



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

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ECONOMIC AND FINANCIAL CRISIS

□ Some data specific to the hospitality industry

The current financial crisis and economic turmoil is putting the hospitality industry under great pressure. The figures of the latest UNWTO (World Tourism Organisation) World Tourism Barometer (see section on Statistics below) underpin the difficulties the industry is currently facing. According to the UNWTO, while international tourist arrivals to Europe showed a growth of 3,4% in the first half of 2008, the trend turned into a decline by 2,5% in the second half of the last year. UNWTO expects a negative growth rate in Europe of between -3% and 0% for the year 2009.

An analysis by Deloitte&Touche, released within the same publication of UNWTO, shows that as a consequence of the above trend, the occupancy rate of hotels in Europe dropped from 69,3% in 2007 to 66,9% in 2008. The heaviest setbacks were recorded in Dublin, Prague and Rome (all between -9% and -10%), while no capital in Europe was showing a plus in terms of hotel occupancy rates. As average room rates in Europe were almost stagnating compared to 2007, the revenue per available room (revPAR) was down by 4,2% in 2008. The prospects for 2009 by Deloitte&Touche are very negative, predicting that hotels will sell fewer rooms at lower prices. These negative trends, accompanied inter alia by higher costs for credits, result in the cancellation or postponement of many investment projects.

These data were discussed at the first meeting of the UNWTO Tourism Resilience Committee held in Madrid end of January 2009. A second meeting of this Committee is scheduled to take place during the International Travel Trade Show (ITB) on 13 March 2009 in Berlin.

In some countries, the hospitality industry is hit additionally by rises of VAT rates. In Latvia and Lithuania, the VAT rate for accommodation services recently rose from 5% to 21% and 19% respectively. Estonia is also facing a VAT increase for hotels from 5% to 9%. Increases of VAT rates for the hospitality industry are unfortunately also being discussed in other countries. In the countries, where such rises of VAT are applied, the prices of hospitality services will increase, with the likely consequence of fewer guests, less revenue and the necessity of cuts in employment.

□ HOTREC calls for a review of the Commission working programme

On the occasion of the last General Assembly of HOTREC (see section on HOTREC general activities below), 40 hotel, restaurant and café associations from 25 European countries discussed the challenges and threats faced by the industry at the current time of great economic turmoil. The General Assembly called unanimously for a review by the Commission of its working programme and working methods. The European hospitality industry is being squeezed by a number of European policy developments precisely when the mobilisation of all its strength is needed to face an abrupt economic slowdown.

This call for a review of the Commission working programme was embodied in a letter addressed by the President of HOTREC, Kent Nyström, to the President of the Commission, José Manuel Barroso and Commissioners Margot Wallström, Günter Verheugen, Meglena Kuneva, Vladimir Spidla and Androulla Vassiliou.

The letter invites the Commission, as the “*initiator*” of EU legislation, to redirect the development of EU measures away from additional burdening of enterprises, which will at the end cost jobs.

For example, the cumbersome and inappropriate Commission proposal imposing food labelling requirements to restaurants should be withdrawn. This new legislation, if adopted, will not only impose burdens costing the industry billions of Euros, but will also be incapable of application by small restaurants. This proposal poses a great risk of small restaurants having to standardise their menus and/or being driven out of business, causing the loss of many thousands of jobs. The over 800 amendments submitted by the MEPs underline the inappropriateness of the proposal (see section on Food and Health below).

In these difficult times, the Commission should apply more strictly than ever its “*better regulation*” policy. In relation to the proposed requirement of food labelling in restaurants, the hospitality industry was particularly shocked to read that the impact assessment acknowledged that “*no systematic research answered the question of how much such a provision would cost*”.

The application of the “*better regulation*” principle should also avoid useless duplication of actions. Two recent striking examples of relevance to the hospitality industry can be mentioned:

- Duplication of initiatives by the services of the European Commission in relation to smoking with, on the one hand, an initiative by DG SANCO with regard to smoking in public places, which could lead to a proposal for a Council Recommendation on smoke-free environments and, on the other hand, an initiative by DG EMPL on smoking at the work place, which could lead to a proposal for legislation (see section on Food and Health below); and
- Duplication of studies: whereas a study on hotel safety has just been released by the European Parliament, the Commission is launching a major study on the same topic (see section on Consumer Affairs below).

These uncoordinated initiatives send inconsistent signals, which are very damaging to the image of the EU Institutions.

The hospitality industry would also appreciate if the Commission could adhere more strictly to the principle of “*subsidiarity*”, implying that a EU measure should only be envisaged in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States. The European hospitality industry questions whether this principle is abided by, for example, in relation to the smoking measures mentioned above as well as in relation to the Fora on Nutrition and Alcohol, which are pressing the industry to make commitments at European level, without regard to the actual situation at national level.

The Commission should put focus on essential priorities, such as bringing back confidence through the provision of a favourable political and regulatory environment. One of the top priorities is of course to ensure that the financial system resumes its mission of financing the economy with credit at affordable rates. The Commission should endeavour to create as quickly as possible the conditions for the economy to recover, growth to flourish and employment to redeploy. The competitiveness of the European hospitality industry is at stake, as well as the future of its 9 million employees.

The press release issued after the HOTREC General Assembly as well as the letter to the Commission are available on the HOTREC website, under the section “News and publications”.

FOOD AND HEALTH

□ Food labelling: over 800 amendments tabled in the European Parliament!

As reported in the last issues of *Live from Brussels*, the European Parliament and the Council of Ministers are continuing their legislative work on the Commission proposal for a Regulation on the provision of food information to consumers (COM(2008) 40 final).

