

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 487 final - SYN 419

Brussels, 7 October 1993

Amended proposal for a
COUNCIL DIRECTIVE

on the protection of purchasers in contracts relating to the purchase of a right
to utilize one or several immovable properties on a time-share basis

(presented by the Commission pursuant to Article 149(3) of the
EEC Treaty)

EXPLANATORY MEMORANDUM

INTRODUCTION

Following the opinions delivered by the European Parliament¹ and the Economic and Social Committee² on the proposal for a Council Directive concerning the protection of purchasers in contracts relating to the utilisation of immovable property on a time-share basis³, the Commission is asked to adopt an amended proposal in that it envisages keeping certain features and possibly making certain other changes to its initial proposal. The proposal, modified in the light of the amendments proposed by the European Parliament, the opinion of the Economic and Social Committee and the debates at Council level, is presented below in compliance with Article 149(3) of the EEC Treaty.

I. Grounds for the proposal in terms of subsidiarity

a) What are the objectives of the measure envisaged with regard to the Community's obligations?

R. The creation of a foundation of common rules such as to ensure the legal and economic security of the consumer in a domain in which he is the weaker party; the elimination of inequalities which currently hinder the smooth functioning of the European market and freedom of movement.

b) Does the envisaged measure concern the exclusive competence of the Community or a competence that is shared with the Member States?

R. A shared competence.

c) What is the Community dimension of the problem?

R. It lies in the transfrontier nature of time-share contracts, because most of the holders of time-share rights exercise or will exercise their rights in Member States other than the one in which they are resident; it also lies in divergences in national legislation, since only four Member States have specific laws - all of which are different and incomplete

¹ PE 171 252 and PE 174 418

² CES 206/93

³ OJ C No 222, 29.8.92, p. 5

d) What is the most effective solution when the Community's instruments are compared with those of the Member States?

R. Whatever approach is adopted by each Member State in this domain, there will always be an agreement which has to be signed by the parties and it is on this agreement that Community action must centre; in this sense it is necessary to lay down minimum information which the consumer must have prior to signature and a time limit, after signature, during which the consumer may withdraw from the contract. Given the transfrontier nature of time-share contracts, this solution can only be realized at Community level.

e) What is the concrete added value of the envisaged measure and what would it cost to do nothing?

R. The measure will make it possible to overcome problems currently facing consumers, notably as regards the use of particularly aggressive sales techniques; it will also make it possible to control a major industrial sector where firms often have their head offices in a tax paradise and enable most of the Member States to legislate in this domain, because they are awaiting a Community text before going ahead with legislation.

The measure will also promote the free movement of products, services, persons and capital, quite apart from the various procedures involved in timesharing.

The consequence of inaction would be the continuation of the existing situation with its attendant frauds and irregularities in a domain of growing importance in the tourist sector.

f) What instruments are at the Community's disposal?

R. A directive or a recommendation.

g) Is a uniform rule necessary or is it enough to adopt a directive setting out general objectives to be implemented by the Member States?

R. A directive is the only appropriate instrument.

II Elements of the initial proposal retained in the amended proposal

The two fundamental features of the initial proposal, i.e. the vendor's obligation to provide an information document whose content constitutes an integral part of the contract and the provision establishing a cooling-off period after signature of the contract during which the purchaser may withdraw from the contract, are retained. The criterion as to the language to be used is the same, i.e. a language which the purchaser declares that he knows.

The minimum character of the Directive is also retained as well as the impossibility for the purchaser to waive his rights under the Directive or for the vendor to disclaim liability.

Finally, as regards the law applicable to the contract, the principle is upheld that the purchaser cannot be deprived of the protection accorded under the Directive through the choice of the law of a non-Member State, although the wording is simpler than in the initial proposal.

III. The amendments

1. The title

The title was changed in order to improve the terminology and to cover more exhaustively the characteristics of certain time-share arrangements which are widely used in certain Member States.

2. The recitals

Recitals 4, 5, 8 and 12 were adapted to the new title.

Recital 9 was amended, in order to emphasise the fact that the Directive concerns only contractual aspects and in no way the law applicable to immovable property, which is exclusively the domain of the *lex rei sitae*.

The amendments to recitals 12 and 13, and the new recitals 14, 15, 16 and 17, are explained together with the corresponding articles.

The purpose of the new recital 18 is to point out that the entire text respects the principle of subsidiarity.

3. The articles

Article 2 : Definitions

The new definition of time-share contracts takes into account an amendment proposed by the European Parliament and which was partly accepted by the Commission, designed to cover certain characteristics of one of the most widespread time-share schemes used in several Member States.

The definition of immovable property also takes into account the Parliament's desire that the Directive should apply not only to existing buildings but also to buildings that are to be constructed and which are to be used only for dwelling purposes; hence buildings intended for office or other use are outside the scope of the Directive. The examples given in the initial proposal have been deleted.

In the definition of vendor, the term "owner" was replaced by that of "holder" which is more appropriate when referring to a right.

