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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange**

(presented by the Commission)

{SEC(2007) 743}

{SEC(2007) 744}

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

#### € **Grounds for and objectives of the proposal**

The proposal is a result of a review of Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

Since the adoption of Directive 94/47/EC there have been major developments in the market place, the most significant being the offer of new products, similarly marketed and economically broadly similar to timeshare, in the sense that there is a substantial payment upfront, followed by payments linked to the later actual use of holiday accommodation (on its own or in combination with travel). These products fall outside the scope of Directive 94/47/EC. The evasion of regulation by these products has created substantial problems for consumers and legitimate businesses, as evidenced by the number of complaints submitted to European Consumer Centres, consumer organisations and other public authorities.

Data suggests that complaints relating to timeshare are declining. This is a strong indication that many of the problems consumers faced before the adoption of the Directive have been solved. Nonetheless, a large number of consumer complaints remain, most of which relate to the new products, such as holiday discount clubs and to resale contracts.

#### € **General context**

On 13 April 2000, the Council adopted Conclusions on the implementation of Directive 94/47/EC. In order to assist the Commission in submitting a proposal amending the Directive, the Conclusions listed a number of elements that could usefully be taken into consideration in reviewing the Directive.

The European Parliament in its Resolution of 4 July 2002 recommended that the Commission takes action to resolve the problems of consumers of timeshare products, while guaranteeing them the highest level of protection.

The Conclusions and the Resolution have been taken into consideration in the proposal.

The Commission, in its Communication on the "Consumer Policy Strategy 2002 - 2006" foresaw the review of Directive 94/47/EC. The proposal is included in the Commission's rolling programme for up-date and simplification of the acquis communautaire and its Work and Legislative Programme (COM (2006)629 Final under the reference 2006/SANCO/038).

#### € **Existing provisions in the area of the proposal**

Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the

purchase of the right to use immovable properties on a timeshare basis.

This proposal is complementary to existing EU law, in particular the Unfair Commercial Practices Directive (2005/29/EC) (UCP) which will be applicable by 12 December 2007. The problems generated by aggressive or misleading marketing practices are expected to be curbed by UCP. However UCP does not provide for a right of withdrawal or a ban on deposits, which are key elements of the protection provided by Directive 94/47/EC. Such contractual rights can only be conferred to consumers by extending Directive 94/47/EC's scope.

#### **€ Consistency with the other policies and objectives of the Union**

The Commission has launched a comprehensive review of the Consumer Acquis comprising 8 directives including Directive 94/47/EC. A Green Paper was adopted on 8 February 2007. The Green Paper sets out several options for the reform of the consumer acquis. These options include a mixed approach based, on the one hand, on a horizontal instrument that would update in a systematic fashion the common aspects of the acquis (e.g. definitions) and, on the other hand, the vertical revision of some sector specific aspects of the directives. As regards timeshare, this vertical revision involves essentially a modification of the definitions and scope of Directive 94/47/EC in order to cover new holiday products as well as clarifying and updating the provisions on requirements for the content and language of the consumer information and the contract.

Given the urgency of the problems faced by consumers, in particular in relation to resale and the new products, the revision of Directive 94/47/EC has become a priority and is the subject of the present proposal.

## **2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **€ Consultation of interested parties**

#### *Consultation methods, main sectors targeted and general profile of respondents*

The main stakeholders were consulted in meetings in 2004-2006 and in three written consultations in 2006. In February 2006 a comprehensive questionnaire of both regulatory and data-related issues was circulated to Member States and stakeholders.

The issues subject to consultation were also discussed in the meeting of the standing working group of Member States experts on the Review of the Acquis in March 2006.

The Commission published a consultation document on its website on 1 June 2006 and invited interested parties to contribute by 15 August 2006. The Commission received more than 100 contributions from all relevant parties, including 14 Member States, one EEA EFTA State, industry and consumer stakeholders, enforcement authorities and lawyers. The replies are available at the website [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/timeshare/index\\_en.htm](http://ec.europa.eu/consumers/cons_int/safe_shop/timeshare/index_en.htm)

On 19 July 2006 the Commission organised a workshop with broad participation from stakeholders and Member States.

In July 2006, a second questionnaire, which sought views on the impacts of a possible vertical revision and data on administrative burden, was published on SANCO's website.

Throughout the consultation, the Commission minimum standards for stakeholder consultation were upheld.

#### Summary of responses and how they have been taken into account

The consultation confirmed that there are serious consumer problems related to long-term holiday products and resale mediation and to a lesser extent related to timeshare and exchange.

There are, however, divergent views on the scale of the problems and how to address them. Most Member States, consumers and other stakeholders support a revision. By contrast, most of the organised European timeshare industry opposes a revision of Directive 94/47/EC, arguing that that Directive is not the right place to regulate the new products, or that better enforcement, self-regulation and consumer information would address the problems.

