



## L I V E F R O M B R U S S E L S

*Issue N°44, 31 October 2008*

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## HEALTH

### □ Food labelling in restaurants?

As reported in *Live from Brussels N°43*, the European Parliament has started working on the Commission proposal for a Regulation on the provision of food information to consumers (COM(2008) 40 final). For a summary of the proposal, see *Live from Brussels N°42*.

So far, MEPs had some exchange of views on the proposed Regulation in the ENVI (Environment, Public Health and Food Safety), IMCO (Internal Market and Consumer Protection) and AGRI (Agriculture and Rural Development) Committees. The IMCO and AGRI Committees have to submit their opinions to the ENVI Committee, which is responsible for the file in the European Parliament.

The draft opinion of the IMCO Committee, prepared by MEP Bernadette Vergnaud (France, PES) welcomes, as good news, the inclusion of non-prepacked food in the scope of the proposed Regulation. MEP Vergnaud suggests even stricter information requirements regarding non-prepacked food, specifying that allergens information should always be “displayed” and that mass caterers should always be in the position to provide consumers with information on the name of the food, the list of ingredients and the country of origin.

MEP Renate Sommer (Germany, EPP-ED), who is in charge of preparing the report of the ENVI Committee, should present her text at a special ENVI meeting at the end of November 2008. The vote on the draft report by the ENVI Committee could take place in January 2009, while the vote by the European Parliament in the plenary is expected in April 2009.

In parallel, the Council of Ministers is also examining the Commission proposal. The national experts of the Council Working Party on Foodstuffs have already exchanged views on the text and will continue to do so on 14 November. The Ministers of the 27 EU Member States will address the issue on 14-15 December 2008 on the occasion of the meeting of the Employment, Social Affairs, Health and Consumer affairs Council (EPSCO Council).

*HOTREC is very concerned about the impact that the Commission proposal is likely to have on the activities of hospitality enterprises. If the text is adopted as such, hotels, restaurants, cafés and similar establishments serving food would be directly subject to all mandatory information requirements imposed by the Regulation.*

*HOTREC believes that, for practical reasons, it is simply unrealistic to foresee the application of complex and detailed requirements (Art. 9 and Art.10) to non-prepacked foods sold by catering businesses. Meals served in “traditional” restaurants cannot be subject to the information requirements applicable to the food processed by food manufacturers and sold in shops.*

*Restaurants tend to change their menus and/or suppliers on a regular basis, according to the market offering. Food labelling would be unworkable with menu-cards, which would need to be constantly re-written and re-printed. It would be impossible to list all ingredients on the menus: menus would become as thick as recipe books!*

*Beyond the costs elements, these requirements would also make menu-cards overly complicated and, therefore, much less attractive and difficult to understand for customers.*

*Most restaurant customers do not expect to find the same detailed information on menus as on prepacked foods sold in shops. After all, most of them are seeking a leisure experience that goes beyond simply acquiring food.*

*There is little demand from restaurant customers for detailed food information, and where a customer requests specific information on the composition of a dish, the staff or the chef are available to explain what foodstuffs are used and the recipe followed.*

*As gastronomic traditions and consumer expectations vary greatly from country to country, the decision to adopt rules concerning the labelling of non-prepacked food should be left to Member States, in accordance with the subsidiarity principle. Indeed, such rules do not have any impact on the “smooth functioning” of the internal market.*

*It is, therefore, vital that the European Parliament and the Member States review thoroughly the Commission proposal, taking into account the specificities of the hospitality industry, which is composed of over 92% of micro-businesses (employing less than 10 people).*

□ **Small businesses and hygiene of foodstuffs: a standstill**

As reported in *Live from Brussels N°43*, on 5 June 2008 the European Parliament adopted, in first reading, a legislative resolution on the Commission proposal to amend Regulation 852/2004 to exempt micro businesses from the full application of procedures based on HACCP principles.

In its resolution, the Parliament proposed the exemption from the application of HACCP procedures not only for micro-enterprises (as suggested by the Commission in its original legislative proposal) but also for small and medium-sized companies. According to the Parliament such “*food business operators may be exempted... provided that the competent authority considers, on the basis of a regular hazard analysis, that there are no hazards... or that identified hazards are sufficiently and regularly controlled through the general and specific food hygiene requirements*”.

