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

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This report provides an assessment of the application of Directive 2008/122/EC (the **Timeshare Directive)** in Member States and evaluates its effects.

This report is based on several resources on information:

- **detailed checks** of the transposition into national legislations of Directive 2008/122/EC, carried out by the Commission since August 2013;
- **complaints** received by the Commission directly from consumers;
- **an external study** conducted in 2014, including an online survey, followed by interviews with individual stakeholders, and five regional workshops.

Results of the study: since the application of the 2008 Directive, complaints recorded by ECC-Net across the EU have **decreased,** from an average of 2150 a year in 2008-11 to an average of 1820 in 2012-13. The decrease in number of complaints coincides with the entry into application of the Directive, and therefore suggests that — overall — **the Timeshare Directive has had a positive impact.**

The results of the study mainly show that:

- 38.5% of consumers who experienced problems still reported they were unable to exercise their **right of withdrawal**;
- 70% of the consumers who concluded a contract after the application of the Directive, and experienced problems, felt they were **not sufficiently informed** about the contract's terms;
- only 7% (as opposed to 9% previously) of consumers surveyed received pre-contractual information in a **language they did not understand**;
- 80.8% of the consumers who bought timeshare or related products in or after 2012 and experienced problems, were asked to make **payments before the end of the withdrawal period;**
- the percentage of problems faced by traditional timeshare owners has significantly dropped since the application of the Timeshare Directive;
- timeshare owners often face **increases in maintenance or service fees** for no objective reason;
- during the period 2007-13, 29.2% of all complaints registered by ECC-Net on timeshare and similar products were linked to **unfair commercial practices;**
- **terminating** the timeshare contract is one of the most problematic issues for consumers, since the procedures and conditions for terminating timeshare contracts vary across Member States;
- the number of problems experienced by consumers in relation to **long-term holiday products** has greatly increased from 11.9% pre-Directive to 57.2% post-Directive;
- the percentage of problems linked to **holiday exchange schemes** has significantly dropped since the application of the Timeshare Directive, from 31% to 5.7%;
- the percentage of complaints related to **resale problems** has remained stable and relatively low both prior to and after the entry into force of the Directive (around 10%).

The research also highlights consumer detriment associated with new products, such as short-term discount **holiday clubs** (membership of less than 1 year) and leisure credit schemes that often seem designed to circumvent the Directive. It also noted:

- **problems with the application of the Directive depending on the country** of the consumer and the professional ;
- **penalties** available to enforcement authorities in case of breaches of the Directive vary significantly among the Member States — from administrative fines of EUR 1500 to fines in excess of EUR 100000;
- in some Member States, **investigating and prosecuting** fraudulent traders involved in consumer scams does not seem to be a priority. The effectiveness of the measures taken by law enforcement authorities (police, prosecution services, courts) strongly depend on the successful functioning of the established criminal law cooperation between the competent authorities of Member States.

The Commission's conclusions: based on the these findings, the Commission draws the following conclusions concerning the application of the Directive:

- at this stage, there seems to be **no need to modify either the scope or the provisions** of the Directive;
- regarding aspects of the timeshare, long-term holiday product, resale and exchange contracts falling within its scope, the Timeshare Directive appears overall to be a **useful tool** in protecting consumers in this specific holiday sector;
- regarding aspects falling outside its scope (such as **termination of contracts**) problems still occur. However, the analysis shows that these aspects can be successfully addressed through targeted interventions at national level, efficient self regulatory measures and a better enforcement of other relevant EU consumer law instruments;
- specific attention must be given to **legal constructions and practices aimed at circumventing the Directive**. The Consumer Rights Directive, Directive 93/13/EEC on unfair contract terms and the Unfair Commercial Practices Directive can all help to address such circumventions;
- in order to render the Directive more effective, national enforcement authorities should **focus on certain business practices and traders**. This is particularly the case for Spain, which is involved in half of all complaints reported to European Consumer Centres across the EU, Iceland and Norway;
- where conduct points towards **criminal law**, law enforcement authorities should be quickly informed with a view to launching criminal investigations;
- the **cross-border dimension** of fraudulent practices could be addressed more effectively by better use of the measures on criminal law cooperation, established between the law enforcement authorities of the Member States. Existing EU instruments for cooperation in criminal matters already provide a comprehensive legal framework for this purpose;
- possible alternative ways of addressing existing problems, e.g. **awareness-raising campaigns, self-regulation and alternative dispute resolution mechanisms**, all of which could also have a positive impact;
- **more comprehensive strategies** for national consumer protection authorities could raise consumer awareness so as to ensure that citizens are more informed about potential scams.

The Commission will also exercise its powers whenever a Member State fails to comply with its enforcement obligations. For this reason, the Commission services have **begun a dialogue with Spain** regarding the correct enforcement of the Directive. It will encourage Member States, where appropriate, to step up their enforcement actions, including through the Consumer Protection Cooperation network, and ensure the Directive's provisions are complied with in all Member States.