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*Committee on Legal Affairs*

**2007/0113(COD)**

28.3.2008

## **OPINION**

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

on 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  
(COM(2007)0303 – C6-0159/2007 – 2007/0113(COD))

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## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

##### Recital 1

###### *Text proposed by the Commission*

(1) Since the adoption of Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, timeshare has evolved and new holiday products similar to it have appeared on the market. These new holiday products and certain transactions related to timeshare, such as resale and exchange, are not covered by Directive 94/47/EC. In addition, experience with the application of Directive 94/47/EC has shown that some points already covered need to be updated or clarified.

###### *Amendment*

(1) Since the adoption of Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, timeshare has evolved and new holiday products similar to it ***or purporting to be similar to it and often designed to circumvent the provisions of that Directive*** have appeared on the market. These new holiday products and certain transactions related to timeshare, such as resale and exchange, are not covered by Directive 94/47/EC. In addition, experience with the application of Directive 94/47/EC has shown that some points already covered need to be updated or clarified ***in order also to prevent the development of new holiday products calculated to evade this legislation.***

###### *Justification*

*The problem with the existing Directive is that its provisions were too easily circumvented by unscrupulous operators. The new Directive should be as watertight as possible.*

## Amendment 2

### Proposal for a directive Recital 3

*Text proposed by the Commission*

(3) In order to enhance legal certainty and fully achieve the benefits of the internal market for consumers and businesses, the relevant laws of the Member States need to be approximated further. **However, for certain aspects Member States should be able to continue to apply stricter rules.**

*Amendment*

(3) In order to enhance legal certainty and fully achieve the benefits of the internal market for consumers and businesses, the relevant laws of the Member States need to be approximated further. **In some respects, it has proved necessary to introduce full harmonisation.**

*Justification*

*In order to reach an optimal level of consumer protection, and notwithstanding the fact that the instrument proposed is a Directive, full harmonisation of some key aspects should be prescribed.*

## Amendment 3

### Proposal for a directive Recital 4

*Text proposed by the Commission*

(4) This Directive should be without prejudice to national rules relating to registration of immovable or movable property, conditions of establishment or authorisation regimes or licensing requirements, determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.

*Amendment*

(4) This Directive should be without prejudice to national rules relating to **the sale and** registration of immovable or movable property, conditions of establishment or authorisation regimes or licensing requirements, determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.

*Justification*

*The directive must also be without prejudice to national rules on the sale of property. In any case, registration law and property law are closely related.*

## Amendment 4

### Proposal for a directive Recital 5

*Text proposed by the Commission*

(5) The ***different*** products covered by this Directive should be clearly defined and the provisions concerning pre-contractual information ***and*** the contract should be clarified and updated.

*Amendment*

(5) The ***types of*** products covered by this Directive should be clearly defined ***in such a way as preclude circumvention of its provisions*** and the provisions concerning pre-contractual information, the contract ***and the withdrawal period*** should be clarified and updated.

*Justification*

*The problem with the existing Directive is that its provisions were too easily circumvented by unscrupulous operators. The new Directive should be as watertight as possible.*

## Amendment 5

### Proposal for a directive Recital 5 a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) Given the particular difficulties posed by certain long-term holiday products, what is covered by this expression needs to be tightly defined and specific rules designed to avoid abuse need to be laid down.***

*Justification*

*The products subsumed under the name "long-term holiday products" are different from timeshare proper as real property rights are never involved, hence the need for specific rules. A tight definition is needed in order to differentiate them from timeshare and from other arrangements and schemes which this Directive is not intended to cover.*

## Amendment 6

### Proposal for a directive Recital 5 b (new)

*Text proposed by the Commission*

*Amendment*

***(5b) 'Long-term holiday products' within the meaning of this Directive are to be distinguished from timeshare and package holidays and discount cheques, and loyalty and fidelity programmes where the discount cheques or points awarded are part of the quid pro quo for buying accommodation or air travel and do not constitute products in themselves; in considering whether a given scheme constitutes a long-term holiday product within the meaning of this Directive, regard may be had in particular to the inchoate nature of the discounts or other benefits allegedly provided, the fact that they are acquired directly against payment or in exchange for points not collected on the basis of nights spent in accommodation against payment or miles travelled, and the fact that the entity which provides or arranges for the provision of the discounts or benefits is often separate from the entity which sells the long-term holiday product.***

*Justification*

*It is essentially to define long-term holiday products within the meaning of the Directive so as to cover all its manifestations whilst excluding products and services not intended to be caught by the Directive.*

## Amendment 7

### Proposal for a directive Recital 8

*Text proposed by the Commission*

*Amendment*

(8) The prohibition on advance payments to the trader or any third party ***before the***

(8) The prohibition on advance payments to the trader or any third party should be

*end of the withdrawal period* should be clarified in order to improve *consumer's protection*. For resale, the prohibition of *advance* payment should apply until the actual sale has taken place or the resale contract has been terminated.

clarified in order to improve *the protection afforded to the consumer*. In the case of resale, the prohibition of *any* payment should apply until the actual sale has taken place or the resale contract has been terminated.

