



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

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Main EU developments over the last 3 months of interest to the hotel, restaurant and café sector

HOTREC represents the hotel, restaurant and café industry at European level. The sector counts 1,7 million businesses, with almost 92% of them being micro enterprises employing less than 10 people. The micro and small enterprises (having less than 50 employees) represent more than 99,5% of businesses and make up 62% of value added. The industry provides some 9,5 million jobs in the EU alone. HOTREC brings together 43 National Associations representing the interest of the industry in 36 different European countries.

STANDARDS **3**

- ISO TC 228 INTENSIFIES WORK ON ACCOMMODATION** **3**
- ISO TC 228 PLENARY MEETING TO BE HELD IN ITALY** **3**
- CEN TOURISM STAKEHOLDERS MEETING** **4**
- CEN LAUNCHES STUDY ON THE IMPLEMENTATION OF SERVICE STANDARDS** **5**

HEALTH AND FOOD **5**

- FOOD LABELLING: ADOPTION OF THE 2ND READING EP REPORT** **5**
- EUROPEAN ALCOHOL AND HEALTH FORUM** **7**

HOTEL CLASSIFICATION **8**

- HOTELSTARS UNION RECEIVED APPLAUSE FROM EUROPEAN COMMISSION AND PARLIAMENT** **8**

CONSUMER AFFAIRS **9**

- CONSUMER RIGHTS DIRECTIVE: TOWARDS A 1ST READING AGREEMENT?** **9**

<i>TOURISM</i>	10
<input type="checkbox"/> FOLLOW-UP OF THE COMMISSION COMMUNICATION ON TOURISM	10
<i>TAXATION</i>	11
<input type="checkbox"/> PROPOSAL FOR A COMMON CONSOLIDATED CORPORATE TAX BASE	11
<input type="checkbox"/> ECJ RULING ON PROVISION OF FOOD FOR IMMEDIATE CONSUMPTION	12
<input type="checkbox"/> IMPLEMENTING REGULATION CLARIFYING THE VAT DIRECTIVE	13
<i>COPYRIGHT</i>	13
<input type="checkbox"/> COMMISSION STRATEGY ON INTELLECTUAL PROPERTY: TO BE RELEASED VERY SOON	13
<input type="checkbox"/> COPYRIGHT TERM EXTENSION: BACK ON THE AGENDA?	14
<i>DIGITAL ISSUES</i>	14
<input type="checkbox"/> HOTEL REVIEW PROVIDERS REPLIED TO HOTREC'S UPDATED PRINCIPLES	14
<i>SOCIAL AFFAIRS</i>	15
<input type="checkbox"/> HOTREC RESPONSE TO THE SECOND PHASE CONSULTATION ON WORKING TIME	15
<input type="checkbox"/> LEGISLATIVE PROPOSAL ON SEASONAL WORKERS	16
<input type="checkbox"/> MATERNITY LEAVE DOSSIER STUCK IN THE COUNCIL	17
<i>SUSTAINABILITY</i>	18
<input type="checkbox"/> HOTREC TASK FORCE ON SUSTAINABILITY	18
<i>STATISTICS</i>	19
<input type="checkbox"/> AGREEMENT ON THE DRAFT REGULATION ON TOURISM STATISTICS	19
<input type="checkbox"/> RECENT STATISTICAL PUBLICATIONS	19
<i>HOTREC GENERAL ACTIVITIES</i>	19
<input type="checkbox"/> NEXT GENERAL ASSEMBLY	19

The previous issues of Live from Brussels are available under the following link:

http://www.hotrec.eu/pages/news_publications/live_from_brussels/

STANDARDS

□ ISO TC 228 intensifies work on accommodation

In the recent months, **proposals for new standardisation projects at ISO level have multiplied in the field of accommodation.**

As reported in the latest issue of *Live from Brussels*, the Secretariat of ISO TC 228 circulated for voting by correspondence a proposal by the Turkish Standards Institution (TSE) to establish a Working Group (WG) to develop an ISO standard on “*Environmental Friendly Accommodation Establishments*”. The majority of the national standardisation bodies voted in favour of this project, therefore, a first Working Group meeting will be held on this topic on 19 May 2011 in Viterbo, Italy.

Furthermore, on 11 April 2011, two other proposals were submitted for a vote by correspondence, both signed by the International Hotel and Restaurant Association (IHRA). One of the projects relates to the **development of standards on “Quality criteria for lodging” and the other one to standards on “Security and risk management for lodging facilities”**. Voting on the establishment of the respective Working Groups is open until 23 May 2011. The vote on the project proposals (of which no details are available yet) is closing on 11 July 2011.

On 13 April, another proposal affecting the accommodation industry was put on the table by the Spanish standardisation body (AENOR). According to the project proposal, **standards on “Service provision requirements in accommodation establishments” shall be elaborated**. Regarding the draft already available, this project is a comprehensive standard proposal, **touching upon inter alia hotel classification, quality and safety related issues**. Voting by the national standardisation bodies on the establishment of the Working Group is open until 18 May 2011. The vote on the project proposal is closing on 13 July 2011.

HOTREC was surprised that, contrary to its previous position, IHRA now initiated proposals to develop international standards in the field of accommodation. It has to be stated clearly that there is no support from the vast majority of the European hospitality industry for the development of ISO standards covering accommodation and catering services.

The current Business Plan of ISO TC 228 is clearly stating that “ISO TC 228 will seek to avoid controversial fields of tourism, such as the classification of accommodation and catering, and concentrate on areas where there is support and consensus for development.” With regard to the above mentioned proposal by AENOR, it is specifically touching upon the field of classification, which is a field to ‘be avoided’.