In accordance with the EU legislative process (co-decision), the text voted by the Parliament (T6-250/2008) has been transmitted to the Council of Ministers, which has to express its view on the Parliament’s opinion. However, so far, it has not been announced when the text will be discussed further at Council level. It is therefore unlikely that the Council will deal with this legislative proposal under the French Presidency (in charge until December 2008).

As already explained in *Live from Brussels N°43*, one possibility is that the Council of Ministers will only resume discussions on this issue, after the Commission has issued its report on the application of Regulation 852/2004, as required by Art.16 of the same Regulation. This report is due by April 2009.

*HOTREC welcomed the original Commission proposal and hopes that the Council of Ministers will find an agreement with the Parliament. The opportunity to adopt a legislation that could reduce unnecessary administrative burdens for restaurateurs, in line with the better regulation approach endorsed by the EU institutions, should not be missed. This is all the more needed since the negative impact of the current global economic and financial crisis is already affecting the activities of European hospitality enterprises.*

□ **New consultation on quality of European agricultural products**

On 15 October 2008, the European Commission adopted a Green Paper on the quality of EU agricultural products (COM(2008) 641final). The objective is to open a reflection among stakeholders (farmers, food producers, traders, retailers, etc.) on how to improve EU rules to protect and promote the quality of agricultural products. The Green Paper is divided into three parts dealing with:

- Production requirements and marketing standards of agricultural products;
- EU quality schemes (geographical indications, traditional specialities guaranteed, organic farming, etc.);
- Certification schemes (food quality).

No less than 19 sets of questions are raised. All interested parties are invited to take part in the consultation and reply by 31 December 2008. Based on the results of the consultation, the Commission will issue in May 2009 a Communication, which could lead to legislative proposals at a later stage.

The Green Paper and related documents can be found at:

[http://ec.europa.eu/agriculture/quality/policy/index\\_en.htm](http://ec.europa.eu/agriculture/quality/policy/index_en.htm)

*Quality agricultural products are essential to ensure the good health of consumers and to maintain the reputation of European cooking. However, new EU schemes / marketing standards / logos and certifications may impact the prices to the users. As an important “end-user” of such products, the hospitality industry has to take a close look at the issues raised.*

## CONSUMER AFFAIRS

□ **Timeshare Directive: multiple hotel room reservations at last out!**

On 22 October 2008, the European Parliament adopted in plenary its opinion on the proposal (COM(2007) 303 final) to review the current timeshare Directive (94/47/EC).

The aim of the proposal is to harmonise certain provisions on consumers’ rights and to extend the scope of the current rules to cover:

- Contracts of more than one year;
- Long-term holiday products (e.g. “discount holiday clubs” where a consumer buys “the right to obtain discounts or other benefits on accommodation in isolation or together with other services”); and
- Resale and exchange of timeshare products.

As explained in *Live from Brussels N°43*, a clear misunderstanding about the legal nature of a hotel room reservation appeared during the debates in all three institutions (Commission, Council and European Parliament). Such misconception could have led to disastrous consequences with multi-annual hotel reservations inadvertently being included in the scope of the new timeshare Directive. Fortunately, a new recital 5a now specifies that the definition of timeshare does “not include in its scope multiple reservations of accommodation, including hotel rooms, insofar as the multiple reservations do not imply rights and obligations beyond those arising from separate reservations”.

This text will ensure, for example, that the booking of the same apartment at a children-friendly resort in the Austrian Alps by a family with two children for Christmas 2008 and 2009 will not be subject to the new timeshare Directive.

The Council is expected to reach soon a political agreement on the same text, thus paving the way for a formal adoption.

*HOTREC welcomes the adoption by the European Parliament of the compromise reached with the Council. This agreement incorporates a specific amendment for multiple hotel room reservations, which corresponds almost word by word to the amendment HOTREC and its National Associations had been advocating for over the last months.*

## □ **Consumer rights: the Commission proposes a horizontal Directive**

As announced in *Live from Brussels N°43*, the Commission finally released on 8 October its proposal for a Directive on consumer rights (COM(2008) 614/3 final). The aim of this Directive is to review, simplify and improve the coherence of the consumer contract regulatory framework. The proposal incorporates a revision of four existing directives:

- The unfair contract terms Directive (93/13/EEC);
- The distance selling Directive (97/7/EC);
- The consumer sales and guarantees Directive (99/44/EC); and
- The doorstep selling Directive (85/577/EC).

