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

2007/0113(COD) - 14/01/2009 - Final act

PURPOSE: to enhance the protection of consumers in respect of timeshare and longterm holiday product contracts.

LEGISLATIVE ACT: Directive 2008/122/EC of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, longterm holiday product, resale and exchange contracts.

CONTENT: the supply of timeshare goods (for example, holiday stays in movable rather than immovable property, such as boats or caravans) has changed considerably over the past few years, and new long-term holiday products (holiday clubs at preferential rates, in particular) have appeared on the market. These new products and certain transactions associated with the use of timeshare goods have not hitherto been covered by Community legislation.

Following an agreement reached with the Parliament at first reading, this Directive lays down the commercial conditions associated with the use of timeshare goods and longterm holiday products (of a duration of more than one year), and with resale and exchange, in order to give consumers the possibility to acquaint themselves with the precontractual information, the rights and obligations under the contracts and possibilities of withdrawal, in a clear and comprehensible manner.

The main elements of the Directive are as follows:

Precontractual information: 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 in the case of a timeshare contract, a longterm holiday product contract, a resale contract and an exchange contract. This information shall be provided, **free of charge**, by the trader **on paper or on another durable medium** which is easily accessible to the consumer, by means of the standard information forms as set out in Annexes I to IV of the Directive.

Member States shall ensure that the information 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.

Right of withdrawal: the consumer shall be given a period of **14 calendar days** to withdraw from the contract, without giving any reason. The period may be extended it the relevant information has not been provided by the trader.

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, the consumer shall **neither bear any cost nor be liable for any value** corresponding to the service which may have been performed before withdrawal. Moreover, the expiration of the withdrawal period does not preclude consumers from seeking remedies for breaches of the information requirements.

Advance payment: Member States shall ensure that, in relation to 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, is prohibited.

For **longterm 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.

Consumer information and out-of-court redress: 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.

Moreover, 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.

Application in international cases: (a) 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; (b) 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: (i) any of the immovable properties concerned is situated within the territory of a Member State; or (ii) 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.

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.

ENTRY INTO FORCE: 23/02/2009.

TRANSPOSITION AND APPLICATION: from 23/02/2011.