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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Report on the evaluation of Directive 2008/122/EC of the European Parliament and of  
the Council of 14 January 2009 on the protection of consumers in respect of certain  
aspects of timeshare, long-term holiday product, resale and exchange contracts**

## 1. INTRODUCTION

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

**The 2008 Timeshare Directive repealed former Directive 94/47/EC<sup>1</sup> and modernised its provisions in order to deal with the emergence of new products in the travel market. It covers a broader range of holiday-related services characterised by long-term commitments** or significant financial risks for consumers, namely:

- **timeshare contracts**, of more than one year under which a consumer, for consideration, acquires the right to use overnight accommodation for more than one period of occupation;
- **contracts for long-term holiday products** by which a consumer, for consideration, acquires the right to obtain benefits in respect of accommodation, either in isolation or together with travel or other services (such as membership in ‘discount holiday clubs’, which offer discounts on travel and accommodation in different resorts for a fixed period of time);
- **exchange contracts** under which a consumer, for consideration, joins a system that allows him to enjoy overnight accommodation or other services in exchange for granting others, on a temporary basis, access to the benefits of the rights arising from his own timeshare contract;
- **resale contracts** under which a trader, for consideration, assists a timeshare owner to resell his timeshare rights or long-term holiday product.

With reference to such contracts, the Timeshare Directive lays down a number of consumer rights. These include **strict rules on pre-contractual and contractual information** that the trader has to provide to the consumer, the **right for the consumer to withdraw from the contract within 14 calendar days, and a ban on advance payments during the withdrawal period.**

Timeshare and other long-term holiday products may often be cross-border in nature, where the marketing and/or conclusion of the contract takes place in a country other than in the consumer’s home country, and where the properties or clubs concerned are located in other countries.

This report is based on several resources on information:

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<sup>1</sup> 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

- Since August 2013 the Commission services have been carrying out detailed transposition checks of the national legislations on their compliance with Directive 2008/122EC.
- In May 2014, an EU level meeting with all Member States' authorities was organised to inquire into the functioning of the Directive in all the EU Member States. The Commission services also received complaints directly from consumers, and addressed national authorities with the concerns brought to the Commission's attention.
- **Study on the practical application of the Timeshare Directive 2008/122/EC:**  
The preparation of this report was also supported by an external study conducted in 2014<sup>2</sup>, including an online survey,<sup>3</sup> followed by interviews with individual stakeholders<sup>4</sup>, and five regional workshops.<sup>5</sup> Another important source of information was the database for complaints used by the European Consumer Centres Network (ECC-Net).<sup>6</sup>

## 2. TRANSPOSITION OF THE DIRECTIVE

Member States had to transpose the Directive into national law by 23 February 2011. Fourteen Member States did not meet this deadline and the Commission therefore launched infringement proceedings for non-communication of transposition measures.<sup>7</sup> The last Member State to fully transpose the Directive was Spain in March 2012.<sup>8</sup> Consequently, the Directive was fully transposed across the EU over a year later than scheduled. This obviously had an impact on the availability of data to assess its practical application.

Whilst 15 Member States enacted the Directive in a sector-specific piece of legislation, the remaining 13 Member States transposed it into their civil code, consumer code or other general frameworks related to consumer protection rules.

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<sup>2</sup> Evaluation Study on the Application of the Timeshare Directive 2008/122/EC by the Centre for Strategy and Evaluation Services (CSES) available at

[http://ec.europa.eu/consumers/consumer\\_rights/travel/timeshare/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/travel/timeshare/index_en.htm)

<sup>3</sup> See p. 3 of the CSES Final Report and annex B, p. 102. The results of this online survey have to be interpreted cautiously as it mainly caught the attention of consumers who had experienced difficulties in connection with their holiday product. Therefore, the results of the online survey focus on the structure of the problems — only replies of consumers having experienced problems have been taken into account. In addition, the vast majority of respondents (89.1%) had concluded their contract before 2012, i.e. before the application of the Directive. Nearly 60% of consumers who replied to the survey had concluded their contract in Spain.

<sup>4</sup> Interviews were carried out with 88 national authorities, timeshare and consumer associations, specialised law firms, timeshare businesses and individual consumers.

<sup>5</sup> Workshops were held in those EU Member States with a significant timeshare market, i.e. France, Malta, Spain, Sweden and the UK.

<sup>6</sup> Data of ECC-Net complaints recorded in 2007-13 were analysed. Information included the country of origin of the complainant (consumer), the country of origin of the trader, classification of the complaint according to the EU instrument applicable to the situation, and the classification of the problem.

<sup>7</sup> Infringement proceedings were launched against Belgium, Cyprus, Czech Republic, Finland, Hungary, Italy, Lithuania, Luxembourg, Malta, Poland, Slovakia, Slovenia, Spain and Sweden.

<sup>8</sup> The cases were closed by the Commission on 31 May 2012. See: [http://europa.eu/rapid/press-release\\_IP-12-528\\_en.htm](http://europa.eu/rapid/press-release_IP-12-528_en.htm).

