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

2007/0113(COD) - 22/10/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 674 votes to 16 with 10 abstentions, a legislative resolution amending 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.

The report had been tabled for consideration in plenary by Toine **MANDERS** (ALDE, NL) on behalf of the Committee on the Internal Market and Consumer Protection.

The amendments are the result of a compromise agreement between Parliament and Council. It was agreed 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. Parliament agreed to revert to the 14 days withdrawal period, and the Council consented to standardised forms for pre-contractual information.

The main amendments – made in 1st reading of codecision procedure – are as follows:

Advertising: if any 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 in the invitation clearly indicate the commercial purpose and the nature of the event. The pre-contractual information must be available to the consumer at any time during the event. A timeshare or long-term holiday product shall not be marketed or sold as an investment.

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 comprehensible manner with accurate and sufficient information on the issues listed in the text. The information will be provided on a standard information form, the contents of which are found in Annexes I-V. The information form contains 3 parts. The first part contains key information on property, price etc information that has to be filled in by the trader. The second part contains important general information, including on the right of withdrawal and the ban on advance payment. The third part contains additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided in the form itself. The information must be provided by the trader on paper or another durable medium easily accessible to the consumer and it shall be free of charge.

If pre-contractual information, including the standard information form set out in Annexes I to IV, has not been provided to the consumer, the right of withdrawal shall expire after 3 months and 14 calendar days.

Language: the Member States shall ensure that the pre-contractual information is drawn up in the language or one of the languages of the Member State in which the consumer is resident or in the language or one of the languages of the Member State of which he is a national provided it is an official language of the Community, at the consumer's choosing. The same applies to the contract itself. However, a Member State in which the consumer is resident may, in relation to the contract, require the contract be provided to the consumer in all cases in its language or one of its languages. In the case of a time-share property, it may ask that the consumer be provided with a certified translation of the contract in the language(s) of the Member State in which the property is situated. The text sets out other provisions on the appropriate language.

Right of withdrawal: the contract must include a separate standard withdrawal form, as set out in Annex V, intended to facilitate the exercise of the right of withdrawal. The consumer will have a period of 14 calendar days to withdraw from the timeshare, long-term holiday product, resale or exchange contract, without giving any reason. The text sets out the calculation for the period of withdrawal. If a completed standard withdrawal form has not been provided to the consumer in writing, on paper or another durable medium, the period of withdrawal shall expire after 1 year and 14 calendar days. However, if other pre-contractual information, including the standard information form set out in Annexes I to IV, has not been provided to the consumer, the right of withdrawal shall expire after 3 months and 14 calendar

Effects of exercising the right of withdrawal: the exercise of the right of withdrawal by the consumer terminates the obligation of the parties to perform the contract. Where the consumer exercises the right of withdrawal, he shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed until withdrawal.

Parliament introduced a clause on the modalities of exercising the right of withdrawal.

Ban on advance payments: Parliament maintained the ban on advance payment for timeshare, long-term holiday products and exchange contracts.

Specific provisions relating to long-term holiday products: a new Article 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 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 another durable medium, at least fourteen calendar days in advance of each due date.

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.

Imperative nature of the Directive and application in international cases: if the law applicable to the contract is the law of a Member State , the consumer may not waive his rights, conferred on him by this Directive. If the applicable law is that of a third country, the consumer shall not be deprived of the protection granted by this Directive, as implemented in the Member State of the forum: if the immovable property is situated in the EU; or if, in the case of a contract not directly related to immovable property, the trader pursues his commercial 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.

Out-of-court redress: 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 encourage, where appropriate, traders and their branch organisations to inform consumers of any such out-of-court complaints and redress procedures

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