

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 363 final - COD 419  
Brussels, 13.09.1994

## OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,  
on the European Parliament's amendments  
to the Council's common position regarding the  
proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**ON THE PROTECTION OF PURCHASERS IN RESPECT OF CERTAIN  
ASPECTS OF CONTRACTS RELATING TO THE PURCHASE OF THE  
RIGHT TO USE IMMOVABLE PROPERTIES ON A TIMESHARE BASIS**

## AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

## I. EXPLANATORY MEMORANDUM


Given that the Treaty on European Union took effect on 1 November 1993, this proposal for a Directive is now subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b.2(d) stipulates that the Commission must deliver an opinion on the amendments proposed by the European Parliament at its second reading.

Consequently, the Commission herewith delivers its opinion on Parliament's four amendments and presents, pursuant to Article 189a(2) of the EC Treaty, an amended proposal which incorporates one amendment and part of another which had already been accepted by the Commission.

### 1 BACKGROUND

- 1.1 The Commission presented its proposal to the Council on 2 July 1992. [COM(92)220 final - SYN 419] (OJ C 222, 29.8.1992).
- 1.2 The Economic and Social Committee delivered a favourable opinion on 24 February 1993.
- 1.3 The European Parliament delivered its opinion at its first reading on 26 May and 14 July 1993, including 45 amendments.
- 1.4 Pursuant to Article 149.3 of the EEC Treaty, the Commission adopted an amended proposal on 7 October 1993, which incorporated six Parliamentary amendments in full and seven in part. [COM(93)487 final - SYN 419 ] (OJ C 299, 5.11.1993).
- 1.5 On 4 March 1994 the Council adopted a common position, by qualified majority.
- 1.6 The Commission accepted the common position and duly informed Parliament on 9 March 1994 [SEC(94)376 final - COD 419].
- 1.7 On 4 May 1994 at its second reading the European Parliament adopted a favourable resolution that includes four amendments to the common position. The Commission rejected part of amendment No 1 and amendments No 2 and No 3 and accepted amendment No 4.

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- 1.8 On 17 May 1994, the Council declared that it was necessary to convene a meeting of the Conciliation Committee and, in view of the termination of the legislative period of the European Parliament, it was agreed to take the formal decisions required by the procedure at the appropriate moment.

**2 SUBJECT OF THE DIRECTIVE**

The proposal for a Parliament and Council Directive designed to harmonise legislation by laying down minimum standards to protect consumers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, given that the transfrontier nature of the phenomenon and the absence of legislation in most Member States put the consumer in a position of inferiority which is incompatible with the good working of the single market.

**II. COMMISSION'S OPINION ON THE EUROPEAN PARLIAMENT'S AMENDMENTS**

In the light of the amendments proposed by the European Parliament at its second reading the Commission can accept those which:

- (1) are compatible with the Commission's initial proposal and/or
- (2) are compatible with the Commission's position following the first reading by the European Parliament, and the debates which took place at Council level, and/or
- (3) clarify the text in a useful manner.

**1 AMENDMENTS ACCEPTED BY THE COMMISSION**

**1.1 Amendment No 1, first indent (Article 5(1), first subparagraph)**

The Commission can accept the first part of amendment No 1. This is because Article 5(1) of the common position was intended to establish the general principle of granting the purchaser a cooling-off period of ten days without any provisos whatsoever. The current wording of the common position, formulated with an eye to consistency with Article 4, ultimately only creates confusion in this respect.

**1.2 Amendment No 4 (Article 12(1), first subparagraph)**

The Commission accepts this amendment because the time limit of three years for implementing the Directive seems to be excessive and the desired level of consumer protection should be established as soon as possible.

**2 AMENDMENTS REJECTED BY THE COMMISSION**

**2.1 Amendment No 1, second and third indent, (Article 5(1), second and third subparagraphs)**

The Commission cannot accept the changes proposed by Parliament in the second and third indents of this amendment (points (c), (d) and (m) of the Annex) for the following reasons:

as regards point (c), certain forms of timesharing make it impossible to know in advance the precise description and location of the property (for example, schemes that involve purchasing timesharing rights for a whole network of properties in different countries, inside and outside the Community).

