

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

1. Whereas the disparities between national legislations on contracts relating to the purchase of the right to use one or more immovable properties on a timeshare basis are likely to create barriers to the proper operation of the internal market and distortions of competition and lead to the compartmentalization of national markets;

2. Whereas the aim of this Directive is to establish a minimum basis of common rules on such matters which will make it possible to ensure that the internal market operates properly and will thereby protect purchasers; whereas it is sufficient for those rules to cover contractual transactions only with regard to those aspects that relate to information on the constituent parts of contracts, the arrangements for communicating such information and the procedures and arrangements for cancellation and withdrawal; whereas the appropriate instrument to achieve that aim is a Directive; whereas this Directive is therefore consistent with the principle of subsidiarity;

3. Whereas the legal nature of the rights which are the subject of the contracts covered by this Directive varies considerably from one Member State to another; whereas reference should therefore be made in summary form to those variations, giving a sufficiently broad definition of such contracts, without thereby implying harmonization within the Community of the legal nature of the rights in question;

4. Whereas this Directive is not designed to regulate the extent to which contracts for the use of one or more immovable properties on a timeshare basis may be concluded in Member States or the legal basis for such contracts;

5. Whereas, in practice, contracts relating to the purchase of the right to use one or more immovable properties on a timeshare basis differ from tenancy agreements; whereas that difference can be seen from, inter alia, the means of payment;

6. Whereas it may be seen from the market that hotels, residential hotels and other similar residential tourist premises are involved in contractual transactions similar to those which have made this Directive necessary;

7. Whereas it is necessary to avoid any misleading or incomplete details in information concerned specifically with the sale of the rights to use one or more immovable properties on a timeshare basis; whereas such information should be supplemented by a document which must be made available to anyone who requests it; whereas the information therein must constitute part of the contract for the purchase of the right to use one or more immovable properties on a timeshare basis;

8. Whereas, in order to give purchasers a high level of protection and in view of the specific characteristics of systems for using immovable properties on a timeshare basis, contracts for the purchase of the right to use one or more immovable properties on a timeshare basis must include certain minimal items;

9. Whereas, with a view to establishing effective protection for purchasers in this field, it is necessary to stipulate minimum obligations with which vendors must comply vis-à-vis purchasers;

10. Whereas the contract for the purchase of the right to use one or more immovable properties on a timeshare basis must be drawn up in the official language or one of the official languages of the Member State in which the purchaser is resident or in the official language or one of the official languages of the Member State of which he is a national which must be one of the official languages of the Community; whereas, however, the Member State in which the purchaser is resident may require that the contract be drawn up in its language or its languages which must be an official language or official languages of the Community; whereas provision should be made for a certified translation of each contract for the purposes of the formalities to be completed in the Member State in which the relevant property is situated;

11. Whereas to give the purchaser the chance to realize more fully what his obligations and rights under the contract are he should be allowed a period during which he may withdraw from the contract without giving reasons since the property in question is often situated in a State and subject to legislation which are different from his own;

12. Whereas the requirement on the vendor's part that advance payments be made before the end of the period during which the purchaser may withdraw without giving reasons may reduce the purchaser's protection; whereas, therefore, advance payments before the end of that period should be prohibited;

13. Whereas in the event of cancellation of or withdrawal from a contract for the purchase of the right to use one or more immovable properties on a timeshare basis the price of which is entirely or partly covered by credit granted to the purchaser by the vendor or by a third party on the basis of an agreement concluded between that third party and the vendor, it should be provided that the credit agreement should be cancelled without penalty;

14. Whereas there is a risk, in certain cases, that the consumer may be deprived of the protection provided for in this Directive if the law of a non-Member State is specified as the law applicable to the contract; whereas this Directive should therefore include provisions intended to obviate that risk;

15. Whereas it is for the Member States to adopt measures to ensure that the vendor fulfils his obligations,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive shall be to approximate the laws, regulations and administrative provisions of the Member States on the protection of purchasers in respect of certain aspects of contracts relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis.

