

Live

FROM BRUSSELS

Issue N° 37 17 April 2006

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PAYMENTS

□ *Payments within the EU soon easier and cheaper?*

On 12 April 2006, the European Commission presented its preliminary findings of a sector inquiry into payment cards. According to the executive summary of the interim report, “*there is evidence of price dispersion at 5 levels:*”

- *Businesses in some countries pay much higher merchant fees on average than in others;*
- *Businesses pay a far higher merchant fee on average to accept credit than debit cards;*
- *Businesses pay a far higher merchant fee on average to accept cards issued in the international networks than cards issued in the domestic networks;*
- *International payment systems make smaller businesses pay more than larger ones;*
- *Businesses in some sectors pay much higher merchant fees on average than in others. For instance, florists, restaurants and car rental firms pay a merchant fee twice that of fuel companies and wholesale trade firms.”*

Although the executive summary refers only to florists, restaurants and car rental, according to graph 18 of the report, hotels are also amongst the sectors paying the highest average MSCs (*merchant service charge – a merchant is defined as the entity which accepts payments by means of cards*).

The Commission has launched a consultation on the basis of this interim report. The consultation document is available through the following link: http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/financial_services/feedback_form.doc. The replies have to be sent back to the following email address: comp-bank-inquiry-feedback@cec.eu.int before 21 June 2006. They will be published unless confidentiality is specifically invoked.

The press release of the Commission concludes with the following remark: “*A final report will be published by the end of 2006. The Commission will explore possible remedies to problems identified with national competition authorities, regulators and industry participants.*» At the press conference held to present the preliminary results of the enquiry, Commissioner Nellie Kroes called “*on the banking industry to come forward with innovative, constructive solutions*”. She also warned the banking industry that “*if the consultation ultimately confirms a need for competition enforcement, we will act*”.

It is not the first time that the European Commission is applying EU competition rules to credit cards: in 2002 (see *Live from Brussels N°25* of 20 September 2002), it brought VISA to review its multilateral interchange fees (MIF) for cross-border payments. Further decisions at national level, e.g. in the UK and the Netherlands, have confirmed infringements of national competition laws. More recently, in January 2006, HOTREC’s German member, Hotelverband Deutschland, together with the German commerce association, filed a complaint with the German antitrust office against the interchange fees imposed by VISA and MasterCard.

In parallel to its actions under competition rules, the European Commission proposed in December 2005 a Directive “*on payment services in the internal market*” (COM(2005)603final).

The aim is to make cross-border payments – by credit card, debit card, electronic bank transfers, direct debit and other means – as easy, cheap and secure as “national” payments within the Member States. The end result should be savings of about 3% of EU’s GDP currently spent on payment costs.

HOTREC welcomes the Commission report on payment cards and has invited its member associations to respond to the consultation open until 21 June 2006. As demonstrated by the report, restaurants and hotels are particularly hit by the fees charged for accepting payments by means of cards.

HOTREC and its member associations also welcome the other efforts to improve payment services in the internal market. Some Austrian colleagues, however, drew attention to the fact that as Article 50 of the proposed Directive limits the loss of the payment user to 150€, in case of use of a lost or stolen card, banks will tend to only guarantee payments with debit cards up to a maximum of 150€. Payments in hotels and restaurants with debit cards could then be made more rare.

SERVICES DIRECTIVE

- *From Bolkestein to McCreevy – amended Commission proposal for a Services Directive*

On 4 April 2006, the European Commission adopted an amended proposal (COM(2006) 160) for a Directive on services in the EU single market. The proposal largely reflects the European Parliament’s vote of 16 February 2006, which was summarised in *Live from Brussels N°36*. Under the new Commission proposal, the main points to be highlighted are:

- it will become easier to set up a business anywhere in the EU: companies will be able to complete all formalities online and through a single point of contact in the host country’s administration. Authorisation schemes must respect specific conditions;
- substitution of the country of origin principle with a “freedom to provide services”, which has been copied almost word by word from the Parliament’s amendment. Essentially, this means that companies providing cross-border services must respect the rules of the host country but, in return, these rules should be non-discriminatory, necessary, and proportional;
- exclusion of labour law from the Directive’s scope;
- continued encouragement to improve transparency in service provision, including as far as hotel classification is concerned, and the development of voluntary standards for services.

