COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.6.2007
SEC(2007) 743

COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

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

IMPACT ASSESSMENT

{COM(2007) 303 final}
{SEC(2007) 744}

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Lead DG: Health and Consumer Protection Directorate-General

Other services involved: no other service involved in the legislative proposal. The Health and Consumer Protection Directorate-General did however liaise with relevant services through the Impact Assessment Interservice Steering Group.

Agenda Planning and CLWP: the legislative proposal was foreseen by the Commission Agenda Planning for 2006, with reference 2006/SANCO/038.

Executive Summary

Timeshare is the right to spend a period of time (e.g. one week or more) in a holiday property for a specified or specifiable period of the year for three years or longer. The Directive provides for the protection of consumers in respect of, among others, the pre-contractual information consumers receive, their right to withdraw from the contract within a minimum period of 10 days, the ban on advance payments during this period, and the language of the contract. Since the adoption of the Directive in 1994, however, there have been major developments in the marketplace, including the appearance of new products which circumvent the coverage of timeshare legislation. These products are 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). 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.

A wide public consultation was launched in early 2006, with two questionnaires eliciting stakeholders' views, and a Consultation Paper setting out the main issue areas for the review. The consultation culminated in a broad stakeholders workshop held in July 2006.

The impact assessment accompanying the proposal for a new directive in this sector combines the outcomes of the consultation process on specific issues, around the three more likely policy options. An impact analysis of each option, and each policy action under each option, is included. In order to facilitate the overall exercise examining risks and benefits involved, an analytical approach has been adopted. The impact assessment includes, therefore, tables summarising in few sentences the main consequences of the possible combinations of the measures under consideration.

The results of the analysis indicate that the status-quo option (Option 1) would have negative consequences on the majority of stakeholders, and that few stakeholders would benefit from the maintaining of the Directive as it is. The same applies for the non-legislative option (Option 3), which would leave most of the problematic issues identified in the revision process unresolved.

The impact analysis of the option to vertically revise the Directive (Option 2), on the other hand, suggests that this option would ensure improved market outcomes for the majority of stakeholders involved.

Option 2 is therefore proposed as the most appropriate solution to the problems identified in the review process. This is without prejudice to the simultaneous pursuit of sub-options under Option 3.

2. Procedural issues and consultation of interested parties

2.1. Organisation and timing

The legislative proposal for a directive amending 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 ("the Directive") was foreseen by the Commission Agenda Planning for 2006, with reference 2006/SANCO/038.

The proposal is included in the Commission's rolling programme for the updating and simplification of the acquis communautaire.

In 1999 the Commission published a Report[1], which provided a comprehensive comparative picture of the various approaches adopted by the Member States in transposing the Directive. It also highlighted among other things the national provisions which go beyond the minimum consumer protection measures prescribed by the Directive, while focusing on issues which arose in the examination of different national transposition instruments. Finally, and after identifying the problems still faced by private parties in their dealings with timeshare developers and vendors, the report drew some conclusions in order to reopen a debate on possible reform of the Directive.

Interested parties were invited to submit any comments they may have on the report and any answers to the questions raised in it.

As a reaction to this report, the Council adopted Conclusions on 13 April 2000[2]. In order to assist the Commission in submitting a proposal amending the Directive, the Conclusions list a number of elements that could be usefully taken into consideration in reviewing the Directive.

The European Parliament, in its Resolution of 4 July 2002[3] on the monitoring of Community policy on protection of purchasers of the right to use immovable properties on a timeshare basis, "recommends to the European Commission that it should study in detail the problems raised by the transposition of Directive 94/47/CE and present to the Parliament, as soon as possible, the appropriate legislative instrument and the necessary administrative measures resolving the problems of the consumers of 'timesharing' products, while guaranteeing them the highest degree of protection."

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1 Report on the Application of Directive 94/47/EC of the European Parliament and Council of 26 October 1994. Doc SEC(1999) 1795 final.

2 Consumer Affairs Council, Luxembourg 13 April 2000

3 Doc EP 298.410.

Both the European Parliament Resolution and the Council Conclusions were taken into consideration when preparing the proposal for a new directive.

2.2. Consultation

The main relevant stakeholders concerned were consulted and participated in meetings in 2004, 2005 and 2006 and in three written consultations in 2006. In addition to the Member State representatives, several industry and consumer stakeholder organisations were systematically consulted.

Stakeholder consultation and the impact assessment process formally kicked off with the circulation of the comprehensive written questionnaire to Member States and stakeholders in February 2006, comprising both regulatory and data-related issues.

Subsequently, the first meeting of the standing working group of Member States experts on the Review of the Acquis took place on 6 March 2006. In this meeting consumer problems related to timeshare, timeshare-like products, resale, exchange and long-term holiday products were discussed.

The Commission published a consultation paper[4] on its website 1 June 2006 and invited interested parties to transmit their written contributions by 1 August 2006 (later extended to 15 August) The Commission received more than 100 written contributions from all relevant parties (industry stakeholders, consumer organisations, enforcement authorities, lawyers, academics and notaries), including contributions from 14 Member States and one EEA EFTA state. On 19 July 2006 a workshop on the review of the Directive was organised in Brussels, with broad participation from stakeholders and Member States.

In July 2006, a second questionnaire, in an online format, was published on the Health and Consumer Protection Directorate-General website. The questionnaire was designed with an industry audience in mind, and particularly sought to collect views on the impacts of a possible vertical revision of the Directive, as well as data on administrative cost. The response rate from business stakeholders on this questionnaire was very low (only 4 responses were submitted).

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

Within the same framework, an Interservice Impact Assessment Steering Group was established, providing regular feedback on the impact assessment process. The group consisted of the Enterprise and Industry DG, the Internal Market and Services DG, the Justice, Freedom and Security DG, and the Commission's Secretariat General and Legal Service. Between late 2005 and throughout 2006, the steering group held four meetings.

The consultation confirmed that there are serious consumer problems related to holiday discount clubs and resale and to a lesser extent related to timeshare and exchange. There are, however, divergent views on the magnitude of the problems and how to address them. On the one hand, most of the organised European timeshare industry is opposed to a

[4] The consultation paper, as well as stakeholder responses to the paper are available on the following website: http://ec.europa.eu/consumers/cons_int/safe_shop/timeshare/index_en.htm

revision of the Directive, and also has doubts as to the magnitude of the problem. One line of argument is that there is no need for the enactment of new legislation since better enforcement, self-regulation and consumer information could address the problems, together with the entering into force of the Enforcement Cooperation Regulation[5] and the Unfair Commercial Practices Directive[6]. They argue that holiday discount clubs could be regulated in the Package Travel Directive[7], in a new separate sectoral Directive, or that standardised rights could be introduced for certain pro-active sales methods. Furthermore, some industry stakeholders who are in principle against a revision, would support specific amendments, as for instance the ban on deposits for resale agents, and the clause on information about the right of withdrawal being signed separately by the consumer.

Also, significant market players agree with the problem as stated above, and favour a vertical revision of the Directive, calling for the "urgent imposition of regulatory requirements on vacation packs and other vacation products that are sold outside of timeshare legislation. This may be achieved through the revision of the Directive to include a definition of timeshare to encompass all products that are sold like timeshare."[8]

Most of the Member States which replied support a revision, as do consumer and other stakeholders.

2.3. Impact Assessment Board

This impact assessment report was examined by the European Commission Impact Assessment Board in February 2007, composed by senior officials from several Commission services. The final opinion of the Board included a number of recommendations for the improvement of the impact assessment report, which were fully taken into account prior to the submission of the Commission proposal.

The key amendments made to the impact assessment following the issuing of the Board opinion:

- More analysis of internal market barriers and their sources
- Better presentation of the Policy Options which were discarded and why
- More detailed quantification of administrative costs, both those stemming from the Directive, as well as those from the proposal for a revised directive.
- More detail on whether the proposal for a new directive will contribute to simplification.

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5 Regulation 2006/2004/EC

6 Directive 29/2005/EC

7 Council Directive of 13 June 1990 on package travel, package holidays and package tours (90/314/EEC)

8 *Timeshare* in *Europe: Outline of Issues and Possible Solutions to the Problems Experienced by Consumers and Industry – A Report for the Health and Consumer Protection Directorate-General of the European Commission* – Submitted by Marriott International, Interval International and the Sunterra Corporation in November 2004.

- More detail on the cross-border nature of timeshare and other long-term holiday products

- More analysis of key timeshare markets and differences in the experiences of Member States

- More analysis of competitiveness-related issues, both in the baseline scenario, as well as for the preferred policy option.

2.4. Terminology

In this document the term "timeshare" will, where possible, be used to designate timeshare within the meaning of the Directive. The terms "timeshare-like products" and "long-term holiday products" will be used to refer to the other products as described below in section 3.5. Resale refers to contracts for mediation of resale of the above-mentioned products (where a consumer wishing to sell his timeshare enters into a contract with a resale agent), and exchange refers to the membership in schemes providing for the possibility of exchanging the above-mentioned products, in terms of time period or location. The data available do not always distinguish between the different products.

In the proposal for a new directive, "timeshare-like products" are included in the revised definition of "timeshare", whereas "resale" and "exchange" are defined separately. The definition of "long-term holiday products" will capture the holiday discount clubs, but also include other similar concepts which could be developed in the future.

3. Problem Definition

The Directive[9] ("the Directive) was adopted in 1994. Since then, there have been major developments in the market place, one of the most significant being the offering 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 the Directive.

The most significant part of the consumer complaints to the European Consumer Centres, enforcement authorities and consumer organisations relate to these new products and to the resale for timeshare. There are also complaints relating to exchange and to timeshare, but to a lesser extent.

This section briefly describes the provisions of the Directive and the differences in the way they were transposed in different Member States, the legal nature of timeshare, and then proceeds to explore the evolution of the timeshare market since the adoption of timeshare legislation in 1994, and the problems that emerged thereafter, including problems with the new products.

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[9] 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.

3.1. The Timeshare Directive and its transposition

3.1.1. The Directive

Timeshare is the right to spend a period of time (e.g. one week or more) in a holiday property for a specified or specifiable period of the year for three years or longer. This definition does not only cover timeshare in the form of real property rights with fixed or floating weeks, but also the so-called "point clubs"[10] and other constructions whether it is for instance a real right, a personal right or a right of tenancy.

The Directive protects consumers by requiring that:

- Traders provide certain pre-contractual information (e.g. description of the property); to prospective purchasers (in a prospectus).
- The content of the contract can only to a limited extent deviate from the information provided in the prospectus.
- The contract terms contain a minimum number of elements.
- The prospectus and the contract are drawn up in the language of the Member State in which the purchaser is resident or of which he is a national. The Member State in which the consumer is resident can also require a certified translation to the language of the country where the property is located.
- Purchasers are given a minimum 10 days cooling-off period during which they may withdraw from the contract.
- Advance payment is banned during the cooling-off period.

As it stands at the moment, the Directive presents a number of problems. Central among them is the definition of the products covered by the Directive allowing easy circumvention through creative product design, and the fact that contracts for products that are similar to timeshare, are not being covered by the Directive. Three characteristics of the Directive are most important in this respect:

- That the definition is specifically concerned only with "immoveable" property.
- That the length of the agreement has to span a minimum of 3 years.
- That the occupation period per year has to be at least one week.

These characteristics gave rise to rigidities, which have allowed rogue operators to occupy the same market space with legitimate timeshare businesses, and evade the scope of regulation. This is done, for instance, with agreements lasting 35 months instead of 36. Contracts for accommodation in cruise ships, canal boats and caravans also fall outside the scope of the Directive, as they are not linked to "immovable property".

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[10] A point club is a timeshare system where "owners" hold points which entitle them to holiday accommodation from a pool of resorts.

Additionally, the Directive does not provide protection to consumers for long-term holiday products, such as discount holiday clubs, which, according to data collected in the course of this impact assessment, together with resale, cause the majority of problems in the marketplace (see section 3.5).

3.1.2. Fragmentation and Internal Market barriers *caused by differences in transposition*

The Directive has been transposed in all the Member States. Given the minimum harmonisation character of the Directive, a number of Member States have adopted national provisions which **go beyond** the level of consumer protection foreseen in the Directive. This is confirmed by the findings in the "EC Consumer Law Compendium-Comparative Analysis (the Compendium)[11]:

Most member states made use of the minimum clause. Major examples of such findings are:

- Additional requirements concerning the information document in Art. 3(1)
- Additional information items to be included in the contract.
- Extension of the list of information duties stated in. Art. 5(1) 2nd indent (i.e. those information duties which lead to a prolongation of the withdrawal period, if infringed).
- Stricter language requirements
- Also languages of EEA contracting states.
- More languages than foreseen in the Directive.

These differences cause fragmentation and legal uncertainty, which in turn causes Internal Market Barriers. It creates confusion for consumers and increased compliance costs for business. For instance, a Belgian consumer who goes to Spain and signs a contract for the purchase of a timeshare could be confused as to the length of the withdrawal period. If he is a reasonably well informed consumer he would be aware of the cooling-off period of 15 days communicated to Belgian consumers. If he signs a timeshare contract and considers using his right of withdrawal, he may leave it until he is back from holidays, thinking he is still within the cooling-off period. However, the withdrawal period in Spain is 10 days, which means that if he notifies the seller on day 13, it will be too late. Similarly, a trader who wishes to market and sell timeshare in different Member States will be faced with different requirements. The information requirements of the Directive regarding exchange is very limited. Whereas many Member States impose no requirements going beyond the Directive, the Spanish law has more detailed and extensive requirements.[12]

[11] EC Consumer Law Compendium –Comparative Analysis- Edited by Prof. Dr. Hans Schulte-Nölke in co-operation with Dr. Christian Twigg-Flesner and Dr. Martin Ebers, Universität Bielefeld. This study can be found at http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/index_en.htm

Some Member States have also attempted to **remedy the regulatory lacunae** caused by the Directive's lack of coverage of the new products, by extending the scope. In the Compendium some examples are mentioned:

- Definition of "contract relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis":
  - No minimum duration of 3 years.
  - No minimum duration for the annual use of the immovable property.
  - Inclusion of timeshare objects other than buildings (caravans, camping grounds).
- Extension of the scope of application to legal acts which do not relate to a certain building or a group of specified buildings, but simply promise special rates on tourist services ("holiday clubs")"

Such unilateral action on the part of Member States is however not sufficient to remedy the problems, since the rules will apply only when the law of the Member State which has extended the scope is the applicable one. For instance, a consumer buying a discount travel membership will only enjoy the rights afforded to buyers of such products by Portuguese legislation if that is the applicable law.

Moreover, unilateral action by Member States further increases fragmentation and legal inconsistency. Looking at how the ban on advance payments was transposed into national law, at the time of transposition by EU15, 6 Member States imposed an absolute ban on advance payments, while nine (to various degrees) allowed deposits to be paid either to third parties or escrow account holders, but not to vendors or credit agents funding the purchase. Because of this variation, timeshare development is easier in some countries than in others. In France and Portugal, for example, it is reported that new developments have all but come to a standstill as a result of the national legislation[13].

Operators argue for more balanced legislation which provides greater clarity and has common applicability across Europe, often quoting the stronger and more consistent regulations in the USA as providing the required environment for timeshare in Europe to reach what they see as its full potential.

3.2. The legal nature of timeshare

According to the Directive, Member States are free to define the legal nature of timeshare. Recital No 3 of the Directive acknowledges this situation by stating that the legal nature of the timeshare rights varies considerably from one Member State to another.

This spirit of the Directive allows covering a wide range of timeshare variants, including:

- Timeshare regarded as a real property right ('right in rem'); this is the case of Italy, Spain, Portugal and other Member States;

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[13] *The* Changing *Face of Timeshare in Europe,* Hospitality Directions Europe Ed, PriceWaterhouseCoopers, September 2005

- Timeshare regarded as a right of tenancy (Greece);

- The case of France, where timeshare is deemed to be a personal right (the system called *'Société Civile d'Attribution'*);

- The 'Trustee-Club System' which is in force in the UK and Ireland.

The Commission has come across no evidence suggesting that the lack of harmonisation of the legal nature of timeshare creates internal market or consumer protection problems.

3.3. Characteristics of timeshare and other holiday products

When considering the need for and how to regulate the marketing and sale of timeshare, discount holiday clubs, timeshare resale and timeshare exchange schemes, the following similarities and differences should be kept in mind:

- From an economic viewpoint, timeshare and timeshare-like products can be described as the combination of a repeated property lease and a service (e.g. maintenance of the property). The contracts normally provide for repeated stays in holiday accommodation. The degree to which the place of accommodation or the period of use is specified varies[14]. Discount holiday clubs may also cover transportation, and transport may also be part of the services offered in exchange.

