

TIMESHARE

Help and advice
for consumers
in Europe



The ECC-Net Report



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THE EUROPEAN CONSUMER CENTRES NETWORK

The ECC-Net is a European network consisting of 30 European Consumer Centres (ECCs) in all 28 Member States, Iceland and Norway. These are working together to provide consumers with information on cross-border purchases and help ensuring that consumers are aware of their rights. It also provides information on both EU and national rules and opportunities offered by the Single Market. ECCs also assist consumers in resolution of cross-border consumer complaints.

It was launched in 2005, as a result of merger of two pre-existing networks (Euroguichets and Clearing Houses). ECC-Net is co-financed by the European Commission, the EU Members States, Iceland and Norway.

Since the network exists, ECCs had over 650.000 contacts from consumers and the numbers have grown steadily. If a consumer has a specific complaint about a trader, the Centres' legal experts provide tailor-made advice, that in itself may be enough for them to reach a solution. If it is not, the ECCs may get more directly involved, either by contacting the trader or asking the ECC in the country where the trader is based to do so. ECCs have helped out this way in more than 300.000 cases in the last 10 years. In 2014, they dealt with more than 37.000 complaints.

ECCs also reach out to consumers at events and publications. The consumers are also increasingly able to find the detailed information they need on the Centres' websites. ECC-Net members also cooperate in the so-called joint projects. These are aimed at investigating specific sectors, where the consumer experience particular difficulties.

The ECC-Net, on the basis of its practical experience of dealing with consumers every day, also provides highly significant input for consumer policy makers at national and EU level.

A section in the website of the European Commission / DG Justice and Consumers (DG JUST) is dedicated to ECC-Net:
http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm

OBJECTIVE OF THE JOINT PROJECT

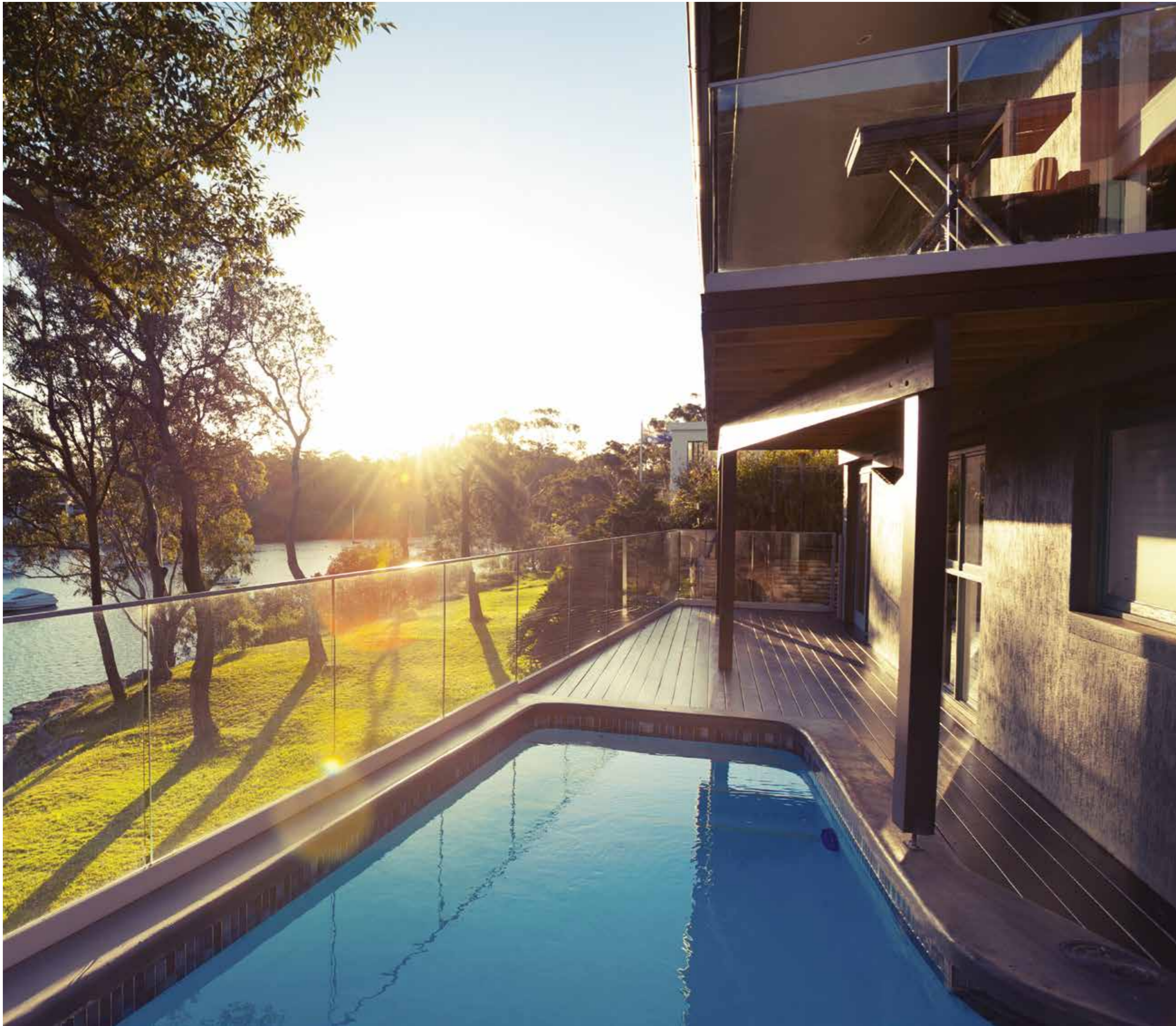
This report is the outcome of the ECC-Net Joint Project on timeshare and related products. The project has been ongoing in 2014 and 2015.