The main political groups in the Parliament have expressed satisfaction with the Commission’s amended proposal, which will now be debated and voted on in the Council of Ministers. The Commissioner for the internal market, Charles McCreevy, has expressed hope of reaching a final agreement between the EU institutions by the end of the year. As the so called co-decision procedure applies, the Council of Ministers and the Parliament must agree on a common text.

Although some have criticised the amended Commission proposal for being a watered-down version of the original one, HOTREC welcomes it as it is likely to facilitate a swift adoption of the Services Directive, which should have a positive impact on growth and employment. Increased cross-border trade in services and economic activity in general is also likely to benefit the hospitality industry indirectly.

We regret nonetheless that the concerns of the hospitality industry in relation to European standards for services have not been listened to. As long as the standardisation bodies do not reform their working methods in the direction of increased transparency and consultation with industry, they should not be mandated to develop service standards.

STANDARDISATION

- *Will HOTREC be able to avoid the development of international standards for the hospitality sector? And if so, for how long?*

As explained in previous issues of *Live from Brussels*, the creation of a new field of activities for ISO (International Standards Organization) in relation to “*Tourism and related services*” was approved in January 2005 on the basis of a proposal by AENOR (the Spanish standardisation body). Subsequently, a new technical committee TC 228 was established and its Secretariat was allocated to AENOR and INNOPRI (Tunisian standardisation body). The first meeting of TC 228 took place in Tunis on 27-28 March 2006.

The main topics on the agenda were:

1. Amendments of the scope of the TC (in view of the many comments received in relation to the initial scope agreed by correspondence);
2. Skeleton of a business plan;
3. Work programme.

Most of the discussions focused on the revision of the scope. As no agreement on this issue could be found, a Task Force was set up to continue the work. It is to meet in Madrid on 1 June 2006.

HOTREC was represented at this meeting by its President, Bernd Geyer, and its Chief Executive, Marguerite Sequaris. Several European hospitality industry representatives were also part of their national standardisation body delegation.

Most of these industry representatives and the delegations of the standardisation bodies of their countries fought vigorously at this first meeting of TC 228 to have the hospitality industry excluded from the scope of the Committee but their views did not prevail. Their efforts were supported by the representatives of EFCO&HPA (European association of camping sites), HOTREC, IH&RA and NORMAPME (European association of small businesses). However, with their Liaison status implying no voting rights, these associations have limited influence on the debates.

For the reasons explained in its position paper of October 2005, available on www.hotrec.org, HOTREC opposes the developments of standards at European and international level by CEN and ISO respectively. “The need for standardisation of services, in particular hospitality services, is not as obvious as it is for goods. Hospitality services are generally custom-made and tailored to the customer. This is very different from goods where, for instance, the diameter of a tap must correspond exactly to the diameter of the tube it has to adjust to. In relation to our services, 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.”

Furthermore, HOTREC and its member associations call upon all standardisation bodies to review their working methods. “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. The development of standards does not need to be “encouraged” by public authorities at whatever level, national, European or international. Nor should the standardisation bodies - at whatever level - take own initiatives in this field. They are there to offer their methodology in case the industry needs it.”

FIRE SAFETY

□ *Fire safety in hotels heating up again!*

The European Commission is once again tackling the issue of fire safety in hotels. The Directorate General for Health and Consumer Protection (DG SANCO) is organising a meeting of the relevant stakeholders (national experts, consumer group and fire rescue services representatives as well as tour operator and hospitality representatives) on 27 April 2006 in Brussels. The aim is to assess the application of the Council Recommendation 86/666/EEC on fire safety measures in hotels adopted in 1986 as well as to discuss a revision of the technical guidelines annexed to this document.

The agenda of the meeting also includes a possible review of existing data collection systems as well as the discussion of a potential pilot project on hotel fire statistics.

Already in 2003, HOTREC participated in a consultation on the revision of the technical guidelines annexed to the Recommendation mentioned above. In its reply, HOTREC stressed the need to differentiate between accidents that occur in hotels and accidents that occur in other types of tourism accommodation.

HOTREC welcomes the idea of a pilot project on hotel fire statistics, as it will demonstrate that hotels are very safe.

In this matter, as in many other areas of interest to the hospitality sector, HOTREC calls for the principle of subsidiarity to be fully respected. HOTREC is convinced that – as stated in a report published by the Commission in 2001 on the application of the 1986 Recommendation – a recommendation remains the best legal instrument in this area.

HOTREC will participate in the stakeholder meeting with a delegation of two national experts and present its views according to the position agreed by all its member associations.