As of August 2013, following detailed analysis of transposition measures, the Commission engaged in a dialogue with 21 Member States<sup>9</sup> to clarify certain issues of incorrect transposition<sup>10</sup>.

As a result of this overall transposition check, several Member States amended their legislation; to date, the dialogue is still on-going with two Member States.<sup>11</sup>

### 3. IMPACT OF THE DIRECTIVE'S MAIN HORIZONTAL PROVISIONS

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.<sup>12</sup> The Association of Timeshare Owners Committees (TATOC)<sup>13</sup> recorded a significant drop in the number of complaints concerning UK timeshare owners, who concern over half of all complaints in this sector according to ECC-net data.

The decrease in number of complaints coincides with the entry into application of the Directive. This data therefore suggests that — **overall — the Timeshare Directive has had a positive impact**<sup>14</sup>.

#### 3.1. Right of withdrawal

The 2008 Timeshare Directive replaced the previous minimum withdrawal period of 10 days with a fully harmonised withdrawal period of 14 days across the EU for all four relevant contracts falling under its scope of application.

##### *Application of the right of withdrawal*

The online survey shows that full harmonisation of the right of withdrawal is seen as a positive development by both traders and consumers. However, **a high percentage (38.5%)<sup>15</sup> of consumers who experienced problems still reported they were unable to exercise their right of withdrawal.**<sup>16</sup> **This figure indicates possible shortcomings in the enforcement of this provision**<sup>17</sup>.

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<sup>9</sup> Austria, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, France, Finland, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden, Spain and the UK.

<sup>10</sup> See Chapter 2.3, p.13 of the CSES final report. Incorrect transposition stemmed mainly from misunderstanding and misinterpretation of the relevant provisions. A recurrent issue was the transposition of Article 9(2) and 10(2). All concerned Member States except one modified their legislation.

<sup>11</sup> Spain (incorrect implementation) and Czech Republic (incorrect transposition)

<sup>12</sup> CSES final report, point 3.3.1 on p.30

<sup>13</sup> The Association of Timeshare Owners Committees (TATOC) is a consumer association for UK timeshare owners ([www.tatoc.co.uk](http://www.tatoc.co.uk)). According to their statistics, 1537 complaints were recorded in 2010 compared with only 781 in 2013; see also the CSES final report, table 3.11.

<sup>14</sup> Due to the lack of other available data and the relatively short time of application of the Directive, it is not possible to draw final conclusions from these data.

<sup>15</sup> Figure 3.6 of the CSES final report

<sup>16</sup> For those respondents who bought timeshare or related products before the 2008 Directive started to apply, only 27% reported the same problem.

<sup>17</sup> However, no further information from another source is available to confirm the impact of the directive

### 3.2. Pre-contractual information and language requirements

The Directive introduces uniform rules on language and on pre-contractual and contractual information requirements. The same marketing rules apply across the EU, reducing business' legal advice costs and allowing consumers to make more informed choices. The annexes to the Directive contain a set of forms for the provision of fully harmonised **pre-contractual information** and a standard form to facilitate a consumer's potential withdrawal within 14 days. The Directive requires the information to be provided on a durable medium, which can be kept on record, free of charge, and unchanged.

Regarding **language requirements**, the Directive establishes that consumers can elect to receive pre-contractual information and the contract itself in the language of the Member State in which they are resident or of which they are a national.

#### *Application of pre-contractual information requirements*

The survey results showed that, of the consumers who concluded a contract after the application of the Directive and experienced problems, 70% felt they were not sufficiently informed about the contract's terms. When compared with the 76% of consumers<sup>18</sup> who experienced problems with contracts concluded before the 2008 Directive and felt misinformed about their terms, the situation has not improved much.

Nonetheless, according to the study, the new rules on pre-contractual information are generally perceived to be beneficial by consumers. Businesses on the other hand feel that the new requirements have created additional paperwork and increased operational costs<sup>19</sup>. They feel that the form set out in the Directive's annexes could be simplified.

#### *Application of language requirements*

Survey results<sup>20</sup> show that, since the application of the Directive, only 7% (as opposed to 9% previously) of surveyed consumers received pre-contractual information in a language they did not understand. Therefore, from a consumer's perspective, this issue does not appear to be a cause for concern. Some timeshare businesses, however, consider such language requirements as costly and cumbersome<sup>21</sup>.

### 3.3. Ban on advance payments

The rule relating to the ban on advance payments during the withdrawal period has been retained from the former Directive 94/47/EC. The Timeshare Directive clarifies the conditions of this ban, which ensures that all kinds of remuneration — not only to the trader but also to

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<sup>18</sup> These figures sum up survey results in Table 4.3, p. 39 of the CSES final report

<sup>19</sup> Table 4.2, p. 40 of the CSES final report; actual increases in costs for businesses were not quantified in the study.