The Commission considers that in general the consultation has confirmed the need to tackle the problems and that it is appropriate to extend the scope of the Directive.

A majority of stakeholders was in favour of an update of the information requirements in the prospectus and contract and the introduction of provisions ensuring that the consumer's attention is drawn to the right of withdrawal. The proposal provides for such provisions.

Article 6 of the Directive bans advance payments during the withdrawal period. The Member States have transposed this provision, although the consequences arising from infringements of the provision differ from country to country, and some Member States allow, to some degree, third-party deposits. Also, different interpretation of the provision in the Directive, has led to divergence in national legislation regarding the situation where the withdrawal period is extended. In some Member States the ban only applies to the normal withdrawal period.

The timeshare industry advocates the lifting of this ban, arguing that it hampers business, that it dissuades international brand-name hotel chains from investing in timeshare and that it triggers the creation and sale of products which fall outside of the scope of the Directive. The timeshare industry believes that the consumer's commitment to the contract would become stronger as a result of the deposit (i.e. the consumer would be more reluctant to withdraw). This would allow timeshare businesses to organise their enterprise better with fewer consumers' withdrawing. Alternatives to a ban put forward by industry include third-party mechanisms to protect consumer funds, such as escrow accounts, trustee arrangements, third party guarantees, letters of credit etc.

Other stakeholders argue that a relaxation of the ban on deposits would in practice undermine the right of withdrawal. Obtaining reimbursement can prove difficult because of the administrative procedure this entails, because of the lack of familiarity of the consumer with the various third party mechanisms put in place by the Member

States, or simply because at the time of signing of the contract the consumer is in unfamiliar surroundings. The task of obtaining reimbursement for advance payments is virtually impossible in the case of rogue traders. Additionally, the same stakeholders have argued that it would be very difficult to make sure that the third party is truly independent of the timeshare company, and to ensure that similar measures for third party mechanisms are introduced across the EU (e.g. some Member States might introduce mechanisms allowing payments through notaries, others through financial institutions, and so forth).

Consumer organisations have consistently supported the view that the ban on any deposit is an efficient way of allowing the consumer to exercise his/her right of withdrawal. In their view, with deposits, it would become more cumbersome for the consumer to withdraw. The consumer could decide not to withdraw not because he is convinced by the deal, but because of the paperwork and the procedures that he would have to follow to get his money back. A ban on deposits constitutes a clear rule, easy to understand for consumers, whereas if alternatives like allowing deposits paid to third parties were accepted, it would be difficult for consumers to judge whether the third party is reliable and independent from the seller.

For these reasons, the ban on all deposits during the withdrawal period is maintained. The maintenance of the ban responds to overwhelming evidence that consumers need a period to reflect on whether they want to keep a contract which in the vast majority of cases they were not looking for to conclude. The nature of these products, often sold with high pressure sales techniques, justify a level of consumer protection appropriate to the context. The ban is clarified in the new proposal, to ensure that all kinds of considerations to the trader or any other third party is prohibited and that the ban applies not only for the normal period, but also where the period is extended because not all the required information has been given in the contract.

The possibility of introducing criminal sanctions was supported by consumer stakeholders. Member States and the industry were generally against, arguing that it should be left to Member States to decide the appropriate mix and nature of sanctions. The consumer protection enforcement cooperation network established by Regulation 2006/2004 EC has been operational since 31 December 2006. The Commission expects that this Regulation will enhance cross-border action against consumer protection infringements. The effectiveness of this new tool should be assessed before introducing a provision at EU level requiring Member States to introduce criminal sanctions.

An open consultation was conducted over the internet from 01/06/2006 to 15/08/2006. The Commission received 100 response(s). The results are available on [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/timeshare/index\\_en.htm](http://ec.europa.eu/consumers/cons_int/safe_shop/timeshare/index_en.htm).

#### **€ Collection and use of expertise**

There was no need for external expertise because comprehensive data was gathered from Member States, stakeholders and European Consumer Centres through questionnaires and public consultation. The information was subsequently analysed and additional information was retrieved where necessary.

## € **Impact assessment**

The impact assessment combines the outcome of the consultation process on specific issues, around the three more likely policy options. The results of the analysis indicate that the status-quo option (Option 1) would have negative consequences on a majority of stakeholders, and that few stakeholders would benefit from maintaining Directive 94/47/EC as it is.

The same applies for the non-legislative option (Option 3).

The impact analysis of the option to vertically revise Directive 94/47/EC (Option 2), on the other hand, suggests that this option would ensure improved market outcomes for the majority of stakeholders involved. The main advantages of this option are that it extends the protection timeshare consumers have to consumers of other long-term holiday products, resale mediation and exchange; that a more level playing field is created for businesses; and that legal clarity is achieved through updated and flexible product definitions and a fully harmonised withdrawal period of 14 days across the EU. Option 2 is therefore proposed as the most appropriate solution to the problems identified.