## Amendment 8

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) In the event of withdrawal from a contract where the price is entirely or partly covered by credit granted to the consumer by the trader or by a third party on the basis of an agreement between that third party and the trader, the credit agreement should be terminated without *any penalty*. The same should apply to ancillary contracts, such as contracts for membership in exchange systems.

#### *Amendment*

(9) In the event of withdrawal from a contract where the price is entirely or partly covered by credit granted to the consumer by the trader or by a third party on the basis of an agreement between that third party and the trader, the credit agreement should be terminated without *the consumer being charged any costs*. The same should apply to ancillary contracts, such as contracts for membership in exchange systems.

## Amendment 9

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) The consumer should not be deprived of the protection granted by this Directive. This should also be the case where the law of a *non-Member State* is the law applicable to the contract.

#### *Amendment*

(10) The consumer should not be deprived of the protection granted by this 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 this 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 Regulation (EC) No ..../2008 of the

***European Parliament and of the Council  
of ... on the law applicable to contractual  
obligations (Rome I)<sup>1</sup>.***

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<sup>1</sup> OJ L XX, xx/xx/xx, p. x.

*Justification*

*This clarification appears necessary.*

## **Amendment 10**

**Proposal for a directive  
Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) The law applicable to contracts relating to timeshare or long-term holiday products should be determined in accordance with Article 6 of Regulation (EC) No .../2008 (Rome I). The courts having jurisdiction to entertain proceedings arising out of timeshare or long-term holiday products, including any relationships collateral or ancillary thereto, should be determined in accordance with Section 4, Consumer Contracts, of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>1</sup> except where the dispute relates to the existence, nature or extent of a right in rem.***

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

*Justification*

*Any doubts relating to jurisdiction should be removed in order to obviate needless disputes.*



## Amendment 11

### Proposal for a directive Recital 14

*Text proposed by the Commission*

(14) Member States should ensure that consumers are effectively informed of the national provisions transposing this Directive and **encourage traders to inform** about their codes of **practice that exist in the field**.

*Amendment*

(14) Member States should ensure that consumers are effectively informed of the national provisions transposing this Directive and **warned about possible malpractice and high-pressure selling techniques, particularly in the sector of long-term holiday products. They should draw attention to the existence of codes of conduct and to the significance of membership of an approved industry organisation. Traders should be encouraged to publicise and provide information** about their codes of **conduct. The Commission should assist and encourage trans-border information campaigns, in particular through its website**.

*Justification*

*This Directive should not turn a blind eye to the malpractices existing in the sector of long-term holiday products.*

*It is also important that the Commission should assist with the organisation of cross-border campaigns.*

## Amendment 12

### Proposal for a directive Heading (new) to be inserted before Article 1

*Text proposed by the Commission*

*Amendment*

**Section 1: Common provisions**

## Amendment 13

**Proposal for a directive**  
**Article 1 – Paragraph 1 – Sub-paragraph 3**

*Text proposed by the Commission*

This Directive is without prejudice to national legislation providing for general contract law remedies ***enabling the consumer to terminate the contract.***

*Amendment*

This Directive is without prejudice ***either*** to national legislation providing for general contract law remedies ***or to national rules on the sale and registration of moveable and immovable property, on conditions of establishment and authorisation, and on the determination of the legal nature of the rights to which contracts falling within the scope of this regulation relate.***

*Justification*

*See justification to Recital 4.*

**Amendment 14**

**Proposal for a directive**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

***2. Member States may continue to apply national provisions in the field approximated by this Directive which are more stringent to ensure a higher level of consumer protection, and which relate to:***

***(a) the starting point for the right of withdrawal;***

***(b) the modalities of exercising the right of withdrawal;***

***(c) the effects of exercising the right of withdrawal.***

*Amendment*

***deleted***

*Justification*

*It is necessary fully to harmonise the right of withdrawal.*

## Amendment 15

### Proposal for a directive

#### Article 2 – paragraph 1 – point (a)

*Text proposed by the Commission*

(a) 'timeshare' means a contract of a duration of more than one year by which a consumer acquires against **consideration** the right to use one or more **accommodation for more than one period of occupation**;

*Amendment*

(a) 'timeshare' means a contract of a duration of more than one year by which a consumer acquires against **payment a recurrent** right to use one or more **accommodations with or without other facilities**;

*Justification*

*The term "consideration" is a term of art peculiar to one legal system. Community legislation should use neutral terminology.*

## Amendment 16

### Proposal for a directive

#### Article 2 – paragraph 1 – point (b)

*Text proposed by the Commission*

(b) 'long-term holiday product' means a contract of a duration of more than one year by which a consumer acquires against **consideration** primarily the right to obtain discounts or other benefits on **accommodation**, in isolation or together with travel or other services;

*Amendment*

(b) 'long-term holiday product' means a contract of a duration of more than one year, **howsoever described or named**, by which a consumer acquires against **payment** primarily the right to obtain, **through a reservation scheme or otherwise**, discounts or other benefits on **accommodations with or without facilities**, in isolation or together with travel or other services; **the expression 'long-term holiday products' does not include timeshare, travel package holidays and discount cheques and loyalty and fidelity programmes used to promote sales and encourage customer loyalty which do not in themselves constitute a product**;

