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

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PURPOSE: to provide consumer protection in respect of certain timeshare aspects, long-term holiday products, resale and exchange.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: Council Directive 94/47/EC "on the protection of purchasers in respect of certain aspects of contract relating to the purchase of the right to use immovable properties on a timeshare basis" has been the subject of a review process in order to examine the impact of major new developments in the market place. Since the adoption of Directive 94/47/EC a number of new products, that are similarly marketed and which, economically speaking, are broadly similar to timeshare, have sprung up. These new products, however, fall outside the scope of the existing timeshare Directive. The fact that these new products are not adequately regulated has resulted in a rise in consumer complaints. Legitimate timeshare business have also complained that the new "timeshare" products are not properly regulated.

CONTENT: following an impact assessment, a Green Paper and taking into account the views and opinions of interested parties, the Commission is proposing the adoption of a new Directive the purpose of which is to provide consumer protection in relation to resale and new products such has holiday discount clubs. Upon adoption, the new Directive will replace Directive 94/47/EC with a modern, simplified and coherent framework.

In summary, the proposed Directive will include the following provisions:

Scope: the proposal will replace Directive 94/47/EC with a modern, simplified and coherent framework that covers timeshare, long-term holiday products as well as exchange and resale mediations. It will be applicable to all products that are listed under "definitions". A derogation from full harmonisation is included (since horizontal issues will be addressed under an overall review of the *acquis*). The proposed Directive also allows Member States to maintain national provision on early termination.

Definitions: the following terms are defined: timeshare; long term holiday product; resale; exchange; trader; consumer; and ancillary contract. Under the new definition of "time-share" products which are equivalent to timeshare, but where one or more of the criteria of the current definition are not necessarily fulfilled, will be included under the terms of the revised definition. Since the proposed definition will no longer be linked exclusively to immovable property, contracts for accommodation in canal boats, caravans or cruise ships will be covered. It will not, however, cover things such as multi-annual reservation of a hotel room. The definition of "long term holiday products" includes products such as discount holiday clubs. "Resale" is defined as contracts for mediation concluded between he consumer who wishes to sell or buy a timeshare, long-term holiday product and resale agent. An "ancillary contract" is defined as a contract which is subordinate to another contract – for example, an exchange in relation to timeshare.

Pre-contractual information and advertising: the proposed provisions would ensure that the consumer receives all relevant information allowing him/her to make an informed decision. Provisions have also been included that ensure a consumer's attention is drawn to the right of withdrawal.

Right of withdrawal: this broadly corresponds to existing provision but the withdrawal period is extended to 14 days and it will be harmonised across the EU. Further, the provision on extending the period of withdrawal, in case of lack of fulfilment, has been clarified.

Advance payment: this proposal broadly reproduces the ban on deposits during the withdrawal period but it has clarified provisions on the ban. For example, the ban will include, not only payments, but consumer (and not just trader) concerns. It will apply as long as the withdrawal period has not expired. In addition, if the withdrawal period has been extended (due to the non-fulfilment of information requirements) the ban will be extended.

Termination of ancillary contracts: this provision prescribes the cancellation of any ancillary contracts if the consumer withdraws from the main contract. The proposed provisions will include certain agreements linked to credit.

Sanctions, enforcement, consumer information and redress: the proposed provisions are broadly similar to the ones set out in recent consumer protection Directives. The European Consumer Centres will assist in transmitting cross-border complaints to the relevant alternative dispute resolution bodies. Article 10 of the proposed Directive encourages the setting up of such bodies.

The proposed Directive will contribute toward the simplification of existing legislation by employing clearer and more transparent legislative language; definitions and an extended scope. The proposal has no implications on the Community budget.