### **3) LEGAL ELEMENTS OF THE PROPOSAL**

#### € **Summary of the proposed action**

The main aim of the revision of the Directive is to provide consumer protection in relation to resale and the new products which have come onto the market place, such as holiday discount clubs. The proposal will replace Directive 94/47/EC with a modern, simplified and coherent framework covering timeshare, long-term holiday products, as well as exchange and resale.

#### € **Legal basis**

Article 95 of the Treaty

#### € **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

The objective of the proposal is to enhance consumer protection as well as to help consumers and traders to take as much advantage as possible of the Internal Market in a sector where contracts often are of a cross-border nature. This objective cannot be adequately achieved by the Member States; the disparities between the national legislations create barriers to the proper operation of the Internal Market, distortions of competition and legal uncertainty.

Community action will better achieve the objectives of the proposal for the following reason(s).

A Community act applies in all Member States, covers aspects which are not covered by national law and provides a high level of consumer protection for cross-border contracts.

The overwhelming majority of consumer complaints are of a cross-border nature.

The proposal regulates an issue that is already regulated at Community level. It will replace Directive 94/47/EC. As the transactions are very often of cross-border nature, cross-border standards are required, i.e. the act should have a Community scope.

National legislation should be used to deal with the internal aspects which are already covered by legislation and traditions firmly rooted in the Member States. For example, the proposal does not impose a common legal nature of the timeshare rights; on the contrary, the Member States' views on how the legal nature should be, are fully respected; as is the case in regard to the management and maintenance of the properties. The proposal only deals with those aspects that should be regulated at Community level.

The proposal therefore complies with the subsidiarity principle.

#### **€ Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The proposal, like Directive 94/47/EC, does not cover all aspects of timeshare but only certain aspects, which have been identified as the most problematic, and hence necessitating Community action. The remaining aspects will be covered by national legislation. For instance, the national general contract law provisions and national provisions regarding authorisation regimes and licensing will be applicable.

Therefore a Directive is the appropriate instrument and thus the proposal complies with the proportionality principle.

#### **€ Choice of instruments**

Proposed instruments: directive.

Other means would not be adequate for the following reason(s).

The solution to the problems that the proposal aims to overcome can only be reached at Community level. Moreover the Commission considers that national legislation should deal with those internal aspects which are covered by legislation and traditions firmly rooted in the Member States.

Consequently, the adequate instrument is a Directive. A Regulation would be too rigid and would not allow Member States the necessary freedom to regulate the matter

adequately and determine the legal nature of the rights which are the subject of the contracts covered by this Directive; a Decision would not cover all Member States and a Recommendation has not the binding nature required for regulating this matter effectively.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5) ADDITIONAL INFORMATION**

##### **€ Simplification**

The proposal provides for simplification of legislation.

It contributes to simplification by employing clearer and more transparent legislative language; by clarifying definitions and the scope of application of the Directive, ensuring legal certainty for stakeholders; by updating and simplifying information requirements so as to ensure effectiveness and minimise administrative costs; and by containing a review clause, which will prevent obsolescence and ensure that the Directive remains future-proof.

The proposal is included in the Commission's rolling programme for up-date and simplification of the *acquis communautaire* and its Work and Legislative Programme under the reference 2006/SANCO/038.

##### **€ Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

##### **€ Review/revision/sunset clause**

The proposal includes a review clause.

##### **€ Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

##### **€ European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.



## € Detailed explanation of the proposal

### Article 1 "Scope"

The proposal will replace Directive 94/47/EC with a modern, simplified and coherent framework covering timeshare, long-term holiday products, as well as exchange and resale mediation. The provisions of the Directive will be applicable to all of these products, as defined in Article 2, unless otherwise specified. In particular the list of items to be included in the prospectus and the contract is tailored to suit the different products.

Horizontal issues will be addressed in the overall review of the Acquis. Therefore, Article 1 (2) contains a derogation from the full harmonisation approach for these issues. Furthermore, this provision clarifies that the Directive is without prejudice to national legislation providing the right to terminate the contract. This means that, for instance, national provisions on early termination of a contract or the right to terminate a contract if the consumer has been misled, can be maintained.