*Justification*

*It is essentially to define long-term holiday products within the meaning of the Directive so as to cover all its manifestations whilst excluding products and services not intended to be*

*caught by the Directive. This provision should be read in conjunction with the new recital 5b.*

## **Amendment 17**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point (c)**

*Text proposed by the Commission*

(c) 'resale' means a contract by which a trader against **consideration helps** a consumer **to sell or buy** a timeshare or long-term holiday product;

*Amendment*

(c) 'resale' means a contract by which a trader **acts** against **payment as an intermediary for** a consumer **in selling or buying** a timeshare or long-term holiday product;

## **Amendment 18**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point (d)**

*Text proposed by the Commission*

(d) 'exchange' means **a** contract by which a consumer **against consideration** joins a scheme which allows him to **modify the location and/or time of his timeshare interest through an exchange**;

*Amendment*

(d) 'exchange' means **an ancillary** contract by which a consumer **for money or money's worth** joins a scheme which allows him to **have the benefit of accommodation with or without other facilities in exchange for his granting temporary access to the benefits of his timeshare to a third party**;

*Justification*

*Seeks to make the definition clearer.*

## **Amendment 19**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point (f)**

*Text proposed by the Commission*

(f) 'consumer' means a natural person who is acting for purposes which are outside his trade, **business** craft or profession;

*Amendment*

(f) 'consumer' means a natural person who is acting for purposes which are outside his trade, **business**, craft or profession;

*Justification*

*Rectifies an error in the English text.*

**Amendment 20**

**Proposal for a directive**

**Article 2 – paragraph 1 – point (g)**

*Text proposed by the Commission*

(g) 'ancillary contract' means any contract which *is subordinated to another contract*.

*Amendment*

(g) 'ancillary contract' means any contract which, *in terms of its content or purpose, is dependent upon the existence of a contract for a timeshare or long-term holiday product*.

**Amendment 21**

**Proposal for a directive**

**Article 3**

*Text proposed by the Commission*

***Precontractual information and advertising***

1. Member States shall ensure that any advertising *indicates the possibility of obtaining the written information referred to in paragraph 2 and where it can be obtained*.

***2. The trader shall provide a consumer requesting information with written information which, in addition to a general description of the product, shall provide at least brief and accurate information on the following items, where applicable:***

***(a) in the case of timeshare, the information set out in Annex I and, if the contract concerns accommodation under construction, the information set out in***

*Amendment*

**Advertising**

1. Member States shall ensure that any advertising *contains a prominent indication that the information referred to in Article 3a has to be provided before the contract is concluded and that it will form part of the contract. The advertising shall also indicate where that information may be consulted*.

*Annex II;*

*(b) in the case of a long-term holiday product, the information set out in Annex III;*

*(c) in the case of resale, the information set out in Annex IV;*

*(d) in the case of exchange, the information set out in Annex V.*

*3. In case of resale the trader's obligation to provide the information under paragraph 2 applies towards the consumer who may enter into the resale contract.*

*4. The information referred to in paragraph 2 shall be drawn up in one of the official languages of the Community, as chosen by the consumer.*

*2. The information referred to in Article 3a(1) shall be provided to the consumer at any venue to which he is invited in order to be offered a timeshare or at which a long-term holiday product is to be promoted or offered.*

#### *Justification*

*It is clear that many abusive selling practices are used, in particular to sell long-term holiday products. It is important to clamp down on these.*

#### **Amendment 22**

##### **Proposal for a directive Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 3a*

##### *Pre-contractual information*

*1. Before the consumer can accept any offer or be bound by any contract, the trader shall provide him with clear, comprehensible, accurate and sufficient information on the following items:*

*(a) in the case of timeshare, the information set out in Annex I and, if the contract concerns accommodation under construction, the information set out in Annex II;*

*(b) in the case of a long-term holiday product, the information set out in Annex III;*

*(c) in the case of resale, the information set out in Annex IV;*

*(d) in the case of exchange, the information set out in Annex V.*

*The trader shall provide the information in writing and free of charge.*

*2. The information referred to in paragraph 1 shall be drawn up, at the consumer's election, either in a language of the consumer's country of residence or in a language of the country of which the consumer is a national provided that that language is an official language of the Community.*

*3. The consumer shall signify that he has read and understood the information referred to in paragraph 1 by appending his signature or by electronic means.*

#### *Justification*

*This amendment is largely based on the latest Council text with some changes.*

### **Amendment 23**

#### **Proposal for a directive Article 4**

##### *Text proposed by the Commission*

1. Member States shall ensure that the contract is in writing and drawn up ***in one of the official languages*** of the Community, ***as chosen by the consumer.***

##### *Amendment*

1. Member States ***at least*** shall ensure that the contract is in writing and drawn up, ***at the consumer's election, either in a language of the consumer's country of residence or in a language of the country of which the consumer is a national provided that that language is an official language*** of the Community.

***Where that language is not the authentic language of the contract, the version made available to the consumer shall be a***

*certified translation. In such case, the consumer shall also be provided with the contract in the authentic language.*

*1a. The consumer shall be entitled to waive the rights stipulated in the first subparagraph of paragraph 1 and choose another language, provided that it is one of the official languages of the Community. Such waiver shall be effected in writing.*

2. The **written** information referred to in **Article 3(2)** shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise or the changes result from circumstances beyond the trader's control.