This proposal for a Directive on consumer rights is very important for the hospitality industry as this horizontal text concerns all contracts for sales of services and goods from business-to-consumer. It provides general consumer rights applicable to all service contracts and, in addition, regulates distance contracts and unfair contract terms. The draft Directive proposes to move away from the minimum harmonisation approach used in the previous Directives of the “consumer acquis”<sup>1</sup> to a full harmonisation approach, meaning that in practice Member States would not be allowed anymore to introduce provisions diverging from the one contained in the Directive, “*including more or less stringent provisions to ensure a different level of consumer protection*”.

In addition to this full harmonisation clause, the draft Directive introduces a general prior information requirement for all service contracts (including distance contracts and contracts for the provision of accommodation). Information such as the main characteristics of the product, the address of the provider, the arrangement for payments, and the existence of a right of withdrawal will have to be provided to the consumer prior to the conclusion of the contract if this information is not apparent from the context. Moreover, prices shall be provided inclusive of taxes and some other additional charges, otherwise the consumer would not be bound by these extra-costs.

The draft Directive also regulates more specifically distance contracts. In particular, its article 20-3 upholds the exemptions on the right of withdrawal and the provision of written information for “*distance contracts for the provision of accommodation (...) catering or leisure services as regards contracts providing for a specific date or period of performance*”.

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<sup>1</sup> “Acquis” is in the EU jargon a term, which refers to existing rules. The Consumer acquis is composed of a bloc of 8 directives aimed at protecting European consumers.

Such exemptions are currently provided by article 3(2) of the existing distance selling Directive.

Finally, the draft Directive on consumer rights also regulates unfair contract terms. In particular, it includes:

- A “black list” of contract terms that are always considered to be unfair;
- A “grey list” of contract terms that are considered unfair unless the trader proves the opposite; and
- A general ban on default pre-ticked opt-in boxes, which apply to payments.

The Commission proposal will now be discussed by the Council and the European Parliament under the co-decision procedure. A first reading agreement is expected to be reached by the two institutions during the spring 2009, just before next European parliamentary elections.

*HOTREC welcomed the Commission proposal to maintain the exemptions on the right of withdrawal and on the provision of written information for distance contracts for the provision of accommodation, catering or leisure services. HOTREC had been fighting intensively at the time of adoption of the distance selling Directive in 1997 to obtain these exemptions. Given the specific nature of hotel room contracts and the highly perishable nature of the services provided by the hospitality industry, such derogations are essential for HOTREC and its National Associations.*

*However, BEUC, a leading European consumer organisation, has already announced its will to fight against these derogations for accommodation contracts. HOTREC will, therefore, remain vigilant, so as to ensure that the Commission proposal is not altered during the debates in the Council and the EP.*

## VAT

### □ VAT reduced rates saga

As reported in *Live from Brussels N°43*, Member States have diverging views on the Commission proposal on reduced VAT rates (COM(2008) 428 final).

At the informal ECOFIN Council meeting in September, the Finance Ministers had asked the Commission to prepare a study on the impact of reduced VAT rates on the national budgets. For the ECOFIN Council meeting held on 7 October, the Commission provided figures broken down by Member States, showing the potential loss of VAT income when reducing the VAT rate by 1 point of percentage for the various goods and services listed in the Annex of the proposal. For example, the German government would lose 238 million EUR, if it were to lower the VAT rate by 1 percentage point on restaurant services.

However, the study focuses on the loss of VAT income and does not take into account other effects, such as higher direct taxation income or social security contributions, which should result from the higher rate of employment, induced by the reduction in the rate.

In view of the strong resistance of some Member States, in particular Germany, to targeted reductions, the French Presidency is proposing compromise solutions:

- To require from Member States, wishing to apply a reduced VAT rate for the first time to a product or service, to carry out a business study demonstrating the cost effectiveness and employment benefits of a reduced VAT rate for the product or service concerned;
- In relation to the application of a standard rate to alcoholic beverages sold in restaurants, to allow Member States, which as of 1 January 2011 would be applying a reduced rate to such drinks, to maintain this rate. This solution would enable Italy, Spain, Portugal and Luxembourg to continue to apply a reduced VAT rate to alcoholic beverages served in restaurants.

The ECOFIN Council will next meet on 4 November 2008, but it is unlikely to reach the unanimous agreement required for tax matters.