<sup>20</sup> Table 4.3, p. -41 of the CSES final report

<sup>21</sup> This information is based on interviews and replies to on-line questionnaires by businesses. Exact figures are not available to quantify such costs.

any other third party — are prohibited. It also applies throughout the extended withdrawal period, where the trader has failed to provide all required information in the contract. The research shows that consumers see this provision as beneficial. Traders however, consider this ban as harmful for their businesses, arguing that many consumers do not take their commitments to the timeshare contract seriously<sup>22</sup>.

Despite this provision existing for almost 20 years, research indicates that of the consumers who bought timeshare or related products in or after 2012 and experienced problems, 80.8%<sup>23</sup> were asked to make payments before the end of the withdrawal period.

**This shows that businesses do not comply with this provision and that enforcement should be improved.**

#### **4. HOLIDAY SERVICE PRODUCTS COVERED BY THE DIRECTIVE**

##### **4.1. Timeshare contracts**

It is now sufficient for a timeshare contract to last one year instead of the previous three years, to fall under the scope of the Timeshare Directive.

The Timeshare Directive also removed the rigid references to ‘immovable’ property contained in the previous Directive; therefore, contracts for accommodation on cruise ships, canal boats and caravans are also covered.

##### *Comparative data (consumer survey results, ECC-Net complaints)*

Survey results show that the percentage of problems faced by traditional timeshare owners has significantly dropped since the application of the Timeshare Directive<sup>24</sup>. This has been confirmed by ECC-Net data, which shows that since the application of the Timeshare Directive, only 16% of complaints related to this Directive were lodged against traditional timeshare providers. This suggests that — **overall — the Directive has had a positive impact on the conventional timeshare market as far as consumer protection is concerned.**

##### *Issues not covered by the Timeshare Directive 2008/122/EC*

At the time of updating former Directive 94/47/EC, there was a lack of evidence regarding internal market or consumer protection problems in this area. The new Timeshare Directive, therefore, does not establish specific rules on the consumer’s right to terminate a contract or on their participation in the decision-making process concerning timeshare properties and related maintenance fees. Since such issues are not regulated at EU level, Member States are free to establish national laws to ensure an appropriate level of consumer protection.

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<sup>22</sup> This information is based on interviews and replies to on-line questionnaires by businesses. Exact figures are not available to quantify such costs.

<sup>23</sup> Figure 3.6 of the CSES final report

<sup>24</sup> 46.3% before the 2008 Directive, against 17.1% thereafter.

## *1. Maintenance fees*

The survey reveals that timeshare owners often face increases in maintenance or service fees for no objective reason. Of those surveyed who have experienced problems, 71.7% of respondents had this issue for contracts concluded before the application of the Directive, i.e. at a time when traders were not bound by harmonised EU rules on pre-contractual information requirements.<sup>25</sup> This figure has dropped to only 15.4%<sup>26</sup> since then. **Such data points to a good initial impact of the transparency requirements introduced by the Directive.**

## *2. Termination of the contract*

Research has shown that terminating the timeshare contract is one of the most problematic issues for consumers.<sup>27</sup> The procedures and conditions for terminating timeshare contracts vary across Member States. In particular, problems have been reported relating to perpetuity or very long-term clauses attached to timeshare contracts, which have a particular bearing when the timeshare owner dies and the beneficiary wishes to terminate the contract. Such clauses could and should be challenged under the Directive 93/13/EEC on Unfair Contract Terms.<sup>28</sup> However, most timeshare owners are seemingly unaware of this legal possibility. This can be changed through a more proactive attitude from the national enforcement authorities, increased awareness-raising activities at national level and, where appropriate, targeted legal actions by timeshare owners' associations or consumer organisations. The situation is more complex in certain countries (such as Italy, Spain, Portugal and France) where a timeshare right is regarded as a right on a real estate property (and hence timeshare owners have to be registered in the national land registers). Since they are then seen as intrinsically linked to the real estate property at stake, such contracts are automatically inherited with almost no possibility for the beneficiary to terminate them, unless they succeed in selling them to someone else. Recent legislative developments in some of these countries (in particular France) aim to resolve the situation by allowing the beneficiary to exit the contract within a certain timeframe.

The impossibility of terminating existing timeshare contracts was addressed in an interesting way by a non-EU country, where timeshare owners were facing these problems.<sup>29</sup> Industry has also taken self-regulatory steps to address this problem; for example, the Resort

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<sup>25</sup> See in particular the detailed description of price, including additional obligatory costs and other recurrent fees, in the standard information form of Annex I to the Directive.

<sup>26</sup> Figure 3.6 of the CSES final report.

<sup>27</sup> The July 2014 research project prepared by the UK Competition and Markets Authority (CMA) entitled '*Disposal of timeshares and other long-term holiday products — a report for BIS and the European Commission*'. This specifically deals with the difficulties that UK owners of timeshare and long-term holiday products face in selling their rights or otherwise terminating their contracts.

