

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)

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PARLIAMENT AND OF THE COUNCIL

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Since the adoption of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 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⁽³⁾, timeshare has evolved and new holiday products similar to it have appeared on the market. These new holiday products and certain transactions related to timeshare, such as resale contracts and exchange contracts, are not covered by Directive 94/47/EC. In addition, experience with the application of Directive 94/47/EC has shown that some subjects already covered need to be updated or clarified, in order to prevent the development of products aiming at circumventing this Directive.
- (2) The existing regulatory gaps create appreciable distortions of competition and cause serious problems for consumers, thus hindering the smooth functioning of the internal market. Directive 94/47/EC should therefore be replaced by a new up-to-date directive. Since tourism plays an increasingly important role in the economies of the Member States, greater growth and productivity in the timeshare and long-term holiday product industries should be encouraged by adopting certain common rules.
- (3) In order to enhance legal certainty and fully achieve the benefits of the internal market for consumers and businesses, the relevant laws of the Member States need to be approximated further. Therefore, certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as the exchange of rights deriving from timeshare contracts should be fully harmonised. Member States should not be allowed to maintain or introduce in their national legislation provisions diverging from

those laid down in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation in conformity with Community law. Thus, Member States should, for instance, be able to maintain or introduce provisions on the effects of exercising the right of withdrawal in legal relationships falling outside the scope of this Directive or provisions according to which no commitment may be entered into between a consumer and a trader of a timeshare or long-term holiday product, nor any payment made between those persons, as long as the consumer has not signed a credit agreement to finance the purchase of those services.

- (4) This Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not within its scope. Member States could therefore maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions in relation to transactions that fall outside the scope of this Directive.
- (5) The different contracts covered by this Directive should be clearly defined in such a way as to preclude circumvention of its provisions.
- (6) For the purposes of this Directive, timeshare contracts should not be understood as covering multiple reservations of accommodation, including hotel rooms, in so far as multiple reservations do not imply rights and obligations beyond those arising from separate reservations. Nor should timeshare contracts be understood as covering ordinary lease contracts since the latter refer to one single continuous period of occupation and not to multiple periods.
- (7) For the purposes of this Directive, long-term holiday product contracts should not be understood as covering ordinary loyalty schemes which provide discounts on future stays in the hotels of a hotel chain, since membership in the scheme is not obtained for consideration nor is the consideration paid by the consumer primarily for the purpose of obtaining discounts or other benefits in respect of accommodation.
- (8) This Directive should not affect the provisions of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours⁽⁴⁾.
- (9) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive)⁽⁵⁾ prohibits misleading, aggressive and other unfair commercial business-to-consumer practices. Given the nature of the products and the commercial practices related to timeshares, long-term holiday products, resale and exchange, it is appropriate to adopt more detailed and specific provisions regarding information requirements and sales events. The commercial purpose of invitations to sales events should be made clear to consumers. The provisions concerning pre-contractual information and the contract should be clarified and updated. In order to give consumers the possibility to acquaint themselves with the information before the conclusion of the contract, it should be provided by means which are easily accessible to them at that time.
- (10) Consumers should have the right, which should not be refused by traders, to be provided with pre-contractual information and the contract in a language, of their

choice, with which they are familiar. In addition, in order to facilitate the execution and the enforcement of the contract, Member States should be allowed to determine that further language versions of the contract should be provided to consumers.