As to the definition of purchaser, although the content is the same, it has been modified in order to improve the text from the point of view of technical terminology.

Article 3 Obligations of the vendor

The amendments are mainly due to the inclusion of certain changes proposed by the European Parliament. Hence paragraphs (a) and (b) take into account Parliament's concern as to the problems which may arise for the purchaser as a result of failure to comply with the time limits stipulated by the vendor or non-performance of the services agreed by the vendor.

The provisions in the initial proposal concerning building and authorisation rules for occupying an immovable property have been removed because these questions are more effectively regulated at national level; they are merely referred to incidentally in the annex.

The new paragraphs c) and d) incorporate certain parliamentary amendments concerning certain obligations whose fulfilment by the vendor must be assured in the contract.

Article 4

As requested by Parliament, the new text deals more directly with the question of the charges incumbent on the purchaser, while specifying that the charges for unsold rights must be imputed to the vendor.

Article 5 (and recital 12)

The amendments to this article have the following major implications:

- a) the information document, already provided for in the initial proposal, must be made available to any person who requests it rather than just to any potential purchaser. It should be noted that the Annex to the amended proposal no longer refers to the information document but to the content of the time-share contract; however, this information document must contain certain items listed in the Annex;
- b) the information contained in this document is an integral part of the contract; this principle was already contained in a recital of the initial proposal, but Parliament wanted it to be included in the binding part of the Directive.

Article 5(2) rules out any changes to the information contained in this document, unless these changes are agreed between the parties or are the results of circumstances independent of the vendor's volition.

- c) all advertising must indicate not only the possibility of obtaining the information document but also where it can be had from

Article 6 (and recital 13) Minimum elements of the contract

As indicated above, the minimum elements which the contract must contain are set out in an Annex to the amended proposal.

Article 7 (and new recitals 14 and 16)

The first paragraph lays down a single cooling-off period as requested by the Economic and Social Committee and in the light of the thinking of the delegations at the meetings of the Council at minister level; in this sense the Commission has opted for a longer deadline than was envisaged in the initial proposals, i.e. 28 days, which is also the deadline requested by the Economic and Social Committee. The Commission took into account the fact that in certain Member States legislation and/or practice require conclusion of a preliminary contract which may be legally binding (for example, a pre-contract) or certain administrative steps, such as engagement of a notary or land registration procedures; in these cases the period begins to run from the date of signature of the preliminary contract.

In the second paragraph, which relates to the way in which the right to withdraw is exercised, the requirement that a registered letter be sent has been replaced by that of a written communication sent in such a manner that documentary evidence of the fact can be produced, as requested by Parliament.

As to the third paragraph, this is a compromise amendment between the Commission and the Parliament; pursuant to this compromise the vendor may not require advance payments before expiry of the cooling-off period; however, if the parties agree, the purchaser may make an advance payment before expiry of the deadline if this agreement is given expressly and if it does not exceed 5% of the sale price including taxes; if the advance contains fees for managing the dossier, i.e. possible notary and registration fees, other administrative fees, etc., these may not exceed 1% of the sale price, and in any event the vendor must provide sufficient security that he will be able to effect reimbursement.

As to the period within which the vendor must reimburse the purchaser in the event of withdrawal, he is granted one month from the date of communication of withdrawal.

Article 8 (and recital 17)

This is a new article which relates to a subject which was not covered in the initial proposal and which was included in the wake of the Council debates; it concerns a loan contract linked to a contract for the purchase of a right to utilise one or several immovable properties on a time-share basis

Here the purchaser must be free to repudiate the loan contract if he decides to exercise his right of withdrawal as provided for in Article 7

Article 9 (and recital 15)

The first part of the new text of this article takes up an amendment by Parliament which merges into one paragraph the two paragraphs which this article had in the initial proposal; the expression "to be null and void" is replaced by a different and more appropriate expression, so as to enable the Member States to stipulate possible penalties.

As to the second paragraph, it replaces Article 9 of the initial proposal, which was judged excessively complicated during the debates within the Council, the Parliament and the Economic and Social Committee. However, the basic principle was retained, i.e. that the protection accorded by the Directive to the purchaser cannot in any way be lessened by the choice of the law of a non-Member State. This is also the wording chosen by the Council in Directive 93/13/EEC concerning unfair terms in consumer contracts.

Article 10, 11, 12 and 13

The amendments made to these articles are purely formal and do not introduce any changes of substance to the initial proposal.