On 8 December 2008, MEP Renate Sommer (Germany, EPP-ED) presented her draft report on the proposal to the members of the ENVI (Environment, Public Health and Food Safety) Committee, which is responsible for the file in the European Parliament. MEP Sommer expressed the view that the Commission proposal, as it stands, “*is extremely hazardous and should never become law*”, stressing that the text was not based on evidence and could impose “*huge additional costs*” on businesses across Europe.

In her draft report, MEP Sommer suggests excluding “*non-prepacked food*” (which, in the jargon of the Commission, covers also meals served by restaurants) from the obligation of mandatory labelling in relation to the particulars listed in Art. 9 of the proposal: i.e. list of ingredients, allergens, net quantity of ingredients, nutrition declaration, etc.

As regards allergens and non-prepacked food, MEP Sommer considers nonetheless that information has to be provided to consumers. However, that would be done orally, during the sale talk and/or via clear visible signs on the sales premises or other information material. The Rapporteur explains that “*in case of non-prepacked food, comprehensive allergens-related labelling [...] is virtually impossible and would give rise to substantial additional costs and competitive disadvantages for SMEs in particular. In addition, cross-contamination cannot be ruled out in businesses with a limited working area*”.

In parallel, the IMCO (Internal Market and Consumer Protection) and the AGRI (Agriculture and Rural Development) committees are preparing their opinions for the ENVI Committee. However, due to the high number of amendments tabled, the timetable of all three committees had to be reviewed and it is not clear whether the Parliament will manage to finalise its first reading of the text before the end of its term in May 2009.

In the meantime, the examination of the proposal by the experts of the national governments continues within the Working Party on Foodstuffs (labelling) of the Council of Ministers.

HOTREC welcomed the draft report by MEP Sommer, as a positive step in the right direction. HOTREC fully shares the opinion of the Rapporteur that the proposal as it stands “should never become law”. As a matter of fact, the regulation proposed by the Commission is simply inapplicable by restaurant services.

HOTREC believes that, for practical reasons, it is unrealistic to foresee the application of complex and detailed EU requirements (Art. 9 and Art. 10) to non-prepacked foods sold locally by catering businesses. Traditional restaurants should not be subject to the same regulatory requirements as major food processing companies. Most restaurant customers do

not expect to find the same detailed information on menus as on standardised prepacked foods. When a customer requests specific information on the composition of a dish, the staff or the chef are available to explain what ingredients are used and the recipe followed.

Moreover, complying with the requirements of the proposed regulation will not only be unworkable, but would also impose disproportionate costs and unnecessary burdens on catering businesses, especially on the smallest.

It is therefore essential 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). This is all the more urgent that the global economic slowdown is already having a negative impact on the hospitality sector and its employment.

In relation to this file, HOTREC is working closely together with AEA (airlines), EMRA (modern restaurants), EuroCommerce (retail), EVA (vending machines), FERCO (contract catering) and UEAPME (craft and SMEs) within an informal “Food Alliance”.

□ **Commission study on food prices in Europe**

On 10 December 2008, the European Commission adopted a Communication on food prices in Europe (COM(2008) 821 final). Between the second half of 2007 and the beginning of 2008, agricultural commodity prices and consumer food prices increased rapidly, before decreasing sharply over the past months.

The focus of the Commission Communication is on the functioning of the food supply chain to “*better understand the transmission mechanism linking commodity prices with producer and consumer prices*”. The price volatility in this area is of great concern.

The Commission notes that “*The asymmetry of bargaining power between agricultural producers and the rest of the supply chain has kept producer margins in the agricultural sector under strong pressure*”. It also stresses that “*Against the background of economic slowdown, it is more important than ever to ensure that downwards movements in commodity prices are transmitted to consumers without delay and to raise the competitiveness of the agricultural, food processing and distribution sectors.*” In other words, the Commission would like, on the one hand, to secure better prices to farmers and, on the other hand, to make prices as low as possible for consumers.

The Communication analyses the following elements:

- The developments in agricultural commodity and food prices;
- The role of speculation in food commodity prices; and
- The functioning of the food supply chain (agricultural sector, food processing industry and distribution).

The Commission proposes a “road-map” of measures to be implemented at national and EU level with the involvement of relevant stakeholders to tackle the problems affecting the supply chain, including, among others:

- The setting up of a permanent European monitoring of food prices and the supply chain; and
- The review of national / EU regulations impacting on the food chain.

The text of the Communication and the background documents can be found at:

http://ec.europa.eu/economy_finance/thematic_articles/article13524_en.htm

The European hospitality industry is an important player in the food chain and a major “end-user” of food and agricultural products. Therefore, sharp variations in prices of agricultural and food products can indeed have a significant impact on the competitiveness of the industry. For this reason, HOTREC will follow with interest this issue and other possible developments at EU level.

□ **Animal cloning for food production to be allowed in the EU?**

On 13 January 2009, the EU Commissioners held an initial “*orientation debate*” on the possible use of cloning in livestock breeding for the production of meat and milk for supply to the food chain. In other words, the Commissioners discussed which attitude the EU should take vis-à-vis the possibility to allow the production of cloned animals for food supply and/or the import of food products derived from such animals into the European market. The issue is very complex and sensitive because it has ethical (animal health and welfare), scientific (food safety), environmental as well as economic (global trade) implications.

According to the press, a number of possible approaches were discussed by the Commissioners, including:

- The use of existing legislative instruments that allow Member States to ban an “*assisted reproduction technique*”, if it is harmful to animal wellbeing;
- The adoption of a targeted ban; and
- The possible development of a mandatory labelling mechanism for products derived from animal cloning.

In practice, the challenge facing the Commissioners is to decide whether to ban cloning, even temporarily, and consequently the introduction into the food chain of products from cloned animals, or to wait. Some Commissioners, including Mariann Fischer Boel (Agriculture) and Androulla Vassiliou (Health), would favour the principle of a temporary ban in anticipation of the arrival into the Community market of food products derived from cloned animals (possibly coming from third countries such as the US or Japan).