### Article 2 "Definitions"

Article 2 (1) (a) defines the notion of "timeshare". In addition to the products covered by Directive 94/47/EC, the proposal includes products which are equivalent to timeshare, but where one or more of the criteria in the current definition (contract of more than 3 years, related to "immovable property") are not fulfilled. Since the definition is no longer exclusively linked to immovable property, contracts for accommodation in canal boats, caravans or cruise-ships will also be covered. Other contracts which do not provide for accommodation, such as rental of caravan pitches, storage space for recreational crafts etc will not be covered. Also arrangements such as seats in lounges for sports events will not be covered, since the term "accommodation" implies overnight stays. The definition covers contracts for a period of more than one year, which includes "trial packs" for accommodation of 35 months duration. On the other hand, prepaid accommodation in a hotel for two stays within a year will not be covered since the duration of the contract is less than one year. Nor will multi-annual reservations of a hotel room be covered, provided they are not "contracts", but reservations which are not binding on the consumer. Since the accommodation must be for "more than one period", ordinary lease contracts will not be included, even if their duration is more than one year. The definition requires that the right is acquired against "consideration", which could be for instance payment by cash, card or trade-in of a timeshare. There is no requirement for the whole consideration to be provided at the initial phase of the contract in order for a contract to be covered by the definition. Also contracts where the consumer pays an initial sum to acquire the right and then additional payment for each use of the accommodation are covered.

The definition of "long-term holiday product" in Article 2 (1) (b) captures products such as discount holiday clubs. The core of this product is that the consumer acquires "the right to obtain discounts or other benefits on accommodation, in isolation or together with travel or other services". Only contracts where the right is obtained against consideration are covered. Hence, ordinary loyalty schemes, providing discounts on future stays in the hotels of a hotel chain will not be covered. Discounts provided over a shorter time-period or one-off discounts will not be covered. This could be for instance if a hotel chain sells a "Summer discount pass" where the

consumer pays 100 euro for a card which entitles him to 10% discount on stays in the hotels in the chain during a summer season. Contracts whose primary purpose is other than the offer of discounts or allowances, are not included. This means that for instance a credit card will not be a "long-term holiday product" even if the card company provides offers for discounts in hotels and the consumer has to pay a fee to establish the card and annual fees, since providing discounts is not the primary purpose of the contract.

"Resale" is defined in Article 2 (1) (c) to cover contracts for mediation concluded between the consumer who wishes to sell or buy a timeshare/long-term holiday product and a resale agent. The sales contract between two consumers will not be regulated, as the proposal only regulates business to consumer practices. On the other hand, where a trader does not act as an intermediary but buys a timeshare and then resells it to a consumer, the contract will be a contract for sale of timeshare under point (a) and covered, as the scope is not limited to first hand sale.

The definition of "exchange" in Article 2 (1) (d) is designed to cover contracts for membership in an exchange system. It does not refer to the individual exchanges in the course of the contract. A contract should be deemed to fall under the definition even if a free introductory period is granted or the fee for the first period is paid by a third party, for instance the trader selling the timeshare to which the exchange is linked.

The definitions of "trader" and "consumer" in Articles 2 (1) (e) and (f) replace the definitions of "vendor" and "purchaser" in the Directive. The term "purchaser" is not suitable for a consumer selling his timeshare (in case of resale). The new definitions correspond to those in the UCP.

The definition of "ancillary contract" - Article 2 (1) (g) - is a contract which is subordinate to another contract, as for instance exchange in relation to timeshare

Articles 3 and 4 "Precontractual information and advertising" and "The contract" broadly reproduce the corresponding Articles in Directive 94/47/EC. Article 3 ensures that the consumer receives the information which is necessary in order to make an informed decision. As in the current Directive, the trader's duty to provide the information is triggered by the consumer showing interest in the product and asking about it. In addition, Article 4 includes a provision to ensure that the consumer's attention is drawn to the right of withdrawal, and the rules on language are simplified. The possibility in Directive 94/47/EC for the Member States to require additional languages is not maintained.

Article 5 "Right of withdrawal" corresponds broadly to the provision in Directive 94/47/EC, but the withdrawal period is extended to 14 days and harmonised across the EU. Also, the provision in Article 5 (2) on extension of the withdrawal period in case of lack of fulfilment of the requirements in Article 4 has been clarified; the additional information has to be provided in writing in order for the withdrawal period to start.

Article 6 "Advance payment"

The proposal in Article 6 (1) broadly reproduces the ban on deposits during the withdrawal period in the corresponding Article in Directive 94/47/EC. Moreover, it aims at clarifying the ban. The ban includes not only payments, but all kinds of

considerations from the consumer's side, and not only to the trader, but to any other recipient. The ban applies as long as the withdrawal period has not expired; if the withdrawal period is extended due to non-fulfilment of the information requirements, the ban is also extended. The proposal also clarifies this.

Article 6(2) provides for a ban on advance payment for resale. This ban extends beyond the withdrawal period, until the actual sale has taken place or the resale contract is otherwise terminated.

#### Article 7 "Termination of ancillary contracts"

Article 7 (1) prescribes the cancellation of any ancillary contract if the consumer withdraws from the main contract. As explained before, an ancillary contract is a contract which is subordinate to another contract, as for instance exchange in relation to timeshare. For certain linked credit agreements, Article 7 (2) applies. The right of withdrawal for exchange contracts following from Article 5 has independent value where the right of withdrawal for the main contract has expired.