OPINION OF THE PARLIAMENT

<u>Amendment No</u>	<u>Initial proposal</u>	<u>Accepted by the Commission</u>	<u>Integrated (new numbering)</u>
1	Title	No	
2	Recital No 3	No	
3	Recital No 12	No	
4	Recital No 14 a	No	
5	Title	No	
6	Article 1	No	
7	Article 2.1	Partly	Article 2
48	Article 2.2	Partly	Article 2
9	Article 2.3	No	
10	Article 2.4	No	
11	Article 3.1(a)	Partly	Article 3(a) and (b)
12	Article 3.1(b)	Partly	Article 3(c)
13	Article 3.1(c)	Yes	Annex, items e) and f)
14	Article 3.1(d)	Partly	Article 3(d)
15	Article 3.2	No	
16	Article 4	Yes	Article 4
17	Article 5.1	Partly	Article 5.2
18	Article 5.2	No	
19	Article 6	No	
51	Article 7.1	No	
21	Article 7.2	Yes	Not relevant
22	Article 7.3	Partly	Article 7.2
58 compromise	Article 7.4	Yes	Article 7.3

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<u>Amendment No</u>	<u>Initial proposal</u>	<u>Accepted by the Commission</u>	<u>Integrated (new numbering)</u>
24	Article 7b	No	
25	Article 8	Yes	Article 9
26	Article 9	No	
27	Article 9	Yes	Article 9.2
28	Article 10	No	
29	Article 11	No	
30	Article 12	No	
31	Annex (a)	Partly	Amendments concerning the Annex are irrelevant because the new Annex no longer refers to the information document but to the time-share contract
32	Annex (b)	Yes	
33	Annex (c)	Yes	
49	Annex (c)	No	
34	Annex (d)	Yes	
35	Annex (e)	Yes	
36	Annex (f)	Yes	
37	Annex (g)	Yes	
38	Annex (h)	Yes	
39	Annex (i) (j)	Yes	
40	Annex (l)	Partly	
41	Annex (m)	Yes	
42	Annex (n)	No	
43	Annex (o)	Yes	
44	Annex (p)	Yes	

INITIAL PROPOSAL

AMENDED PROPOSAL

Proposal for a Council Directive concerning the protection of purchasers in contracts relating to the utilisation of immovable property on a time-share basis

Proposal for a Council Directive concerning the protection of purchasers in contracts relating to the purchase of a right to utilise one or several immovable properties on a time-share basis

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and more particularly Article 100a thereof,

Unchanged

Having regard to the proposal from the Commission,

In cooperation with the Economic Parliament,

Having regard to the opinion of the Economic and Social Committee,

- 1. Whereas one of the main aims of the Community is to complete the internal market by 31 December 1992 at the latest; whereas it is important to adopt measures to ensure that the internal market is established progressively; whereas the internal market comprises an area without internal frontiers in which goods, persons, services and capital can move freely;

- 1. Whereas one of the main aims of the Community is to complete the internal market; whereas it is important to adopt measures to ensure that the internal market is established progressively; whereas the internal market comprises an area without internal frontiers in which goods, persons, services and capital can move freely.

- | | |
|---|---|
| <p>2. Whereas the European Parliament, in its resolution of 13 October 1988 on the need to fill the legal gap in the time-share market⁽¹⁾, called on the Commission to submit a proposal for a directive to harmonise national legislation on time-share property ownership, whereas, in its resolution of 11 June 1991 on a Community tourism policy⁽²⁾, the European Parliament took the view that the Commission should present a general time-share directive as a matter of urgency;</p> | <p>2. Unchanged</p> |
| <p>3. Whereas, in the Community Action Plan for Tourism⁽³⁾, the Commission's guidelines with a view to improving protection for tourists as consumers include 'drafting a proposal regarding cross-border property transactions (time-sharing)';</p> | <p>3. Unchanged</p> |
| <p>4. Whereas the time-share market is very largely of a transfrontier nature by the reason of the geographical location of supply and demand in most cases, and hence has an impact on the free movement of persons, services and capital;</p> | <p>4. Whereas the <u>purchase of a right to utilise one or several immovable properties on a time-share basis</u> is very largely of a transfrontier nature by reason of the geographical location of supply and demand in most cases, and hence has an impact on the free movement of persons, services and capital;</p> |
| <p>5. Whereas, although most of the Member States have as yet no specific legislation on time-share contracts, others do, taking the view that the provisions of ordinary law applicable to this type of transaction have failed to generate the requisite legal clarity or the appropriate level of protection for consumers;</p> | <p>5. Whereas, although most of the Member States have as yet no specific legislation on <u>the purchase of a right to utilise one or several immovable properties on a time-share basis</u>, others do, taking the view that the provisions of ordinary law applicable to this type of transaction have failed to generate the requisite legal clarity or the appropriate level of protection for consumers;</p> |

(1) OJ No C 290, 14.11.1988, p. 148

(2) Resolution A3-155/91, point 91 (Document PE 152.802, p. 54).

(3) COM(91) 97 final, p. 20

6. Whereas the application of the rules of ordinary law in some Member States and of specific legislation, albeit with different rules, in others creates disparities which might hamper the orderly development of this sector of economic activity; whereas this situation is thus prejudicial to the proper functioning of the internal market.