Furthermore, HOTREC is of the opinion that the recently proposed projects are at least partly overlapping. This is creating confusion and demonstrates that it is not necessarily the interests of the hospitality industry which are taken into account.

□ ISO TC 228 plenary meeting to be held in Italy

The 6th annual plenary meeting of ISO Technical Committee (TC) 228 on “*Tourism and related services*” will take place on **20 May 2011 in Viterbo, Italy.**

The draft agenda includes an update on the standardisation activities of the various working groups active 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;
- WG 7: Adventure tourism;
- WG 8: Yacht harbours;
- WG 9: Industrial tourism;
- WG 10: Environmentally friendly accommodation establishments.

Furthermore, the 3 new projects proposed in April (see article above) will be presented in the meeting as well.

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 TC 228. The current Business Plan of TC 228 indicates that the Technical Committee “will not address standards development” for accommodation, catering, travel agents and tour operators “without the express support of the industries concerned”, acknowledging that “work cannot realistically proceed” in areas where cooperation by the tourism industries, represented by Liaison bodies, is withheld. 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 covering accommodation and catering services.

HOTREC considers that the development of standards in relation to the hospitality sector should remain fully market-driven: initiatives should come from the industry and be based on commercial considerations as well as on proper business impact assessments.

□ CEN Tourism stakeholders meeting

On 23 February 2011, the European Committee for Standardisation (CEN) held a tourism stakeholder meeting as a follow-up to the seminar on “Standardization in the tourism sector”. The purpose of the meeting was to further discuss possible standardisation activities on specific topics with the stakeholders concerned, including HOTREC.

In the conclusion of the meeting **CEN acknowledged that currently there is not a clear demand from stakeholders to go ahead on projects concerning tourism services / hotel classification and fire safety**. However, CEN will go ahead with the development of “*Guidelines on accessibility in tourism services*” soon. It is also possible that CEN could develop standardisation activities in relation to skills and competences, in the context of the implementation of the actions proposed by the European Commission in its 2010 Communication on Tourism.

Besides the above specific items, **tourism industry stakeholders reiterated their views with regard to the still existing difficulties in relation to the standardisation process**, i.e. high costs of participating in the work, lack of proper industry consultation and the specific situation of SMEs, which form the major part of the tourism industry.

HOTREC was invited to participate in this stakeholder meeting and presented the views of the European hospitality industry. HOTREC drew the attention to the complexity of the field of

accessibility, where apparently even at national level there are often problems to achieve consensus. With regard to fire safety, HOTREC pointed out the success of the MBS methodology elaborated by its members with the involvement of all stakeholders.

□ CEN launches study on the implementation of service standards

CEN has launched a study on the implementation of European service standards and their impact on service providers and users in January 2011. **The overall aim of the study is to provide concrete data with specific examples on the way in which existing European standards have been used and highlight their impact on service providers and users.**

According to CEN, several studies have been carried out recently in order to try to study the feasibility and need for standardisation in different service sectors and to provide an overview of past and current standardisation activities on services at national, EU and international levels. Nevertheless, these studies hardly concentrate on the actual implementation and use of these standards and the actual benefits they have brought to specific service providers and users. The present study should fill this void.

The study will be carried out on a period of 12 months and will concentrate on those European standards which have been published by CEN before January 2008. The study will be published once it has been finalised in December 2011.

HOTREC will follow carefully the developments on service standardisation, as the hospitality industry might be subject to European standards as well. However, there is presently no support from the vast majority of the European hospitality industry for the development of standards covering accommodation and catering services. The same view is shared by other stakeholders, as confirmed in the CEN Tourism stakeholders meeting in February 2011 (see article above).

HEALTH AND FOOD

□ Food labelling: adoption of the 2nd Reading EP report

Following the official adoption on 21 February 2011 of the Council Common Position on the proposed Regulation on food information to consumers ([COM\(2008\) 40 final](#)), the European Parliament officially started its second reading in March 2011. The proposed Regulation is of major concern to the hospitality sector. If adopted as initially drafted by the European Commission, it would require catering establishments serving “non-prepacked food” to provide, for each item on their menus, the same information that has to be displayed on the labels of packaged foods, unless Member States were to adopt national rules to exempt “non-prepacked food” from the mandatory requirements (“opt-out” approach).

In the European Parliament, MEP Sommer (EPP, Germany), who is still the Rapporteur in second reading, drafted a new report for the ENVI Committee (Environment, Public Health and Food Safety). This report was discussed on 16 March and over 300 amendments were submitted to that report.

On 19 April 2011, the ENVI Committee finally voted on the Sommer draft Report. As regards the issue of “non pre-packed food” (i.e. restaurant meals), the ENVI Committee decided to reject most of the additional exemptions proposed by the Rapporteur and to follow the position of the Council. These additional exemptions for non pre-packed food seem to have only been supported by the

members of the EPP group, because they were massively rejected by the members of the other political groups.

The common approach of the ENVI Committee and of the Council for non pre-packed foods can be summarised as follows:

- **Allergen information will be mandatory** at EU level;
- The “opt-in approach” has been retained for the other elements listed in Art. 9 and 10, meaning that **the provision of information other than allergens is not mandatory at EU level, unless Member States decide to require the provision of these elements;**
- **Member States can adopt national rules concerning the “means through which” the information has to be made available and “where appropriate, their form of expression and presentation”.** This means that Member States could decide that allergens information can be given orally or by other means. The door would be open to national solutions.

The text voted by the ENVI Committee will be submitted to the Plenary session of the European Parliament by July 2011 at the latest. In the meantime, informal trilogue meetings between the European Parliament, the Council and the Commission will take place in order to secure a 2nd reading deal before the formal adoption of the report by the Plenary. The Parliament needs an absolute majority of its Members to adopt its final 2nd reading legislative resolution in Plenary.