- The contracts give rise to substantial financial commitments for consumers, with a global initial payment followed by annual payments (whose size depends on the type of accommodation offered, the season, and modalities of the service) for the duration of the contract.

- For long-term holiday products, such as holiday discount clubs, the entry fee may be lower than the price to be paid for timeshare or timeshare-like products, but the payments to be made for each of the actual stays may be higher than the annual management fee paid by timeshare owners.

- If the consumer joins an exchange scheme, this entails costs in the form of annual membership fees and/or a separate fee related to each exchange undertaken.

- Contracts for resale normally involve a one-off fee covering for instance marketing costs and administrative costs for the resale, which the consumer must often pay upfront.

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[14] The most specific type of contract gives the right to e.g. occupy and use accommodation unit 4, week 13 in Resort A every second year. Other contracts may leave the place and the time to be decided, and only specify the right as the right to occupy and use one holiday unit in a class A resort for 1 week during shoulder season each year. The consumer can then book accommodation according to availability. For the so-called "point clubs", the resorts and periods of the year are classified and given a certain number of points. The consumer buys a certain number of points, which can be used for booking accommodation. For holiday discount clubs the accommodation is generally not specified, as the trader will contract with hotels and resorts at a later stage, to present offers to the members.

- The transactions outlined above frequently involve several actors (see Annex II), e.g. the developer of a timeshare resort, the company marketing the products, the trustee owning the resort and a management company managing the resort. Exchange of timeshare weeks is managed by an exchange company, and the possibility for exchange requires a membership in the exchange club, which is often marketed and sold in connection with the sale of the timeshare. If the consumer wishes to sell his timeshare, a contract for resale may be concluded with a resale agent, whereas the sales contract itself is concluded between the consumer selling and another consumer.

- Timeshare, timeshare-like products and other long-term holiday product contracts are typically of a cross-border nature, since the marketing and/or conclusion of the contract often takes place in a country other than the consumer's home country, or in a country other than that where the property is located. For resale, the consumer may be contacted in his home country by a resale agent from a second country, whereas the resort to which the timeshare to be sold is linked, may be located in a third country. Exchange schemes offer accommodation worldwide, and hence involve companies, properties and services in many different countries.

- In general, contracts are legally complex. From consumer complaints, it seems that the division of responsibility between different parties is not always clear for the buyer; a typical example being that services promised in sales presentations are not always available. In many cases, the response from the resort or the management company is that there is no link between the two companies and no responsibility on their part for promises given in the sales presentation. This may be correct, but complaints data show that this is not always understood by the consumer who perceives the sales person as representing the resort

3.4. Timeshare Market Environment

Timeshare, in its various variants across the EU, is an important segment of the tourism sector. It is considered to help in reducing seasonality in the flow of tourists, generating employment and promoting the development of regions which manage to attract timeshare-related investment. For more facts and figures on the evolution of the timeshare market, data on perceptions of the timeshare market and the competitiveness of the timeshare industry, refer to Annex III. Some of those figures will also be presented in the sections that follow.

3.4.1. General

- After strong and sustained growth in the 1970s and 1980s, the growth of the European timeshare market slowed down in the early 1990s (growth of sales is reported to have halved from approximately 30 % to 15 %). Between 1994 and 1996 there was a certain consolidation and slow growth, probably due to the enactment of the Directive, and a natural adjustment period to the new state of play in the market. From 1996 until now the rate of increase in sales volumes in EU-15

further dropped from approximately 15 % to less than 5 %. This stands in strong contrast to other world regions[15].

- It results from market reports of the Organisation for Timeshare in Europe (OTE) that Europe has approximately 1,500 timeshare resorts, offering about 85,000 timeshare units, which produce 70 million bed-nights per year. The number of timeshare units is increasing by about 2 % annually based on 2005 estimates. Based on the same data, it was estimated that in 2005, 1.45 million households held rights to about 2.9 million European timeshare weeks or the equivalent in points.

- European timeshare industry sales volume during 2001 was estimated at about € 2.3 billion. Of this, purchases from developers and other commercial sources were about € 1.9 billion, with resales accounting for the remaining € 400 million. About 217,000 households acquired about 260,000 timeshare weeks, or the equivalent in points. OTE estimates that in 2005 some 80,000 timeshare transactions were concluded.

3.4.2. Key Markets[16]

- The timeshare industry's economic contribution in 2003 was estimated on the basis of the available 2003 data on timeshare in Spain[17]. This is the most recent data made available by the organised timeshare industry. In 2003 the total economic contribution of timeshare to the Spanish economy was estimated at €4.2 billion, and therefore contribution at EU-level is estimated at € 10.5 billion.

- According to the same 2003 data, a total of 327 timeshare resorts were located in Spain (140 of which on the Canary Islands alone), containing nearly 25,000 units. Approximately 600,000 households owned 970,000 weeks in 2003, and developers are reported to have sold €530 million timeshare interests in Spain alone. This represents approximately 6% of worldwide timeshare developer sales volume.[18]

- Most commonly, timeshare consumers in Spain originated from the UK, with others also residing in France, Germany and Italy. 50% of all Spain timeshare owners reside in the UK, 17% reside in Spain, 7% in France, 6% in Germany and 5% in Italy. 15% of timeshare owners come from Belgium, the Netherlands, Scandinavian countries and Russia.

- Cyprus, Greece and Portugal also display a pattern of predominantly foreign owners of timeshare in local resorts.

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[15] Sources: OTE (Organisation for Timeshare in Europe), ARDA (American Resort Developers Association) and TCA (Timeshare Consumers Association).

[16] The OTE reports quoted in this section (particularly 2003 studies) state that due to lack of reliable data, trend projections are impossible to establish.

[17] *Resort Timesharing in Spain: Industry Size, Market Characteristics, and Economic Impacts*, 2003 Ragatz Associates study for OTE

[18] *Resort Timesharing Worldwide, 2003 Ed Ragatz Associates,* quoted from *Resort Timesharing in Spain: Industry Size, Market Characteristics, and Economic Impacts*, 2003 Ragatz Associates study for OTE

- Contrary to Spain, some EU Member State markets rely mainly on domestic consumers. Italy, for example, has reportedly 200 timeshare resorts, dealing mostly with the 130,000 Italian families owning a timeshare[19]. A similar situation is observed in Germany.

- An estimated €60 million resale transactions occurred (consumer-to-consumer) in Spain. Consumer resales represent nearly one out five timeshare purchases (17%). UK buyers are much more likely to acquire a timeshare on the secondary market, as 30% of buyers surveyed had bought their timeshare through a resale.

3.4.3. Cross-border nature of the product

Timeshare and other long-term holiday products are typically cross-border in nature since the marketing and/or conclusion of the contract often takes place in a country other than the consumer's home country, or in a country other than that where the property is located. For resale, the consumer is often contacted in his home country by a resale agent from another country, whereas the resort to which the timeshare to be sold is linked, may be located in a third country. Exchange schemes offer accommodation worldwide, and hence involve companies, properties and services in many different countries (see previous section for examples).

This clearly indicates that timeshare and related products are fundamentally cross-border in nature, with contractual relations spanning two, three, or more Member States.

3.4.4. Competitiveness of the European timeshare market

The European timeshare market showed signs of slowdown in the early 1990s, when sales are reported to have halved from approximately 30 % to 15 %. The enactment of the Directive in the mid-90s is said to have launched a period of consolidation and slow growth, whereas from 1996 until now the rate of increase in sales volumes in EU-15 is reported to have further dropped from approximately 15 % to less than 5 %. This stands in strong contrast to the rest of the world and in particular the 10 new Member States and Eastern Europe, the USA, North Africa, South Africa, the Middle and Far East, Mexico[20].

Significantly reduced consumer confidence (see Annex III) in the timeshare product damages the competitiveness of the EU as a market in comparison to the United States, the Caribbean, the Middle East and Asia Pacific markets. As business stakeholders with multinational timeshare interests report, other world regions have consequently been receiving considerably higher timeshare-related investment flows in recent years.

In the opinion of some stakeholders, estimates suggest that the European timeshare industry may have declined by as much as 33% or more since 1998. By contrast, even in the face of a worldwide tourism decline in the period following the events of September 11, 2001, the timeshare industry in the United States has seen double digit growth nearly every year during that same period. For the period 1998 to 2005, the U.S. Timeshare

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[19] Response of *AIM – Associazione Italiana Multiproprieta* to June 2006 Consultation Paper

[20] Sources: OTE (Organisation for Timeshare in Europe), ARDA (American Resort Developers Association) and TCA (Timeshare Consumers Association).

industry grew from $3.1bn to $8.6bn. This represents an annual compounded growth rate of 16 percent per year. The prospects for the future of the U.S. market seem equally optimistic.

Europe's ability to attract investment in this area has fallen far behind these benchmarks. In the experience of stakeholders with international timeshare interests, European development margins are, on average, some 20% below what similar investments in the U.S. return.

According to the same opinions, the uncertain and problematic regulatory environment giving rise to distortions of competition (because of the unregulated products) and internal market distortions goes a long way in explaining these disparities.

3.4.5. OTE Code of Ethics

The revised OTE Code of Ethics, represents an attempt at self-regulation by the organised timeshare industry. The revised Code came into force on 1 March 2005 to deal with a number of issues regulated by the Directive, and in some cases goes beyond the Directive in providing stronger consumer protection. The Codes include disclosure requirements, which are additional to those provided for by the Directive, as for instance that timeshare interests must not be marketed or sold as an investment and information about the roles and responsibilities of the different parties involved (e.g. trustee, management company and owners' committee). Exchange is also subject to significant disclosure requirements.

However, the Code of Ethics falls short of solving consumer problems in the area, since it simply cannot oblige non-OTE members, or rogue traders, from complying with the prescribed rules. Even though most OTE members generally comply with the Code, the Commission and consumer organisations have periodically received numerous consumer complaints about breaches of articles of the Code.

3.5. Other holiday products[21]

Since the adoption of the Timeshare Directive, important changes were observed in the market for timeshare and other holiday products, including the appearance of a number of new propositions approximating timeshare. This approximation was achieved both in terms of the customer promise they purport to deliver, the substantial long-term financial commitment for consumers, the means by which they are marketed and sold and the cross-border nature of the product.

Central among the common characteristics of these products, however, is that they fall outside the scope of the Directive. Some are specifically designed to circumvent the coverage of existing legislation affording protection to consumers (e.g. contracts for 35 months), whereas others fall outside the scope because of the type of accommodation offered (e.g. cruise ship accommodation).

[21] Despite the best efforts of the Commission services involved in this impact assessment, it has not been possible to collect quantitative data on timeshare-like or long-term holiday products, other than timeshare. This may be due to the fact that these products are often marketed by rogue traders or small companies for which no aggregate official data exist.

3.5.1. Timeshare-like products

These products are economically similar to timeshare, but are either designed in a way that falls outside the definitions contained in the Directive, or the nature of the property or accommodation to which rights to occupy are granted is not covered by existing legislation.

The problem with products falling outside the scope of the Timeshare Directive appears to be that the existing legislation defines the product of timeshare not by reference to the nature of the agreement between a trader and a consumer, but rather by other issues such as the duration of the contract or the nature of the property to which the agreement relates. The products that have appeared since the adoption of the Directive have taken full advantage of the rigidities it contains in terms of contract duration and property characteristics.

Examples of such timeshare-like products include contracts that provide for:

- Repeated stays in immovable or movable holiday accommodation, with a contract for a duration of less than 3 years

- Repeated stays in immovable or movable holiday accommodation, where the stays last less than one week.

- Repeated stays in holiday accommodation relating to movable rather than immovable property, such as boats or caravans.

Consumers that purchase such products are inevitably exposed to serious risks as a result of not having their rights protected by legislation, as a consumer of timeshare would. Recognising this problem, UK has already extended the coverage of their timeshare legislation to cover caravans as well.

This issue becomes especially acute given that the product is often marketed in holiday destinations where the potential purchaser is in unfamiliar surroundings without access to advice, and to consumers who would also be targeted by companies selling timeshare or other long-term holiday products. Consumers purchasing timeshare-like products are not protected according to the Directive by a cooling-off period, by a mandatory ban on deposits, and the requirements relating to specific pre-contractual information and the content of the contract.

3.5.2. Discount Holiday Clubs

Consumers joining a "Discount Holiday Club" pay an initial fee for joining the club, in return for which they gain access to a booking service, being promised special rates or discounts on flights, accommodation, car hire, insurance and other services. These club memberships involve substantial financial commitments from consumers[22]. Typically, they

[22] The fee paid to become a member ranges from 6000 euro to sometimes up to as much as 20000 euro. The annual fee is around 150 euro and every single holiday has to be paid for.

promise access to holiday accommodation, alone or in combination with travel, over a long period into the future, for a considerably initial outlay and then subsequent payments.

While these products are not timeshare, they are characterised by three elements that approximate them to timeshare: the fact that the consumer enters a contract for the repeated usage of holiday accommodation; the fact that an upfront payment is demanded; and the fact that these products are marketed through methods (misleading and aggressive practices, etc) similarly adopted in the past (mostly before the adoption of the Directive) by some operators in the timeshare market. The combination of these characteristics with the lack of regulatory protection for consumers can be very problematic.

There are strong indications that the most significant part of consumer complaints registered under the category of timeshare, relate to these new products, even if they are not timeshare. (See Section 3.12). A variety of problems has been reported by consumer organisations, industry organisations, European Consumer Centres, and regulatory authorities, including:

- The lack of precise legal definition of the concept.

- Contracts for these products often do not specify the accommodation involved (other than e.g. “accommodation in 5 star hotels around the world”) and are often not backed by underlying property assets.

- The product is often marketed in holiday destinations where the potential purchaser is in unfamiliar surroundings without access to advice, and to consumers who would also be targeted by companies selling timeshare or timeshare-like products.

- Since the products are not regulated, the consumer does not have a cooling-off period, nor is the trader prevented from taking a deposit, or obliged to give consumers pre-contractual information on the product he is selling.

- The discounts and offers made available to consumers will depend on the trader’s ability to contract “good deals” to be offered to the members.

- According to the complaints received, these companies do not generally have the financial capacity and/or reputation needed to procure such contracts. They are often not able to honour the promises made, and in the event of bankruptcy on the part of the trader, consumers lose all the money they paid.

- The product is in some cases marketed by 'ghost' companies, which extract significant financial commitments from consumers and then disappear.

- The perceived proximity of this type of product to timeshare has gone a long way in tarnishing the image of the legitimate timeshare industry. Industry reports, negative media coverage of the industry, and widespread consumer perceptions bear witness to this situation.

Recognising these serious problems, most stakeholders and Member States have expressed their support in bringing these products within coverage of EU legislation. Certain Member States, such as Portugal, have put in place laws regulating these products.

It should be stressed that, as a variety of stakeholders have pointed out, many of the problems within the sector of Discount Holiday Clubs relate to the business practices employed in sales of the product, rather than the inherent nature of the product itself. Reminiscent of practices in the timeshare sector prior to the adoption of the Directive, marketing techniques for these products include (as reported by the UK Office of Fair Trading[23]) exaggeration of the benefits of club membership (for example, luxury long-haul flights for extremely low fares); telling the consumer during promotional presentations that the 'discount' price quoted for membership is available only on that day in order to force the purchase; and, being aggressive towards consumers during the sales process when the consumer has said they are not interested.

These are arguably problems pertaining to particular sales and marketing practices, rather than regulatory lacunae in sectoral legislation; they could, therefore, be better addressed either through better enforcement of existing legislation and the Unfair Commercial Practices Directive (UCP)[24]. The latter would indeed pertain to the problem at hand, since it outlaws unfair practices, in particular aggressive and misleading practices.

However, the fundamental problem remains that consumers of these products would not have the minimum rights afforded to them by consumer protection legislation. UCP does not provide for contractual rights and remedies to consumers, and would hence leave the problem of not having a ban on deposits, a mandatory cooling-off period, and detailed, specific pre-contractual information unresolved. These regulatory lacunae would therefore not be addressed by tighter controls on marketing practices through the enforcement of UCP.

The combination of provisions in the Timeshare Directive with other consumer protection legislation relating to business practices, has dealt substantially with these sales issues in the timeshare market. This is strongly suggested by consumer complaints data in Section 3.12, which shows complaints relating to timeshare between 2001-2005 as declining steadily.

It is arguable that a similar set of robust and updated provisions applicable to such products, which are sold using essentially the same approach and which demand substantially the same from consumers in terms of financial commitments, could remedy and improve market outcomes both for consumers and businesses. The issue of the unintended regulatory coverage of membership in other discount schemes (such as points schemes offered by credit card companies) does not pertain, since the definition in the proposal for a new Directive specifies that the covered products should be primarily concerned with discounts *on accommodation.*

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[23] Office of Fair Trading submission to the Consultation Paper on the review of the Timeshare Directive of 1 June 2006

[24] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council. UCP will be applicable in Member States by 12 December 2007.