The European Commission asked the scientific opinion of EFSA (European Food Safety Agency) and the advice of the EGE (European Group on Ethics in Science and New Technology).

As showed by a *Eurobarometer* survey of citizens (July 2008), there is currently “*a very strong public reluctance to use cloning in the food chain*”. This reluctance was also echoed by the European Parliament, which on 3 September 2008 adopted almost unanimously a resolution calling for a ban on cloning for food supply.

The parliamentary resolution can be found at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0400+0+DOC+XML+V0//EN>

As an important player in the food chain and a major “end-user” of food products such as milk and meat, the hospitality industry has to follow closely the complex debate on the issue of animal cloning for food production. For instance, the introduction of food products derived from cloned animals into the European market could increase the regulatory pressure for mandatory labelling in relation to “non-prepacked foods”, including meals served by restaurants.

□ **Commission consultation on smoking at the workplace**

As explained in *Live from Brussels N°43*, the European Commission is working in parallel on two initiatives in relation to smoking:

- One led by DG SANCO (Health and Consumer Protection), focusing on smoking in public places; and
- One led by DG EMPL (Employment and Social Affairs), focusing on smoking at the workplace.

DG SANCO is working on a draft for a Recommendation (non-binding measure) on smoke-free environments, intended to assist Member States in implementing comprehensive smoke-free laws in line with the guidelines of the World Health Organisation. After various postponements, the proposal, initially due to be issued by the end of 2008, is now expected during spring 2009.

In parallel, on 19 December 2008, DG EMPL launched a “*first-stage consultation*” of the social partners on smoking at the workplace. The Commission is seeking the opinion of employer organisations and trade unions on the opportunity to better protect workers from passive smoking. The consultation invited the social partners to give their opinions on various options for EU action, including:

- Binding legislation (e.g. with the adoption of a specific directive prohibiting smoking at the workplace or with the inclusion of tobacco smoke within the scope of the Carcinogens and Mutagens Directive 2004/37/EC);
- A non-binding initiative (e.g. developments of practical guidelines, etc.); or
- A combination of binding and non-binding initiatives.

The legal basis for EU action in this field would be Article 137 of the Treaty (health and safety at work). If the Commission considers that the outcome of this “*first-stage consultation*” calls for EU action, it will launch the “*second-stage consultation*” on the content of such action.

In its reply to the consultation, HOTREC clearly stated that the issue of second-hand smoke is best tackled at national level, where national circumstances and local practical conditions can be better taken into account.

As already expressed in its reply to the Commission Green Paper “Towards an Europe free from tobacco smoke” (May 2007), HOTREC is of the strong opinion that - in view of the

recent multi-fold developments in all EU countries in relation to smoking rules - any intervention at EU level is not only superfluous, but would also interfere in an inappropriate manner with national legislation and/or with voluntary initiatives taken at national level.

Considering that EU Member States have already adopted comprehensive legislative measures in this field, it would be impossible to establish a common EU policy which does not override, in an inappropriate manner, compromises already agreed at national level.

For these reasons, HOTREC takes the view that there is no need to adopt new EU rules in relation to health and safety at work to tackle the issue of second-hand-smoke.

Moreover, HOTREC regrets the duplication of initiatives by the services of the European Commission in relation to smoking: on one hand, the initiative by DG SANCO with regard to smoking in public places and, on the other hand, the initiative by DG EMPL on smoking at the workplace. Although the objectives of the two initiatives are laudable, this duplication is in contradiction with the principle of “better regulation” and only creates confusion. It could lead to overlapping measures, resulting in new unnecessary burdens for the hospitality industry, exactly when the mobilisation of all its strength is required to face an abrupt economic slowdown.

□ **European Alcohol Forum and WHO alcohol strategy**

On 13 November 2008, the European Alcohol and Health Forum held its third plenary meeting. The Forum was launched by the European Commission (DG SANCO) in June 2007 with the objective of bringing together the stakeholders at European level willing to take self-binding actions (so called “commitments”) aimed at reducing alcohol related harm (see *Live from Brussels N°42* and *N°43*).

Members of the Forum are over 50 organisations representing economic operators (alcohol producers, retailers, hospitality, advertisers, etc.), consumers, health campaigners as well as the medical profession. So far, over 100 commitments have been submitted by the members of the Forum in relation to the priority areas identified by the Commission.

At the plenary meeting in November 2008, the participants were updated on the activities of the Forum and its “bodies”:

- Activities of the Task Forces on Marketing Communication and on Youth-specific aspects of alcohol;
- Interim results of a study requested by the Commission on the link between affordability of alcohol and harmful consumption (by the consultancy RAND Europe);
- Ongoing study by the “Science Group” on the impact of marketing communication on the volume of alcohol consumption.

The next plenary sessions of the Alcohol Forum will take place on 11 March and 12 November 2009.

At the closure of the meeting, Robert Madelin, Chair of the Forum and Director General of DG SANCO, drew the attention of the participants to the latest developments within the World Health Organisation (WHO).

In May 2008, the General Assembly of the WHO adopted a resolution on “*Strategies to reduce the harmful use of alcohol*”. Among others, this resolution calls on the countries members of the WHO to:

- Develop national systems for monitoring alcohol consumption; and
- Consider strengthening, where necessary, national responses to public health problems caused by harmful use of alcohol.

In 2010, the WHO has to present a draft global strategy to reduce alcohol abuse, including recommendations to be implemented in all countries.

Further information on the European Alcohol Forum can be found at:

http://ec.europa.eu/health/ph_determinants/life_style/alcohol/Forum/alcohol_forum_en.htm

For the activities of the WHO you can visit:

http://www.who.int/substance_abuse/activities/globalstrategy/en/index.html

HOTREC, which shares the concerns of public authorities with regard to alcohol-related harm, in particular among young people, joined the Forum at the beginning of 2008.