HOTREC regrets that the ENVI Committee finally departed from its first reading position, which largely excluded “non-prepacked food” from the scope of the proposal as well as from all mandatory labelling requirements, and decided to follow the Council position on the matter. If this “opt-in” solution proposed by the Council and the ENVI Committee for non pre-packed food is still a considerable improvement by comparison with the original Commission proposal, it nonetheless fails to take into consideration the constraints of restaurants, cafés and similar establishments serving “non-prepacked food”.

HOTREC remains of the opinion that “non-prepacked food” should be completely excluded from the scope of the Regulation. Restaurants, cafés and similar establishments serving “non-prepacked food” should not be subject to the same labelling requirements as large food processing companies. Meals served by restaurants are not standardised products. Furthermore, even the solution of limiting mandatory information to allergens would be de facto unworkable. The list of allergens is very long and includes basic ingredients that are used in most recipes. As indicated by the European Parliament itself, the risk of cross-contamination is, unfortunately, unavoidable in restaurants, where chefs have to prepare at the same time, in the same kitchen, with limited working areas, various dishes containing commonly used ingredients, which may be potential allergens (eggs, milk, fish, nuts, cereals, etc. and their derived products).

The decision whether to adopt rules on “non-prepacked food”, including with regard to allergens, should continue to be a matter for Member States, in accordance with the principle of subsidiarity. The provision of information in relation to meals prepared and served locally should not be regulated at EU level, as it has no impact on the functioning of the internal market.

For all these reasons, HOTREC continues to advocate for a full exclusion of “non-prepacked food” from the scope of the Regulation.

□ European Alcohol and Health Forum

On 8 April 2010, the European Alcohol and Health Forum held its 8th plenary meeting. This Forum was set up in 2007 by the European Commission as one of the key actions to implement the “*EU Alcohol strategy to support Member States in reducing alcohol-related harm*” ([COM\(2006\) 625 final](#)). The Forum brings together European associations (and their members) that are willing to take self-binding and verifiable actions (so-called “commitments”) to reduce alcohol-related harm. Members of the Forum include representatives of economic operators (alcohol producers, advertising agencies, retailers, hospitality, etc.), consumers, medical professions and health NGOs. The agenda of the 8th plenary meeting included:

- Procedural issues (membership requests);
- Discussions on labelling of alcoholic beverages and alcohol related harm at the workplaces; and
- Examples of good practices in server training, with the example of a partnership between Diageo, the city of Copenhagen and some night establishments serving alcohol.

Addressing the Forum, Ms. Testori Coggi, Director General of DG SANCO (Health and Consumers), stressed that “*the EU’s policies are all targeted to raise competitiveness of the EU economy. To succeed, the EU needs to focus on healthy workplaces, as alcohol consumption reduces productivity*”. The chair of the EAHF, Ms. Despina Spanou, Principal Adviser to Ms. Paola Testori Coggi, also stressed that, within the forum, too many members have inactive commitments and this situation should change. The European Commission will therefore continue to put pressure on these organisations

The next Alcohol Forum’s meeting will take place on 19 October 2011. Further information on the Forum is available on DG SANCO’s [website](#). It will soon include the summary report of the 8th plenary meeting.

HOTREC attended the plenary meeting and commented the project developed jointly by Diageo, the City of Copenhagen and some hospitality establishments serving alcohol. This project called “A Safer nightlife partnership” involves a voluntary server training certification scheme to fight against irresponsible drinking. HOTREC and its national associations consider that such multi-stakeholders and multi-component approach is very positive to establish proper cooperation with interested parties. For this reason, such projects could be of interest to some HOTREC national associations. However, HOTREC stressed that similar projects already exist in other countries (e.g. Sweden, the Netherlands, and Switzerland). Moreover it is important to adapt to particular circumstances and local needs and conditions, as problems and issues evolve over time and depend of various local factors.

HOTREC is a member of the Forum since 2008, together with the British Beer and Pub Association, the Finnish Hospitality Association and the Swedish Hotel and Restaurant Association. Details on the commitments by HOTREC and its members can be found on the [HOTREC website](#).

HOTEL CLASSIFICATION

□ Hotelstars Union received applause from European Commission and Parliament

On 1 March 2011, HOTREC presented to the EU institutions, in a seminar held in the European Parliament, its successful initiative towards a harmonised hotel classification in Europe, the [Hotelstars Union](#).

Mr. Kent Nyström, President of HOTREC, explained to the EU representatives how the hotel industry of various neighboring **countries took the initiative to find a common ground for the creation of a common classification system**, “with the aim of opening it up to other countries in Europe, which are also seeking to increase the quality and enhance the marketing of their hotel sector.”

First, **Mr. Antonio Preto, Head of Cabinet of Commission Vice-President Antonio Tajani**, congratulated HOTREC on behalf of his Commissioner “for the *outstanding achievement in harmonising hotel classification criteria in Europe*”. Mr. Preto added that the Hotelstars Union is a “*remarkable industry-driven initiative and brings clarity and comparability to hotel offers in Europe*”. He further emphasised that such a common classification system is “*an important tool when promoting Europe as a single destination*”, one of the main objectives of Vice-President Tajani in the building of the new framework for a true European tourism policy. Mr. Preto was convinced that **the Commission’s objective, to ensure competitiveness of the European tourism sector, could only become reality if it follows a ‘bottom-up approach’, i.e. initiated and driven by industry**. Therefore he urged HOTREC to continue its endeavours and share the results with the Commission.