3.6. Resale for timeshare and timeshare-like products

A consumer who wishes to sell his timeshare, could do this on his own or involve a resale agent, either affiliated to the resort to which his timeshare is linked or an independent agent. The resale agent will normally charge a fee for his services, and act as an intermediary between the consumer who is selling the timeshare and the purchaser, who is often another consumer. The consumer interests in the area of resale are therefore twofold: the protection of the consumer whose timeshare is being sold, and the protection of the consumer who is buying the timeshare.

According to figures quoted by OTE, the value of resale sales across the EU in 2001, amounted to € 400 million, or approximately 17.4% of the total sales volume of the timeshare industry. In 2003, an estimated €60 million resale transactions occurred (consumer-to-consumer) in Spain. Consumer resales represent nearly one out of five timeshare purchases (17%). UK buyers are much more likely to acquire a timeshare on the secondary market, as 30% of buyers surveyed had bought their timeshare through a resale[25].

Many complaints (see Section 3.12) to European Consumer Centres, consumer organisations, the European Commission and enforcement authorities indicate that many of the problems in relation to resale relate to fraudulent activity – for example an 'agent' charging an upfront fee to a person wishing to sell a timeshare when the 'agent' has no intention of selling the timeshare, an 'agent' charging for resale where no sale takes place at all, so the consumer ends up with two timeshares, or where there is a sale it is at a price which barely covers the agent's fees at all. This activity should normally be covered by general criminal law provisions dealing with fraud.

However, evidence suggests that there are cases of genuine resale agents that also take an upfront fee to cover marketing costs. This makes it very difficult for the consumer to identify who is a genuine and who is a fraudulent operator. As legislation granting a cooling-off period to and a ban on deposits does not apply to resale, the consumer is not protected, and recovering the deposit paid if often difficult. In the UK, given the existence of widespread fraud, the Office of Fair Trading (OFT) advises consumers to avoid any resale agent that asks for a fee upfront.

Stakeholders have pointed out that if the legislative ban on advance payments which currently applies to timeshare sales, was extended to contracts for resale, combined with awareness-raising about the illegality of taking advance payment for such contracts, then rogue operators could be squeezed out of the market. This could be achieved, first, by the fact that fewer consumers would be entering into contracts where advance payments were requested, and secondly, through robust enforcement of legislation. The extension of the coverage of the Directive, therefore, can be seen as an effective way of addressing problems in this area, and affording consumers entering into such contracts effective protection.

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[25] *Resort Timesharing in Spain: Industry Size, Market Characteristics, and Economic Impacts*, 2003 Ragatz Associates study for OTE

3.7. Timeshare exchange

If the timeshare resort is affiliated to an exchange scheme, the timeshare owners/ timeshare right holders may join the scheme. Members of an exchange scheme "deposit" their week into the pool of the exchange scheme and request exchange on a like-for-like basis from the pool of weeks deposited by members worldwide. The exchange system may also be constructed in a way that points are assigned to the timeshare based on several factors including the quality of the resort and size of the apartment. Members can then identify how many points they need for stays in other affiliated resorts and request a stay. Points can also be used as payment for air travel, car hire etc. Normally the consumer will have to pay an annual fee for the membership, usually ranging between 90-120 euros and in addition transaction fees in the range of approximately 120-200 euro for each exchange.

The two largest exchange companies currently hold more than 95% market share of exchange transactions on a global scale.

The possibility of joining an exchange scheme is often used in the marketing of timeshare and timeshare-like products as a positive argument. Buyers of timeshare rate the exchange opportunity as one of the most important motivations for purchasing. Indeed, the possibility of having a healthy and well-functioning secondary market in the form of exchange is considered as a vital enhancement to the timeshare product, since it offers consumers flexibility and more choice.

Nonetheless, some problems relating to these schemes are reported by consumers. The major part of the problem seems to be related to the "overselling" of the advantages and possibilities of timeshare exchange. This can result in consumers being disappointed or dissatisfied with their exchange membership because the requested accommodation is not available, the timeshare/timeshare-like product they have is not of sufficient value to be exchanged for the "5 star luxury resort" shown in the marketing, or with unexpected high costs related to exchange, having to pay annual membership fees as well as fees related to search and use of exchange. In many cases membership in an exchange scheme is marketed and sold in connection with the purchase of the timeshare, and the fees for the first year of membership may be "free" or included in the global price. In these cases consumers may not be aware of the actual cost of the membership.

Consumer organisations have stressed that the marketing of exchange often gives consumers the impression that they are signing up to something that will give them unlimited choice out of a large number of properties. However, the choice in practice is limited due to availability and depending of course on the value of the timeshare to which the exchange membership is linked. If the timeshare gives the right to a week stay in low season, this cannot be exchanged for a stay in a similar property during high season. Indicatively, In a 2003 OTE survey of timeshare owners in Spain[26], 32% of respondents said that exchange options with other resorts were unclear.

Stakeholders have also argued that the extension of the scope of the Directive could go a long way in remedying these problems, (by affording consumers the right to relevant information and a contract and by the cancellation of the exchange contract if the consumer

[26] *Ibid*

withdraws from the timeshare contract) without imposing a disproportionate regulatory burden on businesses.

3.8. Withdrawal Period

The withdrawal period of 10 days from the signature of the contract, as currently laid down in the Directive is deemed by almost all stakeholders to be too short. Consumers who sign a contract during their holiday, can often not properly assess the actual consequences and implications of their purchase, until they return to their place of residence, by which time it may be too late to withdraw from the contract.

The need for a withdrawal period is confirmed by abundant data. As mentioned earlier, a 2003 OTE survey of timeshare owners in Spain[27], showed that nearly 60% of buyers cited their discomfort with making a "same day" decision involving a significant financial commitment, and 53% expressed their concerns about future maintenance fee increases. Further, 44% expressed reluctance to buy a timeshare because of pressure techniques during sales presentations.

Furthermore, the minimum harmonisation nature of the Directive has produced the result of Member States going beyond 10 days, to introduce longer cooling-off periods. Table 1 summarises the different cooling-off periods relating to timeshare contracts across EU Member States:

Table 1: Cooling-off periods across Member States

(Calendar days, unless specified)	
15 days	Belgium (working days), Cyprus, Czech Republic, Hungary, Slovenia.
14 days	Austria, Germany, Latvia, UK.
10 days	Denmark, Estonia (from receipt of contract), Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden.

It was generally confirmed during the stakeholder consultation process that this divergence can be considered as a significant legal barrier to conducting business cross-border in the EU. This is a barrier that causes cost, complexity and uncertainty for firms, and negatively affects consumer confidence when conducting cross-border transactions. This is a particular problem for SMEs who face the same start-up costs as larger businesses, and whose activities are more seriously impeded by such obstacles due to their smaller size and capacity.

Business and consumer stakeholders affirmed that a fully harmonised 14-day cooling off period for consumers would effectively tackle this problem with very beneficial effects for all stakeholders involved, without imposing a disproportional burden on businesses.

[27] *Ibid*

3.9. Information Requirements and Administrative Costs

The Directive currently contains an annex with a list of requirements on information to be given to the consumer prior to the conclusion of the contract. Pre-contractual information requirements are considered as a fundamental element of consumer protection in this area, given the complexity of the product and the substantial financial commitments involved.

For the products that currently fall outside the scope of the Directive, there is no concrete obligation on the part of the trader to provide pre-contractual information to consumers in a prospectus and the contract. In some cases involving such products, it was reported by consumer organisations that consumers are told that the product being sold is not timeshare, and hence they do not need to receive such information. The result is that consumers are misled into entering such contracts without sufficient information or understanding about what they are purchasing.

Many complaints, therefore, relate to omissions of material information that the consumer needs in order to make an informed decision. Numerous cases also relate to lack of information, to what is perceived as unintelligible contracts, and unfair contract terms. Examples of such terms are unreasonable maintenance fees increasing significantly above a reasonable rate after an initial period, and the terms regulating the way the resorts are managed and how decisions are taken.

Various surveys confirm the critical importance of obligatory detailed pre-contractual information for consumers. In the 2003 OTE survey[28], nearly 60% of buyers cited their discomfort with making a "same day" decision involving such a significant financial commitment, and 53% expressed their concerns about future maintenance fee increases. 32% of consumers said that exchange options with other resorts were unclear.

Consumer organisations have repeatedly requested an updating of the consumer information requirements, in order to address the problems faced by consumers when entering into contracts for the sale of timeshare, and the extension of the relevant requirements to timeshare-like products, long-term holiday products, resale and exchange.

These information obligations do involve some administrative costs[29] for enterprises, in terms of collecting and disseminating the information to consumers, according to the requirements of the Directive. The public consultation has confirmed, however, that these costs are not disproportionate or excessively onerous, and they are necessary in order to meet the consumer protection objectives enshrined in the Treaty.

According to Commission estimates, the administrative costs imposed by the Directive currently amount to EUR 279,794. This estimate is obtained from Table 13 (Annex I)(including only timeshare businesses, which are the ones covered by the current Directive). For more details on the methodology used to obtain this estimate, please refer to Annex I.

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28 *Ibid*

29 Administrative costs refer here to the costs incurred by enterprises and public authorities in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties

3.10. Ban on Deposits

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 lead 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.

3.11. Subsidiarity

3.11.1. Legal basis

The legal basis for the proposal for a new directive is Article 95 of the Treaty.

3.11.2. Necessity for EU-level Action

The objective of the proposal is to enhance the protection of consumers in respect of certain aspects of marketing and sales of timeshare, timeshare-like products, long-term holiday products, the resale and the exchange of such products, as well as to help consumers and traders to take as much advantage as possible of the Internal Market in this sector where the contract is a typical example of cross-border transaction.

This objective cannot be sufficiently achieved by the Member States given the disparities between national legislations that are creating barriers to the proper operation of the internal market, distortions of competition and thus legal uncertainty. It can be better achieved at Community level by adopting harmonised rules, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.

Any proposal, like the existing Directive, will 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 will be applicable.

Hence, a Community measure is required to overcome the consequences of the legal disparities which could prevent consumers and traders from benefiting from the freedom of movement vested in them by the Treaty. A number of specific factors necessitating EU-level action emerged relatively early in the analysis of current problems:

- Cross-border nature of the products: they are often cross-border in nature, and involve a multiplicity of actors from various Member States, often subjected to different jurisdictions. Action by Member States in isolation is extremely unlikely to solve existing problems, given the cross-border nature of the product. For example, 500,000 UK families are reported to own a timeshare, and the vast majority of these timeshares are outside the UK[30] Similarly, OTE reports that one in three timeshare owners owning in mainland Spain and the Balearics are UK residents[31].

- The complexity of contractual relations inherent in these products.

- To the extent that the proposal for a new directive addresses internal market barriers arising from diverging national legislation, Member States could not solve

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[30] Figures reported in the UK response to the February 2006 Health and Consumer Protection Directorate-General Questionnaire for Member States and Stakeholders.

[31] OTE – *The European Timeshare Industry in 2001*, p.57.

this problem in isolation, since the barriers arise from the legal differences between Member States legislation.

3.12. Complaints data

This section explores data on consumer complaints as evidence for the magnitude of the problem in the sector of timeshare, timeshare-like products, long-term holiday products, resale and exchange. Consumer complaints were identified from an early stage in the review process as a key indicator of the size of the problem relating to this market, as they represent a real world and on-the-ground signal on the amount of problems consumers are facing.

Consumer complaints data on these products, originates from a variety of sources, including European Consumer Centres, consumer organisations, national enforcement authorities and the industry.

The European Commission also regularly receives complaints on these products. Most of these are complaints emanating from UK citizens, in many cases forwarded to the Commission by UK MEPs. The regularity of these complaints addressed to the Commission suggests a critical mass of consumer problems in the market.

3.12.1. General

An important issue to consider when using complaint data as an indicator of consumer detriment is what it is that determines whether or not a consumer chooses to complain.

A survey by Warland et al[32] found that 25 per cent of people who were very dissatisfied with the way in which they had been treated as a consumer did not complain. Other studies have suggested that this figure could be even higher.

In the absence of coercion, a consumer's decision as to whether or not to complain depends on his perception of the costs and benefits of making a complaint. The costs and benefits of complaining can be both financial and psychological. Financial costs and benefits include foregone earnings and compensation. Psychological costs and benefits include stress and feeling "a sense of justice".

Research has identified a number of factors that affect a consumer's decision to complain. These include: degree of dissatisfaction; importance of purchase; opportunity to complain; knowledge of process; probability of complaint success; situational influences; and general cultural influences.

Country specific factors may also affect a number of these factors. For example, differing levels of consumer protection in Member States may affect a consumer's perception of the likely success of their complaint.

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[32] Warland, R.H., Herrmann R.O and Willits, J., "Dissatisfied Consumers: Who gets upset and who takes action", The Journal of Consumer Affairs, 1975

3.12.2. Consumer Complaints to European Consumer Centres.

The European Consumer Centres Network is an EU-wide network to promote consumer confidence by advising citizens on their rights as consumers, and providing easy access to redress in cases where the consumer has made a cross-border purchase. The network was created by merging two previously existing networks: the European Consumer Centres or 'Euroguichets', which provided information and assistance on cross-border issues; and the European Extra-Judicial Network or "EEJ-Net" which helped consumers to resolve their disputes through alternative dispute resolution schemes (ADRs) such as consumer complaint boards or arbitrators.

Given their mandate as a first port of call for consumers facing difficulties, ECCs are well-placed to receive complaints relating to problems consumers have with certain products and services. This data is submitted in annual reports to the European Commission. ECC consumer complaints data relating to the timeshare sector is available from 2001 onwards, until the present.

In terms of data collection, ECCs in most cases have not recorded complaints separately when it comes to timeshare on the one hand, and timeshare-like products, long-term holiday products, resale of timeshare, and exchange of timeshare on the other. Either all complaints are pooled together and reported as "timeshare", or complaints on 35-month timeshare and discount holiday clubs are reported as “miscellaneous” – something which can be problematic when trying to discern which product categories most complaints are emanating from. This issue is most acute with regards to the second category of products (see Section 8 for information on how the Commission has attempted to remedy this problem).

To understand the significance of the problem, the share of these complaints as a percentage of total complaints to ECCs was calculated in Table 2 below[33]. Whereas the number of complaints remained over 3000 during the three years observed (with a maximum of 3 607 complaints in 2002), their share fluctuated due to the changing number of total complaints. Six percent of all complaints were timeshare related in 2002, five percent a year later.

[33] The comparison does not extend to 2004 and 2005 because complaints data was not reported by some ECCs for those years, and hence comparison with previous would not be possible.

Table 2: Share of complaints in total complaints, available countries*

	2001	2002	2003
Timeshare (and other holiday products)	3 301	3 568	2 936
Total Complaints	89 216	57 856	60 579
Share of total complaints:	3.7%	6.2%	4.8%

* Based on the following countries which present complete series from 2001 to 2003: Belgium, Germany, Spain, France, Ireland, Luxembourg, Austria, Portugal, Finland and Sweden.

The number of timeshare-related ECC complaints by individual country between 2001 and 2006 is displayed in Table 3. It should be noted that complaints relating to timeshare as defined in the Directive and complaints linked to other products cannot be separated. Hence, both elements may be included in the figures of Table 3.