- (11) In order to provide consumers with the opportunity of fully understanding their rights and obligations under the contract, they should be allowed a period during which they may withdraw from the contract without having to justify the withdrawal and without bearing any cost. Currently the length of this period varies between Member States, and experience shows that the length prescribed in Directive 94/47/EC is not sufficiently long. The period should therefore be extended in order to achieve a high level of consumer protection and more clarity for consumers and traders. The length of the period, the modalities for and the effects of exercising the right of withdrawal should be harmonised.
- (12) Consumers should have effective remedies in the event that traders do not comply with the provisions regarding pre-contractual information or the contract, in particular those laying down that the contract should include all the information required and that the consumer should receive a copy of the contract at the time of its conclusion. In addition to the remedies existing under national law, consumers should benefit from an extended withdrawal period where information has not been provided by traders. The exercise of the right of withdrawal should remain free of charge during that extended period regardless of what services consumers may have enjoyed. The expiration of the withdrawal period does not preclude consumers from seeking remedies in accordance with national law for breaches of the information requirements.
- (13) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits⁽⁶⁾ should apply to the calculation of the periods set out in this Directive.
- (14) The prohibition on advance payments to traders or any third party before the end of the withdrawal period should be clarified in order to improve consumer protection. For resale contracts, the prohibition of advance payment should apply until the actual sale takes place or the resale contract is terminated, but Member States should remain free to regulate the possibility and modalities of final payments to intermediaries where resale contracts are terminated.
- (15) For long-term holiday product contracts, the price to be paid in the context of a staggered payment schedule could take into consideration the possibility that subsequent amounts could be adjusted after the first year in order to ensure that the real value of those instalments is maintained, for instance to take account of inflation.
- (16) In the event of a consumer withdrawing from a contract where the price is entirely or partly covered by credit granted to the consumer by the trader or by a third party on the basis of an arrangement between that third party and the trader, the credit agreement should be terminated at no cost to the consumer. The same should apply to contracts for other related services provided by the trader or by a third party on the basis of an arrangement between that third party and the trader.

- (17) Consumers should not be deprived of the protection granted by this Directive where the law applicable to the contract is that of a Member State. The law applicable to a contract should be determined in accordance with the Community rules on private international law, in particular Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)⁽⁷⁾. Under that Regulation, the law of a third country may be applicable, in particular where consumers are targeted by traders whilst on holiday in a country other than their country of residence. Given that such commercial practices are common in the area covered by this Directive and that the contracts involve considerable amounts of money, an additional safeguard should be provided in certain specific situations, in particular where the courts of any Member State have jurisdiction over the contract, to ensure that the consumer is not deprived of the protection granted by this Directive. This concept reflects the particular needs of consumer protection arising from the typical complexity, long-term nature and financial relevance of the contracts falling within the scope of this Directive.
- (18) It should be determined in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽⁸⁾ which courts have jurisdiction in proceedings which have as their object matters covered by this Directive.
- (19) In order to ensure that the protection afforded to consumers under this Directive is fully effective, in particular as regards compliance by traders with the information requirements both at the pre-contractual stage and in the contract, it is necessary that the Member States lay down effective, proportionate and dissuasive penalties for infringements of this Directive.
- (20) It is necessary to ensure that persons or organisations having, under national law, a legitimate interest in the matter have legal remedies for initiating proceedings against infringements of this Directive.
- (21) It is necessary to develop suitable and effective redress procedures in the Member States for settling disputes between consumers and traders. To this end, Member States should encourage the establishment of public or private bodies for settling disputes out of court.
- (22) Member States should ensure that consumers are effectively informed of the national provisions transposing this Directive and encourage traders and code owners to inform consumers about their codes of conduct in this field. With the aim of pursuing a high level of consumer protection, consumer organisations could be informed of, and involved in, the drafting of codes of conduct.
- (23) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.

- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention on Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.
- (25) In accordance with point 34 of the Interinstitutional agreement on better law-making⁽⁹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Status: This is the original version (as it was originally adopted).

- (1) OJ C 44, 16.2.2008, p. 27.
- (2) Opinion of the European Parliament of 22 October 2008 (not yet published in the Official Journal) and Council Decision of 18 December 2008.
- (3) OJ L 280, 29.10.1994, p. 83.
- (4) OJ L 158, 23.6.1990, p. 59.
- (5) OJ L 149, 11.6.2005, p. 22.
- (6) OJ L 124, 8.6.1971, p. 1.
- (7) OJ L 177, 4.7.2008, p. 6.
- (8) OJ L 12, 16.1.2001, p. 1.
- (9) OJ C 321, 31.12.2003, p. 1.