Directive 2008/122/EC of the European Parliament and the Council of 14 January 2009 on protection of consumers in respect of certain aspects of timeshare, long term holiday products, resale and exchange contracts, regulates and has established higher protection regarding these types of contracts.

Nevertheless, there has been an increase in types of products and commercial techniques since the adoption of the Directive. This has made it necessary to evaluate these changes in this market sectors in the last seven years.

Spain is the country with the highest numbers of complaints received from consumers against traders working in this sector. ECC Spain considered it necessary to lead the study to increase the awareness of these problems amongst the consumers, public authorities and other stakeholders. The other ECCs participating in the project were Denmark, Portugal, Malta, United Kingdom, Germany, The Netherlands, Norway and Sweden.

The great diversity of contracts, lack of consumer knowledge, aggressive sales techniques, etc, make it necessary to increase awareness of consumers. The consumers should be aware of their rights or where they should seek advice and assistance.



Timeshare other long-term holiday product contracts are typically of a cross-border nature, since the marketing and/or conclusion of the contract often take place in a country other than that of consumer's residence. For resale, the consumer may be contacted in his home country by a resale agent from another country. Exchange schemes offer accommodation worldwide and thus may involve companies, properties and services in many different countries.

In general, such contracts are legally complex. From consumer complaints, it seems that the division of responsibility between different parties is not always clear to the consumers. One of such examples is the services promised during presentation not being available. In many such cases, the response from the actual service provider stated that they could not be held responsible for such promises, as there was no direct link between them and the marketer. This may be legally correct, but complaints data shows that it is not always understood by the consumer, who perceives the sales person as a representative of the resort.

We will try to present in this report the main contracts regulated by the Directive, together with emerging products and sales techniques. In the second part of this report, we will try to highlight the main issues the consumers should consider before signing the contract, as well as what to do once they had already signed one.

Common contracts

*Timeshare - Holiday Clubs - Leisure credits
Bonus weeks and vouchers - Fractional ownership*

Timeshare

The nature of these agreements is usually for the consumers to purchase the right to use accommodation at a particular holiday resort (or resorts) or at other types of accommodation. These can be purchased on a 'fixed' (accommodation during a specified unchanged period during the year) or 'floating' (weeks can be booked within the time of the year specified, subject to availability of units for the particular week) basis. The latter are often divided into categories based on how attractive a particular period of the year is (i.e. more expensive in the summer months, etc.).

Timeshare agreements are covered by Directive 2008/122/EC as transposed into the national laws of the Member States. This means that timeshare sales process and contractual documents are regulated to a significant extent. Directive 2008/122/EC regulates strict rules regarding pre-contractual and contractual information that the trader has to provide, the right for the consumer to cancel the contract within 14 days and a ban on advance payments during the cancellation period.

As much as timeshare ownership may indeed offer quality service for the money paid to the company, it needs to be stressed that such contracts are often signed for long periods of time (sometimes decades rather than years). This may become an excessive financial burden for the consumer after many years.

Another potential issue is that currently there is no outright legal provision allowing timeshare customers to ask the companies to terminate the agreement before the end of its duration. This means that it is completely voluntary for the companies to offer a possibility for the consumer to terminate the contract before the end of its duration. Effectively, it may be difficult to get out of such an agreement, with or without the need to compensate the trader for the lost profits. As regards long-term holiday products the termination of these contracts is possible and is regulated by Directive 2008/122/EC.

Holiday Clubs

The idea behind this type of product is to offer the paying customers the facility to make various holiday-related bookings (accommodation, flights, etc.) with significant discounts when compared against the high street prices. The consumers are normally asked to pay a considerable joining fee which is to be offset through obtaining the said discounts on future bookings. Some holiday clubs limit the number of bookings that can be made annually, some don't impose such limits.

If the duration of such an agreement exceeds one year, it would normally be covered by Directive 2008/122/EC as transposed into the national laws of the Member States. Amongst others, this means the obligation to offer cancellation rights of at least 14 days and providing notice of these rights. Traders' failure to do this means the cancellation rights being significantly extended.

The problems with this sort of agreements normally stem from the traders' inability to deliver on the promises made by the sales representatives or even reflected within the paperwork. Based on the complaints received by the European Consumer Centre Network (ECC-Net) offices, the customers don't enjoy discounts at the rates initially promised as well as they are unable to make bookings within the periods of their choice. The traders offering discount holiday clubs services tend to accommodate their customers' requests 'subject to availability', which they use as a get-out clause when they are not able to provide the promised discounts or even any accommodation, etc. on the dates requested.

In cases where the discounted services cannot be offered, some holiday clubs simply offer to make the bookings at high street prices (often with their booking fees on top). It needs to be stressed that it defeats the object of joining such a scheme at a significant cost as well as paying the annual membership fees in the first place.

Another potential issue is that these contracts may be signed for a significant period of time and the consumers may be expected to pay the membership fees regardless of whether the service is used or not. This is merely on the basis of the services being available for the consumers to use.

