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Accompanying document to 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**

Draft IMPACT ASSESSMENT on the Revision of the Timeshare Directive (94/47/EC)

SUMMARY OF THE IMPACT ASSESSMENT

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1. INTRODUCTION

Timeshare is the right to spend a period of time (e.g. one week or more) in a holiday property for a specified or specifiable period of the year for three years or longer. The Timeshare Directive (94/47/EC) (the Directive) provides for the protection of consumers in respect of, among others, the pre-contractual information consumers receive, their right to withdraw from the contract within a minimum period of 10 days, the ban on advance payments during this period, and the language of the contract.

A wide public consultation was launched in early 2006, with two questionnaires eliciting stakeholders' views, and a Consultation Paper setting out the main issue areas for the review. The consultation culminated in a broad stakeholders workshop held in July 2006.

The impact assessment accompanying the proposal for a new directive in this sector combines the outcomes of the consultation process on specific issues, around the three more likely policy options. An impact analysis of each option, and each policy action under each option, is included. In order to facilitate the overall exercise examining risks and benefits involved, an analytical approach has been adopted. The impact assessment includes, therefore, tables summarising in few sentences the main consequences of the possible combinations of the measures under consideration.

2. PROBLEM DEFINITION

Since the adoption of the Directive in 1994, there have been major developments in the marketplace, including the appearance of new products which circumvent the coverage of timeshare legislation. These products are similarly marketed and economically broadly similar to timeshare, in the sense that there is a substantial payment upfront, followed by payments linked to the later actual use of holiday accommodation (on its own or in combination with travel). The evasion of regulation by these products has created substantial problems for consumers and legitimate businesses, as evidenced by the number of complaints submitted to European Consumer Centres, consumer organisations and other public authorities.

From an economic viewpoint, timeshare and timeshare-like products can be described as the combination of a repeated property lease and a service (e.g. maintenance of the property). The contracts normally provide for repeated stays in holiday accommodation. The degree to which the place of accommodation or the period of use is specified varies. Discount holiday clubs may also cover transportation, and transport may also be part of the services offered in exchange.

The contracts give rise to substantial financial commitments for consumers, with a global initial payment followed by annual payments (whose size depends on the type of accommodation offered, the season, and modalities of the service) for the duration of the contract. For long-term holiday products, such as holiday discount clubs, the entry fee may be lower than the price to be paid for timeshare or timeshare-like products, but the payments to be made for each of the actual stays may be higher than the annual management fee paid by timeshare owners.

If the consumer joins an exchange scheme, this entails costs in the form of annual membership fees and/or a separate fee related to each exchange undertaken.

Contracts for resale normally involve a one-off fee covering for instance marketing costs and administrative costs for the resale, which the consumer must often pay upfront.

The transactions outlined above frequently involve several actors (see Annex II of the Impact Assessment), e.g. the developer of a timeshare resort, the company marketing the products, the trustee owning the resort and a management company managing the resort. Exchange of timeshare weeks is managed by an exchange company, and the possibility for exchange requires a membership in the exchange club, which is often marketed and sold in connection with the sale of the timeshare. If the consumer wishes to sell his timeshare, a contract for resale may be concluded with a resale agent, whereas the sales contract itself is concluded between the consumer selling and another consumer.

Timeshare, timeshare-like products and long-term holiday product contracts are typically of a cross-border nature, since the marketing and/or conclusion of the contract often takes place in a country other than the consumer's home country, or in a country other than that where the property is located. For resale, the consumer may be contacted in his home country by a resale agent from a second country, whereas the resort to which the timeshare to be sold is linked, may be located in a third country. Exchange schemes offer accommodation worldwide, and hence involve companies, properties and services in many different countries.

In general, contracts are legally complex. From consumer complaints, it seems that the division of responsibility between different parties is not always clear for the buyer; a typical example being that services promised in sales presentations are not always available. In many cases, the response from the resort or the management company is that there is no link between the two companies and no responsibility on their part for promises given in the sales presentation. This may be correct, but complaints data show that this is not always understood by the consumer who perceives the sales person as representing the resort.

