the “*Brussels I*” Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Council Regulation 44/2001 of 22 December 2000, O.J. L12 of 16 January 2001).

Subject to a few exceptions, this initiative concerns all cross-border contracts concluded by businesses and individuals in Europe.

Converting the 1980 Rome Convention into a Community instruments is expected to bring along the following advantages:

- greater consistency in the Community policy relating to private international law: the Rome Convention is the only instrument of private internal law which is still in international treaty form, with all its drawbacks;
- uniform interpretation by the European Court of Justice;
- easier application in the new Member States.

As far as applicable law is concerned, the proposal repeats in general terms the earlier Convention.

The principle of the freedom of choice is confirmed: with some exceptions, a contract shall be governed by the law chosen by the parties. If the law has not been chosen, a contract for the provision of services shall be governed by the law of the country in which the service provider has his habitual residence.

Special rules apply, however, to contracts with a consumer. In principle, such contracts are governed by the law of the Member State in which the consumer has his habitual residence. However, this principle does not apply “*for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence*”.

Like its predecessor the Rome Convention, the new Regulation, once adopted, will be a key instrument in case of conflicts between a hotelier or a restaurateur and his/her business partners abroad as well as his/her foreign guests.

FOOD, NUTRITION AND HEALTH

□ *New food hygiene legislation in force*

As from 1 January 2006, a number of important documents in the field of food hygiene have become applicable in all EU Member States. Of particular interest to restaurants, is Regulation 852/2004/EC on hygiene of foodstuffs, which was adopted on 29 April 2004 (O.J. L226 of 25 June 2004). This text is complemented by Commission Regulation 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs which also applies from 1 January 2006 (O.J. L338 of 22 December 2005).

As already explained in previous issues of *Live from Brussels*, Regulation 852/2004/EC sets out hygiene requirements for all aspects of restaurants, cafés and other catering businesses, from premises and facilities to the personal hygiene of the staff. Food operators are also obliged to put in place food safety management procedures based on HACCP principles (hazard analysis and critical control points). In order to do so, the operators may refer to recognised national guides to good practice for hygiene and for the application of HACCP principles.

To facilitate the implementation and interpretation of this Regulation, the European Commission recently issued the following documents:

- guidance document on the implementation of certain provisions of Regulation 852/2004/EC on the hygiene of foodstuffs;
- guidance document on the implementation of procedures based on the HACCP principles, and on the facilitation of the implementation of the HACCP principles in certain food businesses.

As reported in *Live from Brussels N34*, in all these documents, provisions try to ensure flexibility, particularly in relation to small food businesses.

Over the last 5 years, HOTREC has been following very closely the revision of the rules on hygiene of foodstuffs and has always insisted that the rules should be easily understandable and applicable by the 95% of very small restaurants the sector consists of.

□ ***Commission Green Paper on health and nutrition***

On 8 December 2005, the European Commission adopted a Green Paper on the promotion of healthy diets and physical activity. With this document, the Commission launched a public consultation of all interested parties. The aim is to gather information for a European dimension to reducing obesity levels which could complement, support and coordinate existing national measures.

The paper is to be seen in the context of the “*European Platform for Action on Diet, Physical Activity and Health*” launched by the Commission in March 2005. As mentioned in *Live from Brussels N32* and *N34*, the platform aims at tackling the problem of obesity and at developing concrete actions on a voluntary basis.

The Green Paper lists over 30 questions and calls for concrete suggestions and ideas on actions to be taken to address this serious problem and to encourage Europeans towards healthier lifestyles.

The public consultation will run until 15 March 2006. By June 2006, the Commission will publish a summary report of the contributions received. In the light of the results of the consultation process, the Commission will reflect upon the most appropriate follow-up measures and instruments for their implementation to be proposed.

The national associations of HOTREC share the concerns of the European and national authorities in relation to the issue of nutrition determining citizens' health to a great extent.

However, as stated by the Commission in its health reflection paper of 15 July 2004 “whether or not people eat healthy food or practice sports is a matter of personal choice”. This choice cannot be regulated at any level. The authorities can only raise awareness, educate and facilitate the dissemination of good practice. Because eating habits and lifestyles vary to a large extent with geography and cultures, solutions can only be suggested at national level.

□ ***Smoking***

The trend towards a smoke-free environment has once more been confirmed at national level. New restrictions on smoking entered into force in Spain and Belgium on 1 January 2006. Spanish law obliges restaurants and bars with a surface of 100m² or more to set up within 8 months a completely closed off ventilated smoking room (the smoking area should not represent more than 30% of the surface of the establishment). Smaller establishments are free to decide whether to allow smoking on their premises or not.