Changes resulting from circumstances beyond the trader's control shall be communicated to the consumer before the contract is concluded.

The contract shall expressly mention any such changes.

2. The information referred to in **Article 3a(1)** shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise or the changes result from circumstances beyond the trader's control.

Changes resulting from circumstances beyond the trader's control shall be communicated to the consumer **in writing** before the contract is concluded.

The contract shall expressly mention any such changes.

*2a. In addition to the information referred to in Article 3a(1), the contract shall mention:*

*(a) the identity and the place of residence of the parties;*

*(b) the date when and the place where the contract was concluded,*

*and shall be signed by both parties.*

3. Before the **signing** of the contract, the trader shall **explicitly** draw the consumer's attention to the existence of the right of withdrawal and the length of the withdrawal period referred to in Article 5 and the ban on advance payment during the withdrawal period referred to in Article 6.

The corresponding contractual clauses shall be signed separately by the consumer.

3. Before the **conclusion** of the contract, the trader shall draw the consumer's attention to the existence of the right of withdrawal and the length of the withdrawal period referred to in Article 5 and the ban on advance payment during the withdrawal period referred to in Article 6.

The corresponding contractual clauses **and the information referred to in Article 3a(1)** shall be signed separately by the consumer.

*The contract shall be accompanied by a detachable form, as set out in Annex VI,*



*designed to facilitate the exercise of the right of withdrawal in accordance with Article 6.*

*3a. The consumer shall receive a copy of the contract at the time when it is concluded.*

*3b. Where a timeshare contract is to be financed by a loan of which the trader has been informed, the contract for the timeshare shall be deemed to have been concluded subject to the condition that the loan is granted before the end of the withdrawal period referred to in Article 5(1).*

#### *Justification*

*This amendment draws on the latest text from the Council. However, changes have been made to ensure greater clarity and to deal with the vexed problem of languages. Having regard to the fact that situations will inevitably arise where a trader has to deal with consumers coming from many different Member States, it would be unrealistic and disingenuous to lay down a requirement which would be liable to result in legal uncertainty. The requirement for the translation to be certified is designed to afford a safeguard for the consumer.*

*Member States must be allowed to retain their current option of enacting stricter procedural rules providing consumer protection on the conclusion of contracts.*

## **Amendment 24**

### **Proposal for a directive Article 5**

#### *Text proposed by the Commission*

1. Member States shall ensure that, after entering into a contract, the consumer has the right to withdraw, without giving any reason, within fourteen days of both parties' signing the contract or of both parties' signing a binding preliminary contract. If the fourteenth day is a public holiday, the period shall be extended to the first working day thereafter.
2. If the contract does not include all the

#### *Amendment*

1. Member States shall ensure that, after entering into a contract, the consumer has the right to withdraw, without giving any reason, within fourteen days of both parties' signing the contract or of both parties' signing a binding preliminary contract. If the fourteenth day is a public holiday, the period shall be extended to the first working day thereafter.
2. If the contract does not include all the

information referred to in points (a) to **(p)** of Annex I *and (a) and (b) of Annex II*, but the information is provided in writing within three months after the **signing** of the contract, the withdrawal period shall start from the day the consumer receives that information.

3. If the information referred to in points (a) to **(p)** of Annex I *and (a) and (b) of Annex II* has not been provided in writing within three months after the **signing** of the contract, the right of withdrawal shall expire after three months and fourteen days from the **signing** of the contract.

4. If the consumer intends to exercise the right of withdrawal he shall, before the expiry of the deadline, notify the person whose name and address appear in the contract for that purpose **pursuant to point (p) of Annex I**. The deadline shall be deemed to have been observed if the notification, if it is in writing, is dispatched before the deadline expires.

**5. Where the consumer exercises the right of withdrawal, he is required to reimburse only those expenses which, in accordance with national law, are incurred as a result of the conclusion of and withdrawal from the contract for legal formalities which have to be completed before the deadline referred to in paragraph 1. Such expenses shall be expressly mentioned in the contract.**

6. Where the consumer exercises the right of withdrawal **provided for in paragraph 3**, he shall not be required to make any reimbursement.

information referred to in points (a) to **(o)** of Annex I, Annex II, **points (a) to (i) of Annex III, points (a) to (g) of Annex IV or points (a) to (k) of Annex V**, but the information is provided in writing within three months after the **day of conclusion** of the contract, the withdrawal period shall start from the day the consumer receives that information.

3. If the information referred to in points (a) to **(o)** of Annex I, Annex II, **points (a) to (i) of Annex III, points (a) to (g) of Annex IV or points (a) to (k) of Annex V**, has not been provided in writing within three months after the **day of conclusion** of the contract, the right of withdrawal shall expire after three months and fourteen **calendar** days from the **day of conclusion** of the contract.

4. If the consumer intends to exercise the right of withdrawal he shall, before the expiry of the deadline, notify the person whose name and address appear in the contract **and on the detachable form provided for that purpose by means which can be proven**. The deadline shall be deemed to have been observed if the notification, if it is in writing, is dispatched before the deadline expires.

