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Brussels, 1 December 2004

Dear Mr. Daelman,

***RE: Regulation 852/2004 of 29 April 2004 on hygiene of foodstuffs***

Once again, I thank you very much for having taken the time to come and meet with us on 15 June 2004 to discuss the application of the Regulation mentioned above to the restaurant sector.

You drew our attention to a number of provisions in the Regulation, which should allow for some flexibility in its application. You will find below some initial comments in relation to these and other provisions.

\* \* \*

But firstly allow us to refer to a few figures relating to the sector. There are over 1 million enterprises in the restaurant and café sector throughout the European Union (EU) employing more than 5 million persons. The sector thus accounts for some 2 % of total employment in the EU. Small enterprises are predominant in the sector as 95 % of restaurants have less than 10 employees. On average, there are 4 employees per restaurant.

The restaurant sector generated EUR 92 billion in value added in 2001, which represents some 4 % of total value added in the market service sector. Restaurants thus make up one of the largest tourism-related activities, although, of course, they serve local customers as well.

In view of the above, it goes without saying that restaurants form a significant part of the economy, whose interests deserve to be taken into account in the formulation of public policy at EU level.

Proper public policy also calls for the burdens imposed by hygiene rules on restaurants to be in proportion to the risks incurred. A non-official survey we did on food casualties showed us that in Germany, for example, food poisoning in 2002 represented less than 0.005 pro mille of all the meals served in restaurants during that year! An official and detailed survey on the subject matter is absolutely necessary before the Commission decides on the arrangements to facilitate the implementation of the Regulation by the operators.

\* \* \*

Comprehensive legislation on food safety and hygiene is essential for food businesses as well as for consumers. Food safety lies at the top of the sector's priorities and the sector works continually to improve its standards and procedures. However, EU legislation in this field has been developed to cover, without distinction, a vast array of activities throughout the food chain including primary producers, manufacturers, packers, importers, retailers, industrial catering and a wide variety of food service operators. These differing sectors have different needs and require different solutions to the challenges and problems facing them. Encompassing all these differing sectors within the same texts has resulted in legislation, which is not appropriate for the restaurant sector and especially not for the 95 % of very small restaurants it represents.

\* \* \*

Article 5 of the new Regulation provides that *“food business operators shall put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles”* (our emphasis). Our member associations noted with interest that the wording of this Article does not imply that restaurants should strictly apply the HACCP principles.

This interpretation is fully supported by Recital (15) of the Regulation: *“The HACCP requirements ... should provide sufficient flexibility to be applicable in all situations, including in small businesses. In particular, it is necessary to recognise that, in certain food businesses, it is not possible to identify critical control points and that, in some cases, good hygienic practices can replace the monitoring of critical control points. Similarly, the requirement of establishing “critical limits” does not imply that it is necessary to fix a numerical limit in every case. In addition, the requirement of retaining documents needs to be flexible in order to avoid undue burdens for very small businesses”*.

The HOTREC member associations ask the Commission to make full use, along these lines, of Article 5.5 which permits detailed arrangements to *“facilitate the implementation of this Article by certain food business operators”*.

\* \* \*

HOTREC and its member associations were very worried to learn about the development of draft Commission Regulations in relation to some of the specific hygiene measures mentioned in Article 4-3, such as compliance with microbiological criteria for foodstuffs and compliance with temperature control requirements for foodstuffs, without any consultation of the business operators to which these rules will apply.

HOTREC and its member associations are particularly concerned that these drafts, contrary to Regulation 852/2004, include no provisions to adjust the rules for small businesses, and in particular the very small ones (with less than 10 people).

\* \* \*

HOTREC and its member associations welcome the fact that some specific arrangements in relation to Article 5 and derogations from Annexes I and II to the Regulation may be adopted by the Commission assisted by the Standing Committee on Food Chain and Animal Health.

HOTREC and its member associations, however, regret the lack of transparency in relation to the activities of this Committee. Agendas are posted on the SANCO website just before the meetings take place and the minutes, made available very late, are not very detailed. The list of participants is never made available. But even more importantly, this procedure does not include any consultation of the industry.

\* \* \*

These are our initial comments and we would like you to reflect upon them. As already indicated above, a non-official survey we did on food casualties showed us that in Germany, for example, food poisoning in 2002 represented less than 0.005 pro mille of all the meals served in restaurants during that year. The burdens imposed by hygiene rules on restaurants are without proportion to the risks incurred.

The restaurateur is the closest possible intermediary to the consumer, because the consumer eats on the spot, immediately after having placed his order. This proximity combined with the very low risks incurred should justify that documentation and records keeping be reduced to a minimum.

We hope the Commission and the Standing Committee will reflect upon these comments and will come up with sensible adjustments of the hygiene rules, to allow our small enterprises to function without too many difficulties in full respect of the law.

\* \* \*

We would also like to take this opportunity to ask you about the current state of play regarding the setting up of the Food Advisory Committee. As you know, HOTREC applied for membership. Our participation in that Committee could hopefully facilitate a proper adjustment of food-related legislation to the enterprises in our sector.

\* \* \*

Finally, since we drafted this letter, we received the reflection document SANCO/3069/2004 on flexibility for small businesses. We will review this document very carefully and let you have our comments and suggestions before 14 January 2005 as requested.

Thank you again for your openness.

Yours sincerely,

Marguerite Sequaris  
Chief Executive of HOTREC