

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 220 final - SYN 419  
Brussels, 24 July 1992

## Proposal for a COUNCIL DIRECTIVE

concerning the protection of purchasers in contracts  
relating to the utilisation of immovable  
property on a timeshare basis

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(presented by the Commission)

EXPLANATORY MEMORANDUM

I. COMMUNITY POLICY CONTEXT

Two fundamental consumers' rights

- 1.1 On 14 April 1975, the Council adopted a resolution on a preliminary programme of the European Economic Community for a consumer protection and information policy.

The programme appended to the resolution summarised the interests of consumers in the form of a declaration of five fundamental consumer rights, including the right to protection of economic interests and the right to information<sup>(1)</sup>.

- 1.2 The right to protection of economic interests embraces a number of principles, more specifically:

"Purchasers of goods or services should be protected against the abuse of power by the seller, in particular against one-sided standard contracts, the unfair exclusion of essential rights in contracts... and against high-pressure selling methods"<sup>(2)</sup>.

"The consumer should be protected against damage to his economic interests caused by defective products or unsatisfactory services"<sup>(3)</sup>.

"The presentation and promotion of goods and services... should not be designed to mislead, either directly or indirectly, the person to whom they are offered or by whom they have been requested"<sup>(4)</sup>.

- 1.3 The consumer's right to information is based on the following principle: "Sufficient information should be made available to the purchaser of goods or services to enable him to:

- assess the basic features of the goods and services offered such as the nature, quality, quantity and price;
- make a rational choice between competing products and services..."<sup>(5)</sup>

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(1) Annex to Council resolution of 14 April 1975, point 3.

(2) Idem, point 19 (i)

(3) Idem, point 19 (ii)

(4) Idem, point 19 (iii)

(5) Idem, point 34.

- 1.4 All these principles were confirmed in the Council resolution of 19 May 1981 on a "second programme of the European Economic Community for a consumer protection and information policy", in which the Council noted - just as it had done in the preliminary programme - that the Commission would submit suitable proposals for the effective implementation of the programme<sup>(6)</sup>.
- 1.5 The Three-year Action Plan on consumer protection policy in the Community (1990-92) says in Chapter 4 on commercial transactions involving consumers that "we are seeing the development of new sales techniques, such as... the sale of timeshare second homes"<sup>(7)</sup>; and the Community Tourism Action Plan provides, as one of the proposed measures for improving the protection of tourists as consumers "a proposal regarding cross-border property transactions (timesharing)"<sup>(8)</sup>.
- 1.6 The European Parliament resolution of 13 October 1988 on the need to fill the legal gap in the timeshare market contains an express request to the Commission to present a proposal for a directive on the harmonisation of national timeshare laws<sup>(9)</sup>; meanwhile, the resolution of 11 June 1991 on a Community tourism policy expresses the view that the Commission should present, as a matter of urgency, a general directive on timesharing<sup>(10)</sup>.

That is what this proposal for a directive sets out to do.

## II. THE TIMESHARE PHENOMENON: THE CURRENT SITUATION

### II.1 INTRODUCTION

The idea of timesharing is a relatively new one. Most of the sources cite Superdévoluy, a ski resort in the French Alps, as the cradle of timesharing with the slogan it coined in 1965 "Stop hiring a room, buy the hotel - it's cheaper". At almost the same moment, the birth was announced in Switzerland of "Hapimag", which offered timeshares for sale in the form of company shares giving a temporary right to use one of its holiday properties.

(6) OJ C 133, 3.6.81, p. 1

(7) COM(90) 98 final, p. 22

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

(9) OJ C 290, 14.11.88, p. 148

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

This new concept failed to achieve the anticipated breakthrough in Europe, but did make headway in the United States from the 1970s on, more precisely in Florida, where inflation had caused a crisis in the traditional property market, thus favouring piecemeal or timeshare selling arrangements.

- 11.2 Given that the phenomenon is highly complex in itself and highly diversified in practice, and that few European countries have any rules or regulations to cover it, it is not easy to hit on a precise definition of timesharing which could equally well be used as an effective legal instrument. The terminological creativity is matched only by the creativity of the phenomenon itself; typical of the terms used are: periodical ownership, seasonal ownership, multiple ownership, timesharing, intermittent ownership, multi-occupation, interval ownership, part-time ownership, time-spare ownership, etc.
- 11.3 For reasons of conceptual accuracy, we prefer the term "right of enjoyment on a timeshare basis", but for one thing this is quite a mouthful, and for another the term commonly used is quite simply "timeshare" or "timesharing", and this is the term we propose to use henceforth.
- 11.4 Timesharing, then, can be described as a new form of access to accommodation, which gives the owner the right to occupy a dwelling for a certain number of days in a year, on a permanent or temporary basis, and which may take the form of a real right or be of a strictly "investment bond" nature.
- 11.5 The phenomenon was born of a variety of economic and sociological factors. The desire to own a holiday home at the seaside or in the mountains has, over recent decades, become the aim of an increasing number of holidaymakers. However, building or buying a second home is very costly, ties down a considerable amount of capital and generates a wide range of overheads for what really only amounts to a week, a month or a number of periods of use per year. Holiday homes tend to impose an (unwelcome) obligation on the owner to take his or her holiday in the same place every year.
- 11.6 In response, developers came up with new forms of holiday arrangements, more particularly in seaside and mountain locations, with a view to "democratising" the acquisition of a holiday home. By introducing timeshare arrangements, developers have given purchasers the chance to have use of a holiday home for a fixed period, at much lower cost, and to make the purchaser liable only for the upkeep pertaining to his/her particular period of occupancy.

- 11.7 An important consideration for potential timeshare purchasers and vendors alike was the creation of exchange arrangements so that purchasers can exchange their rights of use in time and space against payment of an annual fee and exchange charges.
- 11.8 The snowball effect of timeshares based on the number of sellable weeks (50 to 52 per year) had the effect of raising developers' profit-making potential and opening up a market for the mass sale of flats and other timeshare units, making use - particularly in the late 1970s - of so-called "modern" (i.e. aggressive) marketing methods.

### III. TIMESHARING: THE PRINCIPLE AND VARIATIONS ON A THEME

#### III.1 The timeshare principle

The basic idea of timesharing is that, instead of giving potential purchasers of a second home joint ownership or permanent use of a property, what they are in fact given is limited-period enjoyment of a property, i.e. for a pre-determined annual period. The practicalities look something like this:

The timeshare property (it may be a flat, a house or whatever) is made over to a number of persons, each of whom has the right to use the property for a fixed period each year. During this period, the occupier exercises his right to the whole of the property, which comes fully fitted and furnished. All responsibilities are devolved to a manager, who takes charge of everything: maintenance, cleaning, replacement of used, broken or deteriorated items, and even, in some cases, renting.

A timeshare owner thus has the right to use a property during a given period. Seen from this angle, he has none of the normal owner's worries; in other words, the arrangement is akin to that of a holiday hotel.

All countries are acquainted with the timeshare phenomenon in one form or another. Some of them, though, such as France, Belgium, Spain, Italy and the United Kingdom, have been acquainted with it for several decades, and their markets are still expanding, as is evident from the substantial volume of advertising in property reviews, prospectuses and brochures replete with all manner of glossy photographs; for other countries, the phenomenon is a relatively new one.

Generally speaking, the timeshare phenomenon has been spreading, in a wide variety of forms, for a number of years; the kind of variants on this theme (now a worldwide phenomenon) will dictate the nature of timeshare law and management.

### III.2 Variations on the timeshare theme

In practice, most timeshare projects on the European market take the form of one of the following variants:

A) (Real) right of use.

- Under a "club/trustee" system, mainly in the Common Law countries, but also widespread in Spain and Portugal.

This is a contractual system whereby a property is made over to an independent "trustee" company, which retains ownership on behalf of a club, the individual purchasers automatically becoming members when they buy their timeshare. In other words, their "membership" right is not a right of ownership, but gives the purchaser a right of enjoyment of his timeshare unit, divided into "intervals", along with the fittings and infrastructure relating to the entire property. This membership right is enshrined in a certificate.

The club rules, which form part of the contract of purchase and which are generally signed by the parties to the contract, normally provide for the creation of an association which may or may not be a separate company. The association (of members) becomes responsible, as and when the timeshares are sold, for decisions concerning the day-to-day running of the project, more particularly with regard to fixing the annual charges.

- Under a multiple rental contract, the specific feature of which is that it does not bestow a right of continuous rental for the life of the contract, but relates solely to a specified number of days each year; in other words, the owner (or "lessor") undertakes to cede each year to the lessee, for the period stipulated in the contract, use of a holiday dwelling and the associated services. This is the system used in Greece, which is regulated by a law dating from 1986.
- Under a specific real right initiated or recognised by law. This is the case in Portugal (under the law of 1989).

B) A real right of property co-ownership with a permanent right of enjoyment on a time-share basis.

This system superimposes on the co-ownership arrangement a legal or agreement-based element of indivision; it is not so widely used, being met with - with varying degrees of success - in Belgium, Germany, Spain, Denmark and Italy.

- C) A personal right linked to a shareholding in a private or commercial company. The two main characteristics of this arrangement are generally the almost total absence of the profit motive, and the ceding of enjoyment of a share of the assets to the shareholders.  
Examples of this type of arrangement are the Hapimag system (in use in Switzerland and Germany) and the Holiday Property Bond (used in the United Kingdom), and the system introduced in France under the law of 1986. The system is also met with in Italy.

### III.3 Other elements and characteristics of timeshare schemes

- The actual object of a timeshare arrangement can differ substantially from contract to contract, regardless of the "legal packaging" described above. It may involve a multi-occupancy building, a particular category of houses or flats in a housing scheme, or more elaborate systems (e.g. timeshare-points equivalence systems, compensatory pooling arrangements, etc.); it may be a house or flat in any one of several buildings that the owner or owning company possesses throughout the world; it may be a studio flat or a hotel room; it may even cover things other than buildings proper: e.g. pleasure boats, moorings, mobile homes, and, in more general terms, any kind of good which more than one user can avail himself of at periodic intervals year after year.
- Looking at the period of enjoyment and the object of a timeshare arrangement, we can make a distinction between fixed, floating and mixed arrangements.