Table 3: Number of complaints[(1)] by country, 2001-2006

	2001	2002	2003	2004	2005	2006
Total	**3301**	**3607**	**3175**	**2090**	**1813**	**2256**
BE	9	615	72	430	114	297
CZ					10	24
DK					0	95
DE	257	612	1358	904	780	577
EE					1	0
EL			12		2	1
ES	1147	165	208	28	42	188
FR	991	441	173	191	43	41
IE	104	414	191	78	60	44
IT		39	41		8	13
CY					4	4
LV					0	9
LT					0	0
LU	43	144	45		31	6
HU						0
MT					0	
NL						25
AT	189	202	155		45	31
PL					5	10
PT	26	76	193		46	67
SI						0
FI	212	267	164	98	14	8
SE	323	632	377	140	205	213
UK			186	221	304	341
IS						0
NO					99	262

(1)Timeshare + other long-term holiday products + resale +exchange

(2)Requests and complaints

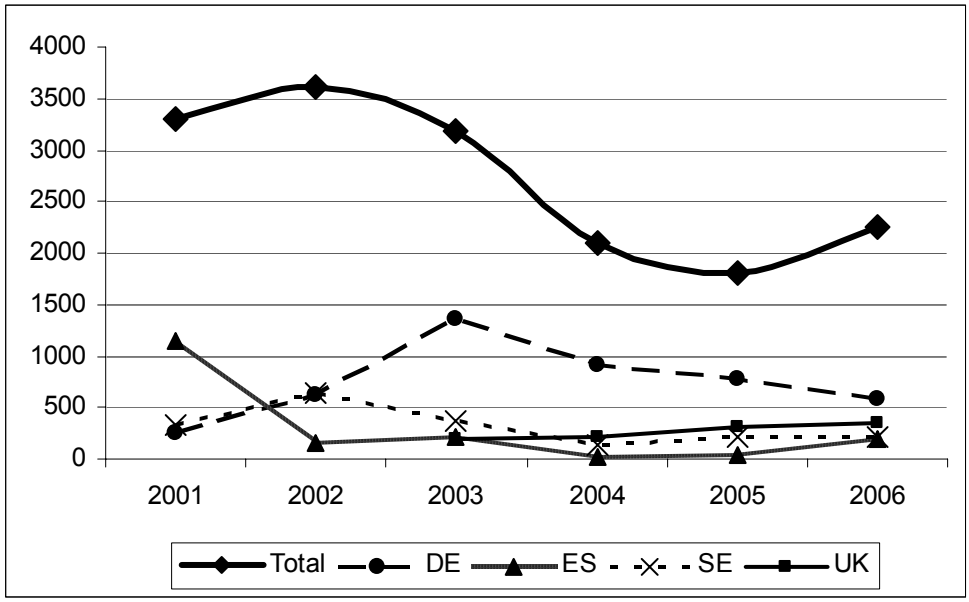
Spain is the country where the number of complaints was highest in 2001 (1 147) followed by France (991). In 2002, 2003 and 2004, it was in Germany where roughly half of timeshare complaints at aggregate level were registered. Conversely, Belgium observed the lowest value (9) in 2001. In 2005, four countries registered more than 100 complaints, whereas in 2006 this number rose to 6.

At aggregate level, the number of timeshare complaints has been decreasing between 2002 and 2005, but shows a sharp increase of almost 25% between 2005-2006.

The number of complaints at aggregate level fluctuated around 3000 between 2001 and 2002. A linear decline was observed in the years that followed. In 2005, the total number of complaints in the selected countries (1 258) represented 40% of the amount counted in 2001.

Data for 2006, however, suggest a different trend: 12 countries have observed rising complaints, most notably in key consumer markets for timeshare and other long-term holiday products: Spain has observed an increase close to 350%, Norway 165%, Belgium 160%, Portugal 46% and the UK of 12%. This is shown in Graph 1 below, which examines the evolution of consumer complaints between 2001 and 2006 in four countries:

Graph 1: Trends of complaints in selected countries



The sharp decrease in complaints in Spain between 2001-2005 could be explained by the judgement of the Court of First Instance n° 1 of Fuengirola (Málaga) of 24 February 2004[34], which decisively ruled that discount holiday clubs and other long-term holiday products are not timeshare, resulting in a separation in the way the complaints were recorded by ECC Spain. In Germany, the maximum was reached in 2003 followed by a noticeable decrease in the years after. Despite the decrease in German figures after 2003, however, complaints levels for 2004 and 2005 remained much higher than they were before 2003 (904 in 2004 and 780 in 2005, as opposed to 257 in 2001 and 612 in 2002).

For the UK and Norway, the figures observed in 2006 are the maximum observed in the given time series.

In order to address the problem of the lack of distinction in ECC complaints relating to timeshare and to other products, the Commission in 2006 requested from ECCs the re-

[34] Judgment of 11 March 2003 of the Judge at Court n° 1 of Fuengirola, Málaga, in the case Asociación Nacional de Empresarios de Tiempo Compartido & O.T.E versus Dream Works Vacation Club, Incentive Leisure Group Ltd, Timelinx S.A. and others.

classification of complaints filed as 'timeshare'. The results from ECCs for the first six months of 2006 are summarised in Table 4 below:

Table 4: ECC Complaints – first half 2006

	COMPLAINTS BREAKDOWN – first half 2006			
	Timeshare	LTHP [1]	Resale	LTHP + Resale [2]
Total	**117**	**494**	**237**	**115**
BE	6			86
CZ	0	9	0	
DK	2	66	0	
DE	39	125	164	
EE	0	0	0	0
EL	0	1	0	
ES	11	48	8	
IE	2			23
LV	0	0	0	0
LT	0	0	0	0
LU	1	0	0	0
HU	0	0	0	0
AT	6			0
PL	2			6
PT	7	3	2	
FI	3	6	3	
SE	17	99	25	
UK	10	133	30	
NO	11	4	5	

[1] LTHP: long-term holiday products

[2] This column includes submissions by ECCs that did not distinguish between LTHP and resale complaints.

The table above clearly suggests that the vast majority of problems, at least for first half of 2006, relate to long-term holiday products other than timeshare, and resale. At the aggregate level, 117 complaints were received in the first half of 2006 with regards to timeshare, whereas a total of 846 complaints were received with regards to resale and other long-term holiday products. Put another way, 87.8% of complaints recorded by ECCs during the first half of 2006 relate to products that are not regulated.

3.12.3. Limitations of ECC Complaints Data

Some limitations in ECC complaints data have to be underlined. For instance, there are no data for all years and for all EU countries. In EU-10, ECCs were created after accession, and hence data do not exist prior to 2004. Some new Member States do not yet have ECCs.

For data prior to 2006, due to the classification system employed by ECCs in recording complaints, it is not clear whether data refer exclusively to timeshare or to timeshare with other products; and, in limited cases, whether it refers only to complaints, or complaints and requests for information.

The Commission's request to ECCs to separate complaints categorised as timeshare for 2006 into their appropriate categories, was an attempt to remedy this problem, and confirmed the significance of the problems relating to the unregulated products.

3.12.4. OTE Complaints Data

OTE reports[35] that since 1999, timeshare-related complaints have been falling steadily, and are now estimated to amount to approximately 500 per year across the EU. The decline in complaints suggests that the combination of provisions in the Timeshare Directive with other consumer protection legislation relating to business practices, in conjunction with consumer information, redress mechanisms and self-regulation, has dealt with some of the problems consumers faced before the adoption of the Directive.

Falling complaints figures with respect to 'traditional' timeshare, however, could also be explained by a slowing down in volume of timeshare sales, as was suggested by various stakeholders. According to responses to the Commission Impact Assessment Questionnaire for Business Stakeholders of July 2006, this decrease in sales in the European timeshare industry may be as high as 33% from 1998 onwards. OTE corroborates this view in its response to the February questionnaire, reporting that the timeshare "growth rate has been tempered between 2002-2005 for various reasons", quoting capacity issues, the European economic slowdown and the industry going into consolidation as the major factors.[36]

3.12.5. UK Data

As the largest timeshare consumer market in the EU, the UK has a special weight when analysing the problems in this sector. The UK has more timeshare owners than any other European country and the UK industry (in terms of timeshare agencies, timeshare developers, sellers and resellers, etc) is estimated to be worth a total € 157 million per year. 500,000 UK families are reported to own a timeshare, almost 80% of them outside the UK[37]. As seen above, 50% of timeshare owners in Spain in 2003, resided in the UK (see section 3.4).

The Commission made specific enquiries, therefore, to the Office of Fair Trading (OFT), in order to investigate the availability of supplementary, disaggregated data on consumer complaints relating to timeshare, timeshare-like products, long-term holiday products, resale and exchange.

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[35] OTE submission to the Health and Consumer Protection Directorate-General Consultation Paper on the Timeshare Directive (1 June 2006)

[36] From the OTE response to the February 2006 Health and Consumer Protection Directorate-General Questionnaire for Member States and Stakeholders

[37] From OTE press release of 9 June 2006 on OTE UK Survey of 15,000 timeshare owners.

Two additional sources of data emerged in this investigation: the OFT internal database and the database of consumer complaints registered by Consumer Direct, a telephone and online consumer advice service, supported by the Office of Fair Trading.

The results, in both cases concerning the time periods of September 2004 – September 2006, are tabulated in the tables below:

Table 5: OFT Complaints Database – September 2004-September 2006

	Timeshare	Holiday Discount Clubs	Timeshare Resale	Total
Sept '04 – Sept '05	88	265	48	401
Sept '05 – Sept '06	81	358	53	492

Table 6: UK Consumer Direct Complaints Database

	Timeshare	Holiday Discount Clubs	Timeshare Resale	Other	Total
Sept '04 – Sept '05	315	477	147	35	974
Sept '05 – Sept '06	530	925	500	131	2086

A number of conclusions can be drawn from this data:

- ECCs complaints data does not necessarily evoke the magnitude of the problem: whereas the UK ECC reported totals of 221 and 304 complaints for 2004 and 2005 respectively, the data from the OFT and UK Consumer Direct paint a very different picture of the size of the problem.

- Due to the system of classification of complaints by ECCs, it is difficult to observe the 'share' of the problem between different products. On the contrary, the UK data presented here clearly shows that the great majority of problems concern long-term holiday products other than timeshare, and to some extent timeshare resale.

- The complaints relating to the unregulated long-term holiday products show a very sharp increase in both datasets: in the OFT database, they show an increase of 35%, whereas in the Consumer Direct database an increase of 94%.

- Timeshare resale-related complaints also display an upward trend, up by 10% in the OFT dataset, and by 274% in the equivalent from Consumer Direct.

- Trends on complaints relating to timeshare, on the other hand, diverge between the two datasets: they are down by 8% in the first one, and up by a significant 68% in the second. This increase as well as the quantity of complaints recorded contradict the figures provided by OTE.

- Examining the aggregated totals including complaints for all products, the upward trend found in the UK ECC data is confirmed: total OFT complaints relating to the

sector increased by 23% in the two years examined, and Consumer Direct complaints by 114%.

3.12.6. Conclusion

Data collected from European Consumer Centres in the course of the impact assessment for the revision of the Directive suggests that complaints relating to timeshare a generally downward trend between 2001-2005, and a sharp increase of 25% in 2006. This is a strong indication that the existing Directive, in conjunction with other consumer protection legislation relating to business practices, has addressed many of the problems consumers faced before the adoption of the Directive.

Generally declining complaints can also very plausibly be attributed to the generally declining sales of timeshare in the European timeshare market, as reported by OTE and various other business stakeholders (some allege that the contraction in the European timeshare market after 1998 was equivalent to 33% - see section 6, impact analysis of Option 1) in their submissions to Commission consultation documents.

Despite the observed decrease, a very significant number of complaints do persist in the market, most of which relate to unregulated areas such as timeshare-like products, holiday discount clubs and timeshare resale. Despite certain data limitations outlined above, this is clearly proven by the data collected from the UK, one of the most significant markets across the EU for these products.

This data suggests that since in 24 months, complaints related to these products, in particular the unregulated products, have doubled, then the complaints data presented by ECCs constitute a mere sample of a problem which appears to be *much* larger. The fact that there is a significant amount of consumer complaints relating to the unregulated products signifies the need for regulatory intervention in order to correct the problem and eliminate the loopholes identified, by conferring legal rights that are currently enjoyed by consumers of the regulated timeshare product.

4. Objectives

In general terms, the Commission's key goals remain to enhance consumer and business confidence in the internal market through a high common level of consumer protection, the elimination of internal market barriers and regulatory simplification through the application of the principles of better regulation.

More specifically, in the area of timeshare, timeshare-like products, holiday discount clubs, resale and exchange, this could be achieved by undertaking measures with the aim of:

- Extending the protection that consumers enjoy when purchasing timeshare, to timeshare-like and other long-term holiday products, such as discount holiday clubs.

  Output Indicators: Level of consumer complaints relating to these products across the EU.

- Ensuring appropriate protection of consumers entering into timeshare resale contracts.

Output Indicators: Level of consumer complaints relating to resale.

- Ensuring appropriate protection of consumers entering into exchange system contracts

Output Indicators: Level of consumer complaints relating to timeshare exchange

- Harmonizing fully the consumer protection provisions pertaining to timeshare, timeshare-like, discount holiday club, resale and exchange contracts throughout the EU, where appropriate (as for instance, the information requirements).

Output Indicators: Transposition of the new directive by Member States

At the operational level, a further set of objectives have been identified:

- Enabling legitimate timeshare businesses to flourish across the EU by protecting them from unfair competition, and removing barriers to cross-border trade.

Output Indicators: Removal of rogue elements from the market; improvement of the image of timeshare and other holiday products among consumers and the media; level of cross-border investment

- Ensuring effective enforcement

Output Indicators: Removal of rogue elements from the market; application of criminal sanctions by Member States; reduced incidences of reported fraud

- Enabling consumers to make informed choices

Output Indicators: Number of consumer complaints to European Consumer Centres, consumer organisations, the European Commission and enforcement authorities.

5. Policy Options

The Policy Options outlined below and the ensuing analysis are the product of the Commission's examination of problems in this area. Most of these options formed part of the public consultation exercise on the review of the Directive, and elicited considerable input and a wide range of views from a variety of stakeholders.

5.1. Initial Policy Options

In the duration of the 2006 consultation exercise, a set of six preliminary Policy Options emerged:

- **Option 1**: No Action (Baseline Scenario)
- **Option 2**: Vertical Revision of the Directive
- **Option 3**: Regulation of Discount Holiday Clubs under a revised Package Travel Directive (90/314/EEC)

- **Option 4:** Regulation of Discount Holiday Clubs as well as other unregulated products under a revised Sales Directive
- **Option 5:** Introduction of Professional Licensing Requirements
- **Option 6**: Non-legislative action (enforcement, self-regulation, consumer information campaigns)

5.2. Filtering of Policy Options

Following the 2006 public consultation exercise, a number of Policy Options were eliminated:

Option 3: Regulation of Discount Holiday Clubs under a revised Package Travel Directive (90/314/EEC).

Some stakeholders, in particular representatives of the European timeshare industry, have argued that discount holiday clubs should be regulated in the Package Travel Directive. It is however evident that there are significant differences between these products and package tours, which render this option unfeasible:

- When a consumer becomes a member of a discount holiday club he only purchases the right to obtain discounts, and not a package tour (or any other travel per se).

- Membership in a discount club is a *long-term contractual relationship* often involving *substantial financial investment*, whereas a package travel contract generally involves smaller amounts and is a short-term one-off contract.

Option 4: Regulation of Discount Holiday Clubs as well as other unregulated products under a revised Directive on "pro-active sales"

Another option which has been promoted by a few stakeholders is addressing the problems related to the holiday discounts club in a new directive on "proactive sales". It must be borne in mind that these stakeholders have not defined the concept of pro-active sales". Such a Directive would put together the directives on Distance Selling, Doorstep-selling, and Timeshare since these three directives would, in their opinion, be deemed to address similar problems. This proposal rests on a fundamental misunderstanding of these directives, which address different situations of consumer vulnerability and which do not necessarily deal with pro-active sales. For example, the situation of a consumer who makes a purchase on the internet after visiting the website of the trader is completely different from that of a consumer who is approached in the street when on holiday by a sales agent of a timeshare company. Moreover, in the absence of a proposed definition, it is not clear what the proposed concept of "pro-active sale" would cover. For example, would this concept cover the sale of sunglasses or swimsuits by ambulant traders on the beach?

For the reasons above, the Commission believes that this is not a credible option.

Option 5: Professional Licensing Requirements[38]

In some Member States, like Greece, Belgium and Malta, traders who wish to sell timeshare need to register and obtain a licence. The possibility of introducing at EU level requirements for licensing of traders selling the products was raised in the timeshare Consultation Paper.

Stakeholders' views were split on this issue. It was pointed out that licensing systems are often aimed at rogue traders, but such traders would not attempt to obtain this license in any case. Doubts also existed as to whether such an obligation would be an efficient allocation of public resources, for Member States that would be required to establish mechanisms to run and monitor such schemes.

The Commission concluded therefore that introducing licensing requirements at this stage would not be an appropriate measure, since it would disproportionally increase the costs faced by the public administration and create new compliance costs (particularly administrative costs) for business. The resources of the public administration would be better used on the enforcement of legislation.

5.3. Policy Options Considered by the IA

Following the elimination of the Policy Options considered as unfeasible or as not credible enough solutions to the identified problems, the impact assessment concentrated on the three remaining options. A brief explanation of these options follows:

OPTION 1: No action at all (Baseline Scenario)

This option would entail maintaining the status quo, as regulated by the existing Directive on timeshare. For the purposes of this impact assessment, the No Action option will be used as the baseline benchmark against which other policy options will be compared.

OPTION 2: Vertical revision of the Directive

This option would entail updating the strictly sectoral provisions of the existing Directive on timeshare, in order to afford consumers buying timeshare-like products, and entering into contracts for long-term holiday products, resale and exchange schemes the same level of protection. A vertical revision would essentially involve a modification of the definitions and scope of the Timeshare Directive in order to cover such products, as well as clarification and updating of the provisions on consumer information requirements and language requirements for the contract.