Leisure credits

The nature of these contracts is for the consumers to purchase holiday points/credits which can later on be 'spent' on obtaining discounts on various activities, including concert tickets, sporting events as well as certain holiday-related services. This may or may not include accommodation, depending on the particular scheme. The duration of the agreement can either be specified in the agreement or it may simply run for as long as there are credits in the consumer's account. Bookings made using the credits usually entail the additional booking fee.

The traders selling leisure credits do not normally consider it as a 'long term holiday product' and hence they do not offer 14 days cancellation right, during which the ban on advance payments applies. The Joint Project working group has heard contradicting opinions regarding whether this particular type of agreement is covered by Directive 2008/122/EC. The crux of the argument is normally the services the credits can be spent on. Unfortunately, ECC-Net is not aware of any case law on the subject matter. For this reason, it is currently not possible to offer a definitive answer in this regard.

The most of complaints received by the ECC-Net were based on the dispute regarding the applicability of the long term holiday product legislation to these agreements. In some cases, the consumers also complained about the trader not being able to deliver on the promises made in the course of presentations or even what was in the contract. The consumers should be particularly aware of



phrases making the discounts subject to availability as well as discounts 'up to X%'. The consumers need to appreciate that logically speaking, a discount of 1% or less may well be within the 'up to' range stated. If the contract is worded in a manner which does not offer any solid guarantees for discounts in the first place (i.e. 'subject to availability'), even no discount at all would be still considered as being within the promised 'up to' area.

Bonus weeks and vouchers

This particular type of product is commonly a number of holiday weeks sold to consumers at discounted prices which are to be used within a period of time. The idea behind these is to offer consumers discounted accommodation usually at upmarket resorts where they are expected to attend a sales presentation usually held by a marketing company selling holiday products (timeshares, etc.).

From the ECC-Net experience, this sort of product is sold either at holiday resorts or by making unsolicited phone calls to consumers. In the latter cases, the traders usually include clauses in their terms and conditions advising that such agreements are exempt from the obligation to offer cancellation rights, based on the nature of the agreement being provision of accommodation on a specific date or within a specific period. It is our belief that since these agreements are usually to provide a number



of weeks within the period of a few years, these should be subject to the rules on timeshare and long-term holiday products including the right of withdrawal and the ban on advance payments". This being said, we are not aware of any case law on this.

Holiday products contracts, which do not fall under the rules regulating timeshare and long-term holiday products (for example contracts of less than one year or contracts that do not involve accommodation) in principle, fall under the scope of the Consumer Rights Directive (CRD 2011/83/EU). If such contracts were concluded on the phone or outside business premises, the consumer has the right to receive pre-contractual information and he has the right to withdraw from the contract within 14 days from its conclusion. If the consumer has not been 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. The trader providing the information required within this period would limit this period to 14 days starting on the day after this is provided.

Based on the complaints reported to the ECC-Net by consumers who paid for this sort of service, we can conclude that the biggest issue with this is that the representatives may give misleading information about the product (they are too optimistic as far as the availability of the weeks and the holiday

location is concerned etc.). Another issue is that due to the nature of the product and its purpose, it is supposedly meant to be aimed at a certain age group with sufficient minimum income. ECC-Net finds that the representatives tend to ignore the fact that the product is almost completely worthless to persons over a certain age and below a certain income threshold and proceed to take payments to get consumers into contracts regardless. The clients only realize that the product is not suitable for them once they get to read the paperwork provided, but the traders tend to stick to their position that no false claims were made and that the agreements are non-cancellable.

Fractional ownership

Usually, this kind of agreement is effectively a purchase of an actual part (a 'fraction') of a particular holiday resort itself rather than just rights to use an apartment within a particular period during the year like it is in case with timeshare contracts. These two types of agreements tend to be mistaken one for another which may lead to the consumers being tied to an agreement which is not regulated by the timeshare and long term holiday product-related legislation.

Some companies selling the fractional ownership do indeed offer the cancellation rights to their customers, but it needs to be stressed that there is no legal requirement to do so. Failure to offer cancellation rights does not entail the sanctions and contractual implications applicable under Directive 2008/122/EC and national laws implemented by the Member States pursuant to it.

ECC-Net would like to emphasize that the fractional ownership purchases are not deemed to be consumer contracts but equivalent to agreements to buy a property (i.e. real estate). Whilst we are happy to offer limited advice regarding these contracts, we are not in position to offer mediation assistance and it is recommended for the consumers to seek advice from a solicitor.

EXCHANGE AND RESALE CONTRACTS

The idea behind this type of product is for the consumers to allow the scheme operators to use the timeshare weeks owned in exchange for points that can be redeemed for booking accommodation and other services worldwide. This is often referred to as 'banking weeks'.



Exchange contracts

The consumers normally should be able choose whether or not to 'bank' their week in any particular year, however, there may still be an annual membership fee to be paid. This is regardless of whether the system is used or not. It is advisable to thoroughly read through the terms and conditions of the agreement, focusing in particular on duration of the contract and whether the annual fees are payable in any case.

Exchange contracts are covered by Directive 2008/122/EC and unlike the timeshare and long term holiday product there is no minimum duration requirement. Traders selling exchange contracts should observe all the requirements applicable to agreements included in the Directive. This means they should offer consumers cancellation rights, not take any advance payments within the cancellation period, etc.