HOTREC committed itself to raise awareness among its Member Associations on the activities of the Forum and to encourage them to be directly involved, with a special focus on responsible drinking and the enforcement of age limits for serving and selling alcoholic beverages.

So far, the British Beer and Pub Association, the Finnish Hospitality Association and the Swedish Hotel and Restaurant Association joined the Alcohol Forum.

Further details on the commitments by HOTREC and its Member Associations within the Alcohol Forum can be found at:

http://www.hotrec.eu/pages/policy_areas/health/alcohol_main_documents/

On 7 November 2008, HOTREC and EuroCommerce (retail sector) addressed a joint letter to the Chair of the Alcohol Forum regarding the issue of “consumer education”. HOTREC and EuroCommerce share the opinion that the industry can commit itself to abide by ethical principles in its marketing and to raise consumer awareness, but it is not its role to “educate” consumers.

The main responsibility for education lies with families, public authorities and private bodies at all levels. For this reason, HOTREC and EuroCommerce suggested the setting up of a “Task Force on Consumer Education” within the Forum, where representatives of the Member States and public authorities at various levels could discuss and develop strategies to educate and sensitise citizens on the issue of alcohol misuse.

In response to the joint letter, the European Commission proposed to discuss the issue of consumer education in the plenary meeting of the Alcohol Forum on 12 November 2009. On that occasion, representatives of Member States, parent organisations and schools could be invited to join the debate.

CONSUMER AFFAIRS

□ **New timeshare Directive: multiple hotel room reservations definitively out!**

Following the adoption by the European Parliament of its opinion on the proposal (COM(2007) 303 final) to review the existing timeshare Directive (94/47/EC), the Council of the European Union formally adopted on 18 December 2008 the new timeshare Directive.

As explained in *Live from Brussels N°43* and *N°44*, the new timeshare Directive intends 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.

The text formally adopted by the Council 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 hotel rooms at a children-friendly resort in the Austrian Alps by a family with two children for Christmas 2009 and 2010 will not be subject to the new timeshare Directive.

Following the publication of the new Directive in the Official Journal, Member States have until 23 February 2011 to adopt the necessary transposition measures.

HOTREC welcomes the final adoption by the Council of the new timeshare Directive, as it contains an amendment for multiple hotel room reservations, which had been strongly advocated for by HOTREC and its National Associations. It is therefore a great lobby success.

□ **Hotel safety: studies and HOTREC fire safety project**

As explained in *Live from Brussels N°43*, the European Commission issued in July 2008 a call for proposals for a study on hotel safety. The aim of this study is to:

- Develop the knowledge of consumer accidents in the hotel sector;
- Identify the main risks encountered in hotels; and
- Give recommendations as to how to address those risks.

The study was awarded in January 2009 to a multinational consultancy specialised in ground engineering and environmental services which will have 12 months to complete its work. According to the Commission's services, the first aspect of the study (statistics on consumer accidents) will constitute its core component.

Despite this upcoming Commission study, the European Parliament launched a parallel study on the exact same topic during the summer 2008. The EP study was carried out over the autumn and its results were released in November 2008 in a specific workshop organised by

the EP. HOTREC and some of its National Associations were interviewed for this study which draws-up mixed conclusions.

Besides these developments, and as explained in *Live from Brussels N°43*, on the occasion of a meeting with the services of DG SANCO of the Commission, HOTREC committed to work on new flexible instruments to increase fire safety in all hotels across Europe. A Business Plan for a voluntary self-regulatory initiative was subsequently adopted by HOTREC and endorsed by the Commission. It implies the setting-up of a Working Party and the involvement of external stakeholders through the establishment of a Stakeholders Consultative Committee (SCC). The Working Party's task will be to produce two deliverables:

- A charter on fire safety in hotels in Europe; and
- A flexible and rational methodology to increase fire safety.

The SCC met for the first time on 21 January 2009 and its members expressed a general support for the approach proposed by HOTREC. The final deliverables should be submitted for approval to the HOTREC General Assembly on 5 and 6 November 2009.

HOTREC's project to work on new tools to improve hotel fire safety is a clear demonstration of the industry's commitment to the safety of its guests. HOTREC in particular welcomes the positive cooperation demonstrated so far within the SCC. HOTREC, however, regrets the duplication of work at EU level. The launch of two parallel studies on the same topic by the European Commission and the European Parliament generated mixed feelings among the hospitality industry and clouded the image of the EU institutions.

□ **Green paper on consumer collective redress: the tourism sector targeted?**

The Commission is currently examining the problems consumers face in obtaining effective redress when the cost of taking legal action is likely to outweigh the amount of compensation claimed. In the Commission's view, collective redress (class actions) could be an effective mean of tackling this issue.

Following the organisation respectively in February and May 2008 of an online consultation and of a specific stakeholder workshop on benchmarks that should guide effective and efficient consumer collective redress systems (see *Live from Brussels N°42* and *N°43*), the European Commission released on 27 November 2008 a Green Paper on Consumer Collective Redress (COM(2008) 794 final).

The Green Paper explains that “*high litigation costs and complex and lengthy procedures*” [...] “*impede European consumers from obtaining effective redress*”. This situation results in additional obstacles to the Single Market. The Green Paper also acknowledges that there are already a number of collective redress mechanisms in place at national level, even though these existing schemes lead to diverse results. Given the fact that 10% of existing collective redress claims have a cross-border element, the Green Paper explains that the Commission's objective is to focus on collective redress as a tool to “*solve the problems consumers face in obtaining redress for mass claims both in national and cross border contexts*”.

According to the Green Paper, the tourism sector could be among the first industries affected by any new EU initiative in the field of collective redress, as tourism/package travel is the 4th sector where consumers find it most difficult to obtain redress for mass claims.