The Commission considers that, since the Directive respects the approach that each national legislation stipulates the legal nature of timesharing, it is more effective to leave regulation to the national authorities, an approach which is quite acceptable given the minimum character of the Directive.

The same applies to point (d) of the Annex concerning properties under construction, given the extremely precise nature of the information required.

As regards point (m), the Commission considers that the decision whether or not to include this element of a somewhat formal nature may also be taken at national level.

**2.2 Amendment No 2 (Article 5(2))**

The Commission understands the spirit of this amendment because the common position does not specify whether it is the dispatch or the receipt of the notification that matters. In fact the Commission's initial proposal (Article 7(3)) was on the same lines as the amendment; however, after debates at Council level the Commission considered it preferable to abandon this approach and to leave the matter to the national legislators because to go further would involve an attempt to harmonise standards relating to the expiry of time limits, and since the systems can vary

considerably from one Member States to another (postmark, acknowledgment of receipt, etc.) this Directive is not the appropriate place to attempt such harmonisation. Hence the amendment is rejected.

### 2.3 Amendment No 3 (Article 9a)

The Commission cannot accept this amendment. The spirit of this amendment, i.e. that the law applicable to the contract should be that of the consumer's country of residence, was rejected by the Council and the common position merely requires that the consumer not be deprived of the protection afforded by the Directive, irrespective of the law applicable, provided the immovable property is located in the territory of a Member State. Given the difficulties of building consensus in this domain and the current limitations of international conventions as regards their applicability to timesharing, the Commission considers that the wording of Article 9 of the common position is the best we can get and, moreover, does not leave one open to the charge of legislative imperialism.

## CONCLUSION

The Commission considers that amendment No 1, first indent and amendment No 4 reinforce and clarify the text of the common position and afford additional protection to purchasers of timesharing rights and are consequently fully compatible with the objective of the Directive.

The amended proposal below takes these amendments into account.

**AMENDED PROPOSAL FOR A PARLIAMENT AND COUNCIL DIRECTIVE  
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(Presented by the Commission pursuant to Article 189a(2) of the Treaty)

### **Explanatory Memorandum**

Given that the Treaty on European Union took effect on 1 November 1993, this proposal for a Directive is henceforward subject to the codecision procedure (Article 189B of the Treaty).

Pursuant to Article 189b(2)(d) the Commission must deliver an opinion on the European Parliament's amendments and the Council's common position. The Commission has accepted one amendment by the European Parliament and part of another for the reasons set out in Chapter 1 of the attached opinion.

Pursuant to the second paragraph of Article 189a of the Treaty, the Commission herewith presents an amended proposal which incorporates the EP's amendments accepted by the Commission into the Council's common position.

**COMMON POSITION OF THE  
COUNCIL**

**AMENDED TEXT**

**Article 5 (paragraph 1)**

1) In addition to the possibilities available to the purchaser under national laws on the nullity of contracts, the purchaser shall have the right:

1) In addition to the possibilities available to the purchaser under national laws on the nullity of contracts, the purchaser shall have the right:

Article 5 (paragraph 1)

- if the contract includes the information referred to in points (a), (b), (h), (i), (k) and (l) of the Annex, to withdraw without giving any reason within ten calendar days of both parties' signing the contract or of both parties' signing a binding preliminary contract. If the tenth day is a public holiday, the period shall be extended to the first working day thereafter;
- to withdraw without giving any reason within ten calendar days of both parties' signing the contract or of both parties' signing a binding preliminary contract. If the tenth day is a public holiday, the period shall be extended to the first working day thereafter;

Article 12 (paragraph 1, first subparagraph)

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with the Directive no later than three years after its publication in the Official Journal of the European Communities. They shall immediately inform the Commission thereof.
1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with the Directive no later than two years after its publication in the Official Journal of the European Communities. They shall immediately inform the Commission thereof.