Under fixed timeshare arrangements, the right of enjoyment relates to the same object and to the same period each year.

Under a floating timeshare scheme, the period of enjoyment and the object are not laid down and may or may not be within a certain category.

Under a mixed timeshare, the object and the period of enjoyment may have both fixed and floating elements.

- A timeshare project often comprises a number of distinct properties which belong to, or are managed by, different companies (building proper, swimming pool, sauna, indoor sports facilities, garden, clubhouse, bar, restaurant, tennis courts, golf course, shop, beauty parlour, etc.). In some cases, this dissipation element may be prohibited; in others it is not.
- Even under a "normal" timeshare abroad, a number of contracting and other parties may well be involved: the vendor in the purchaser's country, the foreign developer or his mandated representative (may be the local sales firm), the management firms, the club (constituted as a company), the trustee, a timeshare exchange, the solicitor or notary, the land registrar, etc.

- By its nature, timesharing is a typical example of a trans-frontier transaction, the implications of which depend on the place of signature of contract, the location of the timeshare, the parties concerned, the legal status of the transaction, any mandatory legal provisions, etc.
- Certain laws currently in force (e.g. in Portugal and Greece) reserve the timeshare concept for holiday properties, which means that a definition of "holiday property" is needed.
- Another question is whether the timeshare must or can be regarded as an investment or as an alternative form of holiday arrangement, with all the attendant consequences of this distinction from the point of view of finance, tax, etc.

#### IV. THE ECONOMIC CONTEXT

##### IV.1 Trends on the world and European markets

As was pointed out under II.1 above, timesharing really took off on a worldwide basis from the 1970s. The world oil crisis in the 1970s put a brake on the growth in the timeshare market until the establishment of timeshare exchanges as mentioned in point II.7, and especially "Interval International" (II, Miami, 1976) and "Resorts Condominiums International" (RCI, Indianapolis, 1979), which added a new dimension and gave fresh impetus to the timeshare phenomenon.

IV.2 The first statistics<sup>(11)</sup> date from 1980 and emanate in the main from the two largest international timeshare exchanges, from audits and from specialist institutions.

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(11) The statistics quoted below, and the tables, are taken from "The Worldwide Resort Timesharing Industry: 1990", drawn up by Ragatz Ass. Inc. for the "International Foundation for Timesharing", Washington D.C., 1991, not yet published as at beginning of 1991.

Other more recent statistics have been collected by R. Haylock, the director of RCI, and will shortly be published in "Travel and Tourism Analyst", published by the Economist Intelligence Unit (EIU) as issue No 2, 1991, under the title "Developments in the European Timeshare Markets". These sources will not be referred to systematically in the rest of this report, except where there are differences.



By the early 1980s, there were 506 timeshare resorts or projects in the world, and something like 100 000 "intervals" had been bought by some 155 000 timeshare owners, for a total value (turnover) of US \$490 million (cf. Table 1).

Given that the average timeshare interval is something like 1½ weeks per owner, the average price per week in 1980 was somewhere around \$3 267.

By 1989, the average price per week was up to \$5 012. In 1990, the number of projects had increased virtually fivefold, to 2 357, while the number of owners had reached 1 800 000. By the end of 1990, the turnover figure had broken through the \$3 bn barrier.

IV.3 Table 1 shows a substantial growth between 1980 and 1984, mainly in the USA thanks to extensive marketing work.

The decline in growth between 1984 and 1986 can be put down mainly, according to the above-mentioned report produced by the "International Foundation for Timesharing", to a recession in the USA and a "considerable fallout in that country of mediocre resorts and under-funded developers".

The rate of growth of new timeshare projects declined after 1985, but turnover experienced a second major growth period from 1987, which can be explained, according to the above report, by an increase in the average size of new projects "developed by more experienced and better funded companies".

Between 1988 and 1990, almost 500 000 families bought more than 700 000 intervals, generating a turnover of \$5.25 bn (cf. Table 2).

This second period of growth made itself felt mainly in the USA, Europe, South Africa and Mexico.

IV.4 By the end of 1990, there were timeshare projects in 67 countries, and timeshare owners in 143 countries.

Tables 3 to 6 show that, in 1990, almost a half of the roughly 2 357 timeshare projects were in the United States.

Europe had 490 projects and 259 000 owners. Some of these owners held timeshares outside Europe, while 257 000 owners throughout the world owned timeshare rights in Europe.

This explains, for example, the significant differences between certain countries which are particularly receptive to tourism in general and timesharing in particular - such as the Caribbean, Mexico (Table 3), Spain and Portugal - on the one hand, and the less attractive countries (from the tourist point of view) like the United Kingdom, Germany and Denmark (Tables 3 to 6).

The countries of Europe with the highest number (in absolute terms) of timeshare owners are the Scandinavian countries and Italy (each with 40 000), France (60 000), Germany, Austria and Switzerland (together: 70 000) and the United Kingdom and Ireland (together: 220 000).

IV.5 To complete this statistical review, we can add (Table 7) a list of countries with timeshare projects and another list of countries of residence of timeshare owners (Table 8):

These two tables are likewise taken from the above-mentioned report produced by the "International Foundation for Timesharing" and illustrate the fact that timeshare penetration rates are not always proportional to per capita gross national product.

In Portugal, for instance, the rate of penetration is 5.3 per 10 000 for a per capita GNP of \$3 250, compared with a rate of barely 2.1 in a number of other Member States (Table 8) with a much higher per capita GNP.

STATISTICAL TABLES

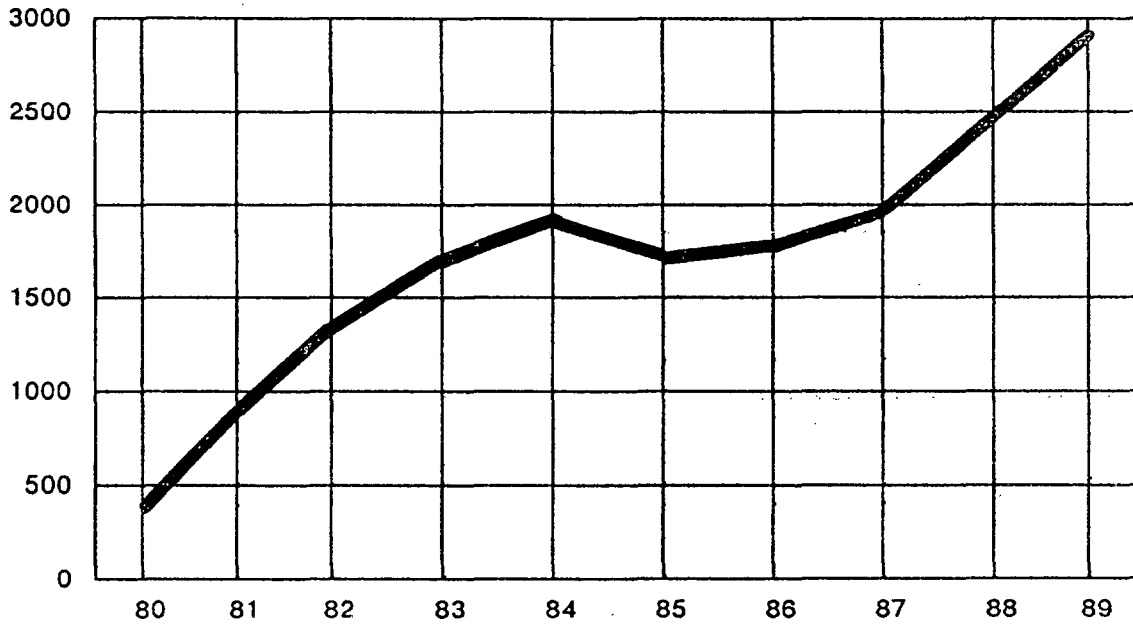
Table 1: Trends in timesharing worldwide between 1980 and 1990

YEAR	PROJECTS	OWNERS	INTERVALS SOLD	TURNOVER (million US dollars)
1980	506	155 000	100 000	\$ 495
1981	631	220 000	175 000	\$ 965
1982	950	335 000	205 000	\$ 1 165
1983	1 200	470 000	225 000	\$ 1 340
1984	1 550	620 000	275 000	\$ 1 735
1985	1 774	805 000	245 000	\$ 1 580
1986	1 779	970 000	240 000	\$ 1 610
1987	1 822	1 125 000	280 000	\$ 1 940
1988	1 899	1 310 000	330 000	\$ 2 390
1989	2 132	1 530 000	395 000	\$ 2 970
1990	2 357	1 800 000		

Source: The Worldwide Resort Timesharing Industry: 1990

Table 2: Turnover

in million US dollars



Source : The Worldwide Resort Timesharing Industry : 1990.

Table 3: Worldwide timeshare market

Timeshares                      Owners of timeshares      Resident owners

COUNTRY	NUMBER	% OF TOTAL	NUMBER	% OF TOTAL	NUMBER	TOTAL
U.S.A.	1 200	50.9	1 082 000	60.2	1 198 000	66.7
EUROPE	490	20.8	257 000	14.3	259 000	14.5
MEXICO	149	6.3	134 000	7.6	60 000	3.3
CARIBBEAN	118	5.0	84 000	4.7	4 000	0.2
SOUTH AFRICA	96	4.1	83 000	4.6	82 000	4.6
AUSTRALIA	94	4.0	71 000	4.0	70 000	3.9
JAPAN/ S.E. ASIA	69	2.9	51 000	2.8	52 000	2.9
SOUTH AMERICA	62	2.6	6 000	0.3	5 000	0.3
CANADA	48	2.0	21 000	1.2	57 000	3.2
OTHER	31	1.4	8 000	0.4	9 000	0.5
TOTAL	2 357	100.0	1 800 000	100.0	1 800 000	100.0

Source : The Worldwide Resort Timesharing Industry : 1990.