Resale contracts

This is a service which probably needed the largest dose of regulation, considering the exploits of less than honest traders in the last few years. At one point before the new laws were introduced, holiday product resale complaints constituted a huge percentage of the overall number of cases received by the ECC-Net.

In most cases, the scenario was that of the consumers owning a holiday product of sorts being cold-called by a trader offering them assistance with selling of the said product for a fee. The consumers would normally be told that the trader already had a readily available buyer and that the process would take just a few weeks to complete. At that point, the consumers were asked to pay a refundable deposit. From that point onwards, the 'trader' would simply disappear or contact the consumer and offer to 'sell' the membership to a corporate partner of theirs.



*At one point before the **new laws** were introduced, holiday product resale complaints constituted a huge percentage of the overall number of cases received by the **ECC-Net**.*

The latter would usually result in the consumer paying more money to join another holiday scheme (holiday club, etc.) where the deposit initially paid as well as the promised resale value would be 'discounted' from the purchase price of the new product.

The problem with the latter scenario is that the consumers CAN NOT be released from the pre-existing contract without the other company agreeing to this. This sort of arrangement would not resolve any of consumers' problems with the existing membership and result in them being tied into two contracts, possibly needing to pay membership fees in respect of the latter as well.

The new legislation has introduced a ban on taking advance payments before the proposed resale is complete and also made it obligatory for the traders to offer unconditional cancellation rights of 14 days. The law in some countries (like the UK) states that failing to observe these requirements arguably makes the agreement null and void outright.

It needs to be stressed that in the current market condition, reselling of an existing membership is extremely difficult. For this reason, it needs to be appreciated that anyone claiming to have a readily available buyer for a particular holiday product is highly unlikely to be telling the truth.

EMERGING ISSUES

Cashback

Not really a holiday products as such, however ECC-Net has found that these were widely used by the marketing companies as an enticement to join holiday clubs, etc.

The idea behind this is for the consumers to receive a cashback certificate with a face value equivalent or close to the purchase price of the holiday product (e.g. a holiday club membership) on offer. Unscrupulous representatives tend to portray this as a way of getting the entire sum paid for the product repaid to their clients in a few years' time.

The reality of the situation, however, is that these effectively are separate agreements governed by their own set of Terms and Conditions. The latter often include the minimum and the maximum proportion of the face value that can be paid out to consumers in case of their claim being successful. In some cases, the minimum proportion can be set as low as five or ten percent and it needs to be appreciated that payment of such proportion can be argued as the agreement being fulfilled in accordance with its Terms and Conditions.

Terms and Conditions also tend to make the claiming process fairly complicated and there is usually a very small opportunity to send the documents to the cashback scheme operator. The ECC-Net has found that ANY deviation from the process set by Terms and Conditions would normally result in the claim being dismissed. Most cashback schemes are deliberately designed to make it almost impossible to recoup the value of the certificate.

Another potential scenario is that the cashback company may cease trading before the bulk of claims is matured in accordance with Terms and Conditions. This usually results in the consumers needing to make claims through the companies' liquidators, which often means that they will only be able to claim a proportion of the amount due to the consumers, if anything at all.

Most cashback schemes are deliberately designed to make it almost impossible to recoup the value of the certificate.

It needs to be emphasized that cashbacks DO NOT constitute a part of the holiday product contracts and they are provided by third parties. Hence it may not be possible to make claims against third parties like banks or credit card companies in this respect.

Agreements for one year or less

These contracts are usually for provision of widely understood holiday product-like services, e.g. timeshare and holiday club services, etc. for the period of twelve months or less. Such duration of the agreement means that it is not covered by the Directive 2008/122/EC. As a result, the consumers are NOT entitled to expect the traders to offer cancellation rights or observe any other requirements existing under the said laws.



The difficulty in such situations is that the consumers may not be aware of what the minimum duration for an agreement to be covered by the relevant legislation is. This is what the ECC-Net can gather from the complaints registered and discussed with the consumers over the course of the last few years. This leaves them with very little argument to make if they wish to cancel the agreement for full refund, with the misrepresentation (if any) being the most likely angle of making the dispute. This is obviously fairly difficult to argue if there is no tangible evidence to back up such allegations.

The consumers can also try arguing breach of contract if the service is not provided in accordance with the written agreement. These contracts, however, tend to include the 'subject to availability' clauses which may weaken this argument to an extent.

The ECC-Net came across complaints regarding mis-selling of such contracts. The claims included the representatives portraying the duration of the agreements as longer than twelve months, based on the period of validity of additional services provided at no extra charge as an enticement to join the scheme (freebies). The consumers need to consider whether the latter are stated as an integral part of the agreement where the payment is made. The consumers also need to take time to study the paperwork to see what is it exactly they are expected to make payments for and how long the duration of the availability of the actual chargeable service is.

The ECC-Net has found that such agreements were designed to circumvent the legal requirements of Directive 2008/122/EC and to be able to sell non-cancellable products.

We have also received a number of complaints where the marketers would sell more than one agreement to the consumers where one of them was a regulated agreement and the other one was not by the virtue of its duration being twelve months or less. The consumers should be alerted if the traders ask for a payment on the day of the signature of the agreement. It is recommended to check the duration of the agreement. “

Holiday products contracts, which do not fall under the rules regulating timeshare and long-term holiday products (for example contracts of less than one year or contracts that do not involve accommodation) in principle, fall under the scope of the Consumer Rights Directive (CRD 2011/83/EU). If such contracts were concluded on the phone or outside business premises, the consumer has the right to receive pre-contractual information and he/she has the right to withdraw from the contract within 14 days from its conclusion.