The MEP Rapporteur on the 2010 Commission Communication on Tourism, **Mr. Carlo Fidanza**, also complimented **this initiative**, “*which will certainly bring a real European added value*”. In his view “*any top-down initiative in hotel classification would be the wrong approach, given the diversity of Europe and of its hotel classification systems*”. Therefore, Mr. Fidanza underlined the importance of taking into account diversity of offer across Europe when setting common criteria.

Another important development in the life of the Hotelstars Union was the establishment of a **self-evaluation tool on its [website](#)**. Hoteliers, who are not yet participating in the hotel classification, have the possibility to find out how many stars the own hotel would receive, if it gets classified under the Hotelstars Union classification system. The test classification is free and non-binding – the hotelier enters his characteristics and receives a preliminary result conditionally of his correct data input. It will also be displayed, which additional criteria must be fulfilled to reach the next star category. The test classification provides for more transparency for the hoteliers and reduces possible constraints.

The common hotel classification system of the Hotelstars Union is based on a total of 270 single criteria; a combination of minimum criteria per category and facultative criteria are to be met to collect the required points. These criteria have been developed on the basis of representative guest surveys and, therefore, match the expectations and requirements of the guests. Accordingly, the catalogue of criteria puts emphasis on the areas of quality management, wellness and sleeping comfort. The hotelstars of the partnership integrate also a linking function between the real hotel product and its virtual image on the internet. A step in this direction is taken with the criteria regarding the informative value of hotel websites and an invitation to provide hotel reviews on the web.

CONSUMER AFFAIRS

□ Consumer rights Directive: towards a 1st Reading agreement?

As explained in previous issues of *Live from Brussels*, the aim of the proposal for a Directive on consumer rights ([COM\(2008\) 614/3 final](#)) is to review, simplify and improve the coherence of the consumer contract regulatory framework through the incorporation into one set of rules of four existing Directives. Two of them are relevant to the hospitality industry: the distance selling Directive (97/7/EC) and the unfair contract terms Directive (93/13/EEC).

This proposal is relevant to the hospitality industry as it intends to regulate distance contracts for the sale of services (including hospitality services) as well as the lawfulness of contract terms. Three issues are particularly relevant:

- A proposed list of unfair contract terms which are prohibited;
- A ban on pre-ticked opt-in boxes for payments in consumer contracts; and
- The existence of derogations to the right of withdrawal and to the provision and confirmation of pre-contractual information, as far as accommodation and catering service contracts sold at distance are concerned.

The text is currently being discussed in both the European Parliament and the Council under the ordinary legislative procedure. Following the informal compromise reached in the Council on 24 January 2011, the IMCO Committee (Internal Market and Consumer Protection) adopted on 9 February its report on the proposal. The Rapporteur, Mr. Schwab (EPP, Germany) supported the exemption to the right of withdrawal for accommodation and catering service contracts concluded at distance. However, some voted amendments would have made almost impossible the conclusion of hotel contracts by telephone or by email each time a payment was required in advance.

On 24 March 2011, the European Parliament finally amended in Plenary session the IMCO report on the proposed Directive. The compromise amendments which were voted were supported by all political groups. The European Parliament Plenary also decided to refer back the amended text to the Committee, in order to try to reach a compromise in first reading with the Council.

The amended text of the EP proposes to keep the current exemption to the right of withdrawal for hotel/restaurant contracts concluded at a distance. However, it suggests that hotel/restaurant contracts concluded at a distance should be subject to the extensive rules on the mandatory provision of pre-contractual information. These rules contain an exhaustive list of information to be provided to the consumer (name and address of the trader, price inclusive of all taxes, complaint handling policy, etc.). **Moreover, this information would have to be provided on a durable medium**, either when the reservation is made or, at the latest, when the consumer reaches the hotel/restaurant. **The definition of durable medium includes emails and websites**, providing that this information cannot be unilaterally altered by the trader. In addition, each time the consumer has to make a pre-payment when concluding a contract by electronic means, specific requirements should be met when the contract is not negotiated individually (i.e. when using a fully automatized reservation system). Finally, the new text includes new rules on pre-contractual information for services contracts concluded on-premises. These provisions would cover hotel/restaurant contracts.

Informal trialogue meetings will now take place between the EP representatives, the Council and the Commission to try to reach a deal, which would avoid a second reading. The Hungarian presidency of the EU already indicated its will to try to reach a deal with the EP, on the basis of the informal compromise reached by the Member States in January. **Concerning the existing derogations granted to the hospitality industry, it seems that both the EP and the Council could be in agreement to keep the exemption to the right of withdrawal, but to lift the exemption to the mandatory confirmation of information on a durable medium.** A compromise between the European Parliament and the Council could be reached by the end of May or June 2011.

HOTREC and its national associations welcome the amendments to the IMCO report that were voted in Plenary session. HOTREC also considers that the existing derogation to the confirmation of information on a durable medium should be maintained. Given the specific nature of hotel room or catering contracts, the highly perishable nature of the services provided by the hospitality industry, and the widespread use of bookings made by phone, such derogation is essential for hospitality establishments in Europe. HOTREC hopes that these realities will be taken into consideration during the informal trialogue meetings between the EP, the Council and the Commission.

TOURISM

□ Follow-up of the Commission Communication on Tourism

The European Commission specifically requested HOTREC's collaboration in relation to various actions announced in the Communication on Tourism of June 2010, such as the CALYPSO programme, Quality and ICT platform. In April 2011, the Commission, DG Enterprise in particular, has also sought HOTREC input on action 5 of the Tourism Communication: the improvement of professional skills and competences.

HOTREC, together with the European Trade Unions Association, EFFAT, had therefore the opportunity to present to the Commission's officials their Qualifications and Skills Passport project (QSP) in the hospitality sector.