Table 4: Top 12 countries in terms of owners of timeshares in those countries

COUNTRY	OWNERS	% OF TOTAL	CUMULATIVE %
U.S.A.	1 082 000	60.2	60.2
SPAIN	140 000	7.8	68.0
MEXICO	134 000	7.4	75.4
SOUTH AFRICA	83 000	4.6	80.0
AUSTRALIA	56 000	3.1	83.1
JAPAN	45 000	2.5	85.6
UNITED KINGDOM	37 000	2.0	87.6
PORTUGAL	33 000	1.8	89.4
DUTCH ANTILLES	32 000	1.8	91.2
BAHAMAS	24 000	1.4	92.6
CANADA	21 000	1.2	93.8
NEW ZEALAND	15 000	0.8	94.6
OTHER	95 000	5.4	100.0
TOTAL	1 800 000	100.0	

Source : The Worldwide Resort Timesharing Industry : 1990.

Table 5: Top 12 countries in terms of resident owners of timeshares

COUNTRY	OWNERS	% OF TOTAL	CUMULATIVE %
U.S.A.	1 198 000	66.7	66.7
UNITED KINGDOM	179 000	10.0	76.7
SOUTH AFRICA	82 000	4.6	81.3
MEXICO	60 000	3.3	84.6
CANADA	57 000	3.2	87.8
AUSTRALIA	53 000	2.9	90.7
JAPAN	45 000	2.5	93.2
GERMANY	18 000	1.0	94.2
NEW ZEALAND	18 000	1.0	95.2
ITALY	12 000	0.6	95.8
FRANCE	11 000	0.6	96.4
SWEDEN	6 000	0.3	96.7
OTHER	57 000	3.3	100.0
TOTAL	1 800 000	100.0	

Source : The Worldwide Resort Timesharing Industry : 1990.



Table 6. Rates of penetration

COUNTRY	OWNERS PER 10 000 INHABITANTS
UNITED KINGDOM	31.5
DENMARK	7.3
IRELAND	6.1
PORTUGAL	5.3
BELGIUM	4.8
GERMANY	3.0
LUXEMBOURG	2.7
NETHERLANDS	2.0
ITALY	2.0
FRANCE	1.9
GREECE	0.5
SPAIN	0.2

Source: "The Worldwide Resort Timesharing Industry 1980"  
and own (CPS/CEC) figures

Table 7

Classification of owners of timeshares in  
the various countries

Country	Number of timeshare owners (resi- dents and foreigners)	Country	Number of timeshare owners (resi- dents and foreigners)
U.S.A.	1 081 700	French Polynesia	1 110
Spain	139 900	Brazil	1 040
Mexico	133 540	Egypt	1 000
South Africa	82 700	Thailand	950
Australia	56 200	Antigua and Barbuda	900
Japan	44 820	Cayman Islands	760
United Kingdom	36 680	Colombia	700
Portugal	32 650	Ireland	620
Dutch Antilles	32 250	Finland	530
Bahamas	24 480	China	380
Canada	21 190	Sweden	370
New Zealand	15 000	Switzerland	310
Italy	11 220	Trinidad and Tobago	310
Puerto Rico	10 000	Tunisia	310
France	9 840	Turkey	300
Malta	8 518	El Salvador	200
Virgin Islands	6 590	Norway	200
Germany	6 820	Venezuela	200
Austria	5 630	Israel	150
Argentina	4 850	Cyprus	120
Greece	3 000	Ecuador	110
Jamaica	2 720	Singapore	100
Malaysia	2 600	St Lucia	60
Guatemala	2 110	Fiji	50
Dominican Republic	1 980	Indonesia	30
Barbados	1 940	Philippines	30
Bermuda	1 920	St Vincent/Grenadines	30
South Korea	1 360	Guadeloupe	20
Costa Rica	1 300	India	10
Denmark	1 190	TOTAL	1 796 340

Table 8

Classification of timeshare owners living in the various countries per 10 000 inhabitants, compared with Gross National Product<sup>(1)</sup>

Country	Timeshare owners per 10 000 inhabitants	Per capita GNP <sup>(2)</sup> (US \$)
Bermuda	185.4	22 050
New Zealand	52.2	8 390
U.S.A.	48.1	19 800
Australia	32.0	12 850
United Kingdom	31.5	13 329
Channel Islands	25.4	n.k. <sup>(3)</sup>
Cayman Islands	25.2	12 100
Dutch Antilles	23.5	6 460
Canada	21.9	18 070
South Africa	21.3	2 360
Andorra	16.7	n.k. <sup>(3)</sup>
Norway	14.5	19 768
Gibraltar	10.1	4 450
Israel	8.9	8 400
Bahamas	8.5	9 632
Denmark	7.3	19 780
Sweden	7.3	13 897
Finland	7.1	17 780
Monaco	6.9	n.k. <sup>(3)2</sup>
Mexico	6.9	1 640
Ireland	6.1	8 640
Portugal	5.3	3 250
Belgium	4.8	15 690
Japan	3.8	15 030
Germany	3.0	18 370
Luxembourg	2.7	13 380
Netherlands	2.0	15 170
Italy	2.0	14 200
Austria	1.9	15 573
France	1.9	16 800
Iceland	1.6	21 660
Switzerland	1.6	16 900
Liechtenstein	1.1	15 000
Malta	1.1	4 310
Greece	0.5	4 670
Cyprus	0.3	5 670
Spain	0.2	7 390
Yugoslavia	0.008	6 540
Poland	0.004	7 280
Turkey	0.003	1 180
Hungary	0.002	8 670
Soviet Union	0.001	8 700

(1) Only the 20 most important countries plus the other countries of Europe, Japan and Malta

(2) cf. Handbook of the Nations, U.S. Central Intelligence Agency, 1990

(3) not known

## THE SITUATION IN THE MEMBER STATES

### Germany

#### 1. Market situation

- 1.1 At the beginning of 1991, Germany had some 265 "classic" timeshare projects, all situated in the original Federal Republic and most of them in the south. Fourteen projects are handled on an exchange basis by RCI and a further eleven by II. Nonetheless, the market leader remains "Hapimag", which has, since 1963, been running a timeshare arrangement which is entirely different from the others through a company based in Switzerland.
- 1.2 In 1990, there were some 18 000 German timeshare owners (all countries), with some 6 820 owners of a timeshare in Germany.
- 1.3 Of the 18 000 German owners, 30.9% hold their timeshare in Spain, 22.3% in Portugal, 4.8% in Sweden, 3.9% in Germany itself and 1.7% in the United States.

#### 2. Legal system

- 2.1 Germany has no specific law on timeshares. As a result, use tends to be made of a variety of legal forms, which are something of a problem when it comes to adapting them to the specific needs and problems of timesharing arrangements. The most widespread model is the Hapimag-type shareholding company, whereby the various timeshare unit buildings belong to the company, which in turn runs them and pays an annual dividend to the shareholders in the form of "points" bestowing the right to use a flat in a certain category for a certain period according to a complicated scheme.
- 2.2 Other models which aim to grant a property right in respect of a specific apartment, such as fractional co-ownership (Bruchteils-gemeinschaft), or a right of enjoyment do not do enough to protect the interests of the purchaser. As regards the club membership model (Vereinsmitgliedschaft), which is closer to the Anglo-Saxon club-trustee scheme, the problem (tested in case law) is that the German Civil Code denies legal capacity to associations which are (primarily) profit-making.
- 2.3 Since 1987, there has been a self-governing organisation (Timeshare-Verband), which has drawn up a code of conduct stipulating, among other things, that any advertising information must be full and clear, that aggressive sales techniques may not be used, that the sale of uncompleted timeshares must be linked to 100% financial guarantees, and that purchasers must have access to a seven-day cooling-off period.

## Belgium and the Grand-Duchy of Luxembourg

1. The first point to be made is that Luxembourg has, at present, no timeshare projects whatever. In 1980, there were barely 100 Luxembourgish timeshare owners. Luxembourg has no timeshare legislation, no case law and no legal literature.

2. Market situation in Belgium

The Belgian timeshare market is expanding rapidly. There are currently seven timeshare projects in Belgium, most of which have been sold under full ownership arrangements under notarial deed arrangements. Virtually all the purchasers are of Belgian nationality.

The timeshare sale market (most of the timeshares being abroad) is currently handled by some 21 firms, few of which have very impressive turnover figures, and which tend to act as intermediaries or developer's agents in Belgium, mainly for southern European countries (Spain 82.6%; Portugal 5.5%; France 1.5%).

3. Belgian legal system

- 3.1 Belgium has no specific rules or regulations on timeshares; nonetheless, the Belgian legal system is one of the few which seem to be able to accommodate certain forms of timesharing, albeit only by giving real status to spatial/temporal ownership.

- 3.2 The co-ownership system in Belgium is regulated in toto by Article 577(a), which was introduced into the Civil Code by the Law of 8 July 1924.

What the article says is: "In the absence of special agreements and provisions, the ownership of a good which belongs indivisibly to more than one person shall be regulated as follows..."; in other words, Belgian law regulates the co-ownership of any good, i.e. organises its indivision. It lays down the rights and obligations of joint owners in the absence of an agreement between them; it is thus supplementable by assent in its entirety.

This element of voluntary indivision escapes the application of Article 815 of the Civil Code ("No-one may be compelled to sustain a state of indivision, and sharing arrangements may always be initiated notwithstanding prohibitions and agreements to the contrary") and consequently a request for sharing arrangements cannot be complied with based on Article 815 provided the property is used for the purpose for which it was acquired. Thus, it is always possible, irrespective of the type of indivision, to set aside the rules provided for in Article 577(a) and to agree on a period of indivision such as to make it practically a permanent arrangement.