If the consumer has not been 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.



Other products

The implementation of changes to national laws pursuant to Directive 2008/122/EC has triggered businesses devising various products aimed at circumventing the legislation with all its requirements including pre-contractual and contractual information requirements, the right of withdrawal, the ban on advance payments, etc.

The ECC-Net is finding that such businesses tend to circumvent the definition of long term holiday product as they devise their product in a manner that does not tick all the boxes within it. In some cases, it is merely a matter of making the duration of the agreement twelve months or less.

Another practice used by companies is to sell tangible goods such as software CDs, whereas the service itself is meant to be provided for a number of years at no further charge to the consumers. The difficulty in this situation is that purchases of software and recording media are generally non-cancellable once the packaging is unsealed. This is caused mostly by the potential copyright issues. At this point, it is difficult to give a definitive answer as to whether this kind of product would fall under Directive 2008/122/EC as we are not aware of any case law regarding this. However, if these contracts didn't fall under Directive 2008/122/EC they would fall under the Consumer Rights Directive (2011/83/EC - CRD). According to the CRD if tangible goods are sold off-premises or on distance, the consumer has a right to withdraw from this contract within 14 days from the day of delivery of the goods if the goods are returned unsealed. The consumer has to be properly informed about the fact that he will lose the right of withdrawal if he/she opens the sealed software CD.

CONSUMER *Credit Contracts*

These are basically finance (i.e. loan) agreements taken out to pay for the purchase of holiday products. This is not uncommon, as the amounts the consumers need to pay to purchase holiday products can be higher than what the buyers have readily available to spend. This is meant to allow the consumers to spread such a significant financial outlay across a number of years.

The situation with these depends on variety of factors, two most significant ones are whether the financed product itself is amongst those regulated by Directive 2008/122/EC and if the credit agreement is arranged specifically to pay for the purchase (the finance agreement document should reflect this). If the answer to these two questions is 'yes', then the consumers should expect that if they cancel the agreement within the cancellation period of 14 days, the credit agreement should be automatically cancelled as well.

The situation can be more complicated where the consumers take out finance for purchase a non-regulated product and/or if the finance agreement is a basic commercial loan with no clear association with the product sold. Consumers need to bear in mind that in such situations they may find it difficult to cancel the loan agreement, unless the bank offers any specific provisions in their contract to do so. In addition to this, once the trader is paid the sum arranged, it is likely that the consumers will need to pay off the loan regardless of the situation with the holiday product contract.



Another thing worth mentioning is some unscrupulous traders making arrangements for the unsuspecting consumers to take out high-interest loans to finance such purchases. This can happen where the consumers don't have particularly good credit rating which results in most financial institutions refusing to offer them credit.

EU LEGISLATION ON TIMESHARE

European Directive 94/47/EC was introduced in the mid-nineties to legislate on timeshare agreements to enhance protection for consumers buying these. Over the years, a number of timeshare-like products appeared in the market to circumvent it.

EU Legislation on Timeshare

In order to close off the ability of certain traders to circumvent consumer protection, the EU introduced new legislation - Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

The new Directive extended the scope of previous rules to:

- ✿ Timeshare of more than one year including any kind of accommodation e.g. in canal boats, cruise-ships and caravans (previous legislation covered only contracts for accommodation in immovable property for periods of three years or more)
- ✿ Long-term holiday products (e.g. holiday clubs)
- ✿ Shorter term contracts - all purchases for more than year, including tacit renewal of shorter periods
- ✿ Timeshare-like products e.g.
- ✿ Resale and exchange of timeshare schemes and long-term holiday products

As a consumer, Directive 2008/122/EC provides you with protection, if:

- ✿ The contract is longer than 1 year;
- ✿ The contract provides that you can stay somewhere during more than 1 certain period for a fee or;
- ✿ The contract provides that you have the right to book a stay somewhere at a discount or;
- ✿ You want to resell an existing contract through a dealer;
- ✿ You want to exchange your rights stemming from your timeshare or long term holiday product contract.

Key points of the new Directive

- ✿ Full harmonization across the EU
- ✿ Detailed rules on pre-contractual and contractual information
- ✿ Cooling-off period is 14 calendar days, with no cancellation costs incurred. No reason has to be given

- ✿ Ban for traders or any third party to ask consumers for deposits, advance payment, guarantees or reservation of money during the cooling-off period
- ✿ Specific payment rules for long-term holiday product contracts and specific rules for termination of long-term holiday product contracts
- ✿ Compulsory penalties (national) if the trader does not comply with the national rules implementing the Directive
- ✿ Any linked loan or finance agreement is automatically terminated if the consumer cancels the contract
- ✿ Timeshare and long-term holiday products must not be sold as an investment
- ✿ Contracts must be in the language of the EU Member State in which the consumer is a resident or a national (at consumer's choice)

Information to be provided in advance

The seller is required to give you certain information in good time before entering into the contract. For this, he/she must use one of the standard information forms contained in the annexes of the Timeshare Directive.