In Belgium, the smoking ban in restaurants will only take effect as of 1 January 2007. Smoking will then only be allowed in separate rooms that are completely closed off from the rest of the building and where only drinks will be served. Cafés and bars in Belgium can be accorded a renewable exemption under the condition that the percentage of the money earned on food is lower than 33 % of the global earnings of the enterprise.

At European level, the Commission Health and Consumer Protection Directorate General (DG SANCO) is currently elaborating a document on the issue of smoke-free environments. Its objective will be to examine the best approach to fight passive smoking as well as the different possibilities of action. However, the elaboration of binding measures under the heading of public health seems unlikely, given the limited competences of the EU in this field.

The Commission was unable to give any indications as to the publication date of the document in question. However, interested stakeholders should be consulted once the draft text is finalised.

HOTREC will continue to monitor the issue closely at national, European as well as at international level.

□ ***Alcohol***

As a follow-up to the discussion paper on a European strategy for alcohol published by the European Commission in March 2005, DG SANCO is currently preparing a Communication. The document is due to be published in mid-2006.

Commissioner Kyprianou stressed that the paper would focus on voluntary actions and recommendations rather than on legislative action. This statement corresponds to the fact that the Commission does not have legislative powers in public health matters.

At international level, following the adoption of its resolution on “*Public health problems caused by harmful abuse of alcohol*” in May 2005, the World Health Organisation has invited representatives of various sectors, involved in production and sale of alcoholic beverages, to a consultation meeting on 8 March 2006. The objectives of the meeting are to brief participants on current WHO activities in relation to the resolution mentioned above and to provide an opportunity for an exchange of views on how to reduce harmful use of alcoholic beverages.

HOTREC will participate in the consultation meeting on 8 March 2006 and shall present its views on the issue of alcohol, in accordance to its position paper of October 2005.

HOTREC shares the concerns of the European and national authorities in relation to the abuse of alcohol, in particular by young people and welcomes all initiatives to combat alcohol-related harm.

HOTREC, however, believes that the issue of alcohol abuse is best tackled on a voluntary basis, in dialogue with all other interested parties. Actions and solutions - to be properly effective - should be taken at a national level, working in partnership with local agencies and enforcement bodies taking account of the fact that use and attitudes in relation to alcohol vary according to cultures and traditions. For the full text of the position paper, please see our website www.hotrec.org, section “Areas dealt with”, “Consumer protection”.

FINANCIAL AFFAIRS

□ *Payment services in the internal market*

On 1 December 2005, the European Commission published a proposal for a Directive on payment services in the internal market (COM(2005)603final). The aim is to make cross-border payments – by credit card, debit card, electronic bank transfer, direct debit or any other means (with the exception of cash and cheque payment) – as easy, cheap and secure as 'national' payments within one Member State by 2010. Studies estimate that this measure could save the EU economy €50-100 billion per year.

The first objective is to generate more competition in payment markets by removing market entry barriers and guaranteeing fair market access.

The second objective is to provide a simplified and fully harmonised set of rules with regard to the information requirements and the rights and obligations linked to the provision and use of payment services.

The Directive should apply in all Member States, not only the Eurozone.

Improvements in cross-border payments to suppliers and from customers are welcomed by the hospitality sector.

SMALL BUSINESSES

□ *Modern SME policy for growth and employment*

On 10 November 2006, the Commission issued a Communication entitled “*Implementing the Community Lisbon programme – Modern SME policy for growth and employment*” (COM(2005)551 final).

The document stresses the importance of small and medium-sized enterprises (SMEs) in the economy of the European Union. It aims at making the “*Think Small First*” principle effective across all EU policies.

The Commission proposes actions in five areas:

- promoting entrepreneurship and skills;
- improving SMEs’ access to markets;
- cutting red tape;
- improving SMEs’ growth potential;
- strengthening dialogue and consultation with SME stakeholders.

As 95 % of the hospitality businesses are SMEs, HOTREC appreciates the document published by the Commission.

The need to improve SMEs access to markets and finance has been confirmed by a Flash Eurobarometer survey of September 2005 which explored the financial situation of SMEs.

42% of SMEs find it more difficult to obtain a bank loan nowadays than a few years ago.

However, it remains to be seen how the good intentions listed in the document will be translated into concrete actions.

□ ***European Statute for SMEs?***

On 13 December 2005, the European Commission organised a conference to present the results of a feasibility study of a European Statute for SMEs. Like the European Company (Societas Europaea), this new legal form would be governed by EU rules and no longer by national legislation.

The consultation on company law and corporate governance, launched by the Commission on 20 December 2005, includes a specific question in relation to the value of developing a European Private Company Statute in addition to the existing European (Societas Europaea and European Economic Interest Grouping) and national legal forms.