Consequently, under Belgian law, if a building is made subject to a co-ownership and voluntary and perpetual sub-division scheme, the resulting timeshare arrangement is in conformity with the general concepts of co-ownership.

- 3.3 Giving the timeshare the status of a real property right requires the mortgage arrangements to be made known so as to give effect to the ownership status vis-à-vis third parties, which means in practice that deeds of acquisition and assignment have to be in the form of notarial acts.

## Denmark

### 1. Market situation

- 1.1 Historically, the first timeshare project in Denmark appeared on the scene in 1976, but it was not until 1985-86 that 20 Danish projects materialised, comprising some 15 000 units, and ten or so foreign projects were likewise offered for sale. Only a minority of them proved to be a success, though.
- 1.2 At the end of 1990, there were some 4 000 timeshare owners in Denmark, indicating a relatively good level of market penetration of the order of 7.3 owners per 10 000 inhabitants (cf. Table 6). The majority of these owners have their timeshares in buildings in Spain (more specifically, the Canary Islands).

### 2. Legal system

- 2.1 Denmark has no specific law on timeshares. Three types of legal models are used, each with certain variants.
- 2.2 The purchaser acquires a temporary and cyclical right of use (x weeks per year, for a fixed period of between 15 and 100 years) and becomes at the same time a member of a timeshare owners' association which is in turn financially liable for the management and upkeep of the entire project. This system is used in something like 20% of Danish projects.
- 2.3 The purchaser acquires one or more shares in a company which acts as the project owner. As a shareholder, the purchaser has a right of use for one or more weeks per year for so long as he remains a shareholder; exercise of the right of use implies being liable for a contribution to the management and upkeep costs. Some 30% of Danish projects use this scheme.
- 2.4 Under a third scheme, used in 50% of projects, the purchaser acquires part of the property. This real property right is registered and bestows the right to use the property for one or more weeks per year, with all joint owners contributing to the overheads. One important point is that this real property right is rarely granted to foreigners, either because they are banned out of hand or because it is made economically unattractive; this state of affairs poses the question of compatibility with the general principle of non-discrimination under the Treaty of Rome.

## Spain

### 1. Market situation

- 1.1 Spain is without any doubt whatsoever the European market leader as far as timeshare location is concerned. Of the 500 or so projects in the 12 Member States at the beginning of 1991, 196 were in Spain, 83 of them on the mainland (most on the Costa del Sol), 21 in the Balearic Islands and 92 in the Canary Islands. Of these 196 projects (made up of more than 9 000 units), 151 were traded by RCI and 45 by II. In 1990, the 88 new projects handled by RCI included 30 new projects in Spain, 14 of them on the Canary Islands.
- 1.2 Spain takes second place (after the United States) in the ranking of countries in which owners (in the main, foreigners) hold their timeshares, with 140 000 owners in 1991, making up 7.8% of the world market (Table 4). The number of Spaniards owning a timeshare is still very low (only 720 at the beginning of 1990), although 1991 saw a strong surge as a result of the hotel industry crisis, which forced a lot of businessmen to consider the timeshare option, resulting in intensified selling activity and involving highly aggressive methods, such that the number of Spaniards owning a timeshare by the end of 1991 can be expected to exceed 3 000.
- 1.3 Almost 73% of timeshare owners in Spain are British, followed by 23% Danes, 3% Belgians, 2.6% French and 2.4% Finns.
- 1.4 The average size of timeshare project is 55 units, 48.1% being studio flats capable of accommodating two people at most. 33% are one-bedroom flats, 17.2% two-bedroom flats and 1% have three bedrooms.

### 2. Legal system

- 2.1 Despite the volume of the Spanish timeshare market, there is no specific legislation on the subject. Several bills have been drafted by the administration, but none has so far reached the statute book. In the absence of any specific provisions, timeshares are regulated by the general rules of the Spanish legal system.
- 2.2 It should be stressed, however, that timeshares are acknowledged to be valid and lawful under the autonomy-of-will principle, a fundamental pillar of Spanish patrimonium law (Article 1255 of the Civil Code). The main problem is how to give a timeshare a legal character which will be really effective and meet the requirements which owners expect of their timeshare.

- 2.3 The present law offers two basic forms in respect of the rights of timeshare holders: either a personal right or a right in real property.
- 2.4 Holding a timeshare as a personal right may occur under what is known as the company model, whereby ownership - of the building as a whole and of the component units - is vested in a legal person (company), whose members are entitled to use the property by virtue of owning shares or an interest in the company.

It has to be said, though, that the company model, which occurs extensively in other countries, has met with very severe, and virtually unanimous, criticism in the legal literature in Spain.

It would also appear to be the least common form in practice, as developers prefer the attraction for consumers of the legal security that the term "ownership" bestows. The draft legislation (mentioned in para 2.1) is not supportive of the company model option either; on the contrary, clear preference is given to the right in property option.

- 2.5 Despite the clear tendency to regard a timeshare as a property right, and hence as opposable to third parties, there is no agreement as to whether a timeshare can be included as one or other of the property rights covered by the Civil Code or whether, alternatively, it should be regarded as a non-standard property right which is not covered by the legal provisions regulating established property rights.
- 2.6 The concept of a timeshare as a right of tenancy does not enjoy majority support, nor does the concept of a timeshare as a right of use or of habitation.
- 2.7 In short, in the absence of any specific rules in Spanish law (although there are local rules in certain holiday regions and resorts), the configuration of a timeshare as a communal estate is without doubt the most widely accepted system and the system most used in practice by notaries and land registrars. It is, for the time being, held to be the simplest and most advantageous way of organising a timeshare, given that co-ownership can be entered on the land register and is opposable "erga omnes". It is important to remember that, in Spanish law, a property right is opposable to third parties only if it is in the form of a notarial act (escritura pública) and is registered with the land registry (Registro de la Propiedad).



## France

### 1. Market situation

- 1.1 The French timeshare market is undergoing rapid expansion. In 1990, something like 10 000 owners held a timeshare in France, 83.6% of whom were of French nationality, with 5.3% from the UK and 2.7% American. As France is very much a tourist country (with some 37 million tourists in 1987), the number of timeshare owners in France was a mere 0.3 per 1 000 foreign tourists, i.e. lower than in Italy (0.4) and Germany (0.5) and much lower than in Spain (5.5) and Portugal (5.4).
- 1.2 Of the 69 or so French timeshare projects at the beginning of 1991 (some sources put the figure at 84), 31 of which are handled by II and 38 by RCI, 13 projects are in the Alps, and the others mainly south of the Loire. At the beginning of 1990, there were only 50 timeshare projects (comprising some 3 390 units in all), which demonstrates how rapidly supply has taken off.
- 1.3 Although France is one of three Community Member States with specific legislation on timesharing, the creativity of developers and vendors would appear to be inexhaustible. The concept of "multiple ownership" was followed by "new ownership" (around 1980) and even "pre-ownership" (around 1986), quite apart from the more marginal types of variant(\*), which just goes to show the fierce competition in France in the tourist property sector, but which certainly does nothing to render the market more transparent, especially for potential foreign buyers.

### 2. Legal system

- 2.1 We shall not deal in detail here with the system of real co-ownership, for one thing because the French system is comparable to the Belgian one but is less geared to timesharing (Article 815 of the Civil Code on indivision applies also to agreement-based indivision), and partly because most timeshare projects are subject to the Société Civile d'Attribution system.

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(\*) "Les formules de propriété-vacances au banc d'essai", "Le particulier immobilier" No 46, July/August 1990, p. 73-80

2.2 Law No 86-18 of 6 January 1986 on timeshare ownership companies (OJ 8 January 1986) regards timesharing as a personal rather than a real right. One of the essential characteristics of this approach is that timeshare purchasers become associates in the company in return for their financial input. The main aim of the law is to resolve the legal and practical problems of the existing company legislation (more particularly the law of 16 July 1971), particularly the ownership sharing aspect, and to look for a legal instrument which is geared to the timeshare phenomenon, which normally involves substantial provision of services, and which adds the time (shared time) dimension. A timeshare company is distinguished from other types of company by (a) not pursuing the profit motive, and (b) the fact that the right of possession of part of the property is shared in time over an annual cycle. The law authorises a choice between all forms of company (commercial or private), although in practice the private company is the form most often chosen because of its greater operational flexibility. The law aims to provide improved protection for timeshare owners/consumers.

#### 2.2.1 Object of the law

The object is defined in the first article of the law as follows: "Companies constituted with a view to the assignment, in whole or in part, of buildings whose principal form of use is residential, with enjoyment by periods...". Thus, the law does not exclude other timeshare models, such as multiple rental systems (cf. the Greek system). It is restricted to primarily residential buildings, although this very vague concept is not explored in detail, and it is mandatory where a "shareholder" model is adopted.

The object of such companies is specified in paras 2 and 3 of Article 1: i.e. the "construction, acquisition, development (or refurbishment) and administration of buildings, and the acquisition and management of the attendant furnishings". Timeshares addressed by the law are not just the tourist-type projects.

The object of the company may, but does not have to, extend to the provision of services, the operation of collective facilities essential to the dwelling or to the building, and of facilities directly attached to the building. There are grounds for wondering why the law did not make provision for the same mandatory characteristic with regard to the provision of certain inherent services for tourist-type timeshares, particularly as regards sports and recreational facilities.

### 2.2.2 Information and advertising

Any document evidencing the acquisition of stocks or shares in companies regulated by the law must state clearly that such acquisition confers only the status of member and not of owner of the building.

In any form of publicity or advertising published, received or perceived in France, in any form whatever, concerning transactions involving the assignment of timeshares to members who do not enjoy a right of ownership or any other property right on the buildings in return for their financial input, the use of any expression including the term "owner" to define the status of members is prohibited (Article 33). Any violation of this provision will be considered as misleading advertising and may give rise to suspension and/or prosecution (Article 44 of the Law of 27 December 1973).