A fundamental principle of this option would be to limit the intervention to the minimum required to achieve the stated objective of extending the protection of consumers to the level currently enjoyed by timeshare purchasers, and clarify, update and modernise certain provisions. The latter could be achieved by amending existing provisions to eliminate rigidities stemming from a prescriptive, legalistic legislative approach, in favour of more principle-based legislation grounded in the economic realities of the market.

[38] This Policy Option was the subject of specific quantitative consultation, but received very few actual responses from stakeholders.

This option was therefore divided into a series of sub-options, each one examined on its own merits, within the framework of Option 2. These suboptions are:

Suboption 2(a): Extension of the scope of the Directive to cover long-term holiday products

Suboption 2(b): Extension of the scope of the Directive to cover timeshare-like products

Suboption 2(c): Extension of the scope of the Directive to cover resale

Suboption 2(d): Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts

Suboption 2(e): Updated consumer protection requirements applying to all products

Suboption 2(f): Fully harmonised consumer withdrawal period of 14 days

Suboption 2(g): Obligation on Member States to ensure better enforcement, including criminal sanctions

The minimum intervention priority induced the elimination of the sub-option of professional licensing requirements in the proposal for a revised Directive, despite the merits of this sub-option, and strong support from numerous Member States and stakeholders. When weighing the benefits for consumers of introducing the licensing requirements sub-option, and the additional regulatory burden it would impose on the industry, it was concluded that, on balance, the benefits did not, at this stage, justify this measure.

The vertical revision will be without prejudice to a possible horizontal instrument that could be proposed by the Commission following the Green Paper on the review of the consumer acquis. The review process has identified that some fundamental issues are cross-cutting by nature and consequently would be better dealt with in a broad horizontal instrument, within the broader framework of the review of the consumer acquis. Some of these issues concern important aspects of the Directive, including the effect on the contract of a failure to disclose the pre-contractual information to the prospective purchaser, and the modalities for the exercise of the right of withdrawal. These aspects will be unaffected by the vertical revision.

Other issues, given their specificity (e.g. the definition of timeshare), can only be addressed in a separate, sectoral instrument. This is the reason why a horizontal solution aimed at simplifying and rationalising the acquis will not be able to address the specific problems identified in this context. In the light of the sectoral nature of the problems identified, it would be counter-productive to wait for the outcome of the Green Paper and its legislative follow-up before taking legislative action in the field of timeshare. This would unduly delay the remedy of the regulatory shortcomings which are causing consumer detriment.

This policy option does not preclude its combination with other strategic sub-options, such as, for instance, those currently contained in Policy Option 3 (such as more rigorous enforcement of existing legal instruments, stronger industry self-regulation and enhanced consumer information campaigns).

OPTION 3: Non-legislative action: More rigorous enforcement, enhanced consumer Information Campaigns and Self-regulation

The non-legislative option could comprise three simultaneous strategies in order to achieve improved market outcomes for consumers and businesses:

i. Information and education campaigns to alert consumers about selling methods and their rights can be carried out in Member States. This could be done, for instance, in the airports or in the tourist destinations where marketing and sales activities take place.

ii. Better enforcement of existing legislation, involving:

- Optimal use of existing and upcoming instruments, including the Unfair Commercial Practices Directive (UCP) (2005/29/EC) which will be applied in all Member States by December 2007, and the Consumer Protection Cooperation Regulation (CPC) (2006/2004/EC), which will be operational at the end of 2006. The former bans misleading and aggressive practices in business-to-consumer transactions, while the latter obliges Member States to designate enforcement authorities, gives powers to these authorities and compels them to cooperate in cases of cross-border infringements.

- Infringement proceedings against those Member States which do not enforce consumer protection law vigorously against the rogue traders operating on their territory.

- For the more serious offences, coordinated criminal law enforcement action, in particular to ensure better co-operation between judicial authorities and the Police in Member States.

iii. Strengthening industry self-regulation. The Organisation for Timeshare in Europe has already established a Code of Conduct and an Alternative Dispute Resolution Scheme, (independently administered by the Chartered Institute of Arbitrators in UK). This could be reinforced by the endorsement of the code by the European Commission, and the closer monitoring of its application.

6. Analysis of Impacts

Consistent and exhaustive quantitative estimates of the risks, costs, opportunities and benefits of the examined policy options are largely unavailable, despite the best efforts of the European Commission to collect such data from industry stakeholders. For this reason, the analysis of impacts per type of impact and policy option is presented with an assessment of general direction (plus or minus), where plus (+) indicates a positive global effect and minus (-) a negative global effect. Two or three (-) or (+) signs indicate the significance of the expected impacts.

6.1. Expected Impacts of Policy Option 1: No Action (baseline scenario)

Based on the foregoing problem definition, the No Action option is not expected to deal with the problems faced by consumers and businesses in this area. On the contrary, there are serious reasons to expect the situation to deteriorate, and for market outcomes to become worse than they are now.

Specifically looking at the *evolution* of the status quo situation:

- Looking at UK complaints figures, the time series data from two years show significant upward trends.

- This is particularly worrying since most of the complaints relate to the unregulated products. This logically gives rise to concerns that the situation in relation to these products will deteriorate, as rogue operators continue profiting from the lack of regulation, at the expense of consumers and legitimate businesses.

- The pessimistic growth rates of the European timeshare industry will not be reversed, and Europe will continue to lose out to other world regions in terms of competitiveness.

In terms of impacts on particular groups, Policy Option 1 is expected to have the following:

Impacts on Consumers

- (-) Continued lack of protection in respect of timeshare-like products; other long-term holiday products such as holiday discount clubs; resale; and exchange schemes

- (-) Sustained exposure to serious financial risks as a result of lack of protection enshrined in EU-level legislation

- (-) Confusion and falling consumer confidence as a result of increasingly negative perceptions of the industry by the general public, due to the incidence of fraudulent activities in the sector.

- (-) The failure to regulate timeshare-like products, and other long-term holiday products, will perpetuate the problem. The resulting effect is to allow rogue traders into the market, something which inevitably affects overall consumer confidence in the timeshare industry. Other things being equal, the number of consumer complaints would increase.

Impacts on Businesses

- (+) No new regulatory and market situation to adjust to.

- (-) Perpetuation of negative public perceptions of the timeshare product as a result of the illicit activities of rogue elements exploiting regulatory lacunae in existing legislation. Business and consumer stakeholders have repeatedly highlighted this prediction.

- (-) Unfair competition from timeshare-like and other long-term holiday products that are not currently regulated would persist, since the Directive allows certain products to evade regulation through creative product design, whereas other fall outside the scope due to the nature of the accommodation (e.g. canal boats or cruise-ships) while allowing rogue operators to compete in the same market segment with legitimate timeshare operators.

- (-) Unrealised potential for growth as a result of the existence of rogue elements occupying the same market segment as legitimate businesses, resulting in a reduction in the attractiveness of the EU as a market for foreign investors. A series of negative effects expected in terms of the Lisbon agenda for EU growth and jobs.

- (-) Confusion in the marketplace and high legal uncertainty resulting from the existence of products approximating timeshare. Legitimate businesses likely to see their sales undermined by ever-falling consumer confidence in their product, as a result of the public's conflation of fraudulent activities in the sector with the activities of legitimate businesses.

Impacts on Administrative Costs

- None foreseen

Impacts on Competitiveness and Investment Flows

- (-) Significantly reduced consumer confidence in the timeshare product damages the competitiveness of the EU as a market in comparison to the United States, the Caribbean, the Middle East and Asia Pacific markets. As stakeholders with multinational timeshare interests report, other world regions have consequently been receiving considerably higher timeshare-related investment flows in recent years. The 'No Action' option is likely to intensify this trend.

- (-) In the opinion of some stakeholders, estimates suggest that the European timeshare industry may have declined by as much as 33% or more since 1998. By contrast, even in the face of a worldwide tourism decline in the period following the events of September 11, 2001, the timeshare industry in the United States has seen double digit growth nearly every year during that same period. For the period 1998 to 2005, the U.S. Timeshare industry grew from $3.1bn to $8.6bn. This represents an annual compounded growth rate of 16 percent per year. The prospects for the future of the U.S. market seem equally optimistic. Europe's ability to attract investment in this area has fallen far behind these benchmarks. In the experience of stakeholders with international timeshare interests, European development margins are, on average, some 20% below what similar investments in the U.S. return.

Impacts on specific regions

- (-) The operations of rogue elements in and around areas with a high concentration of holiday resorts is likely to intensify.

Environmental and Social Impacts

- None foreseen

6.2. Expected Impacts of Policy Option 2: Vertical Revision of the Directive

Please see Table 7 on the following page

Table 7: Expected Impacts of Option 2 – Vertical Revision of the Timeshare Directive

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
Impacts on Consumers	∉ (+) Consumers to be afforded rights and protection when purchasing these products. ∉ (+) Likely to boost consumer confidence, since the consumers purchasing these products will now be protected with a cooling off period, and other rights. ∉ (+) Consumers less likely to be exposed to rogue operators and fraud, since regulatory coverage is likely to	∉ (+) Consumers to be afforded rights and protection when purchasing these products. ∉ (+) Likely to boost consumer confidence, since consumers purchasing these products will now be protected with a cooling off period, and other rights. ∉ (+) Maintenance and clarification of complete ban on deposits send clear and unambiguous	∉ (+) Consumers to be afforded rights and protection when entering into these contracts. ∉ (+) Likely to boost consumer confidence, since consumers entering into resale contracts will now be protected with a cooling-off period and other rights. ∉ (+) Maintenance and clarification of complete ban on	∉ (+) Consumers to be afforded rights and protection when entering into these contracts, since exchange, or other ancillary contracts will be cancelled if the timeshare contract is cancelled within the cooling-off period. ∉ (+) Likely to boost consumer confidence, since consumers entering into exchange scheme contracts will now be	∉ (+) Enhanced protection for consumers, since they will now be presented with improved information pertaining to their contract. ∉ (+) Likely to boost consumer confidence, since consumers will receive clearer information on prospective or actual purchases. ∉ (+) All provisions relating to the protection of consumers in	∉ (+) Clearer and more transparent rights for consumers across the EU ∉ (+) Given that such contracts are often signed during the time when consumers are on holiday, the longer cooling-off period allows more time for proper consideration of the purchase upon the return from holidays.	∉ (+) Consumers likely to benefit from better enforcement in order to remove rogue elements from the sector.

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
	squeeze such elements out of the market. ≠ (+) Maintenance and clarification of complete ban on deposits sends clear and unambiguous message to consumers about the level of protection they are afforded, thereby enhancing consumer confidence.	message to consumers about the level of protection they are afforded, thereby enhancing consumer confidence	deposits send clear and unambiguous message to consumers about the level of protection they are afforded, thereby enhancing consumer confidence	protected with a cooling-off period and other rights. ≠ (+) Maintenance and clarification of complete ban on deposits sends clear and unambiguous message to consumers about the level of protection they are afforded, thereby enhancing consumer confidence	94/47/EC will be maintained in their current form. ≠ (+) Significant simplification effect likely to improve consumers' understanding about the product they are purchasing, and rights and obligations that arise from the contract.	≠ (+) Significant simplification effect likely to enhance consumer confidence, since differences across national borders would be eliminated, and consumers could be more certain of their rights.	
Impacts on Businesses (including businesses active in timeshare, other long-	≠ (+) Regulatory coverage of these products likely to squeeze rogue traders out of the market. ≠ (+) Unfair	≠ (+) Regulatory coverage of these products likely to push rogue traders out of the market. ≠ (+) Unfair	≠ (+) Regulatory coverage of these products likely to push rogue traders out of the market. ≠ (+) Unfair	≠ (+) Regulatory coverage of these products likely to push rogue traders out of the market. ≠ (+) Unfair	≠ (+) Some Member States' rules already go beyond the pre-contractual information requirements imposed by the Directive,	≠ (+) Consistency of cooling-off periods across the EU will result in increased legal certainty	≠ (+) Businesses likely to benefit from better enforcement in order to remove rogue elements from the sector:

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
term holiday products, resale and exchange)	competition for legitimate timeshare businesses removed, due to the fact that operators of these products will now have to also comply with regulation. ∉ (+) SMEs likely to benefit as much as larger operators from the overall improvements in the functioning of the market ∉ (+) The focus of the definition on products conferring the "right to obtain discounts on accommodation"	competition for legitimate timeshare businesses removed, due to the fact that operators of these products will now have to also comply with regulation. ∉ (+) Improved product image and enhanced consumer confidence likely to boost industry sales. ∉ (+) SMEs likely to benefit as much as larger operators from the overall improvements in the functioning of the	competition for legitimate timeshare businesses removed, due to the fact that operators of these products will now have to also comply with regulation. ∉ (+) Improved product image in the secondary market and enhanced consumer confidence likely to boost industry sales. ∉ (+) SMEs likely to benefit as much	competition for legitimate timeshare businesses removed, due to the fact that operators of these products will now have to also comply with regulation. ∉ (+) Improved product image in the secondary market and enhanced consumer confidence likely to boost industry sales. ∉ (+) SMEs likely to benefit as much as larger operators from the overall improvements in the	suggesting that businesses may have already had to adapt to higher requirements. ∉ (+) Updated language requirements simplify the contractual. obligations of businesses towards the consumer ∉ (-) A short adjustment period might be expected, with relatively small initial set-up costs, which are reasonably expected to be a minimal part of ongoing marketing	∉ (+) Reduced costs of legal advice ∉ (+) Cross-border transactions can be conducted with greater ease due to the removal of fragmentation across borders relating to divergent cooling-off periods. ∉ (-) A short adjustment period might be expected, not likely to constitute an excessively onerous obligation, shown	improved market image if unfair practices are eliminated, and higher consumer confidence are likely to be observed. ∉ (+) Criminal sanctions likely to act as a deterrent against rogue elements entering the sector

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
	limits the legal coverage and hence excludes other membership schemes from the coverage ∉ (-) Maintenance of ban on deposits, according to business stakeholders, puts the European timeshare at a disadvantage. Negative impact of ban on deposits could be offset by the onset of greater consumer confidence	market ∉ (-) Maintenance of ban on deposits, according to business stakeholders, puts the European timeshare at a disadvantage. Negative impact of ban on deposits could be offset by the onset of greater consumer confidence	as larger operators from the overall improvements in the functioning of the market ∉ (-) Maintenance of ban on deposits, according to business stakeholders, puts the European timeshare at a disadvantage. Negative impact of ban on deposits could be offset by the onset of greater consumer confidence	functioning of the market ∉ (+) Stakeholder evidence suggests that timeshare exchange businesses already perform some the tasks contained in the new proposal, such as the provision of pre-contractual information to consumers. ∉ (-) Maintenance of ban on deposits, according to business stakeholders, puts the European	and other costs. ∉ (+) Significant simplification effect likely to reduce compliance costs and increasing legal certainty involved in the provision of this information, particularly in cases involving cross-border trade.	by the support of the industry for this measure. ∉ (+) Significant simplification effect reducing fragmentation resulting from differences in national legislation, and hence reducing internal market barriers. Also likely to increase legal certainty and reduce compliance costs	

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
				timeshare at a disadvantage. Negative impact of ban on deposits could be offset by the onset of greater consumer confidence			
Impacts on Administrative Costs	∉ (-) Small administrative costs should be expected on newly regulated businesses, relating to the preparation of pre-contractual information/contract for consumers. Very unlikely to constitute an excessive burden, as evidenced by the quick adjustment of	∉ (-) Small administrative costs should be expected on newly regulated businesses, relating to the preparation of pre-contractual information/contract for consumers. Very unlikely to constitute an excessive burden, as evidenced by the quick adjustment of	∉ (-) Small administrative costs should be expected on newly regulated businesses, relating to the preparation of pre-contractual information/contract for consumers. Very unlikely to constitute an excessive burden, as evidenced by the	∉ (-) Small administrative costs should be expected on newly regulated businesses, relating to the preparation of pre-contractual information/contract for consumers. Very unlikely to constitute an excessive burden, as evidenced by the	∉ (+) Unlikely to cause excessive administrative costs. Market evidence suggests that many legitimate operators already ensure that information is provided in a structured and transparent manner, often going beyond the requirements of	∉ (-) Very minor additional costs expected, mostly involving the updating of material containing information about the cooling-off period. ∉ (+) The fully harmonised cooling-off period	∉ None foreseen

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
	the timeshare industry following the implementation of 94/47/EC.	the timeshare industry following the implementation of 94/47/EC.	quick adjustment of the timeshare industry following the implementation of 94/47/EC.	quick adjustment of the timeshare industry following the implementation of 94/47/EC.	the Directive. The provisions of the new proposal are hence considered to be contributing to the simplification of the legal and regulatory environment. Estimates of the additional administrative costs imposed by the new proposal amount to **€202,541**, compared to the **€279,794** which is estimated to be the administrative costs imposed by the current Directive. ∉ (+) Full	and its significant simplification effect, will put downward pressure on administrative costs, as businesses would no longer be forced to comply with different rules across borders.	

