

Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (Text with EEA relevance)

Article 1

Purpose and scope

1 The purpose of this Directive is to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection, by approximating the laws, regulations and administrative provisions of the Member States in respect of certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as exchange contracts.

2 This Directive applies to trader-to-consumer transactions.

This Directive is without prejudice to national legislation which:

- a provides for general contract law remedies;
- b relates to the registration of immovable or movable property and conveyance of immovable property;
- c relates to conditions of establishment or authorisation regimes or licensing requirements; and
- d relates to the determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.

Article 2

Definitions

- 1 For the purposes of this Directive, the following definitions shall apply:
- a ‘timeshare contract’ means a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation;
 - b ‘long-term holiday product contract’ means a contract of a duration of more than one year under which a consumer, for consideration, acquires primarily the right to obtain discounts or other benefits in respect of accommodation, in isolation or together with travel or other services;
 - c ‘resale contract’ means a contract under which a trader, for consideration, assists a consumer to sell or buy a timeshare or a long-term holiday product;
 - d ‘exchange contract’ means a contract under which a consumer, for consideration, joins an exchange system which allows that consumer access to overnight accommodation or other services in exchange for granting to other persons temporary access to the benefits of the rights deriving from that consumer’s timeshare contract;
 - e ‘trader’ means a natural or legal person who is acting for purposes relating to that person’s trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;
 - f ‘consumer’ means a natural person who is acting for purposes which are outside that person’s trade, business, craft or profession;

- g ‘ancillary contract’ means a contract under which the consumer acquires services which are related to a timeshare contract or long-term holiday product contract and which are provided by the trader or a third party on the basis of an arrangement between that third party and the trader;
- h ‘durable medium’ means any instrument which enables the consumer or the trader to store information addressed personally to him in a way which is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- i ‘code of conduct’ means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;
- j ‘code owner’ means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it.

2 In calculating the duration of a timeshare contract or a long-term holiday product contract, as defined in points (a) and (b) of paragraph 1 respectively, any provision in the contract allowing for tacit renewal or prolongation shall be taken into account.

Article 3

Advertising

1 Member States shall ensure that any advertising specifies the possibility of obtaining the information referred to in Article 4(1) and indicates where it can be obtained.

2 Where a timeshare, long-term holiday product, resale or exchange contract is to be offered to a consumer in person at a promotion or sales event, the trader shall clearly indicate in the invitation the commercial purpose and the nature of the event.

3 The information referred to in Article 4(1) shall be available to the consumer at any time during the event.

4 A timeshare or a long-term holiday product shall not be marketed or sold as an investment.

Article 4

Pre-contractual information

1 In good time before the consumer is bound by any contract or offer, the trader shall provide the consumer, in a clear and comprehensible manner, with accurate and sufficient information, as follows:

- a in the case of a timeshare contract: by means of the standard information form as set out in Annex I and information as listed in Part 3 of that form;
- b in the case of a long-term holiday product contract: by means of the standard information form as set out in Annex II and information as listed in Part 3 of that form;
- c in the case of a resale contract: by means of the standard information form as set out in Annex III and information as listed in Part 3 of that form;
- d in the case of an exchange contract: by means of the standard information form as set out in Annex IV and information as listed in Part 3 of that form.

2 The information referred to in paragraph 1 shall be provided, free of charge, by the trader on paper or on another durable medium which is easily accessible to the consumer.

3 Member States shall ensure that the information referred to in paragraph 1 is drawn up in the language or one of the languages of the Member State in which the consumer is resident or a national, at the choice of the consumer, provided it is an official language of the Community.

Article 5

The timeshare, long-term holiday product, resale or exchange contract

1 Member States shall ensure that the contract is in writing, on paper or on another durable medium, and drawn up in the language or one of the languages of the Member State in which the consumer is resident or a national, at the choice of the consumer, provided it is an official language of the Community.