Article 7 (2) reproduces the rule in Directive 94/47/EC, providing for termination of certain linked credit agreements if the consumer uses his right of withdrawal for the main contract.

The obligation in Article 7 (3) on the Member States to lay down arrangements for the termination of credit agreements reproduces the corresponding provision in Directive 94/47/EC, but is extended to cover ancillary contracts.

Article 8 largely reproduces the corresponding provision of Directive 94/47/EC.

Articles 9- 11 provide provisions on sanctions, enforcement, consumer information and redress similar to the ones in recent consumer protection directives. The European Consumer Centres assist in transmitting cross-border complaints to the relevant alternative dispute resolution bodies, provided such bodies exist. One of the aims of the provision in Article 10 is to encourage the setting up of such bodies.

Articles 12- 16 contain technical changes or standard provisions and formulae and require no special comment.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) Since the adoption of Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis<sup>4</sup>, timeshare has evolved and new holiday products similar to it have appeared on the market. These new holiday products and certain transactions related to timeshare, such as resale and exchange, are not covered by Directive 94/47/EC. In addition, experience with the application of Directive 94/47/EC has shown that some points already covered need to be updated or clarified.
- (2) The existing regulatory gaps create appreciable distortions of competition and cause serious problems for consumers, thus hindering the smooth functioning of the internal market. Directive 94/47/EC should therefore be replaced by a new up to date directive.
- (3) In order to enhance legal certainty and fully achieve the benefits of the internal market for consumers and businesses, the relevant laws of the Member States need to be

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<sup>1</sup> OJ C [...], [...], p. [...]

<sup>2</sup> OJ C [...], [...], p. [...]

<sup>3</sup> OJ C [...], [...], p. [...]

<sup>4</sup> OJ L 280, 29.10.1994, p. 83.

approximated further. However, for certain aspects Member States should be able to continue to apply stricter rules.

- (4) This Directive should be without prejudice to national rules relating to registration of immovable or movable property, conditions of establishment or authorisation regimes or licensing requirements, determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.
- (5) The different products covered by this Directive should be clearly defined and the provisions concerning pre-contractual information and the contract should be clarified and updated.
- (6) The consumer should have the right to choose the language to be used for the pre-contractual information and in the contract.
- (7) In order to give the consumer the possibility to fully understand what his obligations and rights are under the contract he should be allowed a period during which he may withdraw from the contract without having to justify it. Currently the length of this period varies between Member States, and experience shows that the length prescribed in Directive 94/47/EC is not sufficiently long. The period should therefore be extended and harmonised.
- (8) The prohibition on advance payments to the trader or any third party before the end of the withdrawal period should be clarified in order to improve consumer's protection. For resale, the prohibition of advance payment should apply until the actual sale has taken place or the resale contract has been terminated.
- (9) In the event of withdrawal from a contract where the price is entirely or partly covered by credit granted to the consumer by the trader or by a third party on the basis of an agreement between that third party and the trader, the credit agreement should be terminated without any penalty. The same should apply to ancillary contracts, such as contracts for membership in exchange systems.
- (10) The consumer should not be deprived of the protection granted by this Directive. This should also be the case where the law of a non-Member State is the law applicable to the contract.
- (11) It is necessary that Member States lay down effective, proportionate and dissuasive sanctions for infringements of this Directive.
- (12) It is necessary to ensure that persons or organisations having, under national law, a legitimate interest in the matter have legal remedies for initiating proceedings against infringements of this Directive.
- (13) It is necessary to develop suitable and effective redress procedures in the Member States for settling disputes between consumers and traders. To this end, Member States should encourage public or private bodies established for settling disputes out-of-court.
- (14) Member States should ensure that consumers are effectively informed of the national provisions transposing this Directive and encourage traders to inform about their codes of practice that exist in the field.

- (15) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.
- (16) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention on Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Scope*

1. This Directive shall apply to the protection of consumers in respect of certain aspects of the marketing and sale of timeshare and long-term holiday products. It shall also apply to the resale of timeshare and long-term holiday products, and the exchange of timeshare.

This Directive applies to trader-to-consumer transactions.

This Directive is without prejudice to national legislation providing for general contract law remedies enabling the consumer to terminate the contract.

2. Member States may continue to apply national provisions in the field approximated by this Directive which are more stringent to ensure a higher level of consumer protection, and which relate to:
- (a) the starting point for the right of withdrawal;
  - (b) the modalities of exercising the right of withdrawal;
  - (c) the effects of exercising the right of withdrawal.