To tackle the issue at EU level, the Green Paper proposes 4 policy options:

- No EU action. However, the Green Paper almost rules out this option;
- Cooperation between Member States: either a Directive or a Recommendation would be adopted to set-up collective redress systems in every Member States and to allow consumers to use the systems available in other Member States;
- Mix of policy tools: it consists in improving existing Alternative Dispute Resolution (ADR) mechanisms, establishing a collective ADR accessible to consumers from other Member States, extending the scope of the national small claim procedures and encouraging businesses where mass problems are reported (e.g. the tourism sector) to develop self-regulatory measures;
- Judicial collective redress procedure: it implies the creation in every Member States of a collective redress judicial mechanism. Questions on the financing of the procedure, the prevention of unmeritorious claims, the standing in court, the distribution of compensation or the question of opt-in or opt-out would be addressed.

With this Green Paper, the Commission launched a consultation in order to obtain the views of interested stakeholders on the role of the EU in relation to consumer collective redress, on the 4 policy options proposed, on their components, and on the need for binding EU instruments on the matter. The consultation will remain opened until the 1st March 2009.

HOTREC circulated the Green Paper to its Member Associations and will prepare an answer to the consultation launched by the Commission. Moreover, HOTREC already warns that collective redress mechanisms should be set-up with the greatest caution, so as to avoid the pitfalls inherent to class actions systems. In particular, specific attention should be paid to the defendant's reputation, when no illegal behaviours were previously identified. In case the EU would opt for imposing a judicial collective redress procedure, HOTREC will pay specific attention to the system put in place, so as to ensure that unmeritorious claims are effectively discouraged and opt-out mechanisms are ruled out.

❑ **Online hotel reservation systems: a new study proposes to legislate!**

The European Parliament released in the beginning of February 2009 an important and unexpected study on “*Online hotel reservation systems*” carried out at the request of the IMCO (Internal Market and Consumer Protection) Committee. The study analyses the pre-contractual and contractual matters concerning online hotel reservation systems, in particular in the context of the diversity of the structure of such systems, which can be either operated by the hotel itself, by a third party acting for the hotel, or by independent agents. According to the study, this diversity can sometimes lead to confusion and to a perceived lack of transparency for consumers.

While the scope of this study seemed at first sight to be merely focusing on online reservation systems, it actually touches upon a wide range of key issues (e.g. right of withdrawal, overbooking, rights of non-contracting consumers, classification systems, etc.) and invites the EU institutions to legislate on what the study perceives as gaps in consumer protection. These suggestions include, among others, proposals to:

- Impose a right of withdrawal for hotel contracts;
- Require the display of the price of the hotel room during the entire booking procedure;
- Ban pre-ticked opt-in boxes for additional services;

- Require to display whether the booking site acts directly for the hotels or if it is only an agent. In the latter case, the booking site would be required to provide information to make consumers aware of the contractual implications;
- Require the display of the hotel official grade, the date of the grading and the details on the grader and its status vis-à-vis the hotel;
- Etc.

Surprisingly, the study also touches upon issues, which do not seem to fall into its scope, such as the issue of bedroom noise (and the possible display of the level of noise in the hotel room) and guest personal property safety (where the possibility to require booking sites to display the liability rules for damages to property is raised).

This study must be read in the context of the upcoming revision of the Package Travel Directive and of the current Commission proposal for a Consumer Rights Directive (see *Live from Brussels N°44*), which is currently examined by the Council and the European Parliament.

HOTREC and its National Associations express their surprise regarding the release of this study, which was conducted without even informing or consulting the European hospitality industry. Whereas the study presents a comprehensive legal analysis and takes an interesting point of view, especially with regard to the practice of some independent booking sites, HOTREC regrets that the consultancy did not take the time to consult the industry. Such a consultation would have permitted to avoid important shortcomings and to present more accurate information on issues such as consumer no-shows, overbooking and their consequence for the hospitality industry.

VAT

□ VAT reduced rates saga – Agreement in sight?

As reported in *Live from Brussels N°43* and *N°44*, Member States have diverging views on the Commission proposal on reduced VAT rates (COM(2008) 428 final). This proposal suggests the inclusion of restaurant services (excluding alcoholic beverages), together with some labour intensive services and locally supplied services, to the list of goods and services to which all Member States may choose to apply a reduced VAT rate (Annex III of Directive 2006/112/EC). The exclusion of alcoholic beverages would have serious implications for Italy, Portugal, Spain and Luxemburg, where alcoholic drinks served with meals in restaurants are currently subject to a reduced VAT rate.

At the Council meetings of finance ministers (ECOFIN) in November and December 2008, the required unanimity could not be reached. This was mainly due to the strong resistance of Germany.

However, the heads of states and governments at their European Council meeting on 11-12 December 2008 urged the ECOFIN Council to settle the issue by March 2009.

In the margin of the ECOFIN meeting held on 20 January 2009, Germany eased its rigorous resistance and showed willingness to find a compromise agreement, the details of which still have to be elaborated. However, no further progress could be achieved at the subsequent meeting of ECOFIN held on 10 February.

Meanwhile, MEP Ieke van den Burg (the Netherlands, PES) released her draft report, suggesting the approval of the Commission proposal with amendments. In relation to tax matters, the European Parliament is only giving an opinion, which is in no way binding on the Council.

On 2 February 2009, the EP ECON (Economic and Financial Affairs) Committee rejected the amendments suggested by MEP Astrid Lulling (Luxemburg, EPP-ED) and MEP John Purvis (United Kingdom, EPP-ED), proposing not to exclude alcoholic beverages from reduced VAT rates in the case of restaurant services. Finally, the Committee rejected the entire draft report with a slight majority, but agreed a draft resolution supporting the Commission proposal, which should be voted upon in the plenary session on 19 February 2009. MEPs are expected to table amendments to the Commission proposal at that meeting.

