

# COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(94) 376 final - COD 419

Brussels, 09.03.1994

## COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 B (2) of the EC Treaty

on the Council common position  
on the proposal for a Directive of the European Parliament  
and the Council 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

## **INTRODUCTION**

With this communication the Commission wishes to inform the European Parliament of its position concerning the common position on the proposal for a Directive set out above, adopted by the Council of the European Union at its meeting of 4 March 1994 on the basis of Article 100A of the Treaty.

The proposal for a Directive, which falls within the framework of the completion of freedom of movement inside the European Union, is designed - bearing in mind the cross-border character of timeshare contracts and the specific nature of the commercial techniques used in these contracts - to increase the protection of purchasers who want to conclude a contract related directly or indirectly to the purchase of the right to use immovable properties on a timeshare basis.

## **BACKGROUND**

The original proposal of the Commission was presented to the Council on 2 July 1992<sup>1</sup>. The European Parliament delivered its opinion on 26 May and 14 July 1993<sup>2</sup>. The Economic and Social Committee delivered its opinion on 24 February 1993<sup>3</sup>. The Commission presented an amended proposal to the Council on 7 October 1993<sup>4</sup>.

## **THE AMENDED PROPOSAL OF THE COMMISSION**

This amended proposal took account of a number of the amendments contained in Parliament's opinion.

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<sup>1</sup> OJ No C 222 of 29.8.1992, p. 5

<sup>2</sup> OJ No C 176 of 28.6.1993, p. 4 and OJ No C 255 of 20.9.1993, p. 70.

<sup>3</sup> OJ No C 108 of 19.4.1993, p. 1

<sup>4</sup> OJ No C 299 of 5.11.1993, p. 8

The main elements accepted by the Commission refer to the definitions, in particular the definition of "immovable property", in order to make clear that it refers to accommodation, as well as that of "contract", in order to cover certain timeshare arrangements widespread in Germany and other Member States.

The Commission also accepted certain elements designed to prohibit advance payments of more than 5% of the selling price, including taxes, throughout the cooling-off period; the allocation to the vendor of charges for unsold timeshare rights, as well as the consequences of the non-payment of the aforesaid charges; the binding character of the particulars contained in the information document, which forms an integral part of the contract.

On the other hand, the Commission could not retain the amendments designed to cover movable goods, given the excessive number of movable goods likely to be used on a timeshare basis, which can however be covered by national legislation; the same applies to the amendment stipulating that the language in which the information document as well as the contract has to be written should be the purchaser's mother tongue, because this sometimes creates insurmountable difficulties at Community level; neither were legal persons included in the definition of purchaser, because the Directive has to apply to natural persons in line with the definition of consumer established in several Community texts.

Regarding the question of cooperation with sectoral and professional organisations in order to guarantee reimbursement of money already paid, the Commission thinks that it should not be the subject of Community legislation but should be regulated by voluntary systems.

In summary, the amended proposal's main provisions relate to:

- prior information of the purchaser on the constituent parts of the contract;
- the procedure to be followed by the purchaser in cancelling the contract;
- the prohibition on requiring advance payments of the purchaser throughout the cooling-off period, unless the parties expressly agree on such payment and provided the advance does not exceed 5% of the selling price.

#### **THE COUNCIL'S COMMON POSITION**

The common position focuses on three points;

- prior information of the purchaser on the constituent parts of the contract,
- the procedures for cancellation and withdrawal,
- a total ban on advance payments.

## **POSITION OF THE COMMISSION**

The Commission is of the opinion that the Council in its common position retained provisions which ensure a high level of protection for purchasers, higher in some instances (preliminary information, advance payments) than envisaged by Parliament. The aim has been to reduce disparities between existing national legislations on the matter, without however interfering with core aspects of national legal systems, particularly law on immovable property. The Council has thus endeavoured to abide by the principle of subsidiarity.

The Commission has monitored very closely the work carried out within the Council, and is convinced that the text of the common position is the best one in the current situation, given the complexity of the field.