<sup>28</sup> This situation is further analysed in section 6. 2.

<sup>29</sup> The above-mentioned UK CMA research reported that, in Israel, a recent amendment to the Consumer Protection Law enables consumers to cancel timeshares agreed before 24 March 2014 by simply sending a written notice. The cancellation will come into effect at the end of the following annual period and the trader is not allowed to charge any cancellation fees. This law came into force on 24 September 2014 and applies to timeshares located in Israel. It will thus be applicable also to EU citizens who own timeshares there.

Development Organisation requested all of its members<sup>30</sup> to put an exit programme in place for timeshare owners who wished to terminate their timeshare contracts by the end of 2012.<sup>31</sup>

**Such developments show that this issue could be addressed without any need for a specific, EU-wide legislative intervention. Such intervention could pose a number of challenges in light of the general principles of non-retroactivity of new EU legislation and of proportionality.**

#### **4.2. Long-term holiday products**

At the time of reviewing Directive 94/47/EC, it was evident that the lack of regulation of long-term holiday products created substantial problems for consumers and businesses, as indicated by the number of complaints submitted to ECC-Net, consumer organisations, public authorities and to the European Commission. Therefore, the Timeshare Directive 2008/122/EC also covers contracts related to such products. A long-term holiday product can, for example, be membership in a holiday club, which allows a consumer to book accommodation at discounted rates worldwide. The new Directive specifies that payments for such contracts must be made in annual instalments of equal value.<sup>32</sup> Additionally, it clarifies that such contracts can be terminated without any penalties as from the moment the consumer receives the invitation to pay the second instalment.<sup>33</sup>

#### *Comparative data (survey results, ECC-Net complaints)*

The consumer survey highlights that there has been a sharp increase in the number of problems experienced by consumers in relation to long-term holiday products, from 11.9% pre-Directive to 57.2% post-Directive<sup>34</sup>. Similarly, ECC-Net data shows that 57.6% of all complaints linked to the Timeshare Directive were lodged against holiday club companies.<sup>35</sup>

**This shows that compliance by traders of long-term holiday products has to increase and that issues related to this trade could be the focus of strengthened enforcement activities.**

#### **4.3. Exchange**

Prior to the Timeshare Directive, contracts relating to the exchange of timeshare rights were often the subject of complaints; which included situations where professionals would give consumers the misleading impression that they were offering an almost unlimited choice of timeshare properties for such exchanges. These contracts were not covered by the previous Directive 94/47/EC. Today, consumers' rights to detailed pre-contractual information, to

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<sup>30</sup> The Resort Development Organisation is the EU-wide trade association for vacation ownership across Europe. It brings together traders of various types of holiday products. See also: <http://www.rdo.org/>.

<sup>31</sup> Such exit routes include offering owners the option to move to a short-term product that terminates after a set number of years, or directing owners to a so called 'exit club' that gives members the option to leave without penalty after a minimum time period (typically ranging from 2 to 5 years).

<sup>32</sup> Article 10(1) of Directive 2008/122/EC

<sup>33</sup> Article 10(2) of the Timeshare Directive 2008/122/EC

<sup>34</sup> The most frequent issue related to LTHP products is non-compliance with pre-contractual information requirements (misleading information about the product, misleading information about the possibility to re-sell and about the right of withdrawal), see Figure 3.2 of the CSES final report

<sup>35</sup> Table 3.10 of the CSES final report



withdraw within 14 days, and the ban on traders accepting advance payments apply to exchange contracts.

*Comparative data (survey results, ECC-Net complaints)*

The survey reveals the percentage of problems linked to holiday exchange schemes has significantly dropped since the application of the Timeshare Directive, from 31 % to 5.7 %. ECC-Net data shows that problems with exchange contracts are by now very marginal (only 0.6 % of all complaints related to contracts covered by the Timeshare Directive). A similar result arose from the data of TATOC, the Association of Timeshare Owners Committees in the UK.<sup>36</sup>

**Hence, the Directive appears to have had a very positive impact as far as holiday exchange schemes are concerned.**

#### **4.4. Resale**

Resale contracts were specifically included within the scope of the 2008 Timeshare Directive. This was to ensure additional consumer protection for contracts under which a trader assists the timeshare owner in reselling his timeshare rights or long-term holiday product. When reselling, consumers may often be in a vulnerable position for various reasons (e.g. health condition, age, difficult financial situation). Many complaints related to this issue, especially where resale agents took a deposit although no resale later took place. Therefore, in addition to the general provisions, the Timeshare Directive now provides a ban on any advance payments until the actual sale of the timeshare or long-term holiday product takes place.

*Comparative data (survey results, ECC-Net complaints)*

According to ECC-Net data, 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%).

According to the survey, 93.5% of consumers who tried to sell their timeshare or holiday product did not succeed<sup>37</sup>. Various examples of scams were reported by consumer protection authorities and consumers during the interview programme and workshops<sup>38</sup>. These examples included resale companies taking advantage of vulnerable owners, convincing them to agree to arrangements involving additional payments instead of the promised sale of their products.