The Directive lays down rules regarding the information about the contract, which the trader has to provide to the consumer so that the latter can make an informed decision. This information must be provided free of charge and in writing (or another durable medium). Consumers should also be allowed sufficient time to give full consideration to the information furnished.

Consumers are entitled to have this information and the contract itself provided in a language of the EU Member State in which they are residents or nationals, provided it is an official language of the EU.



The following information should be supplied in all cases:

- ✿ Details of the trader
- ✿ Description of the product and nature and content of the right(s) acquired
- ✿ The exact period in which such right(s) can be exercised, including the start date and, if necessary, its duration.
- ✿ The price and other associated charges
- ✿ Cancellation right and prohibition of advance payments
- ✿ Details of any code of conduct the trader has signed up to
- ✿ Where applicable, the possibility for out-of-court dispute resolution.
- ✿ Indication of the language(s) available for future communication (e.g. handling of queries and complaints)

The information and the contract is to be provided free of charge, in writing and in your own language (providing that it is an official language of the European Union).

Additional information required in timeshare and long-term holiday product contracts:

- ✿ A summary of the key services and applicable fees (e.g. water, electricity)
- ✿ Common facilities and associated charges

Specific Provisions relating to timeshare agreements:

- ✿ Detailed description of the property and its location
- ✿ If the property is under construction, a completion date
- ✿ Whether there are any charges, mortgages, or encumbrances against title (where applicable)
- ✿ How the property is to be managed
- ✿ Maintenance and repair of the property
- ✿ Conditions for terminating the contract

Prohibition of Advance Payments

In relation to the products covered by the Directive, the trader is prohibited from demanding or accepting an advance payment from the consumer before the expiration of the withdrawal period. This prohibition also extends to the provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt and payment of any other consideration to the trader or to any third party.

Cancellation Rights

The consumer has the right to cancel this contract without giving any reason within 14 calendar days from the conclusion of the contract (or, if the contract is provided at a later date, from the day when the consumer receives the contract). The consumer must notify the trader in writing of his or her decision to cancel. Any ancillary contracts will be automatically terminated on cancellation.

If certain information detailed in the Directive is missing, the period is extended by further three months (to 3 months and 14 days). Moreover, if a separate standard withdrawal form is not filled in by the trader and provided to the consumer in writing, the period is extended by one year (to 1 year and 14 days).

Where the consumer intends to exercise the right to cancel, the consumer shall, before the cancellation period ends, notify the trader on paper or on another durable medium of the decision to cancel. The consumer may use the standard cancellation form found in the Annex 5 of the Directive, which should be provided by the trader. The deadline is met if the notification is sent before the cancellation period has expired.

The exercise of cancellation rights by the consumer terminates the obligation of the parties to perform the contract. Where the consumer exercises the right of withdrawal, the consumer shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed before the cancellation.

TIMESHARES: TOP TIPS

European Consumer Centres (ECC-Net) regularly hear from unhappy consumers who feel they have been trapped by hard-sell techniques into a long-term contract for holiday accommodations that they do not really need.

-1-

Don't spoil the holiday of a lifetime with a purchase you'll spend a lifetime regretting. Think - hard - before you buy a timeshare, a membership in a holiday club or anything similar.

-2-

Beware of "free holidays", lotteries that you win, or party invitations. There is not such a thing as a free lunch.

-3-

The more aggressive the sales pitch, the more suspicious you should be. But wolves also come in sheep's clothing, speaking your own language.

-4-

Never pay anything at a presentation. Never ever pay anything at a presentation.

-5-

Ask for the contract in your own language. It is your right. Reputable companies will provide that without hesitation.

-6-

Do your sums. Watch out for hidden extras, like insurance or maintenance. Work out what they will add up to over the life of the contract.

-7-

Before signing anything check the website of the company - and what other people have said about it on other websites.

-8-

Beware of contracts that offer accommodation or leisure time activities for one year or less. They are not covered by the same protection from scams.

-9-

Never pay anything when you sign the contract. You have 14 days to change your mind. You don't have to give a reason. Just cancel.

-10-

Too late? Do not despair. If the trader did not treat you fairly, you may still have a case for getting out of the deal. Ask your European Consumer Centre what you can do.

Get your money back from the bank/card issuer when the seller does not respect your rights after the Directive

Many consumers are not aware that there may be a possibility to get their money back from the bank/card issuer when the seller rejects their claim or for other reasons do not reimburse the consumer. The procedure involving a reimbursement from the bank/card issuer is called chargeback. Reasons to turn to the bank/card issuer for a chargeback may be when the seller does not respect the consumers' rights to cancel the contract (where applicable), but also if the trader has gone bankrupt.

In many countries/situations, consumers, who have used a credit card for their transaction, have a right to be reimbursed if the trader does not respect their consumer rights (e.g. the ban of advance payment during the withdrawal period). If you have used a debit card, you might also be protected according to national legislation or the card companies operating rules. Certain conditions may have to be met in order for the consumer to be allowed to make a claim against the bank/card issuer. Such conditions may for instance include that the consumer has to make a claim against the trader and this has to be rejected.

How to proceed: Send a written complaint to the bank/card issuer. If the card issuer/bank rejects the claim, you can send the case to the relevant ADR/mediators. You have to act swiftly as deadlines may apply. You can contact your national ECC for further information about your rights and the conditions to claim your money back by the chargeback procedure.