This Directive shall cover only those aspects of the above provisions concerning contractual transactions that relate to:

- information on the constituent parts of a contract and the arrangements for the communication of that information,
- the procedures and arrangements for cancellation and withdrawal.

With due regard to the general rules of the Treaty, the Member States shall remain competent for other matters, inter alia determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.

Article 2

For the purposes of this Directive:

- 'contract relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis', hereinafter referred to as 'contract', shall mean any contract or group of contracts concluded for at least three years under which, directly or indirectly, on payment of a certain global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or is the subject of a transfer or an undertaking to transfer,
- 'immovable property' shall mean any building or part of a building for use as accommodation to which the right which is the subject of the contract relates,
- 'vendor' shall mean any natural or legal person who, acting in transactions covered by this Directive and in his professional capacity, establishes, transfers or undertakes to transfer the right which is the subject of the contract,
- 'purchaser' shall mean any natural person who, acting in transactions covered by this Directive, for purposes which may be regarded as being outwith his professional capacity, has the right which is the subject of the contract transferred to him or for whom the right which is the subject of the contract is established.

Article 3

1. The Member States shall make provision in their legislation for measures to ensure that the vendor is required to provide any person requesting information on the immovable property or properties with a document which, in addition to a general description of the property or properties, shall provide at least brief and accurate information on the particulars referred to in points (a) to (g), (i) and (l) of the Annex and on how further information may be obtained.

2. The Member States shall make provision in their legislation to ensure that all the information referred to in paragraph 1 which must be provided in the document referred to in paragraph 1 forms an integral part of the contract.

Unless the parties expressly agree otherwise, only changes resulting from circumstances beyond the vendor's control may be made to the information provided in the document referred to in paragraph 1.

Any changes to that information shall be communicated to the purchaser before the contract is concluded. The contract shall expressly mention any such changes.

3. Any advertising referring to the immovable property concerned shall indicate the possibility of obtaining the document referred to in paragraph 1 and where it may be obtained.

Article 4

The Member States shall make provision in their legislation to ensure that:

- the contract, which shall be in writing, includes at least the items referred to in the Annex,
- the contract and the document referred to in Article 3 (1) are drawn up in the language or one of the languages of Member State in which the purchaser is resident or in the language or one of the languages of the Member State of which he is national which shall be an official language or official languages of the Community, at the purchaser's option. The Member State in which the purchaser is resident may, however, require that the contract be drawn up in all cases in at least its language or languages which must be an official language or official languages of the Community, and
- the vendor provides the purchaser with a certified translation of the contract in the language or one of the languages of the Member State in

which the immovable property is situated which shall be an official language or official languages of the Community.

Article 5

The Member States shall make provision in their legislation to ensure that:

1. in addition to the possibilities available to the purchaser under national laws on the nullity of contracts, the purchaser shall have the right:

- to withdraw without giving any reason within 10 calendar days of both parties' signing the contract or of both parties' signing a binding preliminary contract. If the 10th day is a public holiday, the period shall be extended to the first working day thereafter,

- if the contract does not include the information referred to in points (a), (b), (c), (d) (1), (d) (2), (h), (i), (k), (l) and (m) of the Annex, at the time of both parties' signing the contract or of both parties' signing a binding preliminary contract, to cancel the contract within three months thereof. If the information in question is provided within those three months, the purchaser's withdrawal period provided for in the first indent, shall then start,

- if by the end of the three-month period provided for in the second indent the purchaser has not exercised the right to cancel and the contract does not include the information referred to in points (a), (b), (c), (d) (1), (d) (2), (h), (i), (k), (l) and (m) of the Annex, to the withdrawal period provided for in the first indent from the day after the end of that three-month period;

2. if the purchaser intends to exercise the rights provided for in paragraph 1 he shall, before the expiry of the relevant deadline, notify the person whose name and address appear in the contract for that purpose by a means which can be proved in accordance with national law in accordance with the procedures specified in the contract pursuant to point (l) of the Annex. The deadline shall be deemed to have been observed if the notification, if it is in writing, is dispatched before the deadline expires;

3. where the purchaser exercises the right provided for in the first indent of paragraph 1, he may be required to defray, where appropriate, only those expenses which, in accordance with national law, are incurred as a result of the conclusion of and withdrawal from the contract and which correspond to legal formalities which must be completed before the end of the period referred to in the first indent of paragraph 1. Such expenses shall be expressly mentioned in the contract;

4. where the purchaser exercises the right of cancellation provided for in the second indent of paragraph 1 he shall not be required to make any defrayal.