**National enforcement authorities must ensure proper enforcement of the 2008 Timeshare Directive in conjunction with all the other relevant EU consumer protection legislation (in particular the Unfair Commercial Practices Directive and the Unfair**

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<sup>36</sup> Table 3.11 of the CSES final report (just 14 cases in 2013 compared with 277 cases related to resale contracts in the same period).

<sup>37</sup> Table 4.6 and 4.7 of the CSES final report – this, however, might be merely an indication of the current situation of the timeshare and the long-term holiday products market.

<sup>38</sup> Both organised within the CSES study.

**Contract Terms Directive). The correct application of these instruments is crucial in tackling scams from resale companies.**

## **5. HOLIDAY SERVICE PRODUCTS NOT COVERED BY THE DIRECTIVE AND FRAUDULENT PRACTICES**

The research underlying this report highlights consumer detriment associated with new products, such as short-term discount holiday clubs (membership of less than 1 year) and leisure credit schemes<sup>39</sup> that often seem designed to circumvent the Directive.<sup>40</sup> Other commercial practices have emerged which are likely to confuse consumers and impair their ability to exercise their rights (e.g. a second contract requiring a deposit in circumvention of the ban on advance payments; offers misleadingly advertised as ‘not being timeshare’). The Directive, therefore, appears to have been subject to actions designed to circumvent its requirements. The focus should now be on how to effectively address these activities and stop them. The Commission’s impact assessment accompanying the review of the 1994 Directive clearly stated that the new Directive alone could not put a stop to the activities of companies that intend to avoid its requirements or to act in a fraudulent manner. The online survey confirms that the timeshare industry shares this view. Better enforcement and cooperation among relevant authorities, including criminal enforcement authorities, is essential to eradicate such fraudulent companies and rogue traders.<sup>41</sup>

## **6. INTERACTION WITH OTHER RELEVANT EU LEGAL INSTRUMENTS**

The Timeshare Directive is sector-specific and complements other horizontal EU Directives on consumer protection, such as, in particular, the Unfair Commercial Practices Directive<sup>42</sup> — relevant for tackling misleading and aggressive sales practices in the sector — and the Unfair Contract Terms Directive,<sup>43</sup> which is relevant when assessing the possible abusive nature of contract terms. However, contracts falling under the Timeshare Directive 2008/122/EC are not subject to the Consumer Rights Directive 2011/83/EU<sup>44</sup>. It is important to underline that, of all the complaints related to timeshare and similar products recorded by ECC-Net, only 22.7% were recorded as directly relating to issues regulated by either the 1994 or the 2008 Directive: **most complaints instead concern issues related to the correct application of other consumer protection instruments.**

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<sup>39</sup>Leisure credit schemes generally last less than 365 days (typically 360 days) with the promise of free or discounted future holiday bookings. They offer a range of services, with accommodation being only one of them (even though sometimes not even mentioned in the written contract).

<sup>40</sup> The UK European Consumer Centre has reported that consumer complaints about leisure credit schemes rose by 140% in the year to the end of March 2013 — 60 complaints against 25 in 2012.

<sup>41</sup> See section 10 of this Report: Enforcement of the Directive, subsection ‘Police investigation and criminal prosecution’.

<sup>42</sup> Directive 2005/29/EC, OJ L 149 of 11 June 2005, p. 22

<sup>43</sup> Directive 93/13/EEC, OJ L 95 of 5 April 1993, p. 29

<sup>44</sup> Directive 2011/83/EU, OJ L 304 of 22 November 2011, p. 64

### **6.1. The Unfair Commercial Practices Directive**

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. The online survey reveals even more striking figures: of respondents who experienced problems, no fewer than 75% or 68.6% respectively felt they had been misled by a long-term holiday product offer or by a timeshare offer. 40% or 54.3% respectively felt they had been pressured into a long-term holiday product transaction, or into a timeshare transaction. The Unfair Commercial Practices Directive applies to all business-to-consumer commercial practices, including those leading to contracts subject to the Timeshare Directive. Due to its principle-based rules banning misleading actions and omissions and aggressive commercial practices, the Unfair Commercial Practices Directive enables the responsible authorities to protect consumers before, during and after a contract is concluded. Pressure selling and resale scams are still frequent in this holiday industry. Public enforcement authorities therefore need to stringently apply the Unfair Commercial Practices Directive in this industry.