The European Parliament appointed MEP Ieke van den Burg (the Netherlands, PES) as Rapporteur in charge of the file in the responsible Committee (ECON, Economic and Monetary Affairs Committee). The adoption of the EP opinion is expected by March 2009.

*HOTREC has been advocating for years the option for all Member States to apply reduced VAT rates to restaurant services (11 Member States currently apply a reduced VAT rate to restaurants). More countries would probably make use of such option, if they were allowed to do so.*

## **PAYMENT SERVICES**

### **□ Towards a new MasterCard case?**

As explained in *Live from Brussels N°42*, the Commission ruled on 19 December 2007 that MasterCard and Maestro Multilateral Interchange Fees (MIF) for cross-border transactions were violating European competition rules. In order to comply with the Commission's decision, MasterCard had to withdraw its MIF scheme.

However, since that Commission decision, a clear problem of implementation of the decision has been identified. Thus, most banks refused to renegotiate acquiring contracts with merchants to reflect the reduction of fees that should result from it, arguing that they are waiting for the final decision following MasterCard's appeal.

Furthermore, recent significant increases by MasterCard of its card schemes fees to merchant acquirers for both MasterCard credit and Maestro debit cards across Europe seem to indicate that MasterCard is circumventing the Commission's decision, although it expressly mentioned that MasterCard must "*refrain from adopting measures having a similar effect*" to the illegal MIF scheme.

*HOTREC and its National Associations are concerned about banks' failure to implement the Commission's decision and to pass on fees reduction. Such behaviour, combined with MasterCard's increase in card schemes fees, are in clear contradiction with the Commission's antitrust decision on MasterCard's MIF. HOTREC therefore echoes EuroCommerce's call for vigilance and scrutiny over such behaviour.*

## COPYRIGHT

### □ CISAC case: collecting societies challenge the Commission's antitrust decision

As explained in *Live from Brussels N°43*, on 16 July 2008, the Commission adopted an antitrust decision in the proceeding against CISAC (the International Confederation of Societies of Authors and Composers) and its EU members (24 national collecting societies for authors). According to the Commission's press release, the antitrust decision, which took place after a first statement of objections concerning certain parts of the CISAC model agreement dealing with some forms of copyright exploitation (internet, satellite transmission and cable retransmission of music), prohibits:

- The national membership clause (for authors);
- The territorial exclusivity clause (which obliges commercial users to obtain a licence only from the domestic collecting society). This prohibition concerns all forms of copyright exploitation, including exploitation in bars, restaurants, etc.;
- The concerted practice between collecting societies to limit their mandates to the domestic territory of the other collecting societies (this clause prevents one collecting society to grant multi-repertoire licences covering several Member States). This prohibition only concerns internet, cable and satellite exploitation.

On 8 October, CISAC announced that it appealed to the EU Court of First Instance (CFI), with a view to obtain the annulment of the Commission's decision.

*HOTREC and its Member Associations regret CISAC's decision to appeal to the Court of First Instance. HOTREC wishes that the CFI uphold the Commission's decision. This would open the way for increased transparency and efficiency in rights management, and for a decrease in the level of collecting society's administrative fees, without affecting the value of royalties or the possibility for collecting societies to offer multi-repertoire licences to commercial users.*

### □ Calculation of copyright fees and abuse of dominant position: the Kanal 5 case

The European Court of Justice is currently examining a reference for a preliminary ruling made by a Swedish Court on a possible abuse of dominant position by a Swedish collecting society (STIM) in relation with the determination of the level of copyright fees to be cleared by some commercial users.

The ECJ's advocate general released on 11 September 2008 her opinion, in which she argued that:

- The practice by a collecting society, which holds a legal monopoly, to apply a calculation method based on a fixed proportion of the benefits of the commercial user to determine the level of copyright fees constitutes an abuse of dominant position;
- A calculation method based on a fluctuating proportion of the benefits of the commercial user does not constitute an abuse of dominant position, providing that this method takes into consideration the actual exploitation of the copyrighted works;

- A calculation method can constitute an abuse of dominant position if another method of calculation, which takes better into consideration the actual exploitation of the copyrighted work, can be used to determine the fees, and if the first method cannot be justified by an increased efficiency in the collection of the fees;
- Imposing to competing economic operators different methods for determining the level of copyright fees constitute an abuse of dominant position if it results in a higher level of fees for one operator for an equivalent service provided.