COPYRIGHT

□ *Copyright users' conference in Brussels, 20 June 2006*

HOTREC, along with six other European associations representing industries which make great use of works protected by copyright, are organising a copyright conference on Tuesday 20 June (afternoon) in Brussels. The aim is to highlight the concerns of copyright users in relation to the present system of collective rights management. Members of the European Parliament, copyright experts from the European Commission, and representatives from the Member States will be invited to discuss the need for reform with the industry stakeholders.

The following organisations stand behind the conference:

ACT – Association of Commercial Television;

AER – Association of European Radio;

EBU – European Broadcasting Union;

ECCA – European Cable Communications Association;

EICTA – European Information and Communications Technology Industry Association;

PEARLE – European League of Employers' Associations in the Performing Arts Sector;

HOTREC – Hotels, Restaurants, and Cafés in Europe.

A full conference programme should be available in a few weeks. Please contact the HOTREC Secretariat if you are interested in attending the conference.

TOURISM

□ *A renewed European tourism policy*

At the occasion of the European Conference on "*Tourism - Key to Growth and Employment in Europe*", which took place in Vienna on 21 March 2006, Commission Vice President and Commissioner for Enterprise and Industry, Mr. Günter Verheugen, presented a Commission Communication entitled "*A renewed EU Tourism Policy : Towards a stronger partnership for European Tourism*". The Commissioner had already presented an outline for this document at the occasion of the European Tourism Forum in Malta in October 2005.

The main elements of the new policy are:

- Better regulation: tourism-related legislation will be part of the better regulation process cutting red tape, simplifying rules and improving impact assessments;
- More policy-coordination: tourism will be integrated in all related Community policies and policy initiatives affecting tourism. Tourism stakeholders will be regularly consulted;
- Improved use of available European financial instruments: tourism will continue to benefit greatly from the financial support offered by the various European financial instruments (e.g. European Regional Development Fund, European Cohesion Fund, European Structural Fund, etc.);
- “A European Agenda 21 for Tourism” to promote tourism sustainability: by 2007, the Commission will present a proposal for an Agenda 21, based on input from the Tourism Sustainability Group, composed of tourism stakeholders;
- Better information on the dimension of tourism industry: harmonised as well as more detailed statistics and data should be made available in a timely manner;
- Better promotion of European destinations: e.g. the involvement of tourism-related SMEs in the hosting of cultural and sporting events held in Europe;
- Improving the visibility of tourism: promotion through events organised by the EU Presidencies and the annual European Tourism Forum.

The Commission Communication can be found through the following link:

http://europa.eu.int/comm/enterprise/services/tourism/commission_communication/communication.htm

In addition, the Commission has financed the creation of a new European Tourist Destinations web portal called “Visit Europe” (www.visiteurope.com) to promote EU destinations, as many tourists see Europe as a single destination. It includes practical information about Europe, such as travel planning (transportation, weather and calendar) or recommendations on “where to go” and “what to do” and links towards national web sites.

After the Malta Tourism Forum in October 2005, HOTREC had sent comments on the outline for the Communication. HOTREC is pleased to find the key messages confirmed in the final text. HOTREC welcomes the initiatives announced and hopes for an effective and successful application of these in practice.

SOCIAL AFFAIRS

- ***Working time Directive: European Court rules that financial compensation cannot substitute for minimum paid leave***

On 6 April 2006, the European Court of Justice ruled (Case C-124/05) that the four week minimum period of paid annual leave, as provided for in the working time Directive (2003/88), cannot be replaced by an allowance *in lieu* when carried over to a subsequent year. The Court’s ruling was made at the request of a Dutch court in the context of proceedings between the Netherlands Federation of Trade Unions and the Netherlands State.

According to Dutch law, employees cannot waive their entitlement to the minimum period of paid annual leave in return for compensation. However, it is possible for them to carry forward to a subsequent year, in agreement with the employer, days of minimum paid leave which they have not used. In a subsequent year, these saved up days of paid leave can be “sold” to the employer in exchange for cash. During the deliberations of the Dutch Parliament on this possibility, the Government argued that personal responsibility had to be left to employers and employees, who could be expected to act in a responsible manner.

The Court of Justice ruled, however, that the possibility of financial compensation in respect of unused days of minimum leave in a subsequent year would create an incentive for employees not to take leave. The creation of such an incentive is incompatible, in the Court’s view, with the working time Directive’s aim of guaranteeing better protection of the health and safety of workers. The Court argued notably that: *“The entitlement of every worker to paid annual leave must be regarded as a particularly important principle of Community social law from which there can be no derogations...”*

It should be noted that the Court acknowledged that the carrying forward *per se* of days of minimum paid leave to a subsequent year is permissible under Community law. But these days must, according to the Court, be taken as rest in a later period, not exchanged for cash.