Where an advertising document, in any form whatever, gives notice of a timeshare exchange service, or a service for the sale of stocks or shares, or rental of the timeshare unit, there must be a regulation indicating the existence thereof and any special conditions, together with details of the purpose of the building and its various parts, and dealing with the practical arrangements for the use of collective facilities (Article 8). The regulation also lays down the share of communal overheads or the bases on which such overheads are charged (Article 9). The law distinguishes between two types of overheads: i.e. joint charges (attributable to collective facilities, the running and fittings of the building) and charges linked to occupation (e.g. electricity, gas, water, etc.).

The law also provides for a descriptive inventory laying down which parts of the building are deemed to be communal and which are for private use (Article 8). A table of assignment of the parts or shares to the various lots and per period must be appended to this inventory.

The law does not require the vendor or the developer to inform potential timeshare holders by way of these documents or by any other means prior to conclusion of the contract.

### 2.2.3 Contract

Any subscription to or disposal of shares or holdings must be covered by a private deed or a notarial act laying down the nature of the rights attached to the share or holding and their content, such as arise from the locality of the building and of the premises corresponding to the lot, and laying down the timeshare period. If the holding is being disposed of, the sales contract must also specify the economic status of the vendor as attested by the company and, unless the holding is being disposed of free of charge, the price payable to the vendor (Article 20).

The above documents (i.e. the regulation, the inventory and the table of assignment) must be appended to any deeds of subscription or disposal, along with the articles of association of the company and details of the technical characteristics of the building and the premises, and, where appropriate, the accounts for the previous accounting period, the overheads relating to the lot in question or the anticipated overheads, with an inventory of furnishings and fittings. This deed may simply make reference to such documents if it is lodged with a notary, but a copy of the documents must be submitted to the timeshare scheme member and the deed of subscription or disposal must make mention of this communication (Article 20).

#### 2.2.4 Financial guarantees

With a view to protecting consumers, the law makes it illegal for timeshare companies to require payment of a security bond (Article 2). By so doing, the legislature has sought to ensure that the developer does not authorise the company to guarantee the developer's personal liability and for the developer thus to sacrifice the other shareholders' rights.

Again, with a view to protecting consumers, the law states that members are liable for debts to third parties only to the amount of their financial stake (Article 4).

With the exception of transactions between members, no contract of disposal of shares or holdings may be concluded before the building is finished, unless there is a financial guarantee and a contract of sale or a contract of development. Such contracts are intended to protect a purchaser of a building which is still under construction (more particularly by giving a guarantee of completion), while the financial guarantee is designed to ensure, in the event of the failure of one or more associates, regulation of calls for funds for payment of the price of acquisition of the goods or completion of the construction, development or refurbishment work. This guarantee is given by an authorised credit establishment, by a certified insurance undertaking, or by a mutual security company (Article 22).

Any person who, having received or accepted one or more payments, deposits, subscriptions or negotiable instruments, cheques or authorisation to draw on a bank or giro account, on the occasion of the formation or execution of a contract, then misuses all or part of such sums will be punishable by a fine (Article 31 and Article 408 of the Penal Code).

The law requires companies to set up a supervisory board, elected by the general assembly of members, and which is essentially of an advisory nature. A management audit must be carried out each year by a non-member technical postholder, appointed by the general assembly, to whom he is required to report back (Article 18).

### 2.2.5 Other provisions

A defaulting purchaser may not lay claim, from the date of decision of the general assembly, to nor obtain enjoyment of his dwelling, nor maintain such enjoyment (Article 3, in fine).

Members are required to participate in the overheads arising in the two categories (see above), as a function of the situation and contents of the premises, the duration and the period of enjoyment (Article 9).

There is at least one general assembly a year. Members may cast a postal vote (Article 13). An appointed manager may be removed from office by simple majority (Article 16).

A member may rent or lend his timeshare (Article 23).

Companies of this type already constituted before 1986 were required to bring their articles of association into line with the law by 8 January 1988 (Article 34).

## Greece

### 1. Market situation

1.1 At the end of 1990, there were some 3 000 national and foreign owners of timeshares in Greece. On the other hand, only 480 Greek families were timeshare owners (either in Greece or abroad). This gives a modest rate of market penetration of 0.5 Greek timeshare owners per 10 000 inhabitants, although the figure is still almost twice Spain's.

1.2 Greece currently has 16 projects, 14 of which are handled by RCI and two by II. This is an increase of five projects over the previous year. The 11 projects in place at the beginning of 1990 comprised 600 units. Only 15% of the intervals had been sold by the end of 1990. A number of new projects are said to be at the planning or construction stage, most of them in Chalkidiki or on the islands, including Cyprus.

### 2. Legal system

2.1 Greece was one of the first countries in Europe to regulate for timeshare schemes, more particularly by Law No 1652 of 30.10.86 on "timeshare leases and associated matters" and the Ministerial Order of 15.12.87 on "tourist dwellings under timeshare leases".

2.2 A timeshare is defined as a right of tenancy of a tourist dwelling. The owner (or "lessor") undertakes to cede each year to the lessee, for the period laid down in the contract, the use of a tourist dwelling, and to offer the lessee the associated services.

### 2.3 Conditions relating to buildings

The law defines "dwellings" as "hotel businesses and, more generally, tourist establishments operating on the authorisation of the Greek tourist authority (EOT) and which are subject to the law under a decision of the Secretary-General of the EOT" (Article 1 of the law). The law, along with the ministerial order, is primarily aimed at hotel businesses (i.e. in the fairly wide sense of the term, special mention being made of mixed-function hotels (i.e. tourist villages), tourist villas and furnished houses) (Article 1).

These establishments must meet the requirements laid down by the EOT, in conformity with the provisions of Law 642/77 concerning hotels, Article 4 of the Decree of 1 November 1938 on hotel and hotel-owners' standards, and the above-mentioned ministerial order. Tourist dwellings may be subject to the law provided they come within class 2 (= class B) at least (irrespective of their functional nature).

### 2.4 Contract duration

The minimum authorised contract duration is five years, the maximum being 60 years. No provision is made in law for a cooling-off period.

### 2.5 Information, form and content of contracts

Timeshare contracts are signed before a notary and registered at the public registry office, otherwise the contract is null and void. They must contain the following information (Article 3 of the above-mentioned ministerial order):

- . full description of the property, all furnishings and fittings;
- . names, residence (or headquarters) and nationality of contracting parties;
- . duration of tenancy and effective tenancy dates each year;
- . details of rent, payment arrangements and currency, bearing in mind the banker's guarantee provided for in Article 1(3) of the law;
- . the method used for calculating and paying operating costs falling to each lessee;
- . application of Greek law and attribution of judicial competence to the Greek courts;
- . conditions pertaining to any sub-letting or transfer of enjoyment of the good by the lessee to a third party, with or without payment;
- . conditions and expenses pertaining to the enjoyment by the lessee of the various leisure, sports, etc. facilities or to supplementary services and benefits provided by the lessor (e.g. installation of additional beds, furniture, etc.).

The timeshare contract must also incorporate the regulations governing relations between lessor and lessees (Articles 2 and 3 of the ministerial order).

#### 2.6 Price and payment arrangements

The price may be laid down in drachmas or any other currency and may be paid in cash, by cheque or by bank transfer. In all cases, though, payment must be made within 18 months of signature of contract (Article 5 of the ministerial order).

Foreigners wishing to purchase a timeshare in Greece are required to pay in a foreign currency, deposited with the Bank of Greece within the month of reception by the lessor (Article 1(3)). The conditions of payment are different for foreigners. The price is determined on the basis of a number of timeshare characteristics (such as period, number of week per year, duration, date of construction). Depending on how old the project is, there is a reduction on the "standard price" of between 2% and 20% (Article 6 of the ministerial order).

#### 2.7 Right of tenancy, exchange and resale

People buying a timeshare in Greece have to follow the same procedure as for purchase when they wish to let or resell their share. The timeshare contract must lay down the relevant conditions.

#### 2.8 Inspection and sanctions

A hotel establishment may not be defined as a timeshare unless the lessor applies to the EOT enclosing details of rules governing relations between the lessor and the lessee, and detailing their respective rights (see above). The lessor must also lodge with the EOT a copy of the timeshare contract to facilitate project monitoring and to ensure that the lessor's obligations vis-à-vis the lessees are met. He must also communicate to the EOT in writing details of any signature of a timeshare contract, and the EOT is entitled to inspect and be present at the signature of such contracts. Finally, the lessor is also required to keep full details, in a form approved by the EOT, listing by number and chronological order all such contracts (Article 4 of the law and Article 3(4) of the ministerial order).

Should the lessor fail to comply with his contractual and statutory obligations, the EOT may impose sanctions "not just in the interests of lessees, but also to protect the good reputation of tourism in our country" (Article 4(2) of the ministerial order). These sanctions are provided for in Law No 642/77, and include a reprimand or a fine of between 5 000 and 20 000 drachmas, imposed by the director of the EOT; and/or the Secretary-General for Tourism may impose a fine of between 20 000 and 200 000 drachmas, or downgrade the establishment's rating, following the imposition of three fines within a single year, or may revoke the decision to approve a hotel establishment as a timeshare project.

Generally speaking, the task of protecting the rights of purchasers rests with a general assembly of timeshare lessees.

- 2.9 A final point is the problem which arises in Greece in respect of the legislation which prohibits foreigners from acquiring real rights - including timeshares - in regions close to the Greek frontiers (for reasons of national security). In 1990, the Court of Appeal of the District of Dhodhekanisos ruled that this legislation was in violation of Articles 7, 48, 52 and 57 of the Treaty of Rome (pre-Maastricht version) and was thus not applicable. This followed a ruling against Greece by the European Court of Justice (Judgement No 505/87 of 30.5.89); however, half of all Greek territory is still regarded as frontier region, even though certain restrictions have been toned down somewhat by Law No 1892 of 31.7.90.