The Commission very much welcomed the QSP project as an agreed instrument amongst social partners of different countries, which aims at enhancing mobility within the EU, increasing transparency of qualifications and better matching demand and offer in the tourism sector. DG Enterprise is in fact considering to support financially the continuation of the QSP project in the context of the implementation of the tourism Communication.

Meanwhile, the Rapporteur, MEP Carlo Fidanza (EPP, Italy) released the EP draft [own initiative report](#) on the Tourism Communication. MEPs have put forward a total of [246 amendments](#) to the report which will be voted by the Transport and Tourism (TRAN) Committee on 24 May 2011. The vote by the European Parliament Plenary session will take place on 22 June 2011.

A high-level European Tourism Stakeholder Conference on “*Sustainable and responsible tourism as a contributor to quality of life*” will be held in Budapest on 11-13 May. The Conference is organised by the Hungarian Presidency of the European Union in collaboration with the European Commission. Unfortunately for HOTREC, the Conference will take place at the same time as its 62nd General Assembly. Please see here the [programme](#) of the Conference.

HOTREC will continue its collaboration with DG Enterprise of the European Commission in the next months, with a clear message of ensuring the full inclusion of the interests of SMEs of the hospitality sector in the implementation of the actions envisaged in the Communication. The recognition of bottom-up approach experiences promoted by the private sector and the overall objective of boosting the competitiveness of the European hospitality industry must be granted.

*HOTREC welcomes the Fianza draft report as a positive contribution towards the definition of a true tourism policy in Europe. However, HOTREC is concerned about point 17 of the report, which asks the Commission “to promote a specific initiative to harmonise gradually the accommodation classification systems [...] in close collaboration with standardisation bodies”. HOTREC takes the view that more attention should be given to the voluntary, industry and bottom-up approach adopted by HOTREC and its member associations over the last years in relation to hotel classification in Europe. In particular, HOTREC considers it essential that the European Parliament expresses its support to the **Hotelstars Union** initiative (www.hotelstars.eu).*

HOTREC also expressed doubts about the opportunity and feasibility to integrate the quality and ecological criteria into a single European label of quality (point 16 of the report). Furthermore, parameters of quality management of services and the ecological performance are not the same and should be kept separate to avoid confusing consumers.

HOTREC amendments on these provisions have been put forward by some MEPs of the TRAN Committee. HOTREC will monitor the outcome of the vote in the TRAN Committee and Plenary.

TAXATION

□ **Proposal for a Common Consolidated Corporate Tax Base**

On 16 March 2011, the [European Commission released](#) its proposal for a [Directive on a Common Consolidated Corporate Tax Base \(CCCTB\)](#). The proposal is offering an optional alternative corporate taxation format available to all companies, which are recognised in the EU Member States, independently of whether they carry out activities in only one or in several countries. However, the **main aim of the proposal is to facilitate cross-border activities** (e.g. hotel and restaurant chains) by reducing administrative and fiscal burdens thanks to the application of only one tax system instead of several ones.

If the Commission proposal is adopted as such, all companies in all Member States would have the choice between being taxed under the national rules (like today) or under the system offered by the proposal.

The proposal lays down the rules for the calculation of the CCCTB, but does not propose any harmonisation of tax rates. With regard to the corporate tax rates, **Member States will still be free to decide on the setting of the rates**, including the possibility to apply a different corporate tax rate for companies working within the CCCTB than for those working with the national systems.

The Directive sets the rules for the calculation of the CCCTB, taking into account, among others, the followings:

- deductible and non-deductible expenses (e.g. **50% of entertainment costs shall not be deductible**);
- rules on depreciation (e.g. buildings will have a useful life time of 40 years)

- calculation of losses (in case of a group, profits and losses of group members will be consolidated – corporate tax is only to be paid if this result is positive);
- principles of share of the consolidated tax base between the group members;
- determination of the tax year.

The proposal will have to be adopted by the Council by unanimity, following the non-binding opinion of the European Parliament.

HOTREC will follow the discussions on this proposal as the European hospitality industry is especially concerned about the limitation to the deductibility of entertainment expenses to 50%. HOTREC believes that all costs which occur for the sake of the businesses shall be deductible to 100%. It would not be fair vis-à-vis bona fide businesses not to allow them accounting fully their accommodation and catering expenses occurred for business purposes. Such a regulation would make businesses think twice about which hospitality services to make use of, which might cause damage to the European hospitality enterprises.

□ ECJ ruling on provision of food for immediate consumption

On 10 March 2011, the European Court of Justice delivered its [judgement on joint cases](#) related to the supply of food for immediate consumption from snack stalls or mobile snack bars and party catering services.

One of the main questions was whether the sale of food or meals prepared for immediate consumption could be regarded as a supply of goods or rather as a supply of services.

The ECJ ruled that the **supply of food or meals freshly prepared for immediate consumption is a supply of goods if the elements of supply of services preceding or accompanying the supply of the food are not predominant.**

The other main question referred to the ECJ was whether the term ‘foodstuffs’, as one of the goods to which in all Member States a reduced VAT rate may be applied, only covers foodstuffs typically sold in grocer’s shops, or also food for immediate consumption prepared by boiling, grilling, roasting, baking, or other means.

The ECJ confirmed that the term **‘foodstuffs’ must be interpreted as also covering food and meals, which have been prepared for immediate consumption by boiling, grilling, roasting, baking or other means. Therefore, they are also eligible for reduced VAT rate.**

Given the concrete examples in the court cases, mobile snack bars selling e.g. hot-dogs, or cinema foyers selling e.g. popcorn, fulfil the criteria of “supply of goods” and within that supply of “foodstuffs”, to which in all Member States a reduced VAT rate may be applied. According to the ECJ, in the given examples the provision of accompanying services (e.g. the heating of the food, which is done continuously and not at the request of a single customer, like in restaurants; the provision of a table at mobile snack bars) are not outweighing the main element of the overall transaction, namely the provision of the food.

