Protection of consumers: timeshare, long-term holiday products, resale and exchange contracts

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The Committee on the Internal Market and Consumer Protection adopted a report drafted by Toine **MANDERS** (ALDE, NL)) and amended the proposal for a directive of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange. It stressed that certain aspects of the marketing, sale and resale of timeshare and long-term holiday products as well as exchange of timeshare should be fully harmonised in view of the fact that the provisions of the existing Directive were too easily circumvented by unscrupulous operators.

Pre-contractual information: in good time before the consumer is bound by any contract, the trader shall provide the consumer with written information in a clear and concise manner, where applicable, on a general description of the product, on the right of withdrawal, and on the prohibition on advance payment during the period allowed for withdrawal, in addition to other information prescribed in the text. The information shall be free of charge and provided by the trader on paper or in another durable medium. At the same time and in the same form, the trader shall also inform the consumer that, in accordance with private international law the contract may be governed by a law other than the national law of the consumer and possible disputes may be referred to other courts than the court in which the consumer is resident or is habitually domiciled.

Language:the consumer should have the right to choose the language to be used for the pre-contractual information and in the contract between the language or one of the languages of the Member State in which he/she is resident or in the language or one of the languages of the Member State of which he/she is a national which shall be an official language or official languages of the Community. The Member State in which the consumer is resident may, however, require that the contract be drawn up in all cases in at least its language or languages – which must be an official language or official languages of the Community – and that 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 which shall be an official language or official languages of the Community.

If certain prescribed information has not been provided in writing or in another durable medium, the consumer is deemed not to be bound by the contract.

Check-list: the main or resale contract shall include a check-list intended to underline the rights given to consumers by the Directive and to facilitate the exercising of the right of withdrawal. The check-list should be based on the use of standard forms, available in all Community languages, and should contain a detachable form to exercise the right of withdrawal. The check-list shall in a brief and clear manner specify certain prescribed matters.

Ban on advance payments: for resale contracts, the prohibition on advance payment should apply until the actual sale has taken place or the resale contract has been terminated.

Right of withdrawal: the new text strengthens the right of withdrawal, which MEPs suggest should be extended to 21 days following the date of purchase (compared with 10 days now and 14 proposed in the Commission draft). The consumer would not be liable to make any reimbursement when the right of withdrawal is exercised and any payment would be prohibited before the end of the withdrawal period.

Specific provisions relating to long-term holiday products: a new Artilce has been inserted to ensure that for long-term holiday product contracts, payment shall be made according to a staggered payment schedule. The payments, including any membership fees, shall be divided into instalments with at least three instalments, each of which should be of equal value for contracts not exceeding ten years, and at least five instalments, each of which should be of equal value for contracts of more than ten years.

Member States must ensure that long-term holiday product traders are placed under an obligation to provide **sufficient evidence of financial security** in the event of insolvency.

Codes of conduct: Member States must encourage the development of codes of conduct and ensure that, where appropriate, consumers are informed about these codes of conduct. Member States shall encourage economic operators to set up (EU) branch organisations to ensure the development and management of the codes of conduct in close cooperation with designated authorities.

Relation with private international law: the consumer should not be deprived of the protection granted by the Directive. This should also be the case where the law of a third country is the law applicable to the contract and the real property is located in a Member State of the European Union. To this end, the provisions of the Directive relating to the withdrawal period and information requirements should be regarded as being provisions that cannot be derogated from by contract within the meaning of the Rome I Regulation.

The committee was also concerned to ensure that the provisions of the Directive were compatible with both Rome I and Brussels I.

ADR: branch organisations should offer consumers the possibility of an alternative dispute resolution system to handle complaints. Member States shall encourage and support such branch organisations to develop a European wide voluntary quality label aimed at allowing labelled traders to carry an official 'kite' mark approved and supported by the Member States.

Review: 3 years (rather than 5) after the date of application of the national provisions transposing the Directive.

Model contract: a new recital invites Member States and the Commission to work towards the creation of a model contract in all the official languages of the Community, containing all the basic and indispensable contractual provisions.

Amendments to Annexes: lastly, the committee made amendments to all five Annexes regarding information requirements.