HOTREC is following the negotiations for amending the working time Directive which have been taking place since the Commission issued its proposal in 2004. The question of paid leave has not been an important issue in those negotiations. HOTREC has, however, argued that flexibility should be maintained with regard to the calculation of maximum weekly working time and the individual opt-out. The Council of Employment Ministers will next address the working time Directive at its meeting on 1-2 June 2006.

□ ***Posting of workers – Commission issues new guidelines***

On 4 April 2006, the European Commission issued a Communication (COM(2006)159) providing guidelines on the implementation of Directive 1996/71 on the posting of workers. This Directive from 1996 applies to companies which post workers temporarily in another Member State in order to carry out a specific service. The objective is to make sure that the posted workers benefit from certain protective rules in the country of posting. These rules include in particular:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates (exception possible when period of posting is less than one month);
- health, safety, and hygiene at work.

While the Directive makes clear that the law applicable to the employment contract is that of the country where the company is established, the rules of the country of posting apply to the areas identified above. It is the country of posting’s responsibility to ensure that its law is upheld. The Commission has found, however, that certain control measures in the Member States make the process of posting workers unnecessarily burdensome for companies. The Communication therefore sets out guidance, based on the European Court of Justice’s case law, as to which measures are justified or proportionate, and which are not.

The Commission concludes that:

- it is disproportionate of Member States to ask that foreign companies have a representative domiciled in the host country. The appointment of a foreman among the posted workers, who can act as the link between the foreign company and the labour inspectorate, should suffice;
- rules which make the posting of workers subject to systematic prior control, including authorisation or registration, are disproportionate;
- Member States have the right to request a declaration from the foreign company as to the number of workers posted, the type of service they will provide, how long the work will take, and the place where it will be performed;
- Member States have the right to demand of the foreign company that it keeps certain documents at the workplace, such as time sheets or documents on conditions of health and safety.

The Commission also points out that the information provided by Member States, e.g. via dedicated websites, on employment conditions for posted workers could be improved. This would be of help to companies before they take a decision to post workers in a given country.

The objective of the posting of workers' Directive is to facilitate cross-border delivery of services while making sure that employment conditions in the host country are upheld. It is good to have a clear set of rules for how this should work in practice. The temporary posting of workers in other Member States will probably become increasingly common as the internal market for services becomes a reality (see article above on the Services Directive).

□ ***Free movement of workers – what will happen to the temporary restrictions?***

As the EU expanded to include ten more Member States on 1 May 2004, the Accession Treaties allowed the “old” Member States (EU-15) to apply temporary restrictions on the free movement of workers coming from the new Members (except Cyprus and Malta). The restrictions could be used until 2011 at the latest but would be subject to an evaluation in 2006. Except Ireland, UK, and Sweden, all the EU-15 put restrictions into place.

Two years later, the question is whether more of the EU-15 Members will lift their restrictions or not. As reported in *Live from Brussels N°36*, the European Commission published a report in February 2006 which showed that the inflow of workers to the three countries with open labour markets had been beneficial. The EU-15 have until 30 April 2006 to notify their intentions to the Commission.

On the basis of press reports, the situation seems to be the following among the EU-15:

- Maintain open regime: Ireland, Sweden, and UK will maintain open labour markets;
- Open labour market on 1 May 2006: Finland, Portugal, and Spain;
- Open labour market on 1 January 2007: The Netherlands (but decision postponed until end of 2006, in the face of resistance within the Dutch Parliament);
- Progressive opening until 2009: Belgium, Denmark, and France. The latter has indicated it will begin by opening specific sectors which experience labour shortages, among which hotels and restaurants;

- Maintain restrictions: Austria, Germany, Italy;
- Undecided: Italy, Greece.

HOTREC supports the free movement of workers and would encourage a swift opening of the labour markets in all EU countries. Given the skill shortages which prevail in many countries' hospitality industry, more cross-border mobility would be a welcome boost.

FOOD AND HEALTH

□ *Food labelling should not apply to restaurants!*

The Directorate General for Health and Consumer Protection (DG SANCO) of the European Commission has recently launched a process of global reassessment of EU labelling rules. Of utmost importance to the hospitality sector are the rules dealing with ingredients present in foodstuffs, including allergens, nutrients, GMOs, the origin of beef, etc.