6. Where the consumer exercises the right of withdrawal, he shall not be required to make any reimbursement.

*Justification*

*Reflects the text at present under discussion in the Council.*

**Amendment 25**

**Proposal for a directive  
Article 6**

*Text proposed by the Commission*

1. Member States shall ensure that any advance payment, provision of guarantees, reservation of money on **a credit card**, explicit acknowledgement of debt or any other consideration to the trader or to any third party by a consumer before the end of the period, during which he may exercise the right of withdrawal in accordance with Article 5 (1) to 5 (3), is prohibited.

2. Any payment, provision of guarantees, reservation of money on credit cards, acknowledgement of debt or any other consideration to the trader or to any third party by the consumer for resale before the actual sale has taken place or the resale contract otherwise is terminated, is prohibited.

*Amendment*

1. Member States shall ensure that **for timeshare and long-term holiday products** 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 a consumer before the end of the period, during which he may exercise the right of withdrawal in accordance with Article 5 (1) to 5 (3), is prohibited.

2. Any **advance** payment, provision of guarantees, reservation of money on credit cards, acknowledgement of debt or any other consideration to the trader or to any third party by the consumer for resale before the actual sale has taken place or the resale contract otherwise is terminated, is prohibited.

*Justification*

*Aligns the original text with the version at present under discussion in the Council.*

**Amendment 26**

**Proposal for a directive  
Heading (new) to be inserted after Article 6**

*Text proposed by the Commission*

*Amendment*

***Section 2: Provisions relating specifically to long-term holiday products***

## **Amendment 27**

### **Proposal for a directive Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 6a**

##### ***Payments made for long-term holiday products***

***Payments for long-term holiday products of between 18 months and 10 years' duration shall be payable in three equal instalments, with the second and third instalments falling due after the expiry of one-third and two-thirds, respectively, of the duration of the contract.***

***Payments for long-term holiday products of more than 10 years' duration shall be payable in five equal instalments, with the second, third, fourth and fifth instalments falling due after the expiry of one-fifth, two-fifths, three-fifths and four-fifths, respectively, of the duration of the contract.***

#### *Justification*

*An abusive practice exists whereby customers are persuaded to pay large sums of money up front for long-term holiday products and the benefits promised turn out to be largely illusory. Given that the original sellers of those products may be untraceable or may have been wound up by the time that the consumer seeks redress, making any action brought by the consumer for breach of contract ineffectual, this system of staggered payment would afford a useful safeguard.*

## **Amendment 28**

### **Proposal for a directive Article 6 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 6b**

***Without prejudice to the right of withdrawal provided for in Article 5, the consumer may unilaterally rescind a***

*contract for a long-term holiday product, without incurring any penalty, on giving fourteen days' notice terminating at the end of any instalment period within the meaning of Article 6a.*

*This right shall be without prejudice to any right of termination arising under the applicable law.*

## **Amendment 29**

### **Proposal for a directive Article 6 c (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 6c**

*Providers of long-term holiday products shall take out civil liability insurance to cover themselves against claims from consumers arising out of non-performance or defective performance of their contractual obligations and default.*

## **Amendment 30**

### **Proposal for a directive Heading (new) to be inserted after Article 6c and before Article 7**

*Text proposed by the Commission*

*Amendment*

***Section 3: Termination of ancillary contracts and other general provisions***

## **Amendment 31**

### **Proposal for a directive Article 8**

*Text proposed by the Commission*

*Amendment*

***I.*** Member States shall ensure that, if the law applicable to the contract is the law of a Member State, ***any contractual clauses***

Member States shall ensure that, if the law applicable to the contract is the law of a Member State, the consumer ***may not***

*whereby the consumer waives his rights, as provided for in this Directive, shall not be binding.*

*2. Whatever the applicable law, the consumer shall not be deprived of the protection granted by this Directive, if the immovable property concerned is situated within the territory of a Member State or the contract has been entered into in a Member State.*

*waive the rights conferred on him by this Directive, unless otherwise specified in this Directive.*

*Justification*

*This is now covered by the new Articles 8a and 8b.*

**Amendment 32**

**Proposal for a directive  
Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 8a**

***Applicable law and jurisdiction***

***1. The law applicable to contracts relating to timeshare or long-term holiday products shall be determined in accordance with Article 6 of Regulation (EC) No ..../2008 (Rome I).***

***2. The courts having jurisdiction to entertain proceedings arising out of timeshare or long-term holiday products, including any relationships collateral or ancillary thereto, shall be determined in accordance with Section 4, Consumer Contracts, of Regulation (EC) No 44/2001, except where the dispute relates to the existence, nature or extent of a right in rem.***

*Justification*

*This clarification appears desirable in order to avoid unnecessary litigation and references to the European Court of Justice.*

## Amendment 33

### Proposal for a directive Article 8 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 8b*

##### *Overriding mandatory provisions*

*The provisions of this Directive relating to the withdrawal period and information requirements shall be regarded as being provisions that cannot be derogated from by contract within the meaning of Regulation (EC) No ..../2008 (Rome I).*

*Justification*

*Clarifies the legal position.*

## Amendment 34

### Proposal for a directive Annex I

*Text proposed by the Commission*

*Amendment*

Information referred to in Article 3(2)