The ECOFIN Council will next meet on 10 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).

HOTREC welcomes the decision by Germany to ease its rigorous opposition. HOTREC hopes that a compromise can be found among the Members of the ECOFIN Council by March, giving the opportunity to those Member States, which wish to do so, to apply a reduced VAT rate for restaurant services.

STANDARDS

□ A new ISO standard on safety and security in the tourism industry?

In November 2008, the Serbian standardisation body presented a proposal for the development of an international standard on the “Management of safety and security in the tourism industry” within the ISO Technical Committee (TC) 223 on societal security. This Technical Committee was set up by ISO in 2006 to develop standards for crisis management and preparedness through “*technical, human, organization and management approaches*”.

The scope of the proposal covers all tourism services, including hotel services and facilities. The purpose of the standard would be to establish a common set of criteria and procedures for crisis management and preparedness. According to the Serbian proposal, it would be applicable “*in case of any incident that has the capacity to impact the tourism industry*”, such as “*terrorist attacks, war, disease outbreaks, natural disasters, technical accidents and other negative events*”.

Although originally proposed within TC 223, this new project will be discussed at the TC 228 on tourism and related services plenary meeting on 20-21 April 2009 in Turkey.

HOTREC is doubtful about this project. The scope of the proposal is far too broad: it will be simply impossible to develop a standard on crisis management workable for and applicable by all tourist operators worldwide, in all types of emergency situations!

In addition, there is currently no support from the European hospitality industry for the development of any international standard that would touch upon the services provided by its

enterprises. Since years, HOTREC has been repeating over and over that standardisation in relation to hospitality services should remain fully market-driven and that official standardisation bodies should not take any initiatives which are not supported by the users and the industry.

□ **ISO TC 228 plenary meeting in Turkey: a busy agenda!**

The annual plenary meeting of ISO TC 228 on tourism and related services will take place on 20-21 April 2009 in Cappadocia, Turkey (see also *Live from Brussels N°43*).

The draft agenda of the meeting includes an update on the standardisation activities of the various working groups set up within TC 228:

- WG 1: “Recreational diving services”;
- WG 2: “Health tourism services” (projects on medical spas, wellness spas and thalassotherapy services);
- WG 3: “Tourist information and reception services at tourist information offices”;
- WG 4: “Golf services”;
- WG 5: “Beach services”;
- WG 6: “Natural protected areas”.

The agenda also includes a point on the outcome of the vote by correspondence launched by the ISO Central Secretariat on the review of standard EN ISO 18513:2003 on the terminology of hotels and other types of accommodation. The national standardisation bodies have until 16 March 2009 to cast their votes and to decide whether the EN ISO 18513:2003 standard on terminology should be confirmed without any modification, withdrawn or revised.

The participants should also discuss the opportunity to set up a new “Sub-Committee” within TC 228 to develop standards on “Adventure tourism” (initiative by the Brazilian and British standard bodies).

Another item on the agenda of the Cappadocia meeting (although it is not clear if for information or other purpose) will be the proposal presented by the Serbian standardisation body to develop an international standard on the “Management of safety and security in the tourism industry” within the ISO TC 223 on societal security (for further details see previous article).

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.

The need for standardisation of services, in particular hospitality services, is not as obvious as it is for goods. Hospitality services are generally tailored to the customer. Their diversity reflects different cultures and geographical situations and constitutes one of the major attractions for customers. The latter do not expect to find standardised conditions everywhere they travel. On the contrary, their expectations vary according to their destinations, their ages as well as the purpose of their trips, be it a business trip or a trip for pleasure.

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. Re-opening

the standardisation work on terminology would be a lengthy and burdensome process that would not bring any concrete benefit to the European hospitality industry.

COPYRIGHT

□ Extension of the term of protection widely supported in EP committees!

As explained in *Live from Brussels N°44*, the Commission proposal 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) is currently discussed both in the European Parliament and in the Council. According to the Commission, the aim of this proposal 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.

In the European Parliament, three committees already gave in late 2008 their green light for an extension of the term (either to 95 years or until the end of the performer's lifetime). One of them, the ITRE (Industry, Research and Energy) Committee, also proposed an extension for audiovisual performers and the creation of an additional right of compensation for music performers who assigned their "making available" right for on-demand services to their producers.

Following these opinions, a crucial vote took place on 12 February 2009 in the JURI (Legal Affairs) Committee, where a majority of MEPs supported the Commission proposal. However, the JURI committee refrained:

- From backing the creation of an additional right for music performers who assigned their "making available" right to their producers; and
- From extending the scope of the proposal to the audiovisual sector, but rather called for an impact assessment from the Commission by 1 January 2010, in order for the Commission to present a legislative proposal by June 2010.

In the Council, the debate is still ongoing and discussions have been fierce with the initial opposition of the UK, Italy, Poland and the Netherlands. However, the debate is evolving and Member States may eventually find a compromise on a shorter extension of the term than initially proposed by the Commission.

As an important right-user, the hospitality industry is very concerned about this proposal, which has been branded as inefficient and record producer-driven by most European scholars interested in copyright issues. HOTREC firmly believes that an extension of the copyright term for performers and record producers 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 working on possible joint initiatives with other associations interested in the topic within the Copyright Users Platform (CUP).

SOCIAL AFFAIRS

□ Working time – European Parliament versus Council

As reported in *Live from Brussels N°43* and *N°44*, after years of negotiations the Council adopted, on 15 September 2008, a common position on the proposal modifying Directive 2003/88/EC, concerning certain aspects of the organisation of working time.