6. Unchanged

7. Whereas under the circumstances and with a view to ensuring a high level of protection for consumers, it is essential to make provisions for a basic set of specific rules for this type of transaction, applicable throughout the Community;

7. Unchanged

8. Whereas the legal concepts applied under national law to time-share arrangements vary considerably from one Member State to another;

8. Whereas the legal concepts applied under national law to the purchase of a right to utilise one or several immovable properties on a time-share basis vary considerably from one Member State to another;

9. Whereas it is nonetheless sufficient to harmonise the rules concerning time-share contractual transactions, the law applicable in each case deriving exclusively from the *lex rei sitae*;

9. Whereas it is nonetheless sufficient to harmonise the contractual aspects of transactions relating to the purchase of a right to utilise one or several immovable properties on a time-share basis, the law applicable to each immovable property deriving exclusively from the *lex rei sitae*;

10. Whereas, with a view to establishing effective standards for protecting purchasers in this field, it is necessary to stipulate minimum obligations which vendors must comply with vis-à-vis purchasers;

10. Unchanged

11. Whereas nothing must be done to affect the freedom of Member States to establish guarantees under their own legislation in respect of the vendor's obligations;

11. Whereas nothing must be done to affect the freedom of Member States to establish measures to ensure that the vendor fulfils his obligations;

12. Whereas it is necessary to avoid any misleading or incomplete details in information concerned specifically with one sale of time-share rights; whereas such information must be supplemented by a document which the purchaser must formally acknowledge receipt of at the time the contract is signed; whereas this supplementary document must be drawn up in a language which the purchaser states he knows; whereas the items of information contained therein must constitute an integral part of the time-share contract;
13. Whereas, to give the purchaser the chance to realise what obligations and rights he has under the contract he has to be given the right to withdrawal for a period which takes account of the fact that the property is often situated in a State and is subject to legislation which are different to those of the purchaser; whereas it is necessary to make provision for the purchaser to be informed by writing of this cooling-off period;
14. Whereas the protection afforded to the purchaser must be supplemented in terms of private international law, given the time-share contracts are very often transfrontier in nature;
12. Whereas it is necessary to avoid any misleading or incomplete details in information concerned specifically with the sale of rights to utilise one or several immovable properties on a time-share basis; where as such information must be supplemented by a document which must be made available to any person who requests it; whereas the information contained therein must constitute part of the contract for the purchase of a right to utilise one or several immovable properties on a time-share basis;
13. Whereas, to give the purchaser the chance to realise what obligations and rights he has under the contract, he has to be given a period during which he may cancel the contract which takes account of the fact that the property is often situated in a State and is subject to legislation which are different to those of the purchaser;
14. Whereas, in order to give the purchaser a high level of protection and in view of the specific characteristics of systems for utilising immovable properties on a time-share basis, the contract for the purchase of a right to utilise one or several immovable properties on a time-share basis should contain certain minimal elements; whereas this contract should be drawn up in a language which the purchaser declares he knows;
15. Whereas there is a risk, in certain cases, that the consumer may be deprived of the protection accorded by this Directive by specifying the law of a non-Member State as the law applicable to the contract; whereas, consequently, it is necessary to include in this

Directive provisions designed to avoid this risk.

15. Whereas nothing must be done to prevent Member States from maintaining or adopting provisions which give the purchaser greater protection in connection with time-share contracts,

16. Whereas the requirement, on the part of the vendor, that advance payments be made before expiry of the cooling-off period may constitute a risk of financial insecurity for the purchaser, whereas it is necessary to eliminate this risk by prohibiting advance payments before expiry of this period; whereas this prohibition does not prevent the parties from agreeing on the payment of an advance before expiry of the period; whereas it is necessary, in order to secure the maximum amount of financial security for the purchaser, to limit such advances and to ensure reimbursement of the purchaser in the event of cancellation of the contract;

17. Whereas, in the event of cancellation of a contract for the purchase of a right to utilise one or several immovable properties on a time-share basis whose price is entirely or partly covered by a loan granted to the purchaser, the purchaser must also be free to cancel this loan contract;

18. Whereas, finally, the aim of the present Directive is the creation of a set of common rules assuring the legal and economic security of purchasers in an area where they are in a situation of inferiority compared to other interested parties; whereas the present Directive will allow the balance to be redressed between the interested parties, necessary for the smooth functioning of the market; whereas the differences in national legislation, the territorial limits of this legislation and the evidently transfrontier nature of the market mean that a high level of protection for purchasers is only possible at Community level, given the joint

competence of the Community with the Member States in this area, the protection of purchasers, in the conditions laid down by the present directive, seems necessary at Community level in order to support and supplement the policy followed by the Member States at national level; whereas the appropriate instrument to attain the objective is a Directive; whereas the provisions of this present Directive are hence conform with the principle of subsidiarity.

INITIAL PROPOSAL

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States in respect of contracts relating to the utilisation of immovable property on a time-share basis.