However, the Member State in which the consumer is resident may require that in addition:

- a in every instance, the contract be provided to the consumer in the language or one of the languages of that Member State, provided it is an official language of the Community;
- b in the case of a timeshare contract concerning one specific immovable property, the trader provide the consumer with a certified translation of the contract in the language or one of the languages of the Member State in which the property is situated, provided it is an official language of the Community.

The Member State on whose territory the trader carries out sale activities may require that, in every instance, the contract be provided to the consumer in the language or one of the languages of that Member State, provided it is an official language of the Community.

2 The information referred to in Article 4(1) shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise or the changes result from unusual and unforeseeable circumstances beyond the trader's control, the consequences of which could not have been avoided even if all due care had been exercised.

These changes shall be communicated to the consumer on paper or on another durable medium easily accessible to him, before the contract is concluded.

The contract shall expressly mention any such changes.

3 In addition to the information referred to in Article 4(1), the contract shall include:

- a the identity, place of residence and signature of each of the parties; and
- b the date and place of the conclusion of the contract.

4 Before the conclusion of the contract, the trader shall explicitly draw the consumer's attention to the existence of the right of withdrawal, the length of the withdrawal period referred to in Article 6, and the ban on advance payments during the withdrawal period referred to in Article 9.

The corresponding contractual clauses shall be signed separately by the consumer.

The contract shall include a separate standard withdrawal form, as set out in Annex V, intended to facilitate the exercise of the right of withdrawal in accordance with Article 6.

5 The consumer shall receive a copy or copies of the contract at the time of its conclusion.

Article 6

Right of withdrawal

1 In addition to the remedies available to the consumer under national law in the event of breach of the provisions of this Directive, Member States shall ensure that the consumer is given a period of 14 calendar days to withdraw from the timeshare, long-term holiday product, resale or exchange contract, without giving any reason.

2 The withdrawal period shall be calculated:

- a from the day of the conclusion of the contract or of any binding preliminary contract; or
- b from the day when the consumer receives the contract or any binding preliminary contract if it is later than the date referred to in point (a).

3 The withdrawal period shall expire:

- a after one year and 14 calendar days from the day referred to in paragraph 2 of this Article, where a separate standard withdrawal form as required by Article 5(4) has not been filled in by the trader and provided to the consumer in writing, on paper or on another durable medium;
- b after three months and 14 calendar days from the day referred to in paragraph 2 of this Article, where the information referred to in Article 4(1), including the applicable standard information form set out in Annexes I to IV, has not been provided to the consumer in writing, on paper or on another durable medium.

In addition, Member States shall provide for appropriate penalties in accordance with Article 15, in particular in the event that, on expiry of the withdrawal period, the trader has failed to comply with the information requirements set out in this Directive.

4 Where a separate standard withdrawal form as required by Article 5(4) has been filled in by the trader and provided to the consumer in writing, on paper or on another durable medium, within one year from the day referred to in paragraph 2 of this Article, the withdrawal period shall start from the day the consumer receives that form. Similarly, where the information referred to in Article 4(1), including the applicable standard information form set out in Annexes I to IV, has been provided to the consumer in writing, on paper or on another durable medium, within three months from the day referred to in paragraph 2 of this Article, the withdrawal period shall start from the day the consumer receives such information.

5 In the event that the exchange contract is offered to the consumer together with and at the same time as the timeshare contract, only a single withdrawal period in accordance with paragraph 1 shall apply to both contracts. The withdrawal period for both contracts shall be calculated according to the provisions of paragraph 2 as they apply to the timeshare contract.

Article 7

Modalities for exercising the right of withdrawal

Where the consumer intends to exercise the right of withdrawal the consumer shall, before the expiry of the withdrawal period, notify the trader on paper or on another durable medium of the decision to withdraw. The consumer may use the standard withdrawal form set out in Annex V and provided by the trader in accordance with

Article 5(4). The deadline is met if the notification is sent before the withdrawal period has expired.

Article 8

Effects of exercising the right of withdrawal

1 The exercise of the right of withdrawal by the consumer terminates the obligation of the parties to perform the contract.

2 Where the consumer exercises the right of withdrawal, the consumer shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed before withdrawal.