*As a commercial user of copyrighted material, HOTREC and its Member Associations are very interested in the advocate general's conclusions, which provide legal arguments to assess the legality of a calculation method imposed by a collecting society. As mentioned by the advocate general, such methods can have a tremendous effect on competition between economic operators. HOTREC will therefore carefully watch the outcome of this case. The ECJ is expected to deliver its ruling by January 2009.*

□ **Extension of the copyright protection for performers and producers**

As explained in *Live from Brussels N°43*, the Commission proposed on 16 July 2008 to extend the term of copyright protection from 50 years to 95 years for European music performers and record producers (COM(2008) 464/3 final).

In the explanatory memorandum accompanying the proposal, the Commission argues that the aim of the proposed extension of the copyright term is to ensure that music performers still receive royalties in the late years of their life for the music they performed in their youth. In addition, the proposed extension for record producers will allow them to compensate for the decline of their revenues from the CD market.

The proposal is currently discussed both in the EP and in the Council. In the European Parliament, MEP Brian Crowley (Ireland, UEN) has been appointed Rapporteur for the Legal Affairs Committee. His draft report goes further than the Commission's proposal, as it proposes to extend the term of protection not only for music performers, but also for audiovisual performers.

In the Council, the debate is ongoing and discussions have been fierce with the initial opposition of the UK, Italy, Poland and the Netherlands. However, the French Presidency seems to support an extension of the term of protection not only for record producers, but also for audiovisual producers.

*As an important right-user, the hospitality industry is very concerned about this proposal, which has been branded as inefficient and business driven by most European scholars and academics interested in copyright issues. HOTREC is firmly opposed to any extension of the copyright term for performers and record producers that will inevitably increase the huge amount of fees already being paid by the hospitality industry. HOTREC is of the clear opinion that right users should not be asked to compensate losses of revenues incurred by record producers for their failure to adapt their business models to a new market environment. HOTREC is now working on possible joint initiatives with other associations interested in the topic within the Copyright Users Platform (CUP).*

## STANDARDS

### □ ISO TC 228 to review standard on hotels terminology?

On 15 October 2008, the Central Secretariat of ISO (International Organisation for Standardisation) invited the national standardisation bodies to vote by correspondence on the review of the standard EN ISO 18513:2003 on the terminology of hotels and other types of accommodation.

The standard EN ISO 18513:2003 proposes definitions for terms used in the tourism industry in relation to the various types of accommodation and the services/facilities they provide. It was originally developed and adopted within CEN (European Committee for Standardisation) in 2003 and then turned into an ISO standard through application of the Vienna cooperation agreement between CEN and ISO.

According to ISO rules, all published international standards are subject to a “systematic review” process every five years. Under this procedure, the ISO members have to decide whether the EN ISO 18513:2003 standard should be withdrawn, revised/amended or confirmed without any modification. The national standardisation bodies have until 16 March 2009 to cast their votes. In principle, the decision shall be based on a simple majority of ISO permanent members voting. However, ISO rules specify ambiguously that “*in some cases a more detailed analysis of the results may indicate that another interpretation may be appropriate*” (see ISO Supplement to ISO/IEC Directives, 2001, 2.9).

*HOTREC, which contributed to the development of the standard at CEN level, is of the strong opinion that EN ISO 18513:2003 should be confirmed without any modification. The European hospitality industry does not see any need to re-open this standardisation work on terminology.*

In the meantime, standardisation activities within TC 228 are intensifying (see *Live from Brussels N°43*). The recently created working group (WG4) on golf services held its first meeting on 25-26 September 2008 in Madrid. The working group on health tourism services (WG2) met in Bangkok on 30-31 October 2008 to address the ongoing medical spa and the new wellness spa projects.

The next plenary meetings of ISO TC 228 will take place in Turkey (April 2009) and Brazil (2010).

*HOTREC, which has a Liaison status (with no voting right) within TC 228, has been advocating since years that hospitality services should be left out of the scope of the standardisation works. As a matter of fact, there is presently no support from the vast majority of the European hospitality industry for the development of ISO standards in relation to its services.*

## SOCIAL AFFAIRS

### □ Revision of the Working Time Directive – difficult discussions ahead

As reported in *Live from Brussels N°43*, on 15 September 2008 the Council, after years of negotiations, adopted a common position on the proposed modification (COM(2005) 246

final) of the working time Directive 2003/88/EC. However, many MEPs do not welcome this Council position, as it neglects the MEPs' amendments proposed in first reading.