*Article 2*  
*Definitions*

1. For the purposes of this Directive the following definitions shall apply:
- (a) 'timeshare' means a contract of a duration of more than one year by which a consumer acquires against consideration the right to use one or more accommodation for more than one period of occupation;
  - (b) 'long-term holiday product' means a contract of a duration of more than one year by which a consumer acquires against consideration primarily the right to obtain discounts or other benefits on accommodation, in isolation or together with travel or other services;

- (c) 'resale' means a contract by which a trader against consideration helps a consumer to sell or buy a timeshare or long-term holiday product;
  - (d) 'exchange' means a contract by which a consumer against consideration joins a scheme which allows him to modify the location and/or time of his timeshare interest through an exchange;
  - (e) 'trader' means a natural or legal person who is acting for purposes relating to his trade, business or profession and anyone acting in the name of or on behalf of a trader;
  - (f) 'consumer' means a natural person who is acting for purposes which are outside his trade, business craft or profession;
  - (g) 'ancillary contract' means any contract which is subordinated to another contract.
2. In order to calculate the duration of the contract, as defined in points (a) and (b) of paragraph 1, any time extension resulting from tacit renewal or prolongation shall be included.

***Article 3***  
***Precontractual information and advertising***

- 1. Member States shall ensure that any advertising indicates the possibility of obtaining the written information referred to in paragraph 2 and where it can be obtained.
- 2. The trader shall provide a consumer requesting information with written information which, in addition to a general description of the product, shall provide at least brief and accurate information on the following items, where applicable:
  - (a) in the case of timeshare, the information set out in Annex I and, if the contract concerns accommodation under construction, the information set out in Annex II;
  - (b) in the case of a long-term holiday product, the information set out in Annex III;
  - (c) in the case of resale, the information set out in Annex IV;
  - d) in the case of exchange, the information set out in Annex V.
- 3. In case of resale the trader's obligation to provide the information under paragraph 2 applies towards the consumer who may enter into the resale contract.
- 4. The information referred to in paragraph 2 shall be drawn up in one of the official languages of the Community, as chosen by the consumer.

***Article 4***  
***The contract***

1. Member States shall ensure that the contract is in writing and drawn up in one of the official languages of the Community, as chosen by the consumer.
2. The written information referred to in Article 3(2) shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise or the changes result from circumstances beyond the trader's control.

Changes resulting from circumstances beyond the trader's control shall be communicated to the consumer before the contract is concluded.

The contract shall expressly mention any such changes.

3. Before the signing of the contract, the trader shall explicitly draw the consumer's attention to the existence of the right of withdrawal and the length of the withdrawal period referred to in Article 5 and the ban on advance payment during the withdrawal period referred to in Article 6.

The corresponding contractual clauses shall be signed separately by the consumer.

***Article 5***  
***Right of withdrawal***

1. Member States shall ensure that, after entering into a contract, the consumer has the right to withdraw, without giving any reason, within fourteen days of both parties' signing the contract or of both parties' signing a binding preliminary contract. If the fourteenth day is a public holiday, the period shall be extended to the first working day thereafter.
2. If the contract does not include all the information referred to in points (a) to (p) of Annex I and (a) and (b) of Annex II, but the information is provided in writing within three months after the signing of the contract, the withdrawal period shall start from the day the consumer receives that information.
3. If the information referred to in points (a) to (p) of Annex I and (a) and (b) of Annex II has not been provided in writing within three months after the signing of the contract, the right of withdrawal shall expire after three months and fourteen days from the signing of the contract.
4. If the consumer intends to exercise the right of withdrawal he shall, before the expiry of the deadline, notify the person whose name and address appear in the contract for that purpose pursuant to point (p) of Annex I. The deadline shall be deemed to have been observed if the notification, if it is in writing, is dispatched before the deadline expires.
5. Where the consumer exercises the right of withdrawal, he is required to reimburse only those expenses which, in accordance with national law, are incurred as a result of the conclusion of and withdrawal from the contract for legal formalities which



have to be completed before the deadline referred to in paragraph 1. Such expenses shall be expressly mentioned in the contract.

6. Where the consumer exercises the right of withdrawal provided for in paragraph 3, he shall not be required to make any reimbursement.

### ***Article 6*** ***Advance payment***

1. Member States shall ensure that any advance payment, provision of guarantees, reservation of money on a credit card, explicit acknowledgement of debt or any other consideration to the trader or to any third party by a consumer before the end of the period, during which he may exercise the right of withdrawal in accordance with Article 5 (1) to 5 (3), is prohibited.
2. Any payment, provision of guarantees, reservation of money on credit cards, acknowledgement of debt or any other consideration to the trader or to any third party by the consumer for resale before the actual sale has taken place or the resale contract otherwise is terminated, is prohibited.