### **6.2. The Unfair Contract Terms Directive**

45% of timeshare-related complaints recorded by ECC-Net in 2012-13<sup>45</sup> were linked to contract terms. The Unfair Contract Terms Directive applies to business-to-consumer contracts in general therefore it includes timeshare and holiday contracts. It prevents significant imbalances in the rights and obligations of the parties to the detriment of the consumer by requiring, for example, contract terms, which have not been individually negotiated, to be drafted in plain and intelligible language; ambiguities to be interpreted in favour of consumers; and unfair standard contract terms to be declared not binding on the consumer. The Unfair Contract Terms Directive therefore complements the Timeshare Directive in protecting consumers once the contract has been concluded. Enforcement authorities should make further use of it in post-contract situations (e.g. in cases where maintenance fees are unilaterally increased without any justification or where perpetuity clauses are embedded in contracts). As individual consumers may have difficulties in launching court actions to challenge their contracts under the Unfair Contract Terms Directive, consumer associations could be more active in helping individuals to defend their interests, and could play a more active role, including throughout court proceedings.

### **6.3. The Consumer Rights Directive**

The Consumer Rights Directive 2011/83/EU, applicable as of 13 June 2014, strengthens consumer rights, in particular regarding fully harmonised requirements on pre-contractual information and the right of withdrawal for distance and off-premises contracts. It is worth noting that the Timeshare Directive 2008/122/EC was a precursor of these consumer rights.

The Consumer Rights Directive only covers contracts which are not subject to the Timeshare Directive. Therefore, all emerging holiday products designed to circumvent the Timeshare Directive fall, in principle, under the scope of the Consumer Rights Directive. This covers, for example, contracts of less than one year or contracts that do not involve accommodation. In

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<sup>45</sup> Figure 3.8 of the CSES final report.

these cases, the right to receive pre-contractual information according to the Consumer Rights Directive applies. In addition, the right of withdrawal within 14 days from the conclusion of the contract applies to all contracts concluded outside business premises or by means of distance communication. If the consumer is not properly informed of his right of withdrawal before the conclusion of the contract, the withdrawal period is extended by one year, resulting in a withdrawal period of one year and 14 days.

## 7. RAISING AWARENESS

The online survey has shown that **respondents are generally not sufficiently aware of possible malpractices in the timeshare and holiday club industry.**<sup>46</sup>

Awareness-raising efforts have been undertaken in a number of Member States, even prior to the application of the Timeshare Directive.

In Denmark, a television programme investigating holiday scams was broadcast on one of the main TV channels in autumn 2013. Subsequently the Danish European Consumer Centre received many inquiries from consumers seeking help.

In the UK, a special task force — ‘Action Fraud’ — was set up in order to inform consumers about holiday-related scams and to identify and investigate frauds. The Office of Fair Trading (now the Competition and Markets Authority) has been running campaigns at airports to warn consumers of the risks associated with purchasing timeshares abroad and possible holiday-related scams. Despite these actions, UK consumers are still some of the most frequent victims of fraudulent traders<sup>47</sup>.

In 2014, a joint project was launched, involving several European Consumer Centres, to develop ideas for effective prevention campaigns. It involves the development of tips for consumers and will provide material for an awareness-raising campaign to be broadcast on the internet. The European Consumer Centres will post the tips on their websites and actively promote them.

More awareness-raising activities to improve consumer information would clearly be beneficial. The work of the European Consumer Centres is a step in the right direction.

## 8. INDUSTRY SELF-REGULATION AND CODES OF CONDUCT

### *Codes of conduct*

**Research indicates that both** business and consumer associations are willing to contribute towards a better enforcement of the Timeshare Directive. **Both the Resort Development Organisation and TATOC<sup>48</sup> require their business members to comply with their codes of conduct. They have also taken other measures relating to alternative dispute**

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<sup>46</sup> 33.2% of respondents were not aware at all, and another 35.3% of respondents were not very well aware. Merely 10% of respondents were well aware of malpractices in the timeshare and holiday industry. See table 4.8 of the CSES final report.

<sup>47</sup> ECC-Net data indicate that around half of all complaints between 2007 and 2013 concerning timeshare and related products were made by UK consumers.

<sup>48</sup> TATOC (see footnote 12) provides the possibility for legitimate businesses to become affiliated companies. TATOC has its own code of conduct and alternative dispute resolution mechanism.

**resolution to improve the image of the industry as a whole. These codes provide a framework for self-regulation that could be reinforced through work with public authorities to promote awareness among consumers of their rights and of the dangers posed by rogue traders.**

## **9. ALTERNATIVE AND ONLINE DISPUTE RESOLUTION (ADR AND ODR PLATFORM)**

Across the EU, European Consumer Centres can help consumers in the process of handling a complaint to traders through their dispute resolution mechanism. Article 14 of the Timeshare Directive requests Member States to encourage the setting up of alternative dispute resolution procedures by traders. In relation to timeshare, it is still in its infancy, but it is expected that the Directive on Alternative Dispute Resolution for Consumer Disputes (Directive on consumer ADR), which had to be applied in all Member States from 9 July 2015, will improve the situation. It will ensure that alternative dispute resolution entities and procedures are available to consumers throughout the EU and that consumers are aware of alternative dispute resolution by establishing information obligations for traders.