Article 9

Advance payment

1 Member States shall ensure that in relation to timeshare, long-term holiday product and exchange contracts any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer before the end of the withdrawal period according to Article 6, is prohibited.

2 Member States shall ensure that in relation to resale contracts any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer before the actual sale takes place or the resale contract is otherwise terminated, is prohibited.

Article 10

Specific provisions relating to long-term holiday product contracts

1 For long-term holiday product contracts, payment shall be made according to a staggered payment schedule. Any payment of the price specified in the contract otherwise than in accordance with the staggered payment schedule shall be prohibited. The payments, including any membership fee, shall be divided into yearly instalments, each of which shall be of equal value. The trader shall send a written request for payment, on paper or on another durable medium, at least fourteen calendar days in advance of each due date.

2 From the second instalment payment onwards, the consumer may terminate the contract without incurring any penalty by giving notice to the trader within fourteen calendar days of receiving the request for payment of each instalment. This right shall not affect rights to terminate the contract under existing national legislation.

Article 11

Termination of ancillary contracts

1 Member States shall ensure that, where the consumer exercises the right to withdraw from the timeshare or long-term holiday product contract, any exchange contract ancillary to it or any other ancillary contract is automatically terminated, at no cost to the consumer.

2 Without prejudice to Article 15 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers⁽¹⁾, where the price is fully or partly covered by a credit granted to the consumer by the trader, or by a third party on the basis of an arrangement between the third party and the trader, the credit agreement shall be terminated, at no cost to the consumer, where the consumer exercises the right to withdraw from the timeshare, long-term holiday product, resale or exchange contract.

3 The Member States shall lay down detailed rules on the termination of such contracts.

Article 12

Imperative nature of the Directive and application in international cases

1 Member States shall ensure that, where the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by this Directive.

2 Where the applicable law is that of a third country, consumers shall not be deprived of the protection granted by this Directive, as implemented in the Member State of the forum if:

- any of the immovable properties concerned is situated within the territory of a Member State, or,
- in the case of a contract not directly related to immovable property, the trader pursues commercial or professional activities in a Member State or, by any means, directs such activities to a Member State and the contract falls within the scope of such activities.

Article 13

Judicial and administrative redress

1 Member States shall ensure that, in the interests of consumers, adequate and effective means exist to ensure compliance by traders with this Directive.

2 The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, shall be entitled to take action in accordance with national law before the courts or competent administrative bodies to ensure that the national provisions for implementing this Directive are applied:

- a public bodies and authorities or their representatives;
- b consumer organisations with a legitimate interest in protecting consumers;
- c professional organisations with a legitimate interest in taking such action.

Article 14

Consumer information and out-of-court redress

1 Member States shall take appropriate measures to inform consumers of the national law transposing this Directive and shall encourage, where appropriate, traders and code owners to inform consumers of their codes of conduct.

The Commission shall encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the implementation of this Directive, in conformity with Community law. It shall also encourage traders and their branch organisations to inform consumers of any such codes, including, where appropriate, by means of a specific marking.

2 Member States shall encourage the setting up or development of adequate and effective out-of-court complaints and redress procedures for the settlement of consumer disputes under this Directive and shall, where appropriate, encourage traders and their branch organisations to inform consumers of the availability of such procedures.

Article 15

Penalties

1 Member States shall provide for appropriate penalties in the event of a trader's failure to comply with the national provisions adopted pursuant to this Directive.

2 Those penalties shall be effective, proportionate and dissuasive.

Article 16

Transposition

1 Member States shall adopt and publish, by 23 February 2011, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 23 February 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

Review

The Commission shall review this Directive and report to the European Parliament and the Council no later than 23 February 2014.

If necessary, it shall make further proposals to adapt it to developments in the area.

The Commission may request information from the Member States and the national regulatory authorities.

Article 18

Repeal

Directive 94/47/EC shall be repealed.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

Article 19

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 20

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 14 January 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

A. VONDRA

(1) OJ L 133, 22.5.2008, p. 66.