Be extremely cautious if you want to resell your timeshare or long-term holiday product (membership in a holiday club): The ECC-Net regularly receives reports about organizations that want to help you resell your timeshare contract or membership of a holiday club for a fee. There are also so-called lawyers who claim that they can get your original investment returned through a lawsuit against the seller. Since we have never heard of a successful resale or outcome of litigation in this branch, we advise you not accept this type of proposal. There seems to be no market for resale. By numerous lies, dishonest sellers can extort large sums from you and this ultimately does not produce anything. Remember that a lawyer or consultant never represents your interests on his/her own initiative. As you are the only party interested to resolve your situation, you should always take the initiative yourself.

MOST

FREQUENTLY ASKED QUESTIONS

IS IT SAFE TO SIGN THE CONTRACT RIGHT AWAY?

It is always advisable to consider the content of a contract before signing it. We therefore advise you to bring the contract home with you to give yourself time and possibility to consider carefully if it really does offer you the value that you want/need and if you have clear knowledge about the trader.

DO I HAVE THE RIGHT TO CANCEL THE CONTRACT?

It depends on the agreement you have made with the seller. If your contract is covered by Directive 2008/122/EC you are allowed to cancel the contract within 14 days of the day you signed the contract.

I WANT TO WITHDRAW FROM THE CONTRACT BUT I DON'T KNOW HOW TO WRITE IT TO THE COMPANY. CAN YOU HELP ME DO THIS?

If your contract is covered by Directive 2008/122/EC then the seller has to provide certain information and documents. One of these documents is a standard form which can be used when exercising the right to withdraw. In case you did not receive information on the right to withdraw the 14-day period is prolonged. You can also find the standard form coupled with the Directive as Annex V. It is not a requirement to use this form to ask to cancel, but can serve as guidance on your cancellation rights when it comes to timeshare contracts.

HOW DO I KNOW WHAT KIND OF CONTRACT I HAVE SIGNED?

It is often mentioned in the contract itself but you should be aware that some traders/sellers label their "product" under a different name in order to circumvent consumer protection legislation. We are aware of traders sometimes falsely trying to ensure their customers that "you can take it easy, this is not timeshare", when in fact the contract they are trying to sell is still protected under the timeshare directive. When in doubt you are always welcome to contact the European Consumer Centre in your country for advice.

HOW CAN I GET HELP REGARDING MY SIGNED CONTRACT?

You can always contact the European Consumer Centre in your country with your query.

WHAT IS THE DIFFERENCE BETWEEN TIMESHARE AND LONG-TERM HOLIDAY PRODUCTS?

Timeshare contract gives you the right to use specific holiday accommodation (one or more resorts) for a fixed time interval (usually one week) each year. Long Term holiday products can give you the right to a number of different holiday products e.g. coupons for special discount rates at different member hotels, sea cruises and different/various holiday accommodation around the world.



THE COMPANY REFUSES TO REIMBURSE MY DEPOSIT/MONEY. HOW CAN I GET MY MONEY BACK?

In most countries/situations, consumers which have used a credit card will have a right to be reimbursed if the trader does not respect their rights as consumers. If you have used a debit card, you might also be protected according to national legislation or the card companies operating rules. Send a written complaint to the credit card issuer/bank. If the credit card issuer/bank rejects the claim, you can send the case to the relevant Alternative Dispute Resolution (ADR) or mediators. You have to act swiftly as deadlines may apply.

DO I HAVE TO PAY A DEPOSIT UPFRONT?

No, you are not obliged to pay a deposit upfront and the Directive actually prohibits any deposits being made within the cancellation period for contracts covered by the Directive.

WHAT SHOULD I BE ESPECIALLY AWARE OF IF I SIGN A CONTRACT FOR A DISCOUNT HOLIDAY CLUB?

If you wish to become a member of a Discount Holiday Club you should especially be aware that the options to book the promised accommodation are normally subject to availability. This means that you may risk that there is no availability when you have time for vacation. You also need to pay attention to the fact that many Discount Holiday Club discounts do not include transport but you may still be restricted to book with a specific airline company.

I SIGNED A CONTRACT MORE THAN 14 DAYS AGO. I JUST FOUND OUT ABOUT THE COOLING OFF PERIOD OF 14 DAYS. CAN I STILL WITHDRAW FROM THE CONTRACT?

If your contract is covered by the provisions of the Timeshare Directive the right to withdraw from the contract may be prolonged for up to one year and 14 days. The length of the prolongation depends on specific conditions. You are always welcome to contact the European Consumer Centre in your country for further advice on this.

SUNSHINE

The timeshare-like products industry is evolving and changing. One of the changes is the emergence of new types of products and commercial practices not regulated by the Directive. These products are economically similar to timeshare contracts, but are designed in a way that falls outside the definitions included in the Directive.

The problem with products falling outside the scope of the Timeshare Directive appears to be that the existing legislation defines the product not by reference to the nature of the agreement between the trader and the consumer, but rather by other issues, such as the duration of the contract or the nature of the property, to which the agreement relates.

We believe that the implementation of new legislation regulating the holiday product sector has improved the overall situation for consumers. We base this on the drop in complaints from consumer after the Directive started to apply.