## Ireland

### 1. Market situation

- 1.1 At the end of 1990, there were some 2 150 Irish owners of timeshares, most of which were located abroad.
- 1.2 On the other hand, at the end of 1990, some 620 timeshare owners (Irish and foreigners) held timeshares in Ireland in a total of six projects.

According to the Office of Consumer Affairs, there were in May 1991 something like six firms selling Irish and foreign projects on the Irish market.

Five Irish projects are handled by RCI and one by II, comprising a total of 550 units.

Although the share of the Irish market would seem at first sight to be somewhat restricted, market penetration (i.e. Irish timeshare owners per 10 000 inhabitants) is 6.1%, i.e. double the German figure (3) and more than three times the French figure (1.9), but only a fifth of the equivalent figure in the United Kingdom (31.5). Thus, Ireland holds third place in Europe, only just behind Denmark (7.3).

Compared with the other countries of Europe, Irish projects are on a relatively large scale (averaging 92 units), and 58.8% of units have two bedrooms (compared with only 2.2% in France, for example) and only 10.9% of units are studio flats for two people at most (compared with 82.2% in France).

It is estimated that only 3.4% of intervals had been sold by the end of 1990, the lowest rate in Europe (comparing with almost 50% in the United Kingdom and 47.5% in Spain).

### 2. Legal system

- 2.1 Ireland has no statute law nor case law on timeshare arrangements.
- 2.2 As the Irish system displays characteristics proper to the "Common Law" countries, the legislation on immovable property is comparable to that of the United Kingdom.



## Italy

### 1. Market situation

- 1.1 The timeshare phenomenon is a relatively recent development in Italy, and after getting off to a flying start in 1986-87, the sector grew apace in 1989 and 1990, resulting in Italy entering the Top Twelve (1990) of countries with the greatest (absolute) number of timeshare owners. Some 12 000 Italian owners (compared with 11 000 in France) held timeshares predominantly in Italy (95%), with 3.2% in Spain and 0.3% in the United States. The rate of penetration in Italy is of the order of two owners per 10 000 inhabitants, placing Italy in fifth place among the Member States (together with the Netherlands).
- 1.2 On the other hand, 11 000 timeshare owners throughout the world held property in Italy, 87.1% of whom are Italians and 12.6% Germans. This means that, of 1 000 foreign tourists, something like 0.4% were timeshare owners, a rate which is comparable to that in Greece, France and Germany.
- 1.3 In 1990, there were 40 timeshare projects in Italy, representing some 3 240 units, and giving an average of something like 81 units per project. In 1991, there were 56 projects, 52 of which were handled by RCI and four by II. Most of the projects are situated either in the Alps and the Dolomites or in the south and on one of the two main islands.

### 2. Legal system

- 2.1 There is neither statute nor case law specific to timeshares. Not only that - the existing legal instruments are anything but geared to the timeshare phenomenon. Current projects are generally organised in one of two systems: either a variant on co-ownership ("coproprietà indivisa"), or as "acquisto di azioni societarie" (shareholder model).
- 2.2 The former model is now used in most cases, mainly because the latter created a lot of practical problems because of the inflexibility of company law. The "multiproprietà immobiliare" model means that the purchaser obtains a right of co-ownership, which is confirmed in a notary's act and registered in the property register. The principal characteristics of this model are joint ownership on the part of several people of one and the same timeshare, the division of enjoyment of a property in quotas, a regulated form of enjoyment, the opportunity to delegate management of the project to a third party, and the fact that the project cannot be divided into other parts.
- 2.3 Finally, in the wake of legal problems inherent in the timeshare system in Italy and of problems encountered by consumers, the Italian authorities have (since 1985) been planning specific legislation on timesharing. Three proposals and bills have already been discussed in Parliament, but none of them has so far reached the statute books.

## Netherlands

### 1. Market situation

- 1.1 There is practically no such thing as a timeshare market in the Netherlands. In 1991, there was one project in Zandvoort of the trustee-club type, and another has been announced in Port Zeeland.
- 1.2 The number of Dutch owners with timeshares abroad is put at 3 000, most of the properties being in Spain.

### 2. Legal system

- 2.1 There is neither statute nor case law on timeshares in the Netherlands.
- 2.2 Legal literature in the Netherlands has always put the case for a combination of real rights and personal rights for the setting-up of a cooperative company.

## Portugal

### 1. Market situation

- 1.1 Timesharing is a firmly established phenomenon in Portugal. In 1990, something like 33 000 people - 46.7% from the United Kingdom, 22.3% from Portugal and 3.9% from Germany - held timeshares in something like 60 projects in Portugal, while 5 520 Portuguese owners held timeshares, something like 99.2% of which were in Portugal itself.
- 1.2 At the beginning of 1991, Portugal had 70 projects, 57 of which were handled by RCI and 13 by II, most of them in the Algarve. There were something like 3 130 units (averaging 52 per project), with 31.3% of intervals already sold, a relatively high figure compared with the other Member States.

### 2. Legal system

- 2.1 Portugal was the first European country to introduce legislation on timesharing, describing it as a "right of periodic habitation" ("direito de habitação periodica"). As in the other countries of Europe, the number of real rights was limited by law and could only be increased by law, which was in fact done in 1981 by Decree-Law No 355/81 of 31.12.81, subsequently amended by Decree-Law No 368/83 of 4.10.83. This "right of periodic habitation" is thus a new real right.
- 2.2 These two laws regarded timesharing as a right "in rem" belonging to more than one holder and thus taking the form of a variant on property right; however, the two laws had major shortcomings in respect of other aspects of timesharing, and were heavily amended and supplemented by Decree-Law No 130/89 of 18 April 1989, the version which is currently in force.

### 2.3 Scope

The law applies in principle to buildings and groups of buildings forming part of tourist developments, which have been classified (under Decree-Law No 328/86 of 30.9.86) as apartment hotels, tourist complexes, tourist apartments or the like. This does not mean that the law does not apply equally where a tourist business forms an autonomous part of a particular building. In such cases, the units must be distinct and separate, must have their own accesses to a common part of the project of which they form part, to a part of the complex or to the public highway. Such timeshares thus form part of the hotel trade and are subject to the relevant rules and regulations.

The duration of a timeshare is, save any indication to the contrary, open-ended, with a minimum of 20 years, but holders may not buy more than 30 consecutive days per year. The floating weeks system is prohibited.

### 2.4 Information and advertising

Any advertising and any promotional material must contain certain precise items of information, more specifically: identification of owner and project, description of project, date of opening, characteristics of dwelling units, duration of project and week(s) purchased, details of supplementary fittings, details of rights and obligations (Article 33).

If the project is still under construction, the date of approval, date of opening and existence or otherwise of a security bond or insurance arrangements must be specified.

No advertising or promotional activity relating to the timeshare may be made until the project has received the definitive approval from the competent instances, more particularly the Directorate-General for Tourism (Articles 33 and 34).

No document, not even the contract, may use the term "owner" or any other expression likely to give purchasers of timeshare rights the mistaken idea of being an "owner" of a timeshare (Article 31). The same goes for advertising and promotional material.

### 2.5 Contract of sale and cooling-off period

The contract must include ten or so specific elements, viz.

- . identity of owner of project, purchaser, sales firm (where appropriate), management firm (where appropriate);
- . identification of project, including locality of phase in question (where appropriate) and file number issued by the Directorate-General for Tourism;

- . land registry description of project or clear mention of the fact that the timeshare project is under construction;
- . date of opening, or date of approval and completion where still under construction;
- . characteristics of dwelling unit and inventory of furnishings and fittings;
- . list of supplementary facilities (e.g. leisure, sports and entertainment facilities) either completed or planned;
- . duration and date of period of enjoyment of timeshare right;
- . respective rights and obligations of the various parties;
- . existence or otherwise of a mortgage or any other charge on the project or the buildings concerned, and identity of any beneficiary;
- . where the project has not been completed, mention must be made of the existence or otherwise of a security bond or an insurance policy guaranteeing the purchaser the "reimbursement of sums paid over under the contract, under whatever circumstances, in the event of the contract not being honoured within the set time and under the set conditions, for any reason whatever, which is not imputable to the purchaser".

As regards the cooling-off period, the law makes provision for termination of contract by registered post with recorded delivery within seven days of signature, but does not require this clause to be mentioned in the contract.

Constitution of the "real right of periodic habitation" is by notary's act, duly registered.

## 2.6 Financial guarantees and liability

To guarantee fulfilment of his obligations, the owner of the project (frequently the developer) must lodge a security bond in respect of all holders of rights. This may take the form of an insurance policy, a banker's guarantee or deposit, and the amount of the bond must correspond to at least half the annual value of all timeshare payments payable by right holders. The bond certificate must be lodged with the Directorate-General for Tourism, along with the application for issue of the document in respect of the constitution of a real right in accordance with Article 4. The developer or the person responsible for paying the security bond must submit to the Directorate-General for Tourism, before the end of each year, proof that the bond remains valid (Article 22).

It is also worth pointing out that, with a view to making timeshare projects more transparent, and to afford better protection to consumers, the law stipulates that a timeshare project may belong to one person only (i.e. a physical or legal person).

## 2.7 Other elements

The law makes provision for a detailed regulation governing management of timeshare projects. Management costs must include a percentage figure of at least 2.5% of the annual amount to feed a "reserve fund" to be available for repairs and the replacement of furnishings and fittings.