In a draft recommendation for second reading, MEP Alejandro Cercas (Spain, PES), Rapporteur for this dossier, has tabled a series of amendments to the Council common position. He suggests, inter alia:

- Putting an end to the opt-out; and
- Treating any form of on-call time as working time (including inactive on-call time).

MEP Philip Bushill-Matthews (UK, EPP-ED) reminded that the majority of the MEPs of his party voted against such amendments already in first reading. This announces a difficult debate in the EP.

The European Parliament is expected to deliver its second reading opinion by 17 December 2008.

*HOTREC is following carefully the developments in this area. Flexible working time arrangements are crucial for the hospitality industry.*

□ **Temporary agency work marathon comes to an end**

After the agreement within the Council (see *Live from Brussels N°43*) on the proposal for a temporary agency work Directive (COM(2002) 149 final), the European Parliament came swiftly to an agreement in second reading.

On 22 October 2008, MEPs adopted the Council common position without any amendment. The Directive will soon be published in the Official Journal and will have to be implemented by the Member States into national law within 3 years.

*HOTREC is of the opinion that the formulation of the text adopted is still lacking clarity, which may cause problems in its interpretation and therefore implementation.*

□ **European works councils – Social partners to “decide” on the proposal?**

On 22 September, MEP Philip Bushill-Matthews (UK, EPP-ED) presented his draft report on the Commission proposal (COM(2008) 419 final) to revise Directive 94/45/EC on works councils (see also *Live from Brussels N°43*). The draft report takes up the suggestions for amendments presented by the social partners ETUC, Businessseurope, UEAPME and CEEP in their joint advice of 29 August 2008.

A quick agreement on this text seems to be likely, as both Commissioner Spidla and the Council are supporting the proposed amendments by the social partners. The European Parliament foresees the adoption of its first reading opinion at its plenary session in December 2008.

*HOTREC will follow carefully the developments in the decision-making process, as a number of chains in the hospitality sector have works councils (18 according to the database of EWC agreements [www.ewcdb.eu](http://www.ewcdb.eu))*

□ **Commission package on work-life balance**

On 3 October 2008, the European Commission presented a package of documents on work-life balance. The package contains two legislative proposals and a communication.

The legislative proposal (COM(2008) 637 final), amending Directive 92/85/EEC on maternity leave, suggests extending the maternity leave from a minimum of 14 to at least 18 weeks. This would entail changes and additional financial burdens in Germany, Malta, Belgium, France, the Netherlands, Austria, Estonia, Luxembourg and Ireland, where currently the maternity leave is shorter than 18 weeks. Furthermore, as a general rule, the proposal recommends paying women their full salary during this period. However, Member States would be allowed to set a ceiling at the level of sickness pay.

On the same day, the Commission published another legislative proposal (COM(2008) 636 final), aiming at replacing Directive 86/613/EEC on self-employed workers.

This proposal suggests equal access to maternity leave for self-employed women or assisting spouses as for employees. The allowance for such leave should be at least equivalent to the pay of sickness leave. Assisting spouses should furthermore have access to an equal social security protection as the formally self-employed workers.

The FEMM (Women's Rights and Gender Equality) Committee will be responsible for drafting the report on these two proposals in the European Parliament. The texts will have to be adopted under the co-decision procedure.

The Commission also issued a Communication on "*A better work-life balance: stronger support for reconciling professional, private and family life*" (COM(2008) 635 final). In this document the Commission introduces the two proposals described above and refers to the social partners' negotiations on parental leave, which started on 17 September.

*HOTREC shares the opinion of UEAPME, according to which availability of appropriate and affordable childcare facilities is a precondition to enable women returning to their job after having taken their maternity leave.*

□ **Undeclared work – European Parliament calling for action**

On 9 October 2008, the European Parliament adopted an own-initiative report on "*Stepping up the fight against undeclared work*" (T6-0466/2008), further to the Commission communication on the same topic of October 2007 (see *Live from Brussels N°42*).

The report stresses that undeclared work accounts for 20% of GDP in some Member States. According to the report, the hospitality, construction, farming and domestic care sectors are mostly affected.