### ***Article 7*** ***Termination of ancillary contracts***

1. Member States shall ensure that, if the consumer exercises his right to withdraw from the contract for timeshare or long-term holiday product, any ancillary contracts, including exchange, are automatically terminated, without any penalty.
2. If the price is fully or partly covered by a credit granted to the consumer by the trader, or by a third party on the basis of an agreement between the third party and the trader, the credit agreement shall be terminated, without any penalty, if the consumer exercises his right to withdraw from the main contract, as provided for in Article 5.
3. The Member States shall lay down detailed rules on the termination of such contracts.

### ***Article 8*** ***Imperative nature of the Directive***

1. Member States shall ensure that, if the law applicable to the contract is the law of a Member State, any contractual clauses whereby the consumer waives his rights, as provided for in this Directive, shall not be binding.
2. Whatever the applicable law, the consumer shall not be deprived of the protection granted by this Directive, if the immovable property concerned is situated within the territory of a Member State or the contract has been entered into in a Member State.

**Article 9**  
**Judicial and administrative redress**

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive in the interests of consumers.
2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, may take action in accordance with national law before the courts or competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:
  - (a) public bodies or their representatives;
  - (b) consumer organisations having a legitimate interest in protecting consumers;
  - (c) professional organisations having a legitimate interest in acting.

**Article 10**  
**Consumer information and out-of court redress**

1. Member States shall take the appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, traders to inform consumers of their codes of conduct.
2. Member States shall encourage the setting up or development of adequate and effective out-of-court complaints and redress procedures for the settlement of consumer disputes under this Directive.

**Article 11**  
**Sanctions**

1. Member States shall provide for appropriate sanctions in the event of the failure of the trader to comply with the national provisions adopted pursuant to this Directive.
2. These sanctions must be effective, proportionate and dissuasive.

**Article 12**  
**Transposition**

1. Member States shall adopt and publish, by [...] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [...].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### ***Article 13*** ***Review***

The Commission shall review this Directive and report to the European Parliament and the Council no later than five years after the date of application of the national provisions transposing this Directive.

If necessary, it shall make further proposals to adapt it to developments in the area.

The Commission may request information from the Member States and the national regulatory authorities.

### ***Article 14*** ***Repeal***

Directive 94/47/EEC is repealed.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

### ***Article 15*** ***Entry into force***

The Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

### ***Article 16*** ***Addressees***

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I (timeshare)**  
**Information referred to in Article 3 (2)**

- (a) The identity and residence of the parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;
- (b) the exact nature of the right which is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the Member States(s) in which the property or properties concerned are situated and if those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled;
- (c) where the contract concerns a specific immovable property, an accurate description of that property and its location; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities;
- (d) the services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions;
- (e) the common facilities, such as swimming pool, sauna, etc, to which the consumer has or may have access, and, where appropriate, under what conditions;
- (f) how maintenance and repairs to the accommodation and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues;
- (g) an accurate description of how all costs will be allocated to the consumers and how and when such costs may be increased; where relevant, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation;
- (h) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;
- (i) the price to be paid by the consumer, an estimate of the amount to be paid by the consumer for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs);
- (j) a clause stating that the consumer shall not bear any other costs or obligations other than those specified in the contract;
- (k) whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, information about the relevant schemes and an indication of costs related to resale and exchange through these schemes;

- (l) indication of the language(s) available for post-sale communication in relation to the contract, for instance in relation to management decisions, increase of costs and the handling of queries and complaints;
- (m) information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (5) if he exercises his right to withdraw; where appropriate, information on the arrangements for the termination of the credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract; information about the consequences of such withdrawal;
- (n) information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5 (1) to 5 (3)
- (o) indication to whom and how the withdrawal notification is to be sent;
- (p) the existence, content, control and enforcement of codes of conduct;
- (q) the possibility for out-of-court dispute resolution.

**ANNEX II (timeshare)**

**Additional requirements for accommodation under construction, as referred to in  
Article 3**

- (a) the state of completion for the accommodation and the services rendering the accommodation fully operational (gas, electricity, water and telephone connections);
- (b) a reasonable estimate of the deadline for completion of the accommodation and the services rendering it fully operational (gas, electricity, water and telephone connections);
- (c) where it concerns a specific immovable property, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities;
- (d) a guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

**ANNEX III (long-term holiday products)**  
**Information referred to in Article 3 (2)**

- (a) The identity and residence of the parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;
- (b) the exact nature of the right which is the subject of the contract;
- (c) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;
- (d) the price to be paid by the consumer;
- (e) a clause stating that the consumer shall not bear any other costs or obligations other than those specified in the contract;
- (f) indication of the language(s) available for post-sale communication in relation to the contract, for instance in relation to the handling of queries and complaints;
- (g) information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (5) if he exercises his right to withdraw; where appropriate, information on the arrangements for the termination of the credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract; information about the consequences of such withdrawal;
- (h) information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5 (1) to 5 (3);
- (i) indication to whom and how the withdrawal notification is to be sent;
- (j) the existence, content, control and enforcement of codes of conduct;
- (k) the possibility for out-of-court dispute resolution.