A consultative document has been published as a basis for future discussions with stakeholders and should be replied to by 16 June 2006. This document can be found through the link:

http://europa.eu.int/comm/food/food/labellingnutrition/betterregulation/competitiveness_consumer_info.pdf

HOTREC appreciates the dialogue launched by the Commission on the issue of food labelling and the possibility to present its views. Any extension of food labelling obligations to restaurants would not be appropriate. Mandatory labelling would cause unbearable difficulties for restaurants.

So far, the Commission has always confirmed that the EU labelling rules are only applicable to the delivery of "foodstuffs as such", with the consequence that these rules "do not apply to food supplied by mass caterers to their customers where such foods have been prepared or processed". HOTREC believes that this approach should be maintained.

HOTREC will send written comments to the Commission after having agreed on a common position among its member associations at its next General Assembly in April 2006.

HOTREC will have the opportunity to present its position in a meeting of the Advisory Group on the Food Chain and Animal and Plant Health, scheduled for 19 May 2006.

□ *Obesity – high on international and European agendas!*

As reported in previous issues of *Live from Brussels*, the EU Action Platform on Diet, Physical Activity and Health - of which HOTREC is a member - is pursuing its work, actively seeking to increase its members' initiatives and actions in their fight against obesity. The next plenary meeting of the EU Platform will take place on 12 May 2006 in Brussels.

The EU Action Platform is also looking at the developments at international level: it organised on 13 March 2006, a joint meeting with WHO (World Health Organisation) in order to discuss the possibilities of public-private partnerships and to promote synergies for common action on the prevention of obesity.

Furthermore, the EU Platform is establishing closer transatlantic links. A joint EU-US transatlantic conference on “*Good practices: Action on Diet, Physical Activity and Health*” is scheduled to take place on 11 May 2006 in Brussels.

The WHO is also clearly increasing its efforts in the field of obesity. Not only is it currently working on its second Action Plan for Food and Nutrition Policy (first action plan dates back to 2000) aimed at assisting Member States in developing national food and nutrition action plans. It is also preparing a European Ministerial conference on counteracting obesity to take place from 15-17 November 2006 in Istanbul in order to raise political awareness and commitment and to promote international and intersectoral collaboration in fighting obesity. It is expected that the European Member States of the WHO will adopt a European Charter on obesity providing political and public health guidance in counteracting obesity.

HOTREC will monitor closely the developments at international and European level and shall continue to participate in the meetings of the EU Action Platform. HOTREC continues to believe that - as stated by the Commission in its health reflection paper of 15 July 2004 - “whether or not people eat healthy food or practice sports is a matter of personal choice”. This choice cannot be regulated at any level. The authorities can only raise awareness, educate and facilitate the dissemination of good practice. Because eating habits and lifestyles vary to a large extent with geography and cultures, solutions can only be suggested at national level.

□ ***Bars responsible for abuse of alcohol?***

As reported in *Live from Brussels N°36*, Directorate General for Health and Consumer Protection (DG SANCO) of the European Commission is currently preparing a Communication on a European strategy for alcohol. The document is due to be published in mid-2006.

In parallel to these developments at European level, work in the field of alcohol is also taken forward at international level. The WHO (World Health Organisation) organised on 8 March 2006 an open stakeholder consultation meeting in its Geneva headquarters with representatives of the alcoholic beverages industry and other sectors involved on the issue of public health problems caused by harmful use of alcohol.

Of special interest to the hospitality sector was the discussion of the appropriate role of the industry in reducing the harmful use of alcohol. The following measures to be envisaged in relation to the hospitality industry were suggested:

- lay out of bars and restaurants so as to enable staff to see and control the premises (no "vertical drinking boxes");
- training & licensing of bartenders, bouncers, serving staff (cutting off service before intoxication; discouraging violence, using non-violent methods);
- licensing standards for place and staff;
- provision of alternatives to dangerous means of getting home (e.g. driving).

The WHO Expert Committee on Alcohol is expected to be convened later in 2006 in Geneva and should thereafter prepare recommendations on effective policies and interventions combating the harmful use of alcohol.

HOTREC attended the consultation meeting and welcomed the opportunity offered by WHO to exchange views on the issue of alcohol in the framework of a constructive dialogue. However, HOTREC regretted the somewhat unbalanced representation of stakeholders, being the only retail association represented at the meeting. HOTREC will continue monitoring developments on the issue at international as well as European level.

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