Article 2

For the purposes of this Directive:

- 'contract relating to the utilisation of immovable property on a time-share basis', hereinafter referred to as 'time-share contract', means any contract by which a vendor transfers or undertakes to transfer to a purchaser, on payment of a certain price, a real property right or any other right relating to the utilisation of immovable property at a certain time of the year, which may not be less than one week, covering a minimum of three years,
- "immovable property" means any building or part of a building to which the time-share contract relates, such as a house, flat bungalow, studio flat, etc.,
- "vendor" means any natural or legal person who, in transactions covered by this Directive and in his professional capacity, transfers or undertakes to transfer to a purchaser a real property right or any other right relating to the utilisation of immovable property, where he is himself the owner of the said property to which the right refers or is authorised by the owner to carry out such transaction,

AMENDED PROPOSAL

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Article 2

For the purposes of this Directive:

- "contract relating to the purchase of a right to utilise one or several immovable properties on a time-share basis", hereinafter referred to as "time-share contract", means any contract by which a vendor transfers or undertakes to transfer to a purchaser, on payment of a certain price, a right having either the characteristics of an obligation or the characteristics of a real right, and accorded for a minimum period of three years, to utilise one or several immovable properties during a determinable time of the year;
- "immovable property" means any building or part of a building already built or to be built, for use as a dwelling, to which the right which is subject of the time-share contract relates;
- "vendor" means any natural or legal person who, in transactions covered by this Directive and in his professional capacity, transfers or undertakes to transfer the right which is subject of the time-share contract, where he himself is holder of this right or has been authorised by the holder to proceed with this transfer;

"purchaser" means any natural person who, in transactions covered by this Directive, acts as a consumer, i.e. for the purposes which may be regarded as being outside his professional capacity.

"purchaser" means any natural person acting in transactions covered by this Directive for purposes which may be regarded as being outside his professional capacity to whom the right which is subject of the time-share contract is transferred.

Article 3

Article 3

Member States shall make provision to ensure that, in the time-share contract, the vendor guarantees, more particularly:

Member States shall make provision in their legislation to ensure that, in the time-share contract, the vendor shall ensure, more particularly:

- a) that the immovable property, and any connected facilities, has been built or will be built according to the state of the art and under such conditions as to obtain from the authorities of the country in which the property is or will be situated the necessary authorisation, according to the national law, so that he can effectively occupy the property;
- b) the transfer to the purchaser, on payment of the price stipulated in the time-share contract, of the real right or any other right of use in respect of the property, exclusive of all charges or subject only to such charges as are stipulated in the time-share contract;
- c) where appropriate, the purchaser's right to use, in addition to such common services as lighting, cleaning, refuse collection, etc. special facilities such as swimming pools, tennis courts, golf courses, saunas, etc. existing at the time of signature of the time-share contract or in the future, subject to the conditions stipulated in the time-share contract or otherwise provided for by the vendor;

- a) that, if the immovable property is still to be built, the work will be performed within the envisaged time limits;
- b) that adequate guarantees will be provided to compensate for possible loss to the purchaser resulting from delay, defective performance or non-performance of the services incumbent on the vendor;
- c) that the transfer to the purchaser, on payment of the price stipulated, of the right which is subject of the time-share contract shall take place simultaneously and shall be exclusive of all charges, with the exception of those enumerated in the time-share contract, conferring on him the right to do as he wishes with the properties or shares concerned.

Deleted

d) the purchaser's right to be involved in the process of making any decisions concerning the administration of the time-share scheme and the management and maintenance of the property to which the time-share arrangement relates. The purchaser may delegate this right provided this is done in a separate document and subsequent to signature of the time-share contract, such delegation of powers may be revoked at any time.

d) where relevant, the purchaser's right to be involved in an appropriate manner in the process of making any decisions concerning the management and maintenance of the immovable property. The purchaser may delegate this right of participation provided this is done in a separate document and subsequent to signature of the time-share contract; such delegation of powers may be revoked at any time.

2. Member States shall make provision in their legislation for appropriate measures to ensure that the vendor gives adequate guarantees concerning, where appropriate:

deleted

- correct completion of the property,
- reimbursement of any advance payment, in the event of non-completion of the property or in exercise of the right to withdrawal within the meaning of the Article 7, without prejudice to the terms of Article 7(4).

deleted

deleted

Article 4

Article 4

The Member States shall make provision for:

"Member States shall make provision in their legislation for the bases for calculating the breakdown of common and occupation-linked charges between the purchasers, corresponding to their share of the right to utilise the property; where relevant, the share of each category of charges to which each purchaser is liable shall be fixed separately. Charges for unsold rights of utilisation may not be apportioned down among the purchasers who have already signed an undertaking but must be imputed to the vendor.

1) measures to establish the purchaser's rights and obligations in respect of the management and maintenance of the property to which the time-share arrangement relates; such measures shall be in conformity with point (m) of the Annex;

2) the bases for the breakdown of common and occupation-linked charges, in annual terms, in which the purchaser is required to participate; such bases shall lay down clearly and unequivocally, and

in conformity with the terms of point (j) of the Annex, the share of each category of charges to which each purchaser is liable, in the light of the situation and category of the property to which the time-share arrangement relates, and the period and duration of the time-share right.