**ANNEX IV (resale)**  
**Information referred to in Article 3 (2)**

- (a) The identity and residence of the parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;
- (b) the price to be paid by the consumer for the resale services;
- (c) a clause stating that the consumer shall not bear any other costs or obligations other than those specified in the contract;
- (d) indication of the language(s) available for communication with the trader, for instance in relation to the handling of queries and complaints;
- (e) information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (5) if he exercises his right to withdraw.;
- (f) information about the ban on advance payments until the actual sale has taken place or the resale contract otherwise is terminated;
- (g) indication to whom and how the withdrawal notification is to be sent;
- (h) the existence, content, control and enforcement of codes of conduct;
- (i) the possibility for out-of-court dispute resolution



**ANNEX V (exchange)**  
**Information referred to in Article 3 (2)**

- (a) The identity and residence of the parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;
- (b) the exact nature of the right which is the subject of the contract
- (c) an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities;
- (d) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;
- (e) the price to be paid by the consumer, an estimate of the amount to be paid by the consumer for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs);
- (f) a clause stating that the consumer shall not bear any other costs or obligations other than those specified in the contract;
- (g) indication of the language(s) available for communication with the trader , for instance in relation to the handling of queries and complaints;
- (h) explanation of how the exchange system works; the possibilities and modalities for exchange, as well as an indication of the number of resorts available and the number of members in the exchange system and a set of examples of concrete exchange possibilities;
- (i) information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (5) if he exercises his right to withdraw; where appropriate, information on the arrangements for the termination of the credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract; information about the consequences of such withdrawal;
- (j) information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5 (1) to 5 (3)
- (k) indication to whom and how the withdrawal notification is to be sent;
- (l) the existence, content, control and enforcement of codes of conduct;
- (m) the possibility for out-of-court dispute resolution

## ANNEX VI

### CORRELATION TABLE

Directive 94/47/EC	This Directive
Article 1, first paragraph	Article 1 (1), first and second paragraph
Article 1, second paragraph	
Article 1, third paragraph	Article 1(1), third paragraph
	Article 1(2)
Article 2, first indent	Article 2 (1), point a)
-	Article 2 (1), point b) (new)
-	Article 2 (1), point c) (new)
-	Article 2 (1), point d) (new)
Article 2, second indent	
Article 2, third indent	Article 2 (1), point e)
Article 2, fourth indent	Article 2 (1), point f)
-	Article 2 (1), point g) (new)
-	Article 2 (2)
Article 3 (1)	Article 3 (2)
Article 3 (2)	Article 4 (2)
Article 3 (3)	Article 3 (1)
Article 4, first indent	Article 4 (1), Article 4(2)
Article 4, second indent	Article 4 (1)
-	Article 4 (3) (new)
Article 5 (1), introductory sentence	Article 1 (1) third paragraph
Article 5 (1), first indent	Article 5 (1)
Article 5 (1), second indent	Article 5 (2)
Article 5 (1), third indent	Article 5 (3)

Article 5 (2)	Article 5 (4)
Article 5 (3)	Article 5 (5)
Article 5 (4)	Article 5 (6)
Article 6	Article 6 (1)
-	Article 6 (2) (new)
-	Article 7(1) (new)
Article 7, first paragraph	Article 7(2)
Article 7, second paragraph	Article 7(3)
Article 8	Article 8 (1)
Article 9	Article 8 (2)
Article 10	Articles 9 and 11
Article 11	Article 1(2)
-	Article 10(1) (new)
-	Article 10(2) (new)
Article 12	Article 12
-	Article 13 (new)
-	Article 14 (new)
-	Article 15 (new)
Article 13	Article 16
Annex I	Annexes I and II
Annex, point a)	Annex I, point a)
Annex , point b)	Annex I, point b)
Annex , point c)	Annex I, point c)
Annex , point d) (1)	Annex II, point a)
Annex , point d) (2)	Annex II, point b)
Annex , point d) (3)	Annex II, point c)
Annex , point d) (4)	Annex II, point a)

Annex , point d) (5)

Annex , point e)

Annex , point f)

Annex , point g)

Annex , point h)

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Annex , point i)

Annex , point j)

Annex , point k)

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Annex , point l)

Annex , point m)

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Annex II, point d)

Annex I, point d)

Annex I, point e)

Annex I, point f)

Annex I, point h)

Annex I, point g) (new)

Annex I, point i)

Annex I, point j)

Annex I, point k)

Annex I, point l) (new)

Annex I, points m) and o)

Annex I, point a)

Annex I, point o) (new)

Annex I, point p (new)

Annex I, point q (new)

Annexes III to V (new)