Information referred to in Article 3a(1)

#### ***I. INFORMATION ABOUT THE TRADER***

(a) The identity and residence of the ***parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;***

(a) The identity and residence of the ***trader;***

#### ***II. INFORMATION ABOUT THE RIGHTS ACQUIRED***

(b) the exact nature of the right which is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the Member States(s) in which the property or properties concerned are situated and if those conditions have been fulfilled or, if

(b) the exact nature of the right which is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the Member States(s) in which the property or properties concerned are situated and if those conditions have been fulfilled or, if

they have not, what conditions remain to be fulfilled;

***(c) where the contract concerns a specific immovable property, an accurate description of that property and its location; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities;***

***(d) the services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions;***

***(e) the common facilities, such as swimming pool, sauna, etc, to which the consumer has or may have access, and, where appropriate, under what conditions;***

***(f) how maintenance and repairs to the accommodation and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues;***

***(g) an accurate description of how all costs will be allocated to the consumers and how and when such costs may be increased; where relevant, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation;***

***(h) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;***

they have not, what conditions remain to be fulfilled;

***(c) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;***

***(d) where the contract provides rights to occupy accommodation selected from a pool of accommodation, information on any restrictions on the consumer's ability***



*to occupy any accommodation at any time in the pool;*

*(i) the price to be paid by the consumer, an estimate of the amount to be paid by the consumer for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs);*

*(j) a clause stating that the consumer shall not bear any other costs or obligations other than those specified in the contract;*

*(k) whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, information about the relevant schemes and an indication of costs related to resale and exchange through these schemes;*

*(l) indication of the language(s) available for post-sale communication in relation to the contract, for instance in relation to management decisions, increase of costs and the handling of queries and complaints;*

*(m) information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (5) if he exercises his right to withdraw; where appropriate, information on the arrangements for the termination of the credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract; information about the consequences of such withdrawal;*

*(n) information about the ban on advance payments during the period during which the consumer has a right to withdraw*

*from the contract in accordance with Article 5 (1) to 5 (3)*

*(o) indication to whom and how the withdrawal notification is to be sent;*

*(p) the existence, content, control and enforcement of codes of conduct;*

*(q) the possibility for out-of-court dispute resolution.*

### **III. INFORMATION ABOUT THE PROPERTIES**

*(e) where the contract concerns a specific immovable property, an accurate description of that property and its location, together with, where appropriate, details and copies of any land registry, public register, cadastre or equivalent entry relating to the property; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities;*

*(f) the services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions;*

*(g) where applicable, the common facilities, such as swimming pool, sauna, etc., to which the consumer has or may have access and under what conditions.*

### **IV. INFORMATION ABOUT THE COSTS**

*(h) the price to be paid by the consumer;*

*(i) an indication of the amount to be paid by the consumer for the services (e.g. electricity, water, maintenance, refuse collection);*

*(j) where applicable, an indication of the amount to be paid by the consumer for the common facilities, such as swimming pool or sauna, to which the consumer has or*

*may have access;*

*(k) an accurate description of how all costs associated with the timeshare contract will be calculated; how these costs will be allocated to the consumers and how and when such costs may be increased; the method used to calculate the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs);*

*(l) where applicable, information as to whether there are any charges, mortgages or encumbrances, or any other liens, recorded against the title to the accommodation;*

*(m) a statement that the consumer shall not bear any costs or obligations other than those specified in the contract;*

#### ***V. RIGHT OF WITHDRAWAL AND CANCELLATION OF THE CONTRACT***

*(n) information on the right to withdraw from the contract and the consequences of such withdrawal; where applicable, information on the arrangements for the termination of any credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract and the consequences of such termination;*

*(o) particulars indicating to whom and how the withdrawal notification is to be sent;*

*(p) the conditions for terminating the contract, the consequences of termination and information on any liability attaching to the consumer for any costs which might result from termination;*

*(q) information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with*

*Article 5(1) to (3);*

**VI. ADDITIONAL INFORMATION**

*(r) information as to how maintenance and repairs of the property and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues;*

*(s) whether or not it is possible to join a system for the exchange or resale of the contractual rights, information about the relevant exchange system and an indication of costs related to resale and exchange through that system;*

*(t) an indication of the language(s) available for post-sale communication in relation to the contract, for instance in relation to management decisions, costs increases and the handling of queries and complaints;*

*(u) where the trader is a signatory of codes of conduct, information on those codes;*

*(w) where applicable, information on the possibility of out-of-court dispute resolution.*

*Justification*

*Corresponds to the latest Council text. Provision of such information would further protect the consumer against false claims in respect of the ownership of or the title in property.*

**Amendment 35**

**Proposal for a directive  
Annex II**

*Text proposed by the Commission*

Additional requirements for accommodation under construction, as referred to in **Article 3**

(a) the state of completion **for** the accommodation **and** the services rendering

*Amendment*

Additional requirements for accommodation under construction, as referred to in **Article 3a**

(a) the state of completion **of** the accommodation, the services rendering the

the accommodation fully operational (gas, electricity, water and telephone connections);