We still believe there is a number of issues worth looking into in cooperation with both state and private enforcement organizations (local enforcement authorities and industry-specific trade associations). One of these problems are products that are designed to appear as being out of scope of the legislation and thus not requiring the traders and marketers to observe the legal requirements applicable. Our database indicates that there are two particular traders worth investigating from that angle. We would also like to suggest establishing a system where test cases against problematic traders could be tried in courts for the purposes of determining the actual legal situation.

ECC-Net has been receiving numbers of complaints where the consumers indicate that marketers are guilty of mis-selling the products in a variety of ways. They were also reported to have employed tactics aimed at preventing the consumers from being able to obtain refunds through third parties (banks and credit card companies) by the way of insisting on receiving payments by cash, bank transfers and international money transfer services (Western Union, etc.).

We have also received a small number of complaints against a particular trader selling timeshare weeks as investment (illegal under the current legislation) and effectively conning unsuspecting consumers out of sums as high as €100.000. A number of complaints has been received against companies who are alleged to have mis-sold their 'bonus weeks' packages to scores of consumers. These companies are reported to sell their services (which are only suitable for consumers under a certain age and over a certain income level) virtually to everyone they call, regardless of whether they meet these criteria or not. In addition to this, there is an ongoing argument whether such services can be considered exempt from the obligation to provide rights to cancel (accommodation services to be provided within a specific period of time), taking into account that there are no bookings made for a specific date at the point of entering into the agreement and the weeks can be used within even as long as five years.

Apart from these issues, there are numerous companies that may be worth looking at from the angle of how their business is operated (capacity to provide services to the number of customers they sell their services to, etc.). As there are some companies that peddle their services exclusively on the phone, it may be worth to lobby for including the requirement for recording the sales calls and keeping these records for the purposes of consumer disputes.

CONTACT DETAILS FOR ECCs

ECCs are only competent to take action on EUROPEAN cross-border issues. This means complaints of consumers living in an EU Member State, Norway or Iceland having problems with companies in another EU Member State, Norway or Iceland.

We cannot act when the issue involves consumers and traders from the same country, or from a country outside of the EU Member State, Norway or Iceland.

HOW TO PROCEED?

1. Contact the trader first!

Firstly you will have to prove that you have already made contact with the trader - in writing. That means letter, e-mail, fax, recorded delivery...

2. After 30 days with no favourable reply, you can send us your complaint. How?

3. ...By contacting the ECC of your country of residence. On your ECC's website, you will find all contact details, and the official complaint form. Help is coming!

An updated list of the European Consumer Centres contact details is also available at <http://ec.europa.eu/ecc-net>

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GLOSSARY

Practical list of keywords on timeshare and other related products

A

AGREEMENTS FOR ONE YEAR OR LESS

The law on timeshares and long term holiday product cover the agreements that run for more than one year. It is worth noting that the need to offer cancellation rights, ban on advance payments, etc. WILL NOT APPLY.

It is worth noting that such agreements may still be argued as cancellable in some cases, depending on how the consumers were approached by the trader in the first place. In some cases it may be possible to argue this under the Consumer Rights Directive (“off premises” contracts). Appropriate information requirements and cancellation rights will apply in such cases.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Some traders may be members of trade associations and other bodies offering mediation and/or conciliation services. This may be an option to consider before deciding to take court action if it is not possible for the parties to come to an agreement.

Whilst the current legislation requires the traders to name a sector-specific ADR if one exists, they are not obliged to participate in such schemes.

B

BANKING WEEKS

Some timeshare agreements allow for the weeks to be unused by the owners in particular calendar years in exchange for an incentive. Depending on Terms and Conditions, this may result in the accommodation being rented out to a third party, the owner receiving a discount on maintenance charge in the following year, etc.

BONUS WEEKS

Product sold to consumers by a number of companies. The consumers usually pay the traders for a few weeks of discounted accommodation to be used within a few years. The idea behind this is for the consumers to attend a presentation in the course of the stay. This is aimed at promoting and selling other products. This can be more expensive holiday products, etc.

C

CASHBACK

ECC-Net has received complaints regarding the marketers using these when selling holiday products. They would receive cashback certificates with the face value equal or close to the price paid for the product and be reassured that it would guarantee this amount back in a few years. In practice, the schemes would not perform as promised, the claim process would be convoluted and a few companies have gone out of business before the consumers could make claims. It is worth noting that these do not form a part of the agreement sold and the schemes are usually operated by separate entities.

COMPLAINT

Consumer’s expression of dissatisfaction about performance of the service or the sales process, received by the ECC-Net.

CONSUMER CREDIT

In some cases, when the consumers do not have the money to pay for the product, they can be offered credit agreement to finance this. The law states that this should be cancelled together with the contract paid for if it is regulated by Directive 2008/122/EC. It is worth stressing that if the loan is not taken out specifically for this purchase, no automatic cancellation rights will apply. This may be provided under separate legislation or within Terms and Conditions.

CANCELLATION (COOLING OFF) PERIOD

This is understood as a short period after signing the agreement, during which the consumers can ask the traders to cancel the agreement without stating reasons or making payments. Agreements regulated by Directive 2008/122/EC are expected to come with 14 day cancellation period and the traders are expected to provide information regarding this.

Traders offering agreements not regulated by Directive 2008/122/EC may still be argued as needing to offer cancellation rights, depending on the selling method. This is pursuant to the Consumer Rights Directive.

CANCELLATION - RIGHT TO

Depending on the nature of the service paid for or the