The EU Regulation on Online Dispute Resolution is also expected to further facilitate the use of such mechanisms both for domestic and cross-border contractual disputes concerning contractual obligations stemming from online sales or services contracts. From 9 January 2016, the Online Dispute Resolution platform will allow consumers to submit these disputes online and will refer them to the quality alternative dispute resolution entities notified to the Commission under the Directive on consumer ADR. Some companies and timeshare owners associations already provide alternative dispute resolution schemes. For example, in 2005 the Resort Development Organisation established its dispute resolution scheme for the timeshare industry. While this is a positive development, these mechanisms remain rather ineffective in relation to fraudulent operators.

## **10. ENFORCEMENT OF THE DIRECTIVE**

### ***Enforcement issues by country of the consumer and trader***

Around half of all complaints between 2007 and 2013 concerning timeshare and related products, registered by the ECC-Net database, were made by UK consumers.<sup>49</sup> The overwhelming majority of consumer complaints registered by ECC-Net were lodged against traders based in Spain.<sup>50</sup>

### ***Available penalties***

Enforcement procedures and penalties vary considerably from one Member State to another. Member States have discretion in how to comply with the Timeshare Directive with regard to

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<sup>49</sup> Almost one in five complaints comes from consumers residing in the Nordic countries (in particular Sweden and Norway). Other concerned consumers come from Germany, Belgium and the Netherlands. See chapter 3.3.2 of the CSES final report.

<sup>50</sup> Over 75 % of all complaints registered between 2007 and 2013 concerned Spanish traders, followed by 10 % of complaints against traders based in Greece and 5 % against those based in Malta.

providing effective enforcement means and imposing effective, proportionate and dissuasive penalties to ensure compliance with its provisions by traders.

Penalties available to enforcement authorities in case of breaches of the Directive vary significantly among the Member States — from administrative fines of EUR 1 500 to fines in excess of EUR 100 000, or fines based on the annual turnover of the trader, e.g. up to 10 %<sup>51</sup>.

### ***Police investigation and criminal prosecution***

In view of the high number of consumer complaints registered by various organisations, the penalties foreseen by national consumer laws do not appear to be efficient enough to discourage fraudulent traders<sup>52</sup>. There is no EU-wide definition of "fraud" as a criminal offence<sup>53</sup>; however, that does not seem to be a problem, as all Member States, under certain circumstances, qualify fraud as a criminal offence in their criminal law; this offence typically covers practices that have the objective of intentionally deceiving consumers and extorting money from them with no intention of providing the service, or providing the product with the characteristics that was promised. There is thus no indication of a need for an EU-wide definition of fraud, but rather there is a need for a more ambitious application of criminal law in that area. Member States therefore should be encouraged to take a more active approach regarding the investigation and prosecution of fraudulent practices.<sup>54</sup>

In some Member States, investigating and prosecuting fraudulent traders involved in consumer scams does not seem to be a priority. When assessing the seriousness of such conduct the whole extent of the crime (including money laundering) and the possible involvement of criminal organizations should also be taken into account.

**Consumer associations and business associations have been very active in assisting law enforcement authorities in investigating and prosecuting fraudulent conduct committed by companies.** As a result of such assistance, some important criminal cases against fraudulent traders could be successfully launched.<sup>55</sup>

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<sup>51</sup> Estonia — the country with the lowest level of penalty — changed its legislation recently. The available penalty is now EUR 9 600 instead of original EUR 640. See chapter 6.3 of the CSES final report

<sup>52</sup> See chapter 4.6 and table 4.9 of the CSES final report: around 60% of surveyed businesses believe that the Directive, despite providing substantial protection to consumers, is not sufficiently effective in relation to rogue traders, who intentionally break consumer laws.

<sup>53</sup> There is an EU-wide definition of fraud in the case of fraud affecting the Union's financial interest, which is now included in the Convention on the protection of the European Communities' financial interests of 26 July 1995. This Convention will be replaced by a Directive on the fight against fraud affecting the Union's financial interests by means of criminal law, which is currently being negotiated in the European Parliament and the Council (see COM(2012) 363 of 11 July 2012).

<sup>54</sup> The effectiveness of such action can be demonstrated by one example: a significant drop in the number of complaints registered by the Swedish Consumer Centre was recorded in 2013. This drop coincided with two major police operations in 2013 undertaken against rogue traders in the holiday sector in Spain (the main holiday destination of Swedish consumers). As a result, 18 companies were closed down in Spain.