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
					harmonisation will lower administrative costs as businesses will not be forced to comply with different rules across borders.		
Impacts on Investment Flows	∉ (+) To the extent that regulation of these products is expected to improve the market situation, the EU will become a more attractive location for investment funds, both for European and international firms. This is evidenced by the increases observed in recent years in timeshare-related	∉ (+) To the extent that regulation of these products is expected to improve the market situation, the EU will become a more attractive location for investment funds, both for European and international firms. This is evidenced by the increases observed in recent years in timeshare-related	∉ (+) To the extent that regulation of these products is expected to improve the market situation, the EU will become a more attractive location for investment funds, both for European and international firms. This is evidenced by the increases observed in recent	∉ (+) To the extent that regulation of these products is expected to improve the market situation, the EU will become a more attractive location for investment funds, both for European and international firms. This is evidenced by the increases observed in recent years in	∉ (+) Enhanced consumer confidence likely to result from revision will give create more encouraging prospects for business, and hence attract more investment. ∉ (+) Simplified regulatory and legal environment likely to make the EU a more attractive investment	∉ (+) Greater legal certainty resulting from reduced fragmentation across EU Member States will facilitate (cross-border) trade and hence increase the attractiveness of the EU as an investment destination. ∉ (+) Simplified regulatory and legal	∉ (+) Better enforcement will result in a healthier environment for business, and hence increase investment appeal for the EU.

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
	investment, particularly in the USA, Middle East and Asia.	investment, particularly in the USA, Middle East and Asia.	years in timeshare-related investment, particularly in the USA, Middle East and Asia.	timeshare-related investment, particularly in the USA, Middle East and Asia.	destination.	environment likely to make the EU a more attractive investment destination.	
Impacts on specific regions	∉ None foreseen	∉ (+) A better-functioning market for consumers and businesses resulting from the regulation of timeshare-like products, is likely to bring higher investment to regions traditionally attracting investment in holiday accommodation (e.g. Spain and the greater Mediterranean region)	∉ (+) A better-functioning market for consumers and businesses resulting from the regulation of resale, is likely to bring higher investment to regions traditionally attracting investment in holiday accommodation (e.g. Spain and the greater	∉ (+) A better-functioning market for consumers and businesses resulting from the regulation of exchange schemes, is likely to bring higher investment to regions traditionally attracting investment in holiday accommodation (e.g. Spain and the greater	∉ None foreseen	∉ None foreseen	∉ None foreseen

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
			Mediterranean region)	Mediterranean region)			
Impact on Public Authorities	∉ (+) The revision of the Directive in order to bring the new products under the coverage of consumer protection legislation will facilitate the work of Member States' public authorities, particularly those concerned with enforcement, since, in one piece of legislation, it will establish clearly and unambiguously enforceable rights and obligations for consumers and businesses.						
Social Impacts	To the extent that a revision of timeshare legislation is expected to foster better market conditions by reducing uncertainty and enhancing consumer confidence, an expansion of the industry of timeshare and other long-term holiday products should be expected. By implication, one could also expect impacts of a social nature, in particular: ∉ (+) Higher demand for labour and consequent job creation in regions catering to the timeshare industry, as the timeshare market develops. ∉ (+) Diversification of human resources towards the tourism industry, and creation of demand for different skills, geared towards the tourism sector. ∉ (+) Lower incidence of consumer detriment in the timeshare market as the revised legislation reduces the scope for criminal/rogue activity in the sector.						

SUB-OPTION IMPACTS	2(a) Extension of the scope of the Directive to cover long-term holiday products	2(b) Extension of the scope of the Directive to cover timeshare-like products	2(c) Extension of the scope of the Directive to cover resale	2(d) Extension of the scope of the Directive to cover exchange schemes and other ancillary contracts. Lighter regime than other products covered by the proposal	2(e) Updated consumer information and language requirements applying to all products.	2(f) Fully harmonised consumer withdrawal period of 14 days	2(g) Obligation on MS to ensure better enforcement, including Criminal Sanctions
Environmental Impacts	∉ Assuming that the improved regulatory environment in the timeshare industry fosters the conditions for an expansion of the timeshare market (mostly by virtue of the economic arguments outlined above), one should logically expect an expansion of existing timeshare resorts, and the appearance of new ones, in order to cater for consumer demand. This could possibly have environmental impacts. However, a firm environmental regulatory framework is in place in Europe, and assuming that the expansion of the industry complies with this regulation, no adverse effects should be affected. Furthermore, expert opinions and the feedback received from the industry (mostly OTE) suggest that timeshare development does not have adverse environmental impacts due to reducing seasonality, and because of allowing for much more efficient land and natural resource usage all-year round. ∉ The proposal for a revised Directive is not expected, therefore, to have negative environmental impacts.						

6.3. Expected Impacts of Policy Option 3: Non-legislative Action

Given that the biggest majority of problems encountered at the moment in this sector relate to regulatory lacunae contained in the Directive, the impacts of Option 3 are largely expected to be similar to those for Option 1.

The pursuit of strategies under Option 3 does not preclude the simultaneous pursuit of other policy options. For instance, the better enforcement of existing and upcoming legal instruments (such as the Unfair Commercial Practices Directive) through the Consumer Protection Cooperation Regulation, could be combined, and seen as complimentary to the vertical revision of the Directive under Option 2.

Additionally to the impacts of Option 1, the following impacts are expected for Option 3:

3. (i) Consumer Information Campaigns:

Impacts on Consumers

(+) Evidence from Member States suggests that such campaigns can be effective in alerting consumers to their rights, and in warning them in how to avoid fraudulent operators. The downward trend in ECC complaints data relating to timeshare between 2001-2005 could be attributed to the information campaigns undertaken by ECC in some Member States.

(-) Continued lack of protection in respect of timeshare-like products; other long-term holiday products such as holiday discount clubs; resale; and exchange schemes

(-) Sustained exposure to serious financial risks as a result of lack of protection enshrined in EU-level legislation

(-) Confusion and falling consumer confidence as a result of increasingly negative perceptions of the industry by the general public, due to the incidence of fraudulent activities in the sector.

(-) The failure to regulate timeshare-like products, and other long-term holiday products, will perpetuate the problem. The resulting effect is to allow rogue traders into the market, something which inevitably affects overall consumer confidence in the timeshare industry. Other things being equal, the number of consumer complaints would increase.

3. (ii) Better enforcement of existing legislation

Impacts on Consumers

(+) Existing legal instruments could effectively curb unfair practices.

(+) Possible increases in consumer confidence in the sector.

(+) Legal framework for better enforcement enhanced by the entry into force of the Consumer Protection Cooperation Regulation (2006/2004/EC) at the end of 2006.

(-) Continued lack of protection in respect of timeshare-like products; other long-term holiday products such as holiday discount clubs; resale; and exchange schemes. Better enforcement will only improve outcomes for consumers that are currently covered by existing timeshare

legislation, but not for consumers of the unregulated products under consideration. The risks entailed for consumers of those products are likely to increase.

(-) Sustained exposure to serious financial risks as a result of lack of protection enshrined in EU-level legislation

(-) The problem of unfair competition from the unregulated products which do not have to comply with legislation is not resolved.

Impacts on Businesses

(+) Fraudulent operators could be removed from the market.

(+) Possible increases in consumer confidence in the sector.

(+) No additional administrative costs.

3. (iii) Strengthening industry self-regulation

Impacts on Consumers

(-) Rogue traders are not bound by self-regulatory codes.

(-) Legal rights not conferred to consumers, who will remain unprotected in their purchases of the unregulated products. Self-regulation, therefore, could not be seen as a substitute of effective regulation in this sector.

(-) Unlikely to restore consumer confidence in the sector.

(-) Stakeholder input and complaints forwarded to the Commission suggest frequent abuses of existing codes of conduct.

Impacts on Businesses

(+) The Organisation for Timeshare in Europe already has a self-regulatory code, so no new mechanisms would need to be put in place.

(-) Internal market barriers would not be eliminated, since differences in national legislation would persist.

(-) The problem of unfair competition would not be addressed since the unregulated products would continue to occupy the same market segment as legitimate timeshare operators. Self-regulation, therefore, could not be seen as a compliment of effective regulation in this sector.

(-) The public perception of the industry would not necessarily improve, and the potential of the sector would remain unfulfilled because of insufficient consumer confidence about the product.

(-) Administrative costs arising from enhanced self-regulatory code: reporting obligations to public authorities endorsing the code; information to consumers about the code of conduct; monitoring and reporting on the application and enforcement of the code.

Environmental and Social Impacts

Since the strategies included under Option 3 involve non-legislative measures, no social or environmental impacts are expected.

7. Comparing the Options

7.1. Comparison

Using Sections 2 and 3 of this document as starting points, table 8 below compares the three identified policy options against the objectives set for the revision of the Directive.

Table 8: Comparison of Policy Options

Policy Option / Objective		Option 1: No Action	Option 2: Vertical revision of 94/47/EC	Option 3: Non-Legislative Action
GENERAL OBJECTIVES	**Enhance consumer and business confidence in the internal market through a high common level of consumer protection, the elimination of internal market barriers and regulatory simplification through the application of the principles of better regulation.**	No progress towards this objective, as consumers would still suffer not be protected in their purchases of products outside the coverage of the Directive; business would still suffer unfair competition from rogue traders; and the internal market would remain fragmented through the persistence of divergent national rules (e.g. cooling off period)	Consumer confidence likely to be enhanced by extending consumer protection provisions to new products; businesses would benefit from the elimination of unfair competition, whilst not suffering disproportionate regulatory or administrative costs from the proposed regulation; an internal market barrier would be removed by adopting a fully harmonised cooling-off period of 14 days across the EU. Simplification achieved through lighter language requirements and a clarified and updated list of pre-contractual information/contract requirements. Better enforcement of legislation achieved through the inclusion of relevant provisions in the proposal for a new directive.	Self-regulation in the industry has proven to have some effect in reining in some business practices, but cannot address regulatory lacunae; the same would apply to the possibility of better enforcing existing consumer protection legislation; consumer information campaigns could possibly have positive effects, but cannot be expected to improve consumer confidence nor would they address the problem of lack of regulation of the products that appeared after the adoption of the Directive.

SPECIFIC OBJECTIVES	**1. Extending the protection that consumers enjoy when purchasing timeshare, to timeshare-like, and other long-term holiday products, as well as resale and exchange schemes.**	No progress towards this objective.	Option 2, involving the extension of the coverage of the legislation to these products, is the only one of the three options examined that can achieve this objective.	The nature of the problem is not defined by lacking or problematic enforcement, but rather by the lack of regulatory coverage of these products. Self-regulation would achieve very limited results as the suppliers of most of the unregulated products under consideration would not be bound by it; consumers, would still be afforded no legal protection in their purchases of these products.
	3. Harmonizing fully the consumer protection provisions pertaining to timeshare, timeshare-like, discount holiday club, resale and exchange contracts throughout the EU (as for instance, the information requirements), where appropriate.	No progress towards this objective, at this stage.	Option 2 includes fully harmonised information requirements for consumers, removing fragmentation between Member States, reducing costs of legal advice, and enhancing legal certainty.	No progress towards this objective.

OPERATONAL OBJECTIVES	**1. Enabling legitimate timeshare businesses to flourish across the EU by protecting them from unfair competition, and removing barriers to cross-border trade.**	No progress towards this objective.	Option 2 achieves some progress in removing barriers to cross-border trade; more importantly, it is expected to lead to much improved outcomes for business since they will no longer be facing unfair competition from traders who are not subjected to regulation. This can be achieved without expecting high regulatory or administrative costs.	No progress towards this objective.
	2. Ensuring effective enforcement	No progress towards this objective.	Option 2 achieves this objective since the draft proposal contains specific provisions relating to enforcement of the legislation by Member States.	Option 3 could achieve some progress towards this particular objective, but would leave all other identified problems unaddressed.
	3. Enabling consumers to make informed choices	No progress towards this objective.	Option 2 achieves this objective by including a clarified and updated list of information requirements to be provided to consumers.	Option 3 could achieve some considerable progress towards this particular objective, but would leave all other identified problems unaddressed.

7.2. Administrative Costs[39]

In accordance with the Commission guidelines, this impact assessment examined closely the administrative costs imposed by the three policy options under consideration.

The additional administrative cost involved with the preferred policy option (Option 2) amounts to €202,541, compared to costs of €279,794 imposed by the current Directive

This figure is deemed to be very low at European level, compared to the benefits that this regulatory option entails. In terms of costs on businesses, these measures are not deemed to be excessively onerous or disproportionate to the magnitude of the problem.

For more details on these estimates, and the methodology used to obtain them, please refer to Annex I.

[39] For a definition of administrative costs, see Footnote 13

7.3. Conclusion

Measured against the baseline scenario of No Action (Option 1), Option 2 presents the most favourable ratio of advantages to disadvantages, and is hence proposed as the optimal solution for the revision of the Directive.

Without imposing excessively onerous obligations on businesses, Option 2 extends the consumer protection provisions of the Directive into the new and problematic product-areas, including discount holiday clubs, timeshare-like products, resale and exchange. Under this proposal, consumers are to be granted legal rights (such as a withdrawal period) and protection in their purchases of these products, something which is likely to boost consumer confidence. Confidence in the market is also likely to be enhanced by the pressure that will be put on rogue operators to either operate within the margins of legality, or face legal sanctions. Moreover, the fully harmonised withdrawal period of 14 days will provide certainty to consumers, and a simpler legal environment for businesses to operate in. Neither the baseline scenario, nor Option 3 could achieve these objectives, clearly evoking the need for an effective legal backstop to address the identified problems. The maintenance and clarification of the ban on advance payments send a clear message to consumers likely to boost their confidence, and removes ambiguities that have appeared since the adoption of the Directive concerning third party mechanisms.

Data collected from European Consumer Centres and Member States authorities confirm (despite some shortcomings in terms of data quality) that there is a significant problem calling for regulatory intervention. Data from the UK (see Section 3.12), by far the most significant consumer market in the EU, indicate that consumer detriment does occur, relating mostly to the unregulated products.

For businesses, the proposal for a new directive will create a more level playing field. Whereas timeshare operators are currently obliged to comply with the provisions of the Directive, businesses selling other long-term holiday products such as discount holiday clubs operate in the same sector, target the same consumers, and offer products which could be seen as alternatives to timeshare, yet are not subjected to the obligations of the Directive. The decline in the European timeshare industry in recent years, could, at least partly, be attributed to this factor. Maintenance of the status quo could very plausibly allow the problem to deteriorate. Unlike the baseline scenario, therefore, the proposal for a new directive aims at correcting this situation, by tackling unfair competition and squeezing rogue elements out of the market. These objectives are expected to be achieved without the imposition of significant or disproportionate administrative costs, as would be the case if, for instance, professional licensing requirements were introduced.

8. Monitoring and evaluation

Monitoring of implementation will be assured by the Health and Consumer Protection Directorate-General, on the basis of Member States notifying the Commission the texts of the provisions of national laws which they adopt in order to transpose the new directive under article 12.

In accordance with the Commission Communication "Better Monitoring of the Application of Community Law"[40] the Commission will consider appropriate initiatives to facilitate co-operation with the Member States during the transposition period, in order to achieve effective and timely transposition. The ongoing co-operation with Member States relating to the transposition of the Unfair Commercial Practices Directive provides an example of best practice for such co-operation.

The proposal foresees a report on the application of the directive to the European Parliament and the Council no later than five years after the date of the entry into force of national provisions transposing the new directive. The report shall also, if necessary, make further proposal to adapt the directive to the developments in this field.

Information on the effectiveness and impact of the directive will be provided through the active participation of the Commission services in public debates and in reaction to complaints from citizens and professionals.

The Commission will continue its close cooperation with the European Consumer Centres Network, ECC-Net, which will remain a key source of primary data on the consumer experience of the sector. The newly launched (January 2007) ECC case handling IT tool offers the possibility to have immediate access to the number and types of cases being faced in this sector by the consumers that choose to use the ECC Net thus providing a first hand information on the situation on the ground. The classification used distinguishes between timeshare, timeshare-like, discount holiday clubs, exchange, resale and other related propositions, thus providing disaggregated complaints data, both before and after the implementation of a revised Directive.