3. POLICY OPTIONS

The impact assessment focused on and analysed the impacts of three main policy options:

1. No Action
2. A vertical revision of the Directive (with various suboptions)
3. Non-legislative action (with 3 suboptions)

4. EXPECTED IMPACTS

The results of the analysis indicate that the status-quo option (Option 1) would have negative consequences on the majority of stakeholders, and that few stakeholders would benefit from the maintaining of the Directive as it is. The same applies for the non-legislative option (Option 3), which would leave most of the problematic issues identified in the revision process unresolved.

The impact analysis of the option to vertically revise the Directive (Option 2), on the other hand, suggests that this option would ensure improved market outcomes for the majority of stakeholders involved. Its main expected impacts are the following:

4.1. Economic Impacts

4.1.1. *Impacts on Consumers*

Consumers to be afforded rights and protection when purchasing these products.

- Likely to boost consumer confidence, since the consumers purchasing these products will now be protected with a cooling off period, and other rights.
- Consumers less likely to be exposed to rogue operators and fraud, since regulatory coverage is likely to squeeze such elements out of the market.
- Enhanced protection for consumers, since they will now be presented with improved information pertaining to their contract.
- Clearer and more transparent rights for consumers across the EU.

4.1.2. *Impacts on Businesses*

- Consistency of cooling-off periods across the EU will result in increased legal certainty.
- Reduced costs of legal advice.
- Cross-border transactions can be conducted with greater ease due to the removal of fragmentation across borders relating to divergent cooling-off periods.
- Improved product image and enhanced consumer confidence likely to boost industry sales.
- Updated language requirements simplify the contractual obligations of businesses towards the consumer.
- Regulatory coverage of these products likely to squeeze rogue traders out of the market.

- Unfair competition for legitimate timeshare businesses removed, due to the fact that operators of the new products will now have to also comply with regulation.
- SMEs likely to benefit as much as larger operators from the overall improvements in the functioning of the market.
- Unlikely to cause excessive administrative costs. Market evidence suggests that serious and legitimate firms already ensure that information is provided in a structured and transparent manner, often going beyond the requirements of the Directive. Estimates of The additional administrative cost involved with the preferred policy option (Option 2) amounts to €202,541, compared to costs of €279,794 imposed by the current Directive.

4.1.3. *Impacts on Investment Flows and Competitiveness*

- To the extent that regulation of these products is expected to improve the market situation, the EU will become a more attractive location for investment funds, both for European and international firms. This is evidenced by the increases observed in recent years in timeshare-related investment, particularly in the USA, Middle East and Asia.

4.2. **Social Impacts**

- Higher demand for labour and consequent job creation in regions catering to the timeshare industry, as the timeshare market develops.
- Diversification of human resources towards the tourism industry, and creation of demand for different skills, geared towards the tourism sector.
- Lower incidence of consumer detriment in the timeshare market as the revised legislation reduces the scope for criminal/rogue activity in the sector.

4.3. **Environmental Impacts**

- Assuming that the improved regulatory environment in the timeshare industry fosters the conditions for an expansion of the timeshare market (mostly by virtue of the economic arguments outlined above), one should logically expect an expansion of existing timeshare resorts, and the appearance of new ones, in order to cater for consumer demand. This could possibly have some environmental impacts. However, expert opinions suggest that timeshare development conforms to stringent environmental standards, as set in European and national legislation.
- The proposal for a revised Directive is not expected, therefore, to have negative environmental impacts.

5. COMPARISON OF POLICY OPTIONS

Policy Option		Objective	Option 1: No Action	Option 2: Vertical revision of 94/47/EC	Option 3: Non-Legislative Action
GENERAL OBJECTIVES	<p>Enhance consumer and business confidence in the internal market through a high common level of consumer protection, the elimination of internal market barriers and regulatory simplification through the application of the principles of better regulation.</p>	<p>No progress towards this objective, as consumers would still suffer not be protected in their purchases of products outside the coverage of the Directive; business would still suffer unfair competition from rogue traders; and the internal market would remain fragmented through the persistence of divergent national rules (e.g. cooling off period)</p>	<p>Consumer confidence likely to be enhanced by extending consumer protection provisions to new products; businesses would benefit from the elimination of unfair competition, whilst not suffering disproportionate regulatory or administrative costs from the proposed regulation; an internal market barrier would be removed by adopting a fully harmonised cooling-off period of 14 days across the EU. Simplification achieved through lighter language requirements and a clarified and updated list of pre-contractual information/contract requirements. Better enforcement of legislation achieved through the inclusion of relevant provisions in the new directive.</p>	<p>Self-regulation in the industry has proven to have some effect in reining in some business practices, but cannot address regulatory lacunae; the same would apply to the possibility of better enforcing existing consumer protection legislation; consumer information campaigns could possibly have positive effects, but cannot be expected to improve consumer confidence nor would they address the problem of lack of regulation of the products that appeared after the adoption of the Directive.</p>	
	<p>1. Extending the protection that consumers enjoy when purchasing timeshare, to timeshare-like, and other long-term holiday products, as well as resale and exchange schemes.</p>	<p>No progress towards this objective.</p>	<p>Option 2, involving the extension of the coverage of the legislation to these products, is the only one of the three options examined that can achieve this objective.</p>	<p>Better enforcement of existing legislation could eliminate some fraudulent activity; self-regulation might also achieve some results; consumers, however, would still be afforded no legal protection in their purchases of these products.</p>	