<sup>55</sup> Mindtimeshare, a registered association in Spain that represents the interests of European timeshare owners who have been victims of fraud, has been very active in assisting public authorities in taking action against unscrupulous companies. As a result, 18 companies based in Spain were closed down in 2013. In France, the consumer association APAF-VTP is very active and contributed to the conviction of fraudulent traders, e.g. the

The cross-border dimension of such fraudulent practices and 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. Existing EU instruments for cooperation in criminal matters provide a comprehensive legal framework for this purpose. The [Directive 2014/41/EU](#) regarding the **European Investigation Order** in criminal matters will make it easier for judicial authorities to collect evidence from another EU Member State during any investigation.<sup>56</sup> The investigative measures covered by this Directive include, for example, interviewing witnesses, obtaining information or evidence already in the possession of the executing authority, and (with additional safeguards) interception of telecommunications and information on — and monitoring of — bank accounts. As regards the prosecution stage, the **European Arrest Warrant** (established by Council Framework Decision [2002/584/JHA](#)) is a very effective tool for seeking the arrest and subsequent surrender of a requested person for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

### *Credit or debit card chargeback as remedy*

Chargeback possibilities offered by providers of payment means have been identified as one of the most effective short-term ways of obtaining redress when the Timeshare Directive 2008/122/EC has been breached. It is a process that allows consumers to ask their credit or debit card provider to reverse a card transaction if there is a problem with the good or service purchased, especially if an illegal activity can be proven. Study has shown that it has been successfully used to ensure redress for consumers who were asked to make an advance payment and subsequently were refused to exercise their right of withdrawal. Directive 2007/64/EC on payment services in the internal market (PSD)<sup>57</sup> and Directive 2008/48/EC on credit agreements for consumers (CCD)<sup>58</sup> form the main legal bases of requesting a chargeback. With regard to chargeback for the non-conformity of goods or services, Article 15<sup>59</sup> of Directive 2008/48/EC applies, which covers credit card chargeback. Purchases where debit cards are used can, nevertheless, be covered by national law<sup>60</sup> or by the operating rules of card companies. National consumer protection authorities and European Consumer Centres

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Hakim Bourri case, 9 January 2014 and the Christine Dricot case, 24 January 2014 (CSES final report, chapter 6.5, page 83).

<sup>56</sup> This Directive has to be transposed by Member States by 22 May 2017.

<sup>57</sup> Directive 2007/64/EC provides a legal basis for chargeback for non-authorized use of cards

<sup>58</sup> Directive 2008/48/EC provides a legal basis for chargeback for non-conformity of goods or services.

<sup>59</sup> *Article 15 – 1. Where the consumer has exercised a right of withdrawal, based on Community law, concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.*

*2. Where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor if the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services. Member States shall determine to what extent and under what conditions those remedies shall be exercisable.*

<sup>60</sup> For example, in Denmark or Portugal

should, where appropriate, systematically advise consumers to ask banks for a chargeback, and as swiftly as possible since deadlines may apply.<sup>61</sup>

## 11. CONCLUSIONS

Based on the above findings, the Commission draws the following conclusions concerning the application 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 nonetheless be given to legal constructions and practices aimed at circumventing the Directive. **The Consumer Rights Directive, the Unfair Contract Terms Directive and the Unfair Commercial Practices Directive can all help to address such circumventions.** The revised guidance for the Unfair Commercial Practices Directive will, amongst other things, address the interaction between it and the Timeshare Directive<sup>62</sup>.
- **At this stage, there seems to be no need to modify either the scope or the provisions of the Directive.**
- In order to render the Directive more effective, **there is a need to encourage national enforcement authorities to 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 a 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. In this respect, the European Consumer Centres

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<sup>61</sup> See a detailed ECC-Net report on chargeback in the EU/EEA:  
[http://ec.europa.eu/consumers/ecc/docs/chargeback\\_report\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/chargeback_report_en.pdf).

<sup>62</sup> The revised UCPD guidance document will be published before summer 2016 and will be available on [http://ec.europa.eu/consumers/consumer\\_rights/unfair-trade/unfair-practices/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm)



have prepared a dedicated section on their websites with tips for consumers that will be launched soon<sup>63</sup>.

- **More comprehensive strategies of national consumer protection authorities could raise consumer awareness so as to ensure that their own citizens are more informed about potential scams.** Prevention is the most effective way of protecting consumers. Research shows that **legitimate businesses actively work on their reputation and want to be seen as being compliant with the EU regulatory regime.** Associations representing these businesses and their clients draft codes of conduct, set up alternative dispute resolution mechanisms and cooperate with enforcement authorities when detecting fraudulent traders in this holiday sector.
- The Commission has taken the necessary actions under Article 258 of the Treaty on the Functioning of the European Union in cases where a Member State failed to comply with its transposition obligations. The Commission will also exercise its powers under this article 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.
- The Commission will further encourage Member States, where appropriate, to step up their enforcement actions, including via the Consumer Protection Cooperation network,<sup>64</sup> and ensure the Directive's provisions are complied with in all Member States. Consideration will be given to further steps, such as targeted workshops with key stakeholders. If deemed appropriate in light of the amount and impact of activities that are undertaken at national level in response to this report, an additional evaluation on the overall state of application of the Directive could be issued in three years' time.

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<sup>63</sup> See Chapter 7 of this Report dedicated to Awareness Raising

<sup>64</sup> Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ 2004 L 364, p. 1).