[40] COM (2002)725 final/4 16.5.2003

Annex I
Administrative Costs[41]

1 General

In accordance with the Commission guidelines, this impact assessment examined closely the administrative costs imposed by the three policy options under consideration.

The Commission elicited the views of industry stakeholders on the potential administrative costs of policy Option 2 through an online questionnaire. The questionnaire enquired both on likely impacts of a vertical revision of the Directive, and the specific administrative costs that could potentially be incurred. Both qualitative and quantitative questions were included. The questionnaire had a very low response rate, particularly in terms of the questions eliciting quantitative data on the likely administrative costs of possible policy actions. Only two respondents attempted to provide quantitative data, quoting a figure of €25,000 and €100,000 per annum respectively as the cost of preparing consumer information materials. Due to the lack of more quantitative responses on this issue, and the variance between the two amounts, these figures were not considered as sufficient to lead to representative conclusions for the whole industry. As a result, the assessment of administrative costs under the policy actions involved in Option 2, and the analysis of the issue in Sections 5 and 6, relies on qualitative data collected from various stakeholders throughout the consultation process, and the Commission's expert judgment.

Given that Options 1 and 3 would involve no change in the regulatory environment, they carry no additional administrative costs.

Option 2, is expected to impose some administrative costs on the industry, largely due to the updating of consumer information requirements, and the widening of the scope of application of these requirements.

The list of information requirements to be included in the prospectuses and contracts for all products covered by the proposal for a new directive is updated to also include the following[42]:

- Information on the management and maintenance of the resort and how it is arranged. Information on how costs are allocated to the consumers and how and when they may be increased.

- Information about the exchange schemes with which a timeshare resort is affiliated.

- An obligation on the trader to point the consumer's attention to his cancellation rights and withdrawal period

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[41] Administrative costs refer here to the costs incurred by enterprises and public authorities in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties.

[42] For products currently regulated by the Directive, the items included in this list will be additional to existing information requirements. Providers of products that are currently not regulated, but are coming under the scope of application of the directive under the new proposal, will now have to comply with all the provisions that are relevant for them.

- Information on the ban on deposits during the withdrawal period
- Information on about the languages available for post-sale communication.
- Where appropriate, information about codes of conduct
- Where appropriate, information about out-of-court dispute resolution

The scope of application of these requirements is extended to cover long-term holiday products, resale and exchange. This is considered a cornerstone of extending consumer protection provisions to consumers of these protects, in order to enable them to have sufficient understanding of the commitments they undertake.

2 Current Administrative Costs

The existing Timeshare Directive imposes pre-contractual information obligations on the timeshare industry in order to ensure that consumers make their purchasing decisions with enough information about the product and their contractual rights and obligations. The Annex of the Directive contains an extensive list of information that must be included in the prospectus and the contract.

According to the estimates of the Commission, the administrative costs imposed by the Directive currently amount to €279,794. This estimate is obtained from Table 13 below (adjusting the calculation for only 74 enterprises, in order to include only timeshare businesses, which are the ones covered by the current Directive).

Industry feedback during the public consultation suggests that these obligations are not excessively onerous on timeshare businesses, and that they are generally considered as necessary in order for the consumer to make an informed purchasing decision.

3 Future Framework

The widening of the scope of the Directive under the new proposal extends the legal coverage of the Directive to include long-term holiday products, timeshare resale and timeshare exchange. This implies that businesses involved in the sale of these products will be subjected to the same rules relating to the provision of pre-contractual information to consumers as timeshare businesses.

No data exists on the number of enterprises selling long-term holiday products in the European market, largely owing to the fact that this industry is not organised. The assessment of administrative costs in this impact assessment is therefore based on the membership lists published by OTE[43], which includes European timeshare developers, international timeshare affiliates of OTE, exchange companies, and resale companies.

Table 9 lists the existing information obligations under Directive 94/47/EC. Tables 10, 11 and 12 below detail the pre-contractual information obligations that will be imposed on businesses under the new proposal, and include estimates of time required for each activity. Given the nature of the information required, it is assumed that this information would be readily

[43] Available at www.ote-info.com

available in the records of businesses concerned, and the estimates of hours in Table 9, 10 and 11 take this important assumption into account.

Rows in bold in Table 9 indicate pre-contractual information obligations that are introduced by the new proposal. Tables 10 and 11 contain provisions that under the new proposal will apply to timeshare exchange and resale companies respectively.

4 Methodology

For the performance of these tasks, an average wage of 21.00 EUR/hour is estimated using national fully allocated hourly wages for the service sector, using the latest (2004) data from Eurostat. The rate represents an average wage for the whole services sector. The calculation of most administrative costs involves, therefore, the multiplication of the hours needed to perform the required action by one employee, by the average wage of the sector. This figure is then multiplied by the number of enterprises required to perform this action in each category (timeshare, timeshare exchange and timeshare resale), as these were reported by OTE in June 2006. The results are presented in Tables 13 and 14 below.

The calculation of administrative costs in Tables 13 and 14 includes:

- An estimate of the costs involved in designing the information material (leaflet conception)

- An estimate of the costs involved in reproducing this material (item 4 in Table 12). OTE reports[44] a total of 80,000 sales per year by its members. Given that there are 83 OTE members which are considered to be affected by the provisions of this proposal, this amounts on average to 964 sales per member. Anecdotal evidence suggests that the cost of printing 1000 copies of a 30-page (this is the estimated length of the pre-contractual information material) black-and-white booklet containing only text and a colour cover is EUR900. Assuming that each company, therefore, needs 2000 copies of this material per year, there would be a cost of EUR1800 for the reproduction of this material, per company.

- An estimate of the costs involved in businesses familiarising themselves with the information obligations

- An estimate of the costs of legal validation

- An estimate of the costs involved in translating the pre-contractual information requirements from English into 20 other European languages. This estimate was obtained through an assessment of the EU-level average costs of translating 30 pages of legal/economic information material in the private sector.

5 Summary Findings and Conclusions

[44] From the OTE response to the February 2006 Health and Consumer Protection Directorate-General Questionnaire for Member States and Stakeholders

Table 12 below presents the detail breakdown of the administrative costs related to each activity, based on the average wage figures used, and the estimates of time taken to perform them.

The additional administrative cost (total Table 14) involved with the preferred policy option (Option 2) amounts to €202,541, compared to the current level of administrative costs of €279,794**.**

The net administrative cost figure is deemed to be quite low at European level, compared to the benefits that this regulatory option entails. In terms of costs on businesses, these measures are not deemed to be excessively onerous or disproportionate to the magnitude of the problem. The most major part of the administrative costs that will be incurred by business will involve one-off costs involving the preparation of the information material upon the implementation of the revised provisions. Businesses will need to prepare this material once, in order to comply with the provisions of the Directive, and then simply reproduce it. There are indications that some 'best industry practices' include such items in consumer information packs already, particularly in the timeshare exchange and resale areas.

Furthermore, national legislation currently in place in Member States may impose information requirements which are similar, or in some cases stricter than the ones foreseen by the proposal for a new directive, as for instance the provisions in Spanish law relating to exchange[45]. This on the one hand means that in some cases businesses will already be accustomed to providing the kind of information required by the new directive, and on the other that, since these requirements will be fully harmonised, compliance costs will decrease due to the removal of fragmented rules across national borders.

Professional licensing requirements, which would have required the submission of detailed information to public authorities on the part of enterprises, have been excluded from the proposal for a revised directive, so as to minimise additional administrative costs. As stated above, a cost-benefit analysis of benefits to consumers and costs to the industry did not sufficiently prove that possible benefits would outweigh the drawbacks of this measure.

Furthermore, examining the evolution of the industry post-1994 when the Directive was adopted, it has been observed and confirmed by stakeholders that the introduction of information requirements was not an obstacle to the growth of the sector. On the contrary, in the medium- to long-term, the information requirements benefited the industry to the extent that they provided an important layer of legal protection of the consumer's interests, thus fostering consumer confidence in the product. They are generally accepted as an efficient way of ensuring the consumer is best informed about his purchase, especially considering the complexity of the product and contracts involved. There is no reason to assume that the contrary will be the case with the proposal for a new directive.

Option 3 would involve some administrative costs in terms of the enhanced self-regulation in the sector. To the extent that enhancing self-regulation would involve the endorsement of the industry Code of Conduct by the European Commission, reporting obligations would most probably arise for the industry, in terms of monitoring the implementation of the code, data on

[45] Article 8.2k of the Spanish Law governing the Rights of Rotational Enjoyment over Immovable Property for Touristic Use of 15 December 1998

consumer complaints, dispute resolution, etc. Further administrative costs for the industry would arise in terms of informing consumers about the existence of the code.

Table 9: Existing provisions on consumer pre-contractual information relating to the sale timeshare

PROVISION
(General) Costs of legal validation for contract and pre-contractual Information
(Article 4 (3)) Translation Costs
Annex 1 (a) The identity and domicile of the parties, the trader's legal status, signatures, date and place
Annex 1 (b) Nature of the right which is subject of the contract, conditions governing exercise of that right, conditions remain to be fulfilled.
Annex 1 (c) Description of accommodation, facilities and location. This provision does not apply to resale.
Annex 1 (d) Services (e.g. lighting, water, maintenance, refuse collection) to which the consumer has access to.
Annex 1 (e) Common facilities (swimming pool, sauna, etc) to which the consumer has or may have access.
Annex 1 (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.
Annex 1 (i) Estimate of amount to be paid for use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, mandatory statutory charges (taxes and fees) and administrative overheads.
Annex 1 (j) A clause stating that the consumer will not bear any other costs or obligations other than those specified in the contract.
Annex 1 (k) Whether or not 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.
Annex 1 (l) Where appropriate; the existence, content, control and enforcement of codes of conduct.
Annex 1 (q) Information on the right of withdrawal from the contract and the modalities of withdrawal
Annex 1 (s) Indication of whom the notice of withdrawal should be sent to, specifying also the arrangements under which such notices may be sent.
ESTIMATED TIME REQUIRED : 6 hours

Table 10: New provisions on consumer pre-contractual information relating to the sale timeshare

PROVISION (Annex I & II of the new proposal)
How maintenance, repairs and administration are arranged, including how consumers can influence/participate in decisions
Description of how all costs will be allocated to consumers, and of how and when such fees and costs may be increased. Information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation.
Indication of the language(s) available for post-sale communication in relation to the contract
Information about the ban on deposits during the period under which the consumer has a right to withdraw from the contract
Where appropriate; the existence, content, control and enforcement of codes of conduct.
Where appropriate; the possibility for out-of-court dispute resolution
ESTIMATED TIME REQUIRED : 4 hours

Table 11: Provisions on consumer pre-contractual information relating to timeshare exchange

PROVISIONS IN THE FUTURE REGULATORY FRAMEWORK (Annex V of the new proposal)
(General) Costs of legal validation for contract and pre-contractual Information
(Article 4 (3)) Translation Costs
The identity and domicile of the parties, the trader's legal status, signatures, date and place
Nature of the right which is subject of the contract, conditions governing exercise of that right, conditions remain to be fulfilled.
Description of accommodation, facilities and location
The exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration
The price to be paid by the consumer; estimate of amount to be paid for use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, mandatory statutory charges (taxes and fees) and administrative overheads.

A clause stating that the consumer will not bear any other costs or obligations other than those specified in the contract.
Whether or not its 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.
Indication of the language(s) available for post-sale communication in relation to the contract
Explanation of how the exchange system works. Possibilities and modalities for exchange, indication of number of resorts available and number of individual members in the system; and a set of examples of concrete exchange possibilities. This provision only applies to exchange.
Where appropriate; the existence, content, control and enforcement of codes of conduct.
Where appropriate; the possibility for out-of-court dispute resolution.
ESTIMATED TIME REQUIRED : 6 hours

Table 12: Provisions on consumer pre-contractual information relating to timeshare resale

PROVISIONS IN THE FUTURE REGULATORY FRAMEWORK (Annex IV of the new proposal)
(General) Costs of legal validation for contract and pre-contractual Information
(Article 4 (3)) Translation Costs
The identity and domicile of the parties, the trader's legal status, signatures, date and place
The price to be paid by the consumer, an estimate of amount to be paid for use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, mandatory statutory charges (taxes and fees) and administrative overheads. [46]
A clause stating that the consumer will not bear any other costs or obligations other than those specified in the contract.
Indication of the language(s) available for post-sale communication in relation to the contract
Information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature

[46] For resale mediation, only the first requirement is relevant; the price to be paid, which is the price for the resale mediation and associated costs (for instance separate payment for marketing)

and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (3) if he exercises his right to withdraw; where appropriate, information on the arrangements for the cancellation 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.
Information about the ban on deposits during the period under which the consumer has a right to withdraw from the contract and until the resale has taken place or the resale contract otherwise terminated.
Indication of whom the notice of withdrawal should be sent to, specifying also the arrangements under which such notices may be sent.
Where appropriate; the existence, content, control and enforcement of codes of conduct.
Where appropriate; the possibility for out-of-court dispute resolution.
ESTIMATED TIME REQUIRED : 5 hours

Table 13: Calculation of existing administrative costs relating to information obligations imposed by 94/47/EC

Revision of Directive 94/47/EC with Commission Agenda Planning Reference 2006/SANCO/038						**Tariff (€ per hour)**		**Time (hour)**		**Price (per action or equip)**	**Freq (per year)**	**Nbr of entities**	**Total nbr of actions**	**Total cost**	**Regulatory origin (%)**			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
1	Annex I of 94/47/EC		Other	Retrieving relevant information from existing data	Timeshare Businesses	21		6		126	1	74	74	9324		100		
2			Other	Copying (reproducing reports, producing labels or leaflets)	ALL (cost of printing 2000 copies of the information material per enterprise, per year)	1800		1		1800	1	74	74	133200		100		
3			Other	Familiarising with the information obligation	ALL	21		2		42	1	74	74	3108		100		
4			Other	Costs of Legal Validation	ALL	100		4		400	1	74	74	29600		100		

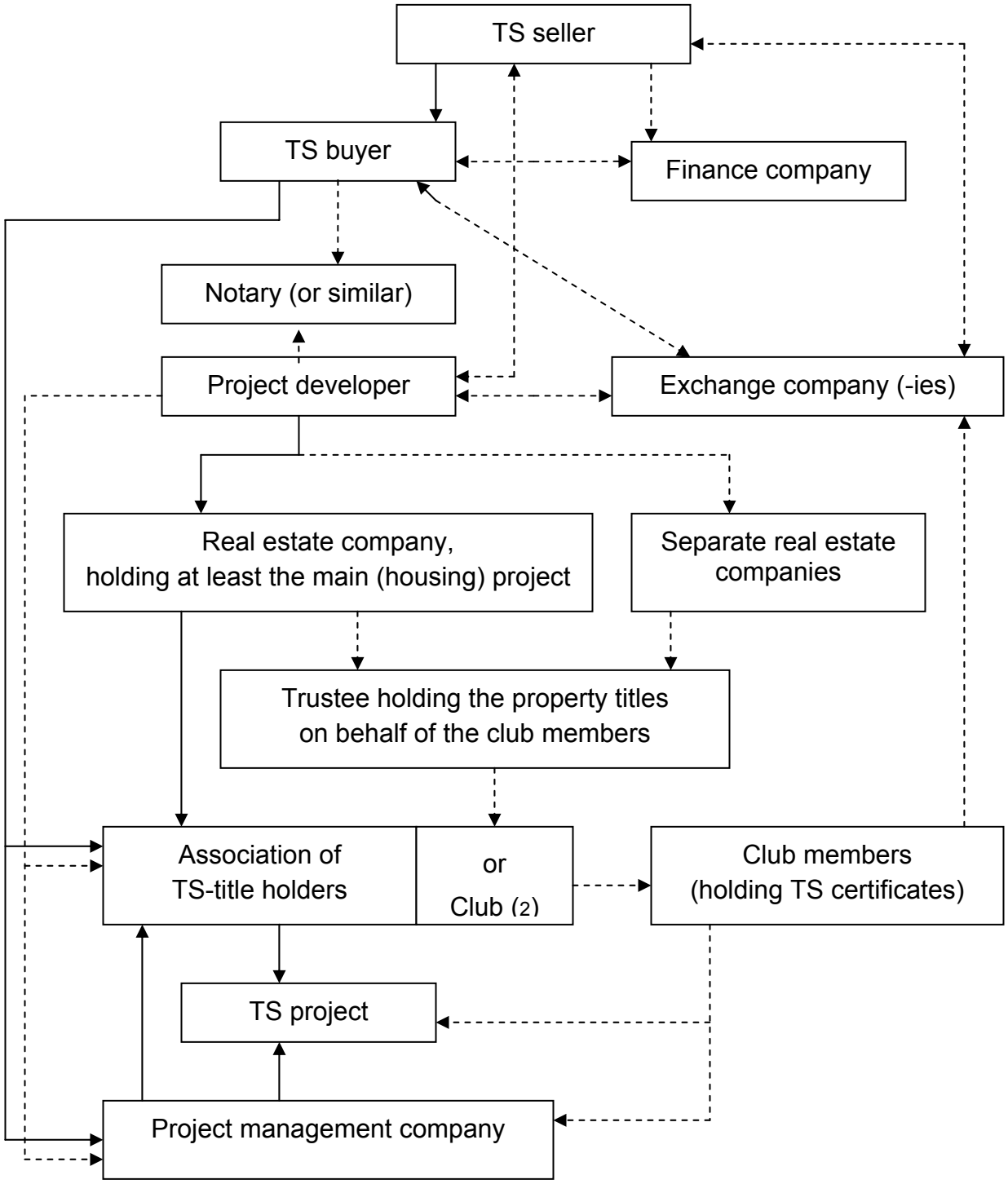
5			Other	Translation Costs	ALL (EU-wide average cost of translating information material from EN into 20 lang)	1413		1		1413	1	74	74	104562		100		