The European Parliament will draft an own-initiative report on the issue. Rapporteur will be MEP Klaus-Heiner Lehne (EPP Group)

Representing the interest of hospitality businesses, - 95 % of which are SMEs employing less than 10 people – HOTREC believes that the project of a European Private Company Statute is an interesting concept, the examination of which should be pursued.

FIGHT AGAINST CRIME

□ ***Data retention***

On 21 February 2006, “for purposes related to law enforcement and security, such as the prevention, investigation, detection and prosecution of serious crime, such as terrorism and organised crime”, the Justice and Home Affairs Council of Ministers adopted a Directive on data retention (COM(2005)438final). The new legislation obliges “providers of publicly available electronic communications services or of public communications networks” to store certain data (traffic data and location data as well as the related data necessary to identify the subscriber or user).

The data have to be retained for a period of not less than six months and not more than two years from the date of communication. The Directive provides for the reimbursement of demonstrated additional costs incurred as a result of this new obligation.

Will this obligation apply to the hospitality sector in as far as establishments provide access to communications covered by the Directive? At this stage, the answer is still unclear and could vary according to the national laws which will have to be adopted to implement the Directive.

TOURISM

□ *A new European tourism policy?*

On the occasion of his speech at the Malta Tourism Forum in October 2005, the Vice-President of the Commission and Commissioner for Enterprise and Industry, Günter Verheugen, presented the main lines of a renewed Community tourism policy entitled “*Towards a stronger Partnership for European Tourism*”.

The paper acknowledges that tourism together with its related activities is “*one of the biggest and fast expanding European economic sectors with promising future*”. It also emphasizes that the European Union has no direct competences in the field of tourism. Nevertheless, it is felt that competitiveness and growth of the sector could be boosted by creating a cohesive European tourism policy and a better partnership at European level between public authorities, the private sector and employees.

Commissioner Verheugen proposed working along the following lines:

- *“We will not propose un-necessary regulation;*
- *We will not create new specific financial instruments but will take advantage of all the possibilities offered by the existing ones;*
- *We will not seek to impose standards when those can be elaborated through voluntary self-regulation;*
- *We will work to cut red tape and modernise existing regulation;*
- *We will co-ordinate the Community actions affecting tourism;*
- *We will promote actively the competitiveness and sustainable development of European tourism;*
- *We will continue to support actions promoting Europe as a tourist destination;*
- *We will explore ways to promote emerging forms of tourism;*
- *We will continue collaborating and consulting with all the relevant stakeholders; and*
- *We will strengthen the visibility of the importance of the European tourism industry.”*

The full text of the proposal for a renewed European tourism policy can be found on the website of DG Enterprise under the section “Tourism”.

The Commissioner invited all stakeholders to comment on these guidelines and to communicate their suggestions before issuing an official Communication to the Council and the European Parliament, expected during the first half of 2006.

After consulting its national member associations, HOTREC sent its detailed comments on the paper to the Commission. In particular, HOTREC appreciates the assurance of Commissioner Verheugen that the Commission will not propose un-necessary regulation while simultaneously modernising existing regulation cutting red tape. Also considered as very positive are the aims to favour self-regulation and to co-ordinate the Community actions affecting tourism – something that HOTREC has been asking for years.

However, it remains to be seen whether the practical implementation of these guidelines lives up to the intentions. HOTREC will carefully follow the further developments once the Communication has been issued.

□ ***Tourism statistics***

The following publications from Eurostat, the EU statistical office, have recently been issued:

- Tourism in the enlarged European Union, *Statistics in Focus*, N13/2005;
- ICT in the tourism sector, *Statistics in Focus*, N34/2005;
- Inbound and outbound tourism in the European Union, *Statistics in Focus*, N6/2006.

The publications may be downloaded in English, German, and French language versions from Eurostat's website: <http://epp.eurostat.cec.eu.int/>

HOTREC ACTIVITIES

□ ***HOTREC General Assemblies***

The last HOTREC General Assembly took place in Vienna on 13-15 October 2005. Martin Bartenstein, Federal Minister of Economics and Labour, was the key note speaker and addressed the main priorities of the Austrian EU Presidency during the first half of 2006.

The General Assembly discussed and adopted a number of position papers relating to standards; taxation of air tickets; tourism statistics; diet, physical activity and health; alcohol policy; hotel classification; and a European umbrella for quality schemes.

In connection with this General Assembly was held a seminar on standardisation in relation to the hospitality sector at national, European, and international levels.

The next HOTREC General Assemblies will take place in Levi, Finland, on 21-22 April 2006 and in Berlin, Germany, on 18-21 October 2006.

The full press release issued after the Vienna meetings can be accessed on www.hotrec.org, section "Latest news".

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