The European Parliament proposes to the Member States and the European Commission measures such as:

- Definition of undeclared work common to all Member States;
- Developing generally accepted methods measuring undeclared work;

- Reducing the attractiveness of undeclared work by making the tax and social protection systems as well as administrative procedures more transparent and less burdensome;
- The introduction of severe penalties on employers who continue to make use of undeclared labour;
- Giving more support to employers' organisations and trade unions in this fight;
- Better enforcement of minimum wage legislation or adopting such legislation.

*HOTREC is of the opinion that this issue is best dealt with at national level. Reducing financial and administrative burdens in the Member States would definitely contribute to the reduction of undeclared work.*

## **SMEs POLICY**

### **□ The European private company Statute: towards a rapid adoption**

As explained in *Live from Brussels N°43*, the Commission released on 25 June 2008 a proposal for a Regulation on the Statute for a European private company (COM(2008) 396/3 final). The objective of this Regulation is to enhance the mobility and competitiveness of European companies, especially SMEs<sup>2</sup>, and to make it easier and cheaper for them to operate cross-border. The proposed European private company statute (SPE) offers several advantages from a SME-friendly point of view.

The proposal, which is based on article 308 of the EC Treaty, is now examined by the Council where unanimity will be needed for its adoption. The EP is only consulted on the proposal, and MEP Klaus-Heiner Lehne (Germany, EPP-ED) has been appointed Rapporteur.

Following the first discussions that were held in the Council, it seems that the Member States are essentially focusing their discussions on two aspects of the proposal:

- The minimum capital requirement of 1€ few delegations consider that such a minimum requirement is insufficient, while some other delegations estimate that social capital is not anymore the main element to be looked at, as other tools such as solvency tests are better indicators of a business sustainability;
- The absence of a cross-border requirement for a company to constitute a European Private Company.

*SMEs represent 99% of the hospitality industry. HOTREC and its Member Associations therefore welcome the initial Commission proposal that should be of great help for the hospitality industry. The flexibility of the statute, the low requirements in terms of minimum capital, the possibility for a SPE to have its registered office in any Member State and the absence of a formal requirement to operate cross-border are key components of the Commission proposal that makes the SPE attractive for SMEs. HOTREC warns that if some of these elements were to be altered during the debates in the Council, the proposal could then lose all its appeal.*

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<sup>2</sup> According to the EU jargon, a SME (micro, small and medium-sized enterprises) is an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

## STATISTICS

### □ **New Regulation on tourism statistics on hold**

Work on the revision of Council Directive 95/57EC on the collection of statistical information in the field of tourism (see *Live from Brussels* N°35 and N°39) started some 4 years ago.

Several Eurostat Working Group meetings took place, where nearly all EEA (European Economic Area) Member States and associated countries took part. As a result of these meetings, Eurostat presented a draft regulation for interservice consultation to the Commission. This text proposes some important new data in relation to the hospitality industry, which would have to be submitted by the national statistical offices to Eurostat:

- Net occupancy rate of bedplaces and bedrooms at national and regional level on an annual and monthly basis;
- Classification of data by type of locality (according to the population density and maritime/non-maritime) and size class of hotels;
- Data on short trips (at least 1 night);
- Same-day visit expenditure with data on expenditure in restaurants.

However, following a first evaluation by the Commission services, the draft text will have to be further elaborated within the Working Group. The Commission fears too high burdens for enterprises and households.

It is, therefore, likely that the European institutions (Parliament and Council) will only be able to start discussions on this topic in the second half of 2009.

*HOTREC had put forward its wishes with regard to the update of the EU legislation on tourism statistics and hopes that the new text will respond to its expectations.*

### □ **Tourism statistics**

Eurostat, the EU statistical office, has recently released the following publications relating to tourism:

- The tourist accommodation sector employs 2,3 million in the European Union, Statistics in Focus 90/2008;
- Winter season tourism trends 2007-2008, Data in Focus 38/2008;
- Tourism Statistics Pocketbook, 2008 edition.

The publications can be downloaded in English from the Eurostat website:

[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-08-090/EN/KS-SF-08-090-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-090/EN/KS-SF-08-090-EN.PDF) (The tourist accommodation sector employs 2,3 million in the EU)

[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-08-038/EN/KS-QA-08-038-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-08-038/EN/KS-QA-08-038-EN.PDF) (Winter season tourism trends 2007-2008)

[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-DS-08-001/EN/KS-DS-08-001-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-DS-08-001/EN/KS-DS-08-001-EN.PDF) (Tourism Statistics Pocketbook)