Article 5

- 1. Member States shall make provision for measures to ensure that the vendor is required to make available to any potential purchaser a document providing information in an unequivocal, detailed and complete form on at least the items set out in the Annex.

The document shall be in a language which the purchaser states he knows.

- 2. Any other form of advertising shall indicate the possibility of obtaining the document.

Article 5

- "1. Member States shall make provision in their legislation for measures to ensure that the vendor is required to make available an information document to any person who requests one. This document, in addition to the general description of the property to which the right which is subject of the time-share contract relates, must at least contain concise and precise information on the items indicated in points a), c), d), f), g), and k) of the Annex as well as particulars on how to obtain additional information.

- 2. Member States shall provide in their legislation that the information contained in the document referred to in paragraph 1 is an integral part of the time-share contract;

Except by express agreement between the parties, the only changes to this information which are admissible are those which relate to circumstances independent of the vendor's volition.

Changes made to this information must be communicated to the purchaser before conclusion of the contract. The contract must expressly mention these changes.

- 3. Any advertising relating to the immovable property in question shall indicate the possibility of obtaining the document referred to in paragraph 1, as well as where it can be had from.

Article 6

Member States shall make provision to ensure that the time-share contract, which must be in writing, contains at least the following items:

- a) a detailed and unequivocal description of the property in respect of which the time-share right is transferred to the purchaser. This description must be in conformity with the information contained in point (a) of the Annex;
- b) the precise type of time-share right which is being transferred to the purchaser. This type of right must feature among those referred to in point (d) of the Annex;
- c) the period and date, in words, within and from which the purchaser may exercise his time-share right, such information being in conformity with the information contained in point (f) of the Annex;
- d) express reference to the other items indicated in the Annex;
- e) the date, in words, of signature of the contract;
- f) the purchaser's declaration indicating that he has received and understood the document referred to in the first subparagraph of Article 5(1) in accordance with the second paragraph thereof.

Article 7

Member States shall make provision for:

- 1 the obligation on the vendor to inform the purchaser, in writing, at the time of signature of contract, that the contract will take effect unless the purchaser withdraws within a period of:

Article 6

1. "Member States shall make provision to ensure that the time-share contract, which must be in writing, contains at least the items mentioned in the annex.
2. The document shall be in a language which the purchaser states he knows.

Article 7

Member States shall provide in their legislation that:

- 1 the contract shall become definitive provided the purchaser has not exercised his right of withdrawal with a period of at least 28 calendar days from the date of signature of the contract or, in the event of

conclusion of a preliminary but legally binding contract, from the date of signature of this contract;

at least 14 calendar days from the date of signature of contract, or

at least 28 calendar days from the date of signature of contract where the time-share right can be exercised in a country other than where the purchaser has his normal residence;

2. the information referred to in point 1 to be contained in the contract in an unequivocal and clearly legible form and at least in the same point as the rest of the contract, immediately preceding the signatures of the parties to the contract;

3. the right of withdrawal provided for in point 1 to be exercised by the purchaser by notifying the person whose name and address figure in the contract for the purpose. As regards compliance with the deadline, it is sufficient for notification to be sent, by registered letter, before expiry of the relevant deadline;

4. measures designed to:

a) lay down the conditions in which, where the purchaser exercises the right of withdrawal provided for in point 1, any sums which may be reimbursable are calculated so as to ensure that reimbursement does not entail any unjustified enrichment for either of the parties concerned;

b) establish the deadline for reimbursement.

2. With a view to exercising this right of withdrawal, the purchaser shall address a written communication to the person whose name and address are indicated in the contract for this purpose. As regards compliance with the deadline, it is sufficient for the communication to be sent in such a manner that documentary evidence of the fact can be produced before expiry of the deadline;

3. The vendor may not require advance payments from the purchaser before expiry of the deadline mentioned in paragraph 1. However, the parties may agree on payment of an advance if this agreement is given expressly and if the advance does not exceed 5% of the value of the sale, including taxes, to the extent that such an advance contains expenses for managing the dossier, such expenses may not exceed a maximum of 1% of the sale price and must be mentioned separately in the contract. As to a possible advance payment, the vendor must

provide adequate guarantees for its reimbursement. If the purchaser, in due form and within the agreed deadline, exercises his right of withdrawal, the advance payment, where relevant less the fees for managing the dossier, shall be reimbursed within a month at the latest, starting from the date of communication of withdrawal.

Article 8

"Member States shall provide in their legislation that:

- a) if the price is entirely or partly covered by a loan granted by the vendor or,
- b) if the price is entirely or partly covered by a loan accorded to the purchaser by a third party on the basis of an agreement concluded between the third party and the vendor, the purchaser shall be free to withdraw from the loan contract if he chooses to exercise his right of withdrawal provided for in Article 7; in such cases the purchaser must cancel the loan contract before expiry of the deadline referred to in paragraph 1 of that article. The procedures for exercising the right to cancel the loan contract shall be determined by the Member States.