### United Kingdom

#### 1. Market situation

- 1.1 The United Kingdom is far and away the timeshare market leader in Europe from virtually all points of view. In 1990, there were something like 180 000 owners of timeshares, accounting for 10% of all timeshare owners worldwide. Some 64.2% of timeshare owners had their property in Spain, compared with 16.8% with holdings in the United Kingdom and 3.3% in the USA.
- 1.2 Again, in 1990, the United Kingdom had 70 projects with 2 220 units, giving a relatively low average of around 32 units per project (compared with 92 in Ireland and 81 in Italy). Only 6.3% of timeshares were studio flats; 31.8% had one bedroom, and 55.1% two bedrooms (compare the situation in France, with 82.2% of timeshares in the form of studio flats).  
At the beginning of 1991, the number of projects was 74, with 58 being handled by RCI and 16 by II. In 1990, something like half of all "intervals" had been sold, the highest percentage in Europe (compared with 47.5% in Spain and 31.3% in Portugal).
- 1.3 Given the huge growth in the timeshare market in the UK, it is hardly surprising to find a number of firms selling timeshares second hand.
- 1.4 The large majority of UK projects are run under the club-trustee system. Another important point is that most British timeshare companies are based in the Isle of Man.

#### 2. Legal system

- 2.1 The UK has no specific legislation on timeshares, although under a report published by the Office of Fair Trading in June 1990, the government does intend to table a bill in Parliament in the near future.

2.2 This does not mean to say, though, that the timeshare market operates in a total legislative vacuum in the United Kingdom. On the one hand, the UK has a substantial body of consumer protection legislation, the most important elements of which are the:

- . Misrepresentation Act, 1967
- . Trade Descriptions Act, 1968
- . Fair Trading Act, 1973
- . Consumer Credit Act, 1974
- . Unfair Contract Terms Act, 1977
- . Estate Agents Act, 1979
- . Data Protection Act, 1984
- . Financial Services Act, 1986
- . Consumer Protection Act, 1987
- . Control of Misleading Advertising Regulations, 1988

On the other, the law on contracts, as developed by the courts and amended by Parliament, applies to timeshares in the same way as to the purchase of goods and services; it is also important to remember that trust legislation is fully applicable to timeshares, given that the club-trustee scheme is the one most widespread in the United Kingdom.

2.3 As regards the self-regulatory system, which is very widespread in the United Kingdom, mention must be made of the Timeshare Developers Association, which was set up in 1987 and which has created a full system of standards and a code of good conduct for its members. With effect from October 1990, the Timeshare Council has taken over from the Timeshare Developers Association and has laid down its main objectives, conditions of membership and own rules of procedure.

JUSTIFICATION OF THE PROPOSED MEASURE

There are three main reasons why it is appropriate to introduce a Community norm with a view to protecting purchasers of timeshares:

- 1) The problems faced by consumers.
- 2) The transfrontier nature of the timeshare market.
- 3) The divergent nature of national legislation.

The problems faced by consumers

The Commission's attention has been drawn to the situation of consumers in the timeshare market by the large number of complaints submitted either directly by the people concerned or indirectly through other sources such as the European Parliament.

These complaints relate specifically to:

- A) The use of particularly aggressive sales techniques - or the use of psychological pressure - so that the consumer is caught unprepared and is virtually forced into signing a contract without any opportunity to think over his decision. Typical sales techniques include:

Vague invitations to meetings where the vendor (who usually avoids the term "timeshare" entirely) is in complete control of the situation.

Unsolicited gifts, often involving the potential purchasers in unforeseen expenditure.

Threats of the type "you'll never get a chance like this again, so sign now".

- B) The use of advertising material which gives the consumer misleading information or, at best, incomplete information on what he is really being offered. The consumer may be led to believe that he has acquired a real property right, e.g. that he has become an owner, when in fact legislation makes no provision for this form of property ownership; or he may be led to believe that he can readily resell or exchange his timeshare, when in fact reality is quite different.
- C) The inability of the authorities to supervise the activities of a substantial sector of the timeshare industry, which is often based in a tax haven.

### The transfrontier nature of the timeshare market

Generally speaking, with the exception of France and Italy, where most timeshare rights acquired by nationals relate to properties situated on their own territory, most holders of timeshare rights tend to exercise them in respect of properties situated in a Member State of which they are not nationals. Even in France and Italy, the number of foreign timesharers is very high.

For instance, there are two Community Member States which can currently be regarded without any doubt whatsoever as the European timeshare market leaders: the United Kingdom, as far as the place of origin of timesharers is concerned, and Spain, in terms of location.

In 1990, there were some 180 000 timeshare holders in the UK, accounting for 10% of the worldwide total. About 64% of those holders exercise their rights in respect of properties situated in Spain, the remainder being spread among properties in Portugal, France, Italy, Greece, the UK itself and other Member States.

In 1990, something like 7.8% of the world timeshare market was situated in Spain, timeshare holders being 73% British, 21% Danish, 3% Belgian, 2.6% French, etc.

30% of German timeshare holders exercise their rights in respect of properties in Spain, as to 82% of Belgian timesharers and the majority of the Danish, Dutch and Irish contingents.

### Divergent national legislation

Only three Member States have enacted specific legislation in respect of timeshares, the three items in question being not only different but also clearly incomplete, given the wide range of timeshare variants:

- Portugal, where a timeshare is a real property right quite distinct from traditional real rights;
- Greece, where a timeshare is regarded as a right of tenancy;
- France, where a timeshare is deemed to be a personal right.



Three other Member States are currently drawing up their own legislation, i.e. Italy, Spain and the United Kingdom. The other Member States, which have no specific timeshare legislation, or have for the time being taken no steps to enact such legislation, are aware of the problem and are using existing legislation to fill the gap, with varying degrees of success. The situation is made even more complicated by the wide range of legal systems (civil law countries and common law countries).

#### Timesharing and the principle of subsidiarity

1. Nowadays, consumers' timeshare problems can only be solved by legislation at Community level. Because of the reasons set out above, there is not practicable solution at national level, nor are bilateral agreements a viable alternative. In other words, an agreement between the United Kingdom and Spain would not hold good for Danish, Belgian, Dutch or German nationals holding timeshare rights in Spain, France, Portugal, Italy, Greece etc., not to mention the groups who need special protection by reason of holding rights in properties outside the Community.
2. In September 1991, the Commission organised a symposium in Brussels on "private property rights and consumer rights", bringing together representatives of all interested parties: consumers, industry, public authorities, the liberal professions, financial institutions, etc. The aim was to pinpoint the main problems in today's timeshare market, the unanimous conclusion being that Community action was required.
3. The fact alone that the government of the Member State most closely concerned by the timeshare phenomenon, the United Kingdom, has urged the Commission to present a proposal for a directive shows that the question cannot be regulated at national level.
4. Another point to be borne in mind is that current anomalies in the timeshare market meet head on - to differing degrees - in the twelve Member States; and judicial traditions and systems in the Twelve (e.g. in respect of property and contractual rights) call for the complicated application of the rules of private international law, and likewise amply justify the introduction of legislation at European level.
5. However, we are bound to ask whether the principle of subsidiarity should be excluded entirely from the timeshare issue. In other words, should there be European rules to cover all aspects of the timeshare phenomenon or would it be better to deal with certain elements by way of national legislation?

The Commission takes the view that national legislation should be used to deal with the internal aspects which are already covered by legislation and traditions firmly rooted in the Member States. Nonetheless, the Commission sought the views of the national authorities, and organised a meeting with government experts in Brussels on 12 December 1991.

The twelve delegations unanimously came out in favour of the Commission presenting a text centred on two fundamental aspects:

- (a) Consumer information, i.e. the obligation on the vendor to furnish the purchaser with a document setting out the minimum information the consumer must have before signing the contract. The elements contained in this document must form part of the contract.
- (b) Allowing the consumer, subsequent to signature of contract, a period within which he can withdraw from the contract, without penalties, for the whole of this so-called cooling-off period.

On the other hand, the Member States are in favour of the provision of legal and financial guarantees for the purchaser of a timeshare right, the form of such guarantees, the provisions concerning the management and maintenance of the properties, and the legal nature of the timeshare being the responsibility of the individual Member States.

- 6. Consequently, and in application of the principle of subsidiarity, the proposal for a directive covers only those elements in respect of which the Member States have expressed a desire for a Community standard.

## COMMENTARY ON THE INDIVIDUAL ARTICLES

The directive sets out to establish minimum norms to protect consumers intending to sign a contract on the timeshared enjoyment of immovable property, known throughout the world by the Anglo-Saxon term "timeshares".

The timeshare concept is a relatively new one and covers a very wide range of variations, most of them highly complex.

The directive's aim is not to establish norms designed to regulate for each and every variant or practical arrangement, nor to impose any specific system, but simply to protect consumers in a field where, given the trans-frontier nature of timeshares and the absence of legislation in most of the Member States, the consumer is in a weak position which is incompatible with the proper functioning of the single market.

For practical reasons, we have used the term "purchaser" to refer to the consumer, and "vendor" for the other contracting party. The directive addresses pre-contractual aspects (e.g. vendor's obligations, purchaser's position, information and advertising) and contractual aspects (contract content, cooling-off period, of which the purchaser must be aware when he signs the contract, applicable law).

As this text is directly connected with the operation of the single European market, the legal basis chosen is Article 100a of the Treaty.

### Article 1: Scope

This article indicates briefly the scope of the text.

### Article 2: Definitions

#### A) Definition of contract

A timeshare contract is characterised by three elements:

- The transfer of a right (virtually any right) of use of an item of immovable property.
- The temporal limitation of this right of use, with a minimum period of one week. A week is the minimum period of use in virtually all forms of timeshare scheme.
- The indefinite nature of the number of years the right of use may be exercised (it is up to national legislation to introduce limits), but laying down a minimum of three years with a view to facilitating market stability.

B) Definition of immovable property

This definition sets out to cover all types of object to which a timeshare arrangement might apply. There are certain types of property (e.g. pleasure boats, mobile homes and moorings) which are not universally regarded as buildings by national legislation, but which are regarded as immovable property for the purposes of this directive. The property in question does not necessarily have to be "tourist" in nature. (For example, there are also timeshares in buildings attached to fair or exhibition facilities.)