(b) **a reasonable estimate of** the deadline for completion of the accommodation and the services rendering it fully operational (gas, electricity, water and telephone connections);

(c) where **it concerns a specific immovable property**, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities;

(d) a guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

accommodation fully operational (gas, electricity, water and telephone connections) **and any facilities to which the consumer will have access**;

(b) the deadline for completion of the accommodation and the services rendering it fully operational (gas, electricity, water and telephone connections) **and any facilities to which the consumer will have access**;

(c) where **applicable**, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities, **if the contract concerns a specific immovable property**;

(d) **where applicable**, a guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

#### *Justification*

*Corresponds to the latest Council text.*

### **Amendment 36**

#### **Proposal for a directive Annex III**

*Text proposed by the Commission*

Information referred to in **Article 3(2)**

(a) The identity and residence of the **parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded**;

*Amendment*

Information referred to in **Article 3a(1)**

#### **I. INFORMATION ABOUT THE TRADER**

(a) The identity and residence of the **trader and its** legal status;

(b) the exact nature of the right which is the subject of the contract;

(c) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;

(d) the price to be paid by the consumer;

(e) a **clause stating** that the consumer shall not bear any other costs or obligations other than those specified in the contract;

**(f) indication of the language(s) available for post-sale communication in relation to the contract, for instance in relation to the handling of queries and complaints;**

**(g) information on the right to withdraw from the contract and the consequences of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5(5) if he exercises his right to withdraw;** where **appropriate**, information on the arrangements for the termination of **the** credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract; **information about** the consequences of such **withdrawal**;

## **II. INFORMATION ABOUT THE RIGHTS ACQUIRED**

(b) the exact nature **and content** of the right which is the subject of the contract **and an accurate description of the rights conferred on the consumer under the contract, including any restrictions on the consumer's ability to enjoy those rights (e.g. limited availability or offers provided on a first come, first served basis, or time limits on a particular discount);**

(c) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;

## **III. INFORMATION ABOUT THE COSTS**

(d) the price to be paid by the consumer, **including any recurring costs;**

(e) a **statement** that the consumer shall not bear any other costs or obligations other than those specified in the contract;

## **IV. RIGHT OF WITHDRAWAL AND CANCELLATION OF THE CONTRACT**

**(f) information on the right to withdraw from the contract and the consequences of such withdrawal;** where **applicable**, information on the arrangements for the termination of **any** credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract **and** the consequences of such **termination**;

***(h) information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5 (1) to 5 (3);***

***(i) indication*** to whom and how the withdrawal notification is to be sent;

***(g) particulars indicating*** to whom and how the withdrawal notification is to be sent;

***(h) the conditions for terminating the contract, the consequences of termination, and information on any liability attaching to the consumer for any costs which might result from termination;***

***(i) information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5(1) to (3);***

#### ***V. ADDITIONAL INFORMATION***

***(j) an indication of the language(s) available for post-sale communication in relation to the contract, for instance in relation to the handling of queries and complaints;***

***(j) the existence, content, control and enforcement*** of codes of conduct;

***(k) where the trader is a signatory of codes of conduct, information on those codes;***

***(k)*** the possibility ***for*** out-of-court dispute resolution.

***(l) where applicable, information on the possibility of*** out-of-court dispute resolution.

#### *Justification*

*Takes over the latest Council text.*

### **Amendment 37**

#### **Proposal for a directive Annex IV**

*Text proposed by the Commission*

*Amendment*

Information referred to in ***Article 3(2)***

Information referred to in ***Article 3a(1)***

(a) The identity and residence of the *parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;*

(b) the price to be paid by the consumer for the resale services;

(c) a *clause stating* that the consumer shall not bear any other costs or obligations other than those specified in the contract;

(d) *indication of the language(s) available for communication with the trader, for instance in relation to the handling of queries and complaints;*

(e) information on the right to withdraw from the contract and the consequences *of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5 (5) if he exercises his right to withdraw;*

(f) *information about the ban on advance payments until the actual sale has taken place or the resale contract otherwise is terminated;*

(g) *indication* to whom and how the withdrawal notification is to be sent;

## ***I. INFORMATION ABOUT THE TRADER***

(a) The identity and residence of the *trader and its* legal status;

## ***II. INFORMATION ABOUT THE SERVICES PROVIDED***

(b) *an accurate description of the services to be provided under the contract (e.g. marketing);*

## ***III. INFORMATION ABOUT THE COSTS***

(c) the price to be paid by the consumer for the resale services;

(d) a *statement* that the consumer shall not bear any other costs or obligations other than those specified in the contract;

## ***IV. RIGHT OF WITHDRAWAL AND CANCELLATION OF THE CONTRACT***

(e) information on the right to withdraw from the *resale* contract and the consequences *of such withdrawal;*

(f) *particulars indicating* to whom and how the withdrawal notification is to be sent;

(g) *the conditions for terminating the contract, the consequences of*



*termination, and information on any liability attaching to the consumer for any costs which might result from termination;*

*(h) information about the ban on advance payments until the actual sale has taken place or the resale contract is otherwise terminated;*

#### **V. ADDITIONAL INFORMATION**

*(i) an indication of the language(s) available for communication with the trader, for instance in relation to the handling of queries and complaints;*