HOTREC takes note of this judgement. As mobile snack bars offering food for immediate consumption are competitors of restaurant establishments, this judgement may even more call for a reduced VAT rate to restaurant services in all Member States in order not to disadvantage restaurant establishments offering freshly prepared food for immediate consumption with additional services.

□ **Implementing Regulation clarifying the VAT Directive**

On 16 March 2011, the Council of Ministers formally adopted, in a non-legislative procedure, an [implementing Regulation](#) clarifying some aspects of the VAT Directive, defining exactly, inter alia, the scope of accommodation services to which a reduced rate may apply and **defining exactly what restaurant and catering services shall mean.**

With regard to accommodation services, Article 43 of the Regulation clarifies that "Provision of holiday accommodation" – as referred to in point (12) of Annex III of Directive 2006/112/EC as a type of service to which in all Member States a reduced VAT rate may be applied – "*shall include the hiring out of tents, caravans or mobile homes installed on camping sites and used as accommodation.*" Accommodation provided in hotels and similar establishments is already clearly mentioned in the VAT Directive.

With regard to services supplied to taxable persons "*by intermediaries, acting in the name and on behalf of another person consisting of the intermediation in the provision of accommodation in the hotel sector*", the place of taxation shall be the place where the recipient is established. If the recipient is a non-taxable person, the place of supply of this intermediary service shall be the place where the transaction is supplied, says Article 31 of this Regulation.

With regard to catering services, article 6 of the Regulation clarifies that "***Restaurant and catering services mean services consisting of the supply of prepared or unprepared food or beverages or both, for human consumption, accompanied by sufficient support services allowing for the immediate consumption thereof. The provision of food or beverages or both is only one component of the whole in which services shall predominate.***

Restaurant services are the supply of such services on the premises of the supplier, and catering services are the supply of such services off the premises of the supplier.

The supply of prepared or unprepared food or beverages or both, whether or not including transport but without any other support services, shall not be considered restaurant or catering services within the meaning of the previous paragraph".

This Regulation shall apply from 1 July 2011.

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□ **Commission strategy on intellectual property: to be released very soon**

The European Commission is currently working on its future strategy in relation to intellectual property. **According to the latest available information, this strategy should be presented in the form of a Communication that would be officially adopted by the Commission on 18 May 2011.** This Communication should, in principle, explain the Commission's strategic vision that will guide all its activities in the field of intellectual property in general, from patent protection to trademarks, from counterfeiting to copyright, etc.

The Communication should contain a specific chapter on copyright, with a particular focus on the creation of a comprehensive framework for digital copyright and on how to make the single market a reality for artistic works protected by copyright and available online. It should therefore provide details on the legislative proposal the Commission intends to submit by

the summer in relation to the governance and licensing practices of collecting societies. Most likely this chapter on copyright should mostly address the legal issues faced by works protected by copyright and available online in the single market. It should also cover other aspects of copyright such as private copying and the length of performer's and producers' rights.

The hospitality industry has been voicing for years concerns over the management of collecting societies and their licensing practices. The Commission's focus on collective management in this Communication is therefore an important development for the hospitality industry. Nevertheless, HOTREC, which is currently working on the issue with other trade associations members of the Copyright Users Platform (CUP), fears that the scope of this initiative would be restricted to the problem faced by online distribution of work protected by copyright, thus leaving aside the long standing problems faced by the hospitality industry when negotiating licenses with collecting societies for "offline" uses. HOTREC, therefore, considers that this aspect should also be covered by this Communication and then by the upcoming legislative instrument.

□ **Copyright term extension: back on the agenda?**

As explained in *Live from Brussels N°47*, the debate on the Commission proposal to extend the term of copyright protection for European music performers and record producers ([COM\(2008\)464 final](#)) was frozen since the middle of 2009, as a few countries firmly opposed the Commission proposal and the European Parliament opinion ([P6_TA\(2009\)0282](#)) in first reading and as it was not really clear whether proponents of the proposal could overcome a blocking minority in the Council.

However, the issue was re-introduced by the Hungarian presidency of the EU on the agenda of the Council at working party level on 14 April 2011, as it seems that some Member States (Denmark and the Czech Republic) could possibly review their position and start supporting the text voted by the European Parliament two years ago. Currently, in the EU, music performers and record producers rights are protected for 50 years following the first publication of their work. According to the EP text, the term of copyright protection for music performers and record producers would be extended to 70 years (instead of 95 years as in the Commission proposal). The EP text also proposes to reflect on a similar extension for the audiovisual sector.

As an important right-user, the hospitality industry is very concerned about this proposal. HOTREC firmly believes that an extension of the copyright term will inevitably increase the huge amount of fees already being paid by the hospitality industry, while doing little to improve concretely the situation of artists. 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. Given the strong opposition of all right-users to this measure, HOTREC regrets that this issue is being put again on the agenda of the Council.

DIGITAL ISSUES

□ **Hotel review providers replied to HOTREC's updated principles**

Online reviews have become an indispensable tool for both hoteliers and their guests. However, in order to increase reliability and to realise even more mutual benefits, HOTREC intensified its dialogue with hotel review providers and also revised its 10 principles in December 2010. **Some of the biggest review providers (among others TripAdvisor, HolidayCheck, HRS) responded to HOTREC's call to evaluate themselves on how they comply with HOTREC's proposed principles in their functioning. The replies can be found on [HOTREC's website](#).**

HOTREC initiated the dialogue with hotel review sites in November 2007, inviting them to discuss together along which principles such sites should operate in order to allow for reliability and transparency for the travel community. The final aim is the provision of true, clear and useful information for travellers.