Article 8

Member States shall make provision for:

- 1. any clause under which the purchaser renounces his right to benefits under this Directive to be null and void;
- 2. any clause under which the vendor is exonerated from liability arising from this Directive to be null and void.

Article 9

- 1. Member States shall provide in their legislation that clauses under which the purchaser renounces his right to benefits under this Directive or under which the vendor disclaims liabilities arising from this Directive shall not bind the purchaser under the conditions laid down by their national laws.
- 2. Member States shall take the measures necessary to ensure that the purchaser shall not be deprived

of the protection accorded by this Directive through choice of the law of a non-Member State as the law applicable to the contract.

Article 9

deleted

Member States shall make provision, notwithstanding a choice of the law by the parties to the contract or the application of the objective criteria of international private law for determining which law shall apply, for the purchaser not be deprived of the protection given him by this Directive;

- a) if the property to which the time-share in a Member State and
 - i) if conclusion of the contract was preceded in that Member State by a specially drafted proposal or by advertising, and if the purchaser has completed in that same Member State the necessary legal steps for completion of the contract;
or
 - ii) if the vendor or his representative received the order from the purchaser in that Member State;
or
 - iii) if the purchaser went from that Member State to a foreign country and signed the time-share contract there, on condition that the journey was organised by the vendor for the purpose of inducing the purchaser to conclude such a contract.

Article 10

The Member States shall make provision in their legislation for the consequences of non-compliance with the provisions in this Directive.

Article 10

The Member States shall make provision in their legislation for the consequences of non-observance of the provisions in this Directive.

Article 11

This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable with regard to protecting the interests of the purchaser in the field in question, without prejudice to their obligations under the Treaty.

Article 11

Member States may adopt or maintain, in the domain covered by this Directive, stricter provisions which are compatible with the Treaty, in order to ensure a higher level of protection for the purchaser.

Article 12

Members States shall bring into force the law, regulations and administrative provisions necessary to comply with this Directive by 31 December 1994. They shall immediately inform the Commission thereof. When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1995. They shall immediately inform the Commission thereof.
2. When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.
3. Member States shall communicate to the Commission the text of the fundamental provisions of internal law which they adopt in the domain covered by this Directive.

Article 13

This Directive is addressed to the Member States

Article 13

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ANNEX

INITIAL PROPOSAL

Minimum list of items to be included in the document referred to in Articles 5(1) and 6(d)

- a) A description of the immovable property to which the time-share rights relate or will relate, giving details of geographical situation, whether the property has already been built, is being built or is planned and stating that it has been built or will be built according to the state of the art and so as to obtain from the authorities of the country in which the property is or will be situated the necessary authorisation, under national legislation, so that the property in question can effectively be occupied.
- b) The nature of the vendor's title to the land on which the immovable property is or will be located; any charges to which the property is subject (e.g. mortgages easements); whether the vendor has been granted the requisite permits (e.g. building, connection to telephone, electricity, water, gas, TV services, etc.).
- c) The precise legal structure of the time-share and its duration.
- d) An indication of the time-share rights offered by the vendor and their duration; the number of properties constructed, under construction or planned; the furnishings and fittings associated with each property.

AMENDED PROPOSAL

Minimum list of items to be included in the contract referred to in Article 6

- a) Identity and place of residence of the parties, with a precise indication of the legal status of the vendor at the time of conclusion of the contract, as well as, where relevant, the identity and place of residence of the owner of the immovable property.
- b) The precise nature of the right which is subject of the time-share contract
- c) When the property to which the time-share right relates is a specific one, a precise description of the property and its location.
- d) Whenever the immovable property is under construction:
 - 1) the state of completion of the construction
 - 2) estimated date of completion of the works,
 - 3) if it is a specific immovable property, the number of the building permit and the full name and address of the

- authorities or authorities responsible,
- 4) the state of completion of common services rendering the immovable property operational (gas, electricity, water, telephone),
- 5) the guarantees referred to in Article 3(b);
- e) The total number of time-share rights in each property. e) the common services (lighting, water, maintenance, waste removal) to which the purchaser has or will have access and the applicable conditions;
- f) A clear and precise description of the fixed and variable periods of occupation, stating the arrangements for determining such periods. f) sport and leisure facilities to which the purchaser has or will have access, and, where relevant, the applicable conditions;
- g) The date on which the purchaser may occupy the property. g) a precise indication of the period or periods during which the right which is subject of the time-share contract may be exercised and, where relevant, the duration of the scheme that has been established; the date from which the purchaser may exercise the right which is subject of the time-share contract;
- h) Common facilities (e.g. swimming pool, sauna, tennis courts, golf courses, etc.) and existing and future services to which the purchaser is entitled, and the date on which such facilities and services may be used by the purchaser. h) the total price which the purchaser must pay to exercise the right which is subject of the time-share contract; this shall include the sum which must be paid by the purchaser for utilisation of common services and facilities, the basis for calculating the charges linked to occupation of the immovable property by the purchaser, mandatory legal charges (taxes, dues) and additional administrative charges (management, upkeep, repairs);
- i) The total cost for the purchaser, laying down clearly and unequivocally the cost of the various time-share rights over the various periods of the year, where a leasehold arrangement is involved, the rent must be specified. i) a clause mentioning that the purchase shall not involve any outgoing, charge or obligation other than those stipulated in the contract;