On 17 December 2008, the European Parliament rejected, by absolute majority, the main points of this common position. The position of the European Parliament is very clear on the following crucial issues:

- Opt-out clause: no Member State should allow to opt out of the general principle of the 48 hours weekly working time; and
- On call-time: the inactive period of the on-call time should be counted as working time.

Now the third and final, so-called “*conciliation*”, phase of the procedure has started. If, at the end of the conciliation period (maximum 8 weeks), no agreement is reached, the proposal will be considered as not adopted and the original Directive of 2003 will continue to apply.

HOTREC follows carefully the developments in this matter as flexible working-time arrangements are crucial for the hospitality industry.

□ Opening up of borders for highly-skilled third country nationals

As explained in *Live from Brussels N°42*, the Commission submitted in October 2007 two legislative proposals in view of opening up the borders for legal immigrants:

- Directive on the conditions for entry and residence of third country nationals for the purposes of highly-skilled employment (“*EU blue card*” COM(2007) 637 final); and
- Directive on a single application procedure for a single permit and a common set of rights for third country nationals (COM(2007) 638 final).

The “*blue card*” proposal received the European Parliament backing on 20 November 2008. Workers admitted under this scheme will be issued the “*EU blue card*”, which combines work and residence permit and endows them and their families with a series of rights.

The proposal as amended by the European Parliament includes, amongst others, the following admission conditions for highly qualified third country workers:

- Work contract or a binding job offer of at least one year;
- The wage specified in the contract or offer must be at least 1.7 times the average wage in the Member State concerned; and
- Proof of evidence of sickness insurance when entitlement to health insurance benefits is not provided in connection with or resulting from the work contract.

The discretionary decision of a Member State of issuing the “*blue card*” shall take into account the national and regional demand for labour. Reversely, Member States should not

actively seek to attract highly qualified workers in sectors where there is shortage of highly qualified workers in the country of origin.

The European Parliament also adopted on 20 November 2008 its opinion on the proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State. This Directive was issued to complement the “*blue card*” proposal and simplify the related administrative requirements.

Both proposals are now on the table of the Council of Ministers: they must be adopted unanimously by the Member States.

When the Commission proposal was adopted, HOTREC welcomed it, with regard to the skill shortages prevailing at that time in the hospitality industry of many countries. However, the financial/economic crisis has, unfortunately, changed the circumstances.

❑ **Sanctions against employers employing illegally staying third country nationals**

As reported in the previous issues of *Live from Brussels*, the Commission published in May 2007 a proposal for a Directive providing for sanctions against European employers employing illegally staying third country nationals (COM(2007) 249 final). This “sanction” proposal is part of a wider package of measures, including also the “*blue card*” scheme (see brief report above), aiming at developing a comprehensive migration policy.

On 4 February 2009, the European Parliament voted, in first reading, a legislative resolution largely supporting the Commission text.

Surprisingly, both the European Trade Union Confederation (ETUC) and BUSINESSSEUROPE criticise the text, but for different reasons:

- ETUC sees this legislation as dangerous, as it will encourage employers to use complex subcontracting arrangements and “letter-box” companies to avoid their obligations and sanctions; and
- BUSINESSSEUROPE claims that the proposal is “*disproportionate*” and putting “*a heavy administrative burden on companies*”.

The matter is now to be looked at by the Council of Ministers, under the co-decision procedure.

HOTREC does not see the need for additional legislation at Community level on top of existing national rules and fears that the current proposal would impose disproportionate sanctions and add costs and red tape for employers – especially for SMEs.

❑ **European works council – recast to be adopted soon**

As reported in *Live from Brussels N°43* and *N°44*, in July 2008, the European Commission proposed (COM(2008) 419) to replace the 94/45/EC Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

In December 2008, the European Parliament adopted, in first reading, a legislative resolution on the proposal. In line with the suggestions by the social partners ETUC (trade unions), BUSINESSEUROPE, UEAPME (crafts and SMEs) and CEEP (public employers), the Parliament introduced more precise definitions of the terms “consultation” and “information”. The “transnational” nature of matters was clarified to now encompass decisions taken in one Member State only, but that may potentially affect the workers in another Member State.

However, no clarification was brought in relation to the obligation that the competent European workers’ and employers’ organisations be informed of the composition of the “special negotiating body” and of the start of the negotiations: it is not clear yet whether the European sectoral employer and employee organisations (e.g. HOTREC and EFFAT) and/or the global European employer and worker organisation are to be informed.

The Commission proposal and the European Parliament resolution are now being examined by the Council of Ministers. A rapid adoption is expected as the text has been already widely discussed in tripartite meetings of the Institutions.

HOTREC is following 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)

□ **New skills need for jobs in the hospitality sector until 2020**

In the course of 2008, Directorate General Employment, Social Affairs and Equal Opportunities of the European Commission launched a large project entitled “*Comprehensive sectoral analysis of emerging competences and economic activities in the European Union*”, entailing studies for 16 sectors of economic activities. The study in relation to the hospitality sector was conducted by the Oxford Research Institute (Denmark). It is scenario-based (Marco Polo, body shop, sunny beach, asceticism) and is backward-looking in order to facilitate forward-looking.

On 29 and 30 January 2009, an expert workshop was held in Brussels where the findings of the study were presented and discussed with experts of the industry. On the basis of the discussions and comments during the workshop, the consultant will finalise his report and present a revised version of the study to the Commission.

A dissemination conference, bringing together EU Institutions, experts and social partners, will be held at the end of the year to present the results of the overall project, covering 16 sectors.

HOTREC was very well represented at the workshop, with experts from the National Associations from Austria, France, Hungary, Lithuania and Spain. HOTREC will disseminate the final version of the study and inform its National Associations of the details of the final conference as soon as available.

SMEs POLICY

□ **Small Business Act: adoption of conclusions by the Council**

Following the adoption by the Commission in June 2008 (see *Live from Brussels N°43*) of its “Small Business Act” (SBA) for Europe (COM(2008) 394 final), the Competitiveness Council adopted on 1 December 2008 its conclusions on the matter.