C) Definition of vendor

The vendor is the person who transfers the right of use, or his representative, the only condition being that he must be carrying out his professional activity.

D) Definition of purchaser

This means the consumer, i.e. a physical or legal person acting outside his professional capacity.

Articles 3

The guarantees provided for in this article have to be established by national legislation. The important thing is that the contract must stipulate which guarantees are to be provided under national legislation, that the vendor meets the obligations set out in para 1 and that guarantees are available for the purchaser in the cases provided for in para 2.

Article 4

Para 1: The measures to which this paragraph refers concern the internal rules of procedure of associations of timeshare right holders. The national legislation is required to establish whether certain measures (e.g. management companies, reserve funds for maintenance and renewal, etc.) have to be covered by the rules, and if so, subject to what conditions.

Para 2: The national legislation must be very clear so that a potential purchaser is aware precisely what costs he will have to assume. The expression "category of immovable property" refers to the possible existence of different types of dwelling (e.g. two or three-bedroom apartments, studio flats, etc.) in one and the same building.

#### Article 5

This article incorporates one of the directive's essential elements. The aim is to provide the purchaser with full and detailed information on the product or service in exchange for which the purchaser pays over a sum of money. The document to which the article refers may take any form, the only condition being that it should not exclude any of the elements indicated in the annex to the directive.

One important aspect concerns the language in which the document is written. The purchaser must declare in the contract that he has received a document written in a language which he states he knows; this is one of the consequences of the distinctly trans-frontier nature of the timeshare market. Given that this document must always be at the disposal of any potential purchaser, having copies of the document in the requisite languages will impose an additional cost on the vendor, and the effect of this cost factor on the purchaser must be regulated by national legislation.

Any other publicity material relating to a timeshare must indicate that the informative document exists and that it is available to any interested person.

#### Article 6

This article sets out which elements have to be included in the contract. None of the elements listed in the annex may be excluded.

It is important to bear in mind that the date must be entered in letters, as it is only from the date of signature (and not of conclusion) of the contract that the purchaser can exercise his right of withdrawal.

#### Article 7

This article is the heart of the directive, constituting the most effective means of combating the highly aggressive sales methods practised nowadays by many timeshare companies. There is no reason whatever why extending the period to 28 days for timeshare contracts relating to a property situated in a Member State other than that of the purchaser's residence should create any legal problems (for a timeshare contract which involves the acquisition of real property rights or rights of enjoyment for a long period or forever, a 28-day period can easily be accommodated by bona fide timeshare companies).

The fact that there is a cooling-off period within which the purchaser can exercise his right of withdrawal must be mentioned in the contract in the same type size as the rest of the contract and immediately preceding the place where the contracting parties have to sign.

Any notification of withdrawal must be made by registered letter, before the stipulated period expires, addressed to the person whose name and address are given for this purpose in the contract. As regards the time of expiry, national legislation applies.

If any reimbursement has to be made by the vendor to the purchaser, the sums reimbursable must be worked out such as to ensure that the operation does not generate any unjustified enrichment for either of the parties. The concept of "unjustified enrichment" is to be interpreted in the sense of Article 7 of the Directive 87/102/EEC of 22 December 1986 on consumer credit.

#### Article 8

Clauses under which the purchaser relinquishes any benefits accorded to him by the directive, and clauses under which the vendor is exonerated from any liability under the directive are deemed to be null and void.

#### Article 9

This article is based on the idea that, on the one hand, and given the frequently transfrontier nature of a timeshare contract, it is important to ensure that the protection provided by this directive in terms of (domestic) substantive law cannot be circumvented by the general mechanisms of international private law, more particularly by opting for which body of law should apply, and on the other, Article 5 of the Convention of Rome on the law applicable to contractual obligations of 19 June 1980 does not apply to timeshare contracts, its scope being limited to contracts under which a consumer procures real property or services.

#### Article 10

National legislation must make provision for penalties to be applied where the provisions of this directive are not complied with.

#### Article 11

As the directive does no more than set out minimum standards, Member States are free to adopt more favourable provisions in the interests of purchasers.

#### Articles 12 and 13

The usual provisions in respect of transposition into national law.

Proposal for a  
COUNCIL DIRECTIVE

concerning the protection of purchasers in contracts  
relating to the utilisation of immovable  
property on a timeshare basis

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

In cooperation with the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

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;

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(1)

(2)

(3)

2. Whereas the European Parliament, in its resolution of 13 October 1988 on the need to fill the legal gap in the timeshare market<sup>(4)</sup>, called on the Commission to submit a proposal for a directive to harmonise national legislation on timeshare property ownership; whereas, in its resolution of 11 June 1991 on a Community tourism policy<sup>(5)</sup>, the European Parliament took the view that the Commission should present a general timeshare directive as a matter of urgency;
3. Whereas, in the Community Action Plan for Tourism<sup>(6)</sup>, 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)";
4. Whereas the timeshare market 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;
5. Whereas, although most of the Member States have as yet no specific legislation on timeshare 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;

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(4) OJ No C 290, 14.11.88, p. 148.

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

(6) 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;
7. Whereas, under the circumstances and with a view to ensuring a high level of protection for consumers, it is essential to make provision for a basic set of specific rules for this type of transaction, applicable throughout the Community;
8. Whereas the legal concepts applied under national law to timeshare arrangements vary considerably from one Member State to another;
9. Whereas it is nonetheless sufficient to harmonise the rules concerning timeshare contractual transactions, the law applicable in each case 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;
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;

12. Whereas it is necessary to avoid any misleading or incomplete details in information concerned specifically with the sale of timeshare 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 timeshare 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 of 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 that timeshare contracts are very often transfrontier in nature;

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

HAS ADOPTED THIS DIRECTIVE:

#### TITLE I. OBJECTIVE AND DEFINITIONS

##### 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 timeshare basis.

##### Article 2

For the purposes of this Directive:

- "contract relating to the utilisation of immovable property on a timeshare basis", hereinafter referred to as "timeshare 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 timeshare 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;
- "purchaser" means any natural person who, in transactions covered by this Directive, acts as a consumer, i.e. for purposes which may be regarded as being outside his professional capacity.

## TITLE II. OBLIGATIONS OF THE VENDOR

### Article 3

1. Member States shall make provision to ensure that, in the timeshare contract, the vendor guarantees, 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 timeshare 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 timeshare 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 timeshare contract or in the future, subject to the conditions stipulated in the timeshare contract or otherwise provided for by the vendor;

(d) the purchaser's right to be involved in the process of making any decisions concerning the administration of the timeshare scheme and the management and maintenance of the property to which the timeshare arrangement relates. The purchaser may delegate this right provided this is done in a separate document and subsequent to signature of the timeshare 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:

- 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 of withdrawal within the meaning of Article 7, without prejudice to the terms of Article 7(4).

#### Article 4

Member States shall make provision for:

1. measures to establish the purchaser's rights and obligations in respect of the management and maintenance of the property to which the timeshare 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 timeshare arrangement relates, and the period and duration of the timeshare 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.

### TITLE III. RULES GOVERNING CONTRACTS

#### Article 6

1. Member States shall make provision to ensure that the timeshare 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 timeshare 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 timeshare 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 timeshare 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 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
  - 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 timeshare 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 print 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 this 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.

#### 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

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 to be deprived of the protection given him by this Directive:

(a) if the property to which the timeshare contract relates is situated in a Member State or

(b) if the purchaser has his normal residence 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 timeshare 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 of 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 12

Member 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 13

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

ANNEX

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 timeshare 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 timeshare scheme and its duration.
- d) An indication of the timeshare 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.
- e) The total number of timeshare rights in each property.
- f) A clear and precise description of the fixed and variable periods of occupation, stating the arrangements for determining such periods.
- g) The date on which the purchaser may occupy the property.
- h) Common facilities (e.g. swimming pool, sauna, tennis courts, golf course, 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.
- i) The total cost for the purchaser, laying down clearly and unequivocally the cost of the various timeshare rights over the various periods of the year; where a leasehold arrangement is involved, the rent must be specified.
- 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 guarantees referred to in Article 3.
  - l) Clear and unequivocal details of conditions, limits and cost of timeshare 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 timeshare 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.
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IMPACT ASSESSMENT FORM

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

Title of proposal: Protection of purchasers in contracts relating to the utilisation of immovable property on a timeshare basis (timeshares).

Reference No: SPC/148/92

The proposal

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

Timeshare contracts are of a distinctly transfrontier nature; the great majority of Community citizens who hold timeshare rights have their timeshares in a Member State other than their country of residence. Moreover, only three of the Member States have specific (highly divergent) legislation on timeshares. Community purchasers can only be protected by Community legislation.

The main aim of the proposal is to give the consumer legal security by ensuring that he receives appropriate information to make a rational choice in the timeshare market.

The impact on business

2. Who will be affected by the proposal?

Companies selling timeshare rights. This is a relatively new sector which is expanding rapidly throughout the Community.

3. What will business have to do to comply with the proposal?

Give more detailed and precise information to potential purchasers and abandon certain current commercial practices which have an adverse effect on the proper functioning of the single market.

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 text lays down Community rules to facilitate the proper functioning of a clearly defined sector of the tourist market. No particular effect is likely on jobs, nor on investment; as far as the creation of new businesses is concerned, this should be facilitated by the anticipated improvement in competitiveness.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

The text contains specific proposals for firms, most of which are SMEs. The proposal seeks to make the market more transparent.

Consultation.

6. List the organisations which have been consulted about the proposal and outline their main views.
- European Timeshare Federation: in favour. The ETF hopes that the proposal will discourage the use of certain harmful commercial practices.
  - Consumers' Consultative Committee: very much in favour.
  - Standing Conference of Notaries in the EC: in favour on the grounds that the effect would be to make the market more transparent.

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