Table 14: Calculation of additional administrative costs relating to information obligations imposed by the proposal for a new directive

Revision of Directive 94/47/EC with Commission Agenda Planning Reference 2006/SANCO/038						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Reg o	
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU
1	All provisions contained in Annex I (new proposal)		Non-labelling information for third parties	Designing information material (leaflet conception…)	Timeshare Businesses	21		4		84	1	74	74	6216		1(
2	All provisions contained in Annex V (new proposal)		Non-labelling information for third parties	Designing information material (leaflet conception…)	Timeshare Exchange Businesses	21		6		126	1	3	3	378		1(
3	All provisions contained in Annex IV (new proposal)		Non-labelling information for third parties	Designing information material (leaflet conception…)	Timeshare Resale Businesses	21		5		105	1	6	6	630		1(
4	All provisions contained in Annexes (new		Other	Copying (reproducing reports, producing labels or leaflets)	ALL(printing 2000 copies of the information material per	1800		1		1800	1	83	83	149400		1(

	proposal)				enterprise, per year)										
5	All provisions contained in Annexes (new proposal)		Other	Costs of Legal Validation	ALL	100		4		400	1	83	83	33200		10
6	All provisions contained in Annexes (new proposal)		Other	Translation Costs	Exchange and Resale only (EU-wide average cost of translating information material from EN into 20 lang)	1413		1		1413	1	9	9	12717		10
Total administrative costs (€)202.541															

Annex II
Scheme of Some Possible (Contractual) Relations in Timesharing



1 The dotted lines indicate facultative or not formally structured relationships; The structure could also apply to timeshare-like products.

2 Corporated or incorporated.

Annex III
Background on the Timeshare Market Environment

1 Facts and figures on the evolution of the timeshare market[47]

- The timeshare industry in Europe has developed significantly since its beginnings in the late 1960's and early 1970's. The pace of resort development has seen the number rise from a handful of resorts at the start of the 1970's to the figure of 1452 in 2001[48].
- After strong and sustained growth in the 1970s and 1980s, the growth of the European timeshare market slowed down in the early 1990s (growth of sales halved from approximately 30 % to 15 %). Between 1994 and 1996 there was a certain consolidation and slow growth, probably due to the enactment of the Directive, and a natural adjustment period to the new state of play in the market.
- From 1996 until now the rate of increase in sales volumes in EU-15 further dropped from approximately 15 % to less than 5 %. This stands in strong contrast to the rest of the world and in particular the 10 new Member States and Eastern Europe, the USA, North Africa, South Africa, the Middle and Far East, Mexico[49].
- From Organisation for Timeshare in Europe (OTE) market reports, Europe has approximately 1,500 timeshare resorts, offering about 85,000 timeshare units, which produce 70 million bed-nights per year. The number of timeshare units is increasing by about 2 % annually based on 2005 estimates. Based on the same data, it is estimated that in 2005, 1.45 million households held rights to about 2.9 million European timeshare weeks or the equivalent in points.
- European timeshare industry sales volume during 2001 was estimated at about € 2.3 billion. Of this, purchases from developers and other commercial sources comprised about € 1.9 billion, with resales accounting for the remaining € 400 million. About 217,000 households acquired about 260,000 timeshare weeks, or the equivalent in points. OTE estimates that in 2005 some 80,000 timeshare transactions were concluded.
- Timeshare's economic contribution in 2003 is estimated on the basis of the available 2003 data on timeshare in Spain[50]. In 2003 the total economic output of timeshare in Spain was estimated at €4.2 billion, and therefore total output for Europe is estimated at € 10.5 billion.
- According to the same data, a total of 327 timeshare resorts were located in Spain (140 of which on the Canary Islands alone), containing nearly 25,000 units. Approximately 600,000 households owned 970,000 weeks, and developers are reported to have sold

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47 The OTE reports quoted in this section (particularly 2003 studies) state that due to lack of reliable data, trend projections are impossible to establish.

48 OTE Research (www.ote-info.com).

49 Sources: OTE (Organisation for Timeshare in Europe), ARDA (American Resort Developers Association) and TCA (Timeshare Consumers Association).

50 Resort *Timesharing in Spain: Industry Size, Market Characteristics, and Economic Impacts*, 2003 Ragatz Associates study for OTE

€530 million timeshare interests in Spain alone. This represents approximately 6% of worldwide timeshare developer sales volume.[51]

- Most commonly, timeshare consumers in Spain originated from the UK and Spain, with considerable numbers residing in France and Germany, and to a lesser extent, Italy. 50% of all Spain timeshare owners reside in the UK, 17% reside in Spain, 7% in France, 6% in Germany and 5% in Italy. 15% of timeshare owners come from Belgium, the Netherlands, Scandinavian countries and Russia.
- An estimated €60 million resale transactions occurred (consumer-to-consumer) in Spain. Consumer resales represent nearly one out five timeshare purchases (17%). UK buyers are much more likely to acquire a timeshare on the secondary market, as 30% of buyers surveyed had bought their timeshare through a resale.
- Total spending by timeshare owners on maintenance and upkeep of the resorts is estimated to be € 290 million annually, creating 25,100 jobs and for Europe the estimate is that this creates some 50,000 jobs.
- It is reported that currently close to 40,000 people are directly employed by the European timeshare industry[52].
- Total profits from timeshare in 2003 in Spain were € 4.3 billion.
- The average European timeshare travel party spent € 1,347 in the local community during their vacation, or € 114 per day in 2002. Owners report using 91 % of the time available in their European timeshares, resulting in strong year-round utilisation, reducing seasonal fluctuations in resort area employment. Ragatz research in 2002 found timeshare holidays provide significant economic benefits for resort communities. European timeshare owners spent an estimated € 1.8 billion in local communities during that year[53], and € 725 million in annual maintenance fees which cover refurbishment, cleaning services, maintenance etc, for all of which local people are employed[54].
- Among European timeshare owners as a whole, beaches represent by far the most important attraction. This holds especially true in Spain, where 86% of consumers interviewed cited beaches as key[55]. This fact will become crucially relevant in predictions concerning the future direction of the timeshare market.
- Owners of European timeshares report median incomes of € 45,000 annually and an average age of 55 years. Some 58 % are in high-status occupations such as business owner, professional, or manager and 92 % are homeowners. Affluent and primarily without children living at home, they can afford substantial vacation expenditures[56].

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51 *Resort Timesharing Worldwide, 2003 Ed Ragatz Associates,* quoted from *Resort Timesharing in Spain: Industry Size, Market Characteristics, and Economic Impacts*, 2003 Ragatz Associates study for OTE

52 OTE Research (www.ote-info.com).

53 These figures represent consumption spending while on vacation, but not the wider macroeconomic revenues generated as a result of the timeshare resorts.

54 The *Community Benefits of Timesharing*, 2002. Ragatz Associates.

55 *Timeshare Purchases: A Profile of Recent Activity*, 2002. Ragatz Associates.

56 *The Community Benefits of Timesharing*, 2002. Ragatz Associates.

- The UK has more timeshare owners than any other European country[57] and the UK industry (in terms of timeshare agencies, timeshare developers, sellers and resellers, etc) is estimated to be worth a total € 157 million per year[58]. 500,000 UK families are reported to own a timeshare, almost 80% of them outside the UK[59]..

Despite these industry figures, a report[60] by the UK Timeshare Consumers Association attempts to present a very different picture of the market. The report states that timeshare sales are declining with some companies now reporting losses; that owners are leaving the market because of declining standards, increasing annual costs, and negative media coverage of the industry; and that enforcement of existing legislation is weak, or at times, "non-existent"[61.] These views have been repeatedly challenged by the timeshare industry.

2 Perceptions of the timeshare market

Surveys purporting to assess the level of consumer satisfaction in the timeshare industry tend to paint diverging pictures of market outcomes, usually depending on the source of the survey.

OTE reports that recent independent research conducted on its behalf shows that European timeshare consumers are "overwhelmingly satisfied with their timeshare holidays[62]". Of 15,000 timeshare owners interviewed in this survey, 75% expressed satisfaction with their timeshare, 72% would recommend timeshare to others, 67% think it is good value for money in comparison with other holidays they have taken in the past and 83% think the standard of accommodation is higher than other self catering holidays.

On the other hand, a general consumer survey in the UK carried out by RCI Global Vacation Network in late 2001[63], presents very different results. The survey identified the following opinions of timeshare amongst consumers asked:

i.	Very positive	3%	
ii.	Somewhat positive	12%	
iii.	Neutral		35%
iv.	Somewhat negative	24%	
v.	Very negative	26%	

An OTE consumer satisfaction survey published in June 2006, reports that 75% of UK timeshare consumers are happy with their timeshare purchase. **16%** of those enquired stated either that they "are not happy with the decision" or the "it is something I regret[64]".

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57 The OTE *European Timeshare Industry in 2001* report.

58 UK Department of Trade and Industry, November 2002.

59 From OTE press release of 9 June 2006 on OTE UK Survey of 15,000 timeshare owners.

60 *Timeshare in Europe* – Report by the Timeshare Consumers Association – 2005.

61 *Ibid.*

62 OTE submission to the Health and Consumer Protection Directorate-General Consultation Paper on the Timeshare Directive (1 June 2006)

63 *Ibid.*

64 *Timeshare Unveiled – OTE Survey Reveals Shocking New Statistics*, OTE June 2006

In a 2003 OTE survey of timeshare owners in Spain[65], nearly 60% of buyers cited their discomfort with making a "same day" decision involving a significant financial commitment, and 53% expressed their concerns about future maintenance fee increases. Further, 44% expressed reluctance to buy a timeshare because of pressure techniques during sales presentations, and 32% said that exchange options with other resorts were unclear.

3 Competitiveness of the European timeshare industry

According to the other reports[66], the appeal which timeshare had as a product 25 years ago is steadily diminishing. There are indications that the main reasons for the erosion of this appeal are:

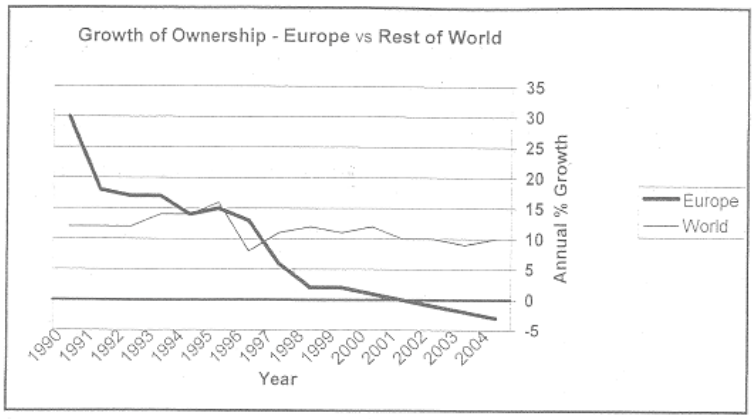
- Failure of operators to maintain standards allowing the quality of the timeshare product (quality of accommodation, maintenance, service, after-sales service etc) in particular, as well as at overall industry level, to fall.
- Failure of operators to ensure a healthy secondary market (resale) so that owners can get a reasonable proportion of their purchase money back when they sell.
- Failure of operators to keep annual costs at a competitive level (e.g. due to higher advertising costs in order to improve the tarnished image of the product) allowing alternative suppliers from other world regions to undercut European timeshare prices.
- Unfair competition from timeshare-like and other long-term holiday products that occupy the same sector as timeshare operators, but evade timeshare regulation.
- Falling consumer confidence in the timeshare product as a result of the activities of rogue traders, which have been receiving considerable media attention.

Graph 2 below illustrates this trend, comparing the growth of ownership in Europe to other countries:

[65] *Resort Timesharing in Spain: Industry Size, Market Characteristics, and Economic Impacts*, 2003 Ragatz Associates study for OTE

[66] Reported in *Timeshare in Europe* – Report by the Timeshare Consumers Association – 2005.

Graph 2: Growth of Ownership



Source: 1990 to 2000 - Organisation for Timeshare in Europe (OTE)
2001 to 2005 - Timeshare Consumers Association (estimate)

Annex IV
Stakeholders Participating in 2006 Public Consultation Exercise

STATES:

Austria
Belgium
Cyprus
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Lithuania
Luxembourg
Malta
Norway
Poland
Portugal
Slovak Republic
Slovenia
Spain
Sweden
The Netherlands
UK

OTHER STAKEHOLDERS:

AIM – Associazione Italiana Multiproprietà
Albori Vacaciones, S.L. Almeira
Amathus Vacation Ownership Limited
American Resort Development Association (ARDA)
Anfi Sales, Gran Canaria

APAF VTP

ACTE Sweden

Association of Austrian Law Societies (Österreichische Bundesarbeitskammer)

Beise und Munscheid Rechtsanwälte

Brian & Pam Wilkinson, timeshare owners

Bundesarbeitskammer, Austria

Bureau Conseil des Notarats de l'union Europeenne (CNU)

Bureau Européen des Unions des Consommateurs (BEUC)

Catalan Agency of Consumer Affairs

CECU Confederación de Consumidores y Usuarios

Citizens Advice Bureau, UK

Clifford Water Lodges, Owners Management Company

Clowance Holdings Limited

Clowance Owners Club Limited

Club Es Pueto

Club La Costa

Club Riza Management Committee

Club Vista Verde Owners' Committees

Colin Jenkins

Consumer Council, Norway

Consumer Protection Board, Estonia

D.P. Funchal

ECC Belgium

ECC Luxembourg

ECC Spain

ECTAA

Edward Mc Millan Scott MEP

EFCO&HPA European Federation of Campingsite Organisations and Holiday Park Associations

Elite Club Resorts

Explotación Hotelera P. A. S. A.

Federation of Associations of Timeshare Owners, Greece

First National Trustee Company Limited

German Federal Timeshare Association (DBTW)

Ghaqda tal-Konsumaturi Malta

Group of National Travel Agents' and Tour Operators' within the EU (ECTA)

Hapimag

Hilton International Grand Vacations Company

Holiday Hungary Ltd.

Hutchinson & Co. Trust Company Limited

ICE- International Cruise & Excursions

Interval International

JFM Janssen

Kereknap Kft.

La Manga Club Resort, Peninsular Club

Leisure Solutions S.L.

Lion Resorts, Cyprus

Los Amigos Beach Club Owners' Committees

Malta Hotel and Restaurants Association

Manudecor Internacional

Mariott Vacation Club International

Marketing Es Pueto

Medio Y Hereda

Office of Fair Trading UK

Österreichischen Rechtsanwaltskammertages (ÖRAK)

Organisation for Timeshare in Europe

Osborne Club Owners Committee

Pan Europa Hospitality S.L.

Pearly Grey Ocean Club

Pestana Group

Petchey Leisure

Portuguese Consumer Institute

Puerto Calma Group

RCI Global Vacations

RCN-West Corona Ltd

Regency Resorts

Registradores de Espana

Resort Properties

RICS

Royal Golf Park Club

Scutzvereinung Wiesbaden, Germany

Seasons Holidays Plc

Sol Melia Vacation Club

Sunterra Corporation

TCA UK & ATCE Sweden

The Association of Timeshare owners Committees (TATOC)

The Law Society of England and Wales

The Osborne Club

Timelinx

Timeshare Computer Link Ltd - Shakespeare Classic Line Limited (SCL)

Timeshare Sales Limited

Trading standards Institute & Lacors

Travel and Leisure Group

Underscar Owners Club Committee

Union Luxembourgeoise des Consommateurs

University of La Laguna, Spain

VOICE

Which?

White Sands Beach Club

WimPen Leisure Management

Working Group for Consumer Protection and Health, Hungary