HOTREC welcomes the willingness of some main hotel review providers to participate in this dialogue it has initiated. HOTREC appreciates to see that most of the providers recognise the HOTREC principles as a good basis for discussion and that they are more or less adjusting their functioning into the direction of the proposed principles.

SOCIAL AFFAIRS

□ HOTREC response to the second phase consultation on working time

On 21 December 2010, the European Commission adopted a Communication launching the second-phase consultation of the social partners on the possible content of EU action regarding the working time rules. The Commission also asked social partners whether they were willing to enter into negotiations on all or part of the issues raised in the Communication.

The 2 main options for a possible review of the working time rules established by the Commission are either a focused or comprehensive review (for more details please see *Live from Brussels N° 52*).

In its [response](#) to the second-phase consultation of the social partners, HOTREC stressed that it favours a focused review of the working time rules, rather than a comprehensive review. The first option will consist in proposing new solutions focused on the questions of “on call-time” and “compensatory rest”. Furthermore, HOTREC stressed that it does not regard sectoral level negotiations at EU level as necessary on this matter.

In its reply paper, HOTREC also commented on some of the following issues raised by the Commission:

- *On call time:* HOTREC considers that when workers are provided with accommodation at the workplace or near it, only periods spent actually responding to a call should be counted as working time;
- *Greater flexibility for new working patterns:* HOTREC is of the opinion that flexibility of working time is crucial for the maintenance of the service within the hospitality sector. It is important that working time patterns allow the possibility for the employer to have workers at work when needed;
- *Work life balance for new demographic changes:* HOTREC supports the principle of reconciliation of work and family life. However, patterns of work in the hospitality sector depend heavily on the changing demand for services, as seasonality plays a big role in the sector. It is not always to the employer to decide when and how much the workforce is needed. Therefore, to achieve harmony between work and family life should not pose unnecessary restrictions to employers’ fundamental right to supervise and arrange work;
- *Opt-out:* HOTREC considers it essential to keep the opt-out provision.

HOTREC will monitor the next developments in this area. HOTREC is of the opinion that flexible working time arrangements and the need to adapt to the new developments in the “world of work” are crucial for the hospitality sector.

❑ **Legislative proposal on seasonal workers**

The Commission proposal for a Directive on the conditions of entry and residence of third country nationals for the purposes of seasonal employment ([COM \(2010\) 379 final](#)) is being analysed at the moment by the Council and the European Parliament under the ordinary legislative procedure.

The proposal aims at establishing a common procedure for entry and residence of third country seasonal workers in the EU. According to the Commission, “seasonal workers” are defined as *third-country nationals* (non-EU citizens) coming to an EU Member State for the purposes of *employment in a sector of activity dependent on the passing of the seasons* (typically in agriculture, horticulture and tourism).

The proposal establishes the conditions for admission of non-EU seasonal workers, amongst others, a valid work contract or a binding job offer, a valid travel document, evidence of having or having applied for sickness insurance, sufficient resources during his/her stay; etc. (article 5). However, the text does not create a right to admission of third country nationals (TCN), as it remains the right of the Member States to determine the number of seasonal workers to be admitted to their country.

The following provisions are also contained in the Commission proposal:

- Seasonal workers will be issued a visa or residence permit allowing them to work for a maximum period of 6 months. Such strict limitation is aimed at ensuring that workers are employed for work that is genuinely seasonal and not for regular work;
- Employers are required to provide evidence that the seasonal worker will have appropriate accommodation during his/her stay “*that ensures an adequate standard of living*”

On 4 April 2011, Claude Moraes (S&D, UK), Parliamentary Rapporteur for this dossier, released a [working document](#) on the legislative proposal. The Rapporteur welcomes the proposal in general and favours the maximum period of stay of 6 months for the seasonal worker. MEP Claude Moraes, however, points out that:

- Consideration should be given to identifying specifically which sectors should be covered by the Directive due to their link with seasonal factors;
- It will be important to clarify what an “*adequate standard of living*” means as this provision varies from country to country. Clarification on who provides the accommodation and how it should be paid for is also needed.

MEP Claude Moraes is expected to present his draft report on the proposal on 15-16 June. The deadline for amendments is foreseen for mid-July.

HOTREC will monitor the upcoming discussion in the EP on the proposed Directive on seasonal employment. HOTREC generally welcomes the proposal for a Directive as the text establishes, for the first time, clear rules for the admission of non-skilled third country nationals and can help to avoid the exploitation of non-skilled illegal workers. HOTREC is of the opinion that seasonal

workers should be welcomed in the EU to deal with shortages in certain sectors of activity like the tourism industry.

❑ **Maternity leave dossier stuck in the Council**

A Commission proposal for a Directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding is currently being dealt with by the European Parliament and the Council under the ordinary legislative procedure.(see previous issues of *Live from Brussels*)

The Commission suggests, amongst others, to extend the minimum period of maternity leave to 18 weeks (14 under the current Directive), 6 of which would have to be taken after the birth. Maternity allowance should be 100% of the full monthly salary, though this provision is not made mandatory.

On 20 October 2010, the Plenary session of the European Parliament adopted its first reading [legislative resolution](#) on the Estrela (S&D, Portugal) Report. A large majority of MEPs voted in favour of introducing 20 weeks maternity leave on full paid. However, MEPs adopted amendments adding that, when family related leave is available at national level, the last four weeks of the 20 may be regarded as maternity leave and must be paid at least 75% of salary. MEPs also voted in favour of introducing a new provision on a 2 weeks full paid paternity leave for workers whose life-partner has recently given birth.