- j) The annual cost which the purchaser is expected to assume for use of the common facilities and services; the annual amount of charges related to occupation of the property by the purchaser; the annual statutory and mandatory charges (e.g. taxes, fees, etc.) and the annual administrative overheads (e.g. management, upkeep, repairs, etc.) and their expected development; any costs payable by the purchaser for special services on request.
- k) The guarantee referred to in Article 3
- l) Clear and unequivocal details of conditions, limits and cost of time-share exchange and resale services, where these services exist; if they do not exist, this must be indicated. At any event, there must be a statement to the effect that the sale of time-share rights cannot be assured at a fixed price or within a fixed period.
- m) Measures which have been or will be taken in respect of the management, upkeep and maintenance of the property, and any measures adopted or to be adopted relating to the purchaser's participation in the administration and management.
- (n) The period within which the purchaser can exercise his right to withdraw from the contract, as referred to in Article 7, the arrangements for so doing and the effect of withdrawing.
- j) whether or not the purchaser may participate in an exchange project and/or resale of the right which is subject of the time-share contract, as well as possible costs if the vendor should organise a system of exchange and/or resale; where relevant, a statement to the effect that sale of the right which is subject of the time-share contract cannot be assured at a fixed price or within a fixed period;
- k) information on the right to withdraw from the contract, precise indication of the nature and quantity of fees which will not be reimbursed to the purchaser pursuant to Article 7(3), should he exercise his right to withdraw; where relevant, information on the possibility of withdrawing from the loan contract linked to the time-share contract in the event of withdrawal from the latter;
- l) date and place of the signature of the contract by both of the parties.

Revised impact assessment form

IMPACT OF THE PROPOSAL ON BUSINESSES WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES.

Title: Amended proposal for a Council Directive on the protection of purchasers in contracts relating to the purchase of a right to utilise one or several immovable properties on a time-share basis.

Reference No: COM(92) 220 final - SYN 419.

- 1 Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

Contracts relating to the purchase of a right to utilise one or several immovable properties on a time-share basis are of a distinctly transfrontier nature; the great majority of Community citizens who hold time-share rights have their timeshares in a Member State other than their country of residence. Moreover, only four of the Member States have specific - and highly divergent - legislation on timeshares. Community purchasers can only be protected by Community legislation.

The main aim of the proposal is to create a foundation of common rules so as to give the consumer legal and economic security in a domain in which he is weaker than the other parties concerned.

The impact on business

- 2 Who will be affected by the proposal?

Companies selling time-share rights. This is a relatively new sector which is burgeoning throughout the Community, and mainly consists of small and medium-sized enterprises, many of which are immune from any supervision in the Member States where they sell their services because their head offices are often located in tax havens; these enterprises offer their services in premises located at seaside and mountain tourist resorts (such as ski resorts, the Mediterranean coast, Atlantic islands).

- 3 What measures will businesses have to take to comply with the proposal?

Before signing the contract they will have to provide the purchaser with more precise and detailed information on the rights they are offering, and they will also have to give purchasers a cooling-off period during which they may withdraw from the contract without incurring a penalty. This cooling-

off period, which in the amended proposal has been extended to 28 days, may add to the costs of firms in the sector; firms will also have to take into account that, during the cooling-off period, advance payments may not be requested unless the purchasers concur and that such payments may not exceed 5% of the sale price.

4 What economic effects is the proposal likely to have?

- on employment
- on investment and the creation of new businesses
- on the competitive position of businesses

The instrument should have no particular effect on employment, while the creation of new businesses will be eased given that increased market transparency will have beneficial effects on competition. However, there may be a negative effect on cash flow, mainly because of the extension of the cooling-off period and the restrictions on advance payments.

5 Does the proposal contain measures to take account of the specific situation of small and medium-sized firms?

Firms, whatever their size, have nothing to fear from the proposal provided they are serious and honest. The aim is to target bogus firms which conceal their activities from the authorities and practice what amounts to unfair competition to the detriment of the honest firms in the sector; hence the objective is to put at end where possible to certain commercial practices which may jeopardise the smooth functioning of the market.

Consultation

6 List of organisations which have been consulted about the proposal and outline of their main views.

- European Timeshare Federation. The ETF is for the proposal, although it would have preferred a shorter cooling-off period. This federation of timeshare firms hopes that the Directive will shake out the market by leading to the disappearance of firms which use unfair commercial practices (under the cover of anonymity) and which are responsible for the bad reputation the sector has at present.
- Consumers' Consultative Committee: very much in favour.
- Standing Committee of Notaries in the EC: for the proposal because it will increase market transparency and improve the protection of purchasers.

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