Article 6

The Member States shall make provision in their legislation to prohibit any advance payments by a purchaser before the end of the period during which he may exercise the right of withdrawal.

Article 7

The Member States shall make provision in their legislation to ensure that:

- if the price is fully or partly covered by credit granted by the vendor, or - if the price is fully or partly covered by credit granted to the purchaser by a third party on the basis of an agreement between the third party and the vendor,

the credit agreement shall be cancelled, without any penalty, if the purchaser exercises his right to cancel or withdraw from the contract as provided for in Article 5.

The Member States shall lay down detailed arrangements to govern the cancellation of credit agreements.

Article 8

The Member States shall make provision in their legislation to ensure that any clause whereby a purchaser renounces the enjoyment of rights under this Directive or whereby a vendor is freed from the responsibilities arising from this Directive shall not be binding on the purchaser, under conditions laid down by national law.

Article 9

The Member States shall take the measures necessary to ensure that, whatever the law applicable may be, the purchaser is not deprived of the protection afforded by this Directive, if the immovable property concerned is situated within the territory of a Member State.

Article 10

The Member States shall make provision in their legislation for the consequences of non-compliance with this Directive.

Article 11

This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable as regards the protection of purchasers in the field in question, without prejudice to their obligations under the Treaty.

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than 30 months after its publication in the Official Journal of the European Communities. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall include references to this Directive or shall accompany them with such references on their official publication. The Member States shall lay down the manner in which such references shall be made.

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Strasbourg, 26 October 1994.

For the European Parliament, The President K. HAENSCH

For the Council, The President J. EEKHOFF

ANNEX

Minimum list of items to be included in the contract referred to in Article 4

- (a) The identities and domiciles of the parties, including specific information on the vendor's legal status at the time of the conclusion of the contract and the identity and domicile of the owner.
- (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 State(s) in which the property or properties concerned relates is or are situated and if those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled.
- (c) When the property has been determined, an accurate description of that property and its location.
- (d) Where the immovable property is under construction:
 - (1) the state of completion;
 - (2) a reasonable estimate of the deadline for completion of the immovable property;
 - (3) 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;
 - (4) the state of completion of the services rendering the immovable property fully operational (gas, electricity, water and telephone connections);
 - (5) a guarantee regarding completion of the immovable property or a guarantee regarding reimbursement of any payment made if the property is not completed and, where appropriate, the conditions governing the operation of those guarantees.
- (e) The services (lighting, water, maintenance, refuse collection) to which the purchaser has or will have access and on what conditions.
- (f) The common facilities, such as swimming pool, sauna, etc., to which the purchaser has or may have access, and, where appropriate, on what conditions.
- (g) The principles on the basis of which the maintenance of and repairs to the immovable property and its administration and management will be arranged.
- (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 purchaser may start to exercise the contractual right.
- (i) The price to be paid by the purchaser to exercise the contractual right; an estimate of the amount to be paid by the purchaser 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 acquisition will not result in costs, charges 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, and any costs involved should an exchange and/or resale scheme be organized by the vendor or by a third party designated by him in the contract.
- (l) Information on the right to cancel or withdraw from the contract and indication of the person to whom any letter of cancellation or withdrawal should be sent, specifying also the arrangements under which such letters may be sent; precise indication of the nature and amount of the costs which the purchaser will be required to defray pursuant to Article 5 (3) if he exercises his right to withdraw; where appropriate, information on the arrangements for the cancellation of the credit agreement linked to the contract in the event of cancellation of the contract or withdrawal from it.
- (m) The date and place of each party's signing of the contract.