The Parliament legislative resolution is currently being analysed by the Member States within the Council. No agreement could be reached under the Belgian Presidency (July 2010-December 2010) as the majority of the Ministers considered that the amendments adopted by the Parliament, notably the one that request the extension of maternity leave to 20 weeks on full pay do not constitute an appropriate basis for negotiations. They also expressed concern about the cost implications of this extension. Many ministers were also reluctant to include paternity leave within the scope of the draft directive.

The Belgian Presidency concluded that the Commission original proposal aiming to extend the minimum length of maternity leave from 14 to 18 weeks could be a more acceptable basis for a compromise than the European Parliament amendments.

Discussions within the Council continue under the current Hungarian Presidency.

HOTREC supports measures on work-life balance and protection of working women who are pregnant, have recently given birth or are breastfeeding. Nevertheless, HOTREC is of the opinion that an excessive regulation in this area will add financial costs and additional burdens on SMEs. The compulsory extension of maternity leave to 20 weeks with full pay and the introduction of 2 weeks paid paternity leave would entail additional burdens in the majority of the Member States, where the situation in relation to maternity and paternity leave varies greatly.

HOTREC shares the opinion of BUSINESSSEUROPE, according to which extra rules in the field of maternity protection might discourage employers from recruiting young women and could have a negative impact on employment possibilities for women.

SUSTAINABILITY

□ HOTREC Task Force on Sustainability

On 16 February 2011, HOTREC held its first meeting of its new Task Force on Sustainability chaired by Ms. Susanne Kraus-Winkler, Vice President of HOTREC. The main objective of this Task Force will be to define HOTREC long-term strategy and positioning in the area of sustainability and demonstrate HOTREC's commitment in this area to the external audiences.

This first meeting was devoted to define the new Task Force's scope of action, list of working areas and to have an initial discussion on HOTREC's position on several legislative and non-legislative issues.

The participants to the meeting decided that the appropriate approach to sustainability should not only be purely environmental, but also economic, in order to take into account the return on the investment done by industry to become more sustainable.

With regard to the working/policy areas, it was decided that the new Task Force will monitor developments in the following areas: energy efficiency & renewable energy, environmental labels, waste management, water supply, food supply & biodiversity, climate change, carbon footprint, new technologies related to guests (such as the obligation to provide plugs for electric cars in hotels), awareness raising campaigns, etc.

The Task Force will also look into business experiences and best practices amongst HOTREC members, which should constitute the basis for any HOTREC action in this field. Indeed, it was decided that the Task Force will prepare a sort of "Best practices catalogue", which would be a compilation of successful examples of sustainable industry behaviour.

There have been some recent policy developments, which will certainly be discussed, amongst others, in the next meeting of the Task Force to be held on 31 May 2011:

- [The Energy Efficiency Action Plan 2011](#): The Commission adopted on 8 March 2011 this plan for saving more energy through concrete measures. The text is a strategy paper that sets out ideas for binding measures to enhance energy efficiency. In a few months legislative proposals with very concrete binding measures will follow. The energy efficiency action plan is a step forward for the European Union to meet its objective of 20% energy savings by 2020.
- [A Roadmap for moving to a Competitive Low Carbon Economy in 2050](#): The Commission also adopted on 8 March 2011 this roadmap for transforming the EU into a competitive low-carbon economy by 2050. The paper describes the cost-effective pathway to reach the EU's objective of cutting greenhouse emissions by 80% below 1990 levels by 2050. The Commission invites the European Institutions, Member States and stakeholders to take this plan into account in the further development of EU, national and regional policies to achieving the low carbon economy by 2050.

STATISTICS

□ Agreement on the draft Regulation on tourism statistics

On 30 March 2010, the European Commission released a draft Regulation on European Statistics on tourism ([COM\(2010\) 117 final](#)), which will be formally adopted soon.

The proposal suggests the replacement of the current Directive 95/57/EC and **includes inter alia the introduction of the net occupancy rate of rooms and also a more precise breakdown on tourist expenditure** by requiring data on expenditure spent on accommodation. Information on same-day visits will also have to be provided to Eurostat, including figures on expenditure in restaurants.

The final draft of the text takes note of the importance of Tourism Satellite Accounts (TSAs) and urges the Commission to continue with pilot studies for the development of TSAs, which is also promoted by Eurostat. As a last change to the Commission proposal, Council and Parliament finally agreed to include also data to be provided by the national statistical offices on the number of establishments having bedrooms accessible for persons with reduced mobility, including wheelchair users, for the first time in 2015.

The Council and the European Parliament now reached a first reading agreement on the proposal. [MEPs voted on the compromise text](#) on 6 April 2011 and the Council will also formally adopt its decision soon. The first reference period concerning the delivery of the data in the Regulation will start as of 1 January 2012, unless specified otherwise.

HOTREC submitted its position to both the Council and the European Parliament. HOTREC regrets the non-inclusion of the figure RevPAR in the future Regulation, but appreciates most of the changes, inter alia the encouragement for the development of TSAs. HOTREC now takes note of the agreement reached by Council and Parliament.

□ Recent statistical publications

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

- [Summer season tourism trends in 2010](#), Statistics in Focus 19/2011;
- [Slow recovery of the tourist accommodation sector in 2010](#), Statistics on Focus 6/2011.

HOTREC GENERAL ACTIVITIES

□ Next General Assembly

The 62nd HOTREC General Assembly will take place in Zurich on 12-13 May 2011.

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