The Council conclusions are composed of broad political statements, such as the recognition of the fundamental role of SMEs in contributing to economic growth and the need for better regulation, or a call upon the Member States and the Commission to “*promote the SBA at the highest political level, ensure its efficient implementation*” and “*ensure an effective and coherent application*” of the SBA.

The conclusions also approve the ten principles contained in the Commission SBA (e.g. improving access to finance, a more supportive regulatory environment for SMEs, less red tape, etc). The Council also adopted an action plan, which is annexed to its conclusions, calling for, among others:

- Less burdensome accounting requirements for SMEs;
- Consistent application of the “Think Small First” principle.

However, besides these political statements, the Council conclusions fail to take concrete steps towards a tangible implementation of the SBA.

As 99% of the hospitality industry is composed of SMEs, HOTREC welcomes the Council conclusions on the Small Business Act. HOTREC, however, regrets that they do not contain any binding mechanism to ensure that the principles applauded by the Council will effectively be implemented. In particular, the lack of binding objectives for the application of the “Think Small First” principle or for the inclusion of “SME test” in all impact studies conducted by the Commission are important shortcomings.

□ **Statute for a European Private Company: additional requirements**

As explained in *Live from Brussels N°43* and *N°44*, 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 proposal for a new European private company statute (Societas Privata Europaea - SPE), as tabled by the Commission, offers several advantages from a SME-friendly point of view, in particular in terms of minimum capital requirement (1€), location of the registered office, internal organisation and registration formalities.

The Commission proposal is currently being discussed both in the Council and in the European Parliament. In the European Parliament, the Legal Affairs (JURI) Committee adopted on 19 January 2009 its report on the proposal, in which it proposes to impose additional requirements for the formation of a SPE, such as:

- The need for a company to have a “cross-border” component in order to qualify as a SPE;
- The need for a company either to provide a solvency-test or to fulfil the requirement of a minimum capital of €8,000; and

- Specific rules on employee participation (in order to avoid the circumvention of existing rules on employee participation).

The same requirements are currently discussed in the Council, where unanimity will be needed. While the EP is only consulted, its opinion is nonetheless likely to influence the debate in the Council. The EP final opinion is now expected by March 2009, while the Council should reach an agreement by the end of the Czech Presidency of the EU.

As SMEs represent 99% of the hospitality industry, HOTREC and its Member Associations welcome the initial Commission proposal which can be of great help for the hospitality industry. Following the adoption of the draft report by the JURI Committee, HOTREC hopes that the Council will not water-down the initial Commission proposal, thus making the SPE less attractive for the majority of SMEs.

STATISTICS

□ Tourism statistics

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

- Tourism trends in Europe and in Mediterranean partner countries 2000-2006, Statistics in Focus 95/2008
- Air passenger transport in Europe 2007, Statistics in Focus 1/2009
- Key figures on supply and use of tourist accommodation in the European Union, 2007, Data in Focus 50/2008

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

http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1073,46587259&_dad=portal&_schema=PORTAL&p_product_code=KS-SF-08-095 (Tourism trends in Europe and in Mediterranean partner countries 2000-2006, English and French versions)

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-001/EN/KS-SF-09-001-EN.PDF (Air passenger transport in Europe 2007)

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-08-050/EN/KS-QA-08-050-EN.PDF (Key figures on supply and use of tourist accommodation in the European Union, 2007)

The UNWTO (World Tourism Organisation) released the following publications concerning the current developments in international tourism:

- UNWTO World Tourism Barometer, Volume 6, No. 3, October 2008
- UNWTO World Tourism Barometer, Volume 7, No. 1, January 2009

The publications can be downloaded in English via the following link:
<http://unwto.org/facts/eng/barometer.htm>

HOTREC GENERAL ACTIVITIES

□ 58th HOTREC General Assembly

The 58th HOTREC General Assembly took place on 6-7 November 2008 in Prague.

The General Assembly discussed the latest developments in relation to fire safety, food labelling, reduced VAT rates, standards, copyright, consumer contracts, etc.

Mr. Alexander Wiedow, Director for Indirect Taxation within DG TAXUD of the European Commission, discussed with the participants the state of play in relation to reduced VAT rates. Mr. Xavier Durieu, Secretary General of EuroCommerce, gave an overview on the latest developments in relation to payment systems. Mr. Ludger Fisher, Policy Advisor of UEAPME, shared the views of his association on the issue of food labelling. Ms. Aurora Abad, Policy Advisor of Comité Européen des Entreprises Vins (CEEV) was invited to present the activities of the European wine industry within the European Alcohol Forum.

The General Assembly elected Mr. Kent Nyström as new President of HOTREC for the next two years. Mr. Bernd Geyer, who stepped down from this post at the end of 2008, was awarded with the title of HOTREC Honorary President.

The HOTREC Executive Committee is currently composed as follows:

Kent Nyström (Sweden)	President
Joan Gaspart Solves (Spain)	Vice President
Susanne Kraus-Winkler (Austria)	Treasurer
Didier Chenet (France)	Member
Marinus Cordesius (The Netherlands)	Member
Ákos Niklai (Hungary)	Member
Evalda Šiškauskienė (Lithuania)	Member

A Seminar on hotel review sites was held in connection to the General Assembly, continuing the dialogue launched by HOTREC with such sites.

The 59th HOTREC General Assembly will take place on 7-8 May 2009 in Stockholm and the 60th on 5-6 November 2009 in Barcelona.

The full press release issued after the Prague meetings can be accessed on www.hotrec.eu, under the section “News & Publications”.

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Previous issues of *Live from Brussels* are available on the HOTREC website www.hotrec.eu under the section “News & Publications”.