*(j) where the trader is a signatory of codes of conduct, information about those codes;*

*(k) where applicable, information on the possibility of out-of-court dispute resolution.*

*(h) the existence, content, control and enforcement of codes of conduct;*

*(i) the possibility for out-of-court dispute resolution.*

#### *Justification*

*Reflects the latest Council text.*

### **Amendment 38**

#### **Proposal for a directive Annex V**

##### *Text proposed by the Commission*

Information referred to in **Article 3(2)**

(a) The identity and residence of the **parties, including specific information on the trader's legal status at the time of the conclusion of the contract, the signatures of the parties and the date and the place where the contract is concluded;**

(b) the exact nature of the right which is

##### *Amendment*

Information referred to in **Article 3a(1)**

#### **I. INFORMATION ABOUT THE TRADER**

(a) The identity and residence of the **trader and its** legal status;

#### **II. INFORMATION ABOUT THE RIGHTS ACQUIRED**

(b) the exact nature **and content** of the

the subject of the contract

(c) an *appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities;*

(d) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;

(e) the price to be paid by the consumer, *an estimate of the amount to be paid by the consumer for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs);*

right which is the subject of the contract;

(c) an *explanation of the way in which the exchange system works and the possibilities and modalities for exchange, as well as an indication of the number of resorts available and the number of members in the exchange system, including any limitations on the availability of particular accommodation selected by the consumer, for example as the result of peak periods of demand and/or the potential need to book a long time in advance, and indications of any restrictions of the timeshare rights deposited into the exchange system by the consumer, including, where appropriate, limitations based on the number of points allotted to or held by the consumer and a set of examples of concrete exchange possibilities;*

(d) the exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the consumer may start to exercise the contractual right;

### **III. INFORMATION ABOUT THE PROPERTIES**

(e) *an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities;*

### **IV. INFORMATION ABOUT THE COSTS**

(f) the price to be paid by the consumer *for membership of the exchange system and any renewal fees and the current price to be paid per exchange;*

**(f)** a *clause stating* that the consumer shall not bear any other costs or obligations other than those specified in the contract;

**(g)** *indication of the language(s) available for communication with the trader, for instance in relation to the handling of queries and complaints;*

**(h)** *explanation of how the exchange system works; the possibilities and modalities for exchange, as well as an indication of the number of resorts available and the number of members in the exchange system and a set of examples of concrete exchange possibilities;*

**(i)** information on the right to withdraw from the contract and the consequences *of withdrawing from the contract, including a precise indication of the nature and amount of the costs which the consumer will be required to reimburse pursuant to Article 5(5) if he exercises his right to withdraw*; where *appropriate*, information on the arrangements for the termination of *the* credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract; *information about* the consequences of such *withdrawal*;

**(j)** information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5

**(g)** *information on the obligation on the trader to provide details before an exchange is arranged, in respect of each proposed exchange, of any additional charges for which the consumer will be liable in respect of the exchange;*

**(h)** a *statement* that the consumer shall not bear any other costs or obligations other than those specified in the contract;

## ***V. RIGHT OF WITHDRAWAL AND CANCELLATION OF THE CONTRACT***

**(i)** information on the right to withdraw from the contract and the consequences *of such withdrawal*; where *applicable*, information on the arrangements for the termination of *any* credit agreement and the ancillary contract linked to the contract in the event of withdrawal from the contract *and* the consequences of such *termination*;

**(j)** *particulars indicating to whom and how the withdrawal notification is to be sent;*

**(k)** information about the ban on advance payments during the period during which the consumer has a right to withdraw from the contract in accordance with Article 5(1)

(1) to 5 (3)

***(k) indication to whom and how the withdrawal notification is to be sent;***

***(l) the existence, content, control and enforcement*** of codes of conduct;

***(m) the possibility for*** out-of-court dispute resolution

to (3);

## **VI. ADDITIONAL INFORMATION**

***(l) an indication of the language(s) available for communication with the trader, for instance in relation to the handling of queries and complaints;***

***(m) where the trader is a signatory of codes of conduct, information about those codes;***

***(n) where applicable, information on the possibility of*** out-of-court dispute resolution.

### *Justification*

*Corresponds to the latest Council text.*

## PROCEDURE

<b>Title</b>	Protection of consumers in respect of certain aspects of timeshare
<b>References</b>	COM(2007)0303 – C6-0159/2007 – 2007/0113(COD)
<b>Committee responsible</b>	IMCO
<b>Opinion by</b> Date announced in plenary	JURI 21.6.2007
<b>Drafts(wo)man</b> Date appointed	Antonio López-Istúriz White 10.9.2007
<b>Discussed in committee</b>	20.11.2007      26.2.2008
<b>Date adopted</b>	27.3.2008
<b>Result of final vote</b>	+:            22 -:            0 0:            0
<b>Members present for the final vote</b>	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Sharon Bowles, Mogens Camre, Jean-Paul Gauzès, Sajjad Karim, Kurt Lechner, Georgios Papastamkos, Michel Rocard, Gabriele Stauner, József Szájer, Jacques Toubon
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Gabriela Crețu