	3. Harmonizing fully the consumer protection provisions pertaining to timeshare, timeshare-like, discount holiday club, resale and exchange contracts throughout the EU (as for instance, the information requirements), where appropriate.	No progress towards this objective, at this stage.	Option 2 includes fully harmonised information requirements for consumers, removing fragmentation between Member States, reducing costs of legal advice, and enhancing legal certainty.	No progress towards this objective.
OPERATIONAL OBJECTIVES	1. Enabling legitimate timeshare businesses to flourish across the EU by protecting them from unfair competition, and removing barriers to cross-border trade.	No progress towards this objective.	Option 2 achieves some progress in removing barriers to cross-border trade; more importantly, it is expected to lead to much improved outcomes for business since they will no longer be facing unfair competition from traders who are not subjected to regulation. This can be achieved without expecting high regulatory or administrative costs.	No progress towards this objective.
	2. Ensuring effective enforcement	No progress towards this objective.	Option 2 achieves this objective since the draft proposal contains specific provisions relating to enforcement of the legislation by Member States.	Option 3 could achieve some progress towards this particular objective, but would leave all other identified problems unaddressed.
	3. Enabling consumers to make informed choices	No progress towards this objective.	Option 2 achieves this objective by including a clarified and updated list of information requirements to be provided to consumers.	Option 3 could achieve some considerable progress towards this particular objective, but would leave all other identified problems unaddressed.

6. ADMINISTRATIVE COSTS

In accordance with the Commission guidelines, this impact assessment examined closely the administrative costs imposed by the three policy options under consideration.

Compared to the level of administrative costs in the current Directive (EUR279,794), the net additional costs imposed by the Commission proposal for a revised directive amount to **EUR202,541**.

This figure is deemed to be very low at European level, compared to the benefits that this regulatory option entails. In terms of costs on businesses, these measures are not deemed to be excessively onerous or disproportionate to the magnitude of the problem.

For more details on these estimates, and the methodology used to obtain them, please refer to Annex I of the Impact Assessment.

7. CONCLUSION

Option 2 presents the most favourable ratio of advantages to disadvantages, and is hence proposed as the optimal solution for the revision of the Directive.

Without imposing excessively onerous obligations on businesses, Option 2 extends the consumer protection provisions of the Directive into the new and problematic product-areas, including discount holiday clubs, timeshare-like products, resale and exchange. Under this proposal, consumers are to be granted legal rights (such as a withdrawal period) and protection in their purchases of these products, something which is likely to boost consumer confidence. Confidence in the market is also likely to be enhanced by the pressure that will be put on rogue operators to either operate within the margins of legality, or face legal sanctions. Moreover, the fully harmonised withdrawal period of 14 days will provide certainty to consumers, and a simpler legal environment for businesses to operate in.

For businesses, the new directive will create a more level playing field. Whereas timeshare operators are currently obliged to comply with the provisions of the Directive, businesses selling other long-term holiday products such as discount holiday clubs operate in the same sector, target the same consumers, and offer products which could be seen as alternatives to timeshare, yet are not subjected to the obligations of the Directive. The decline in the European timeshare industry in recent years, could, at least partly, be attributed to this factor. The new directive aims at correcting this situation, by tackling unfair competition and squeezing rogue elements out of the market. These objectives are expected to be achieved without the imposition of significant or disproportionate administrative costs, as would be the case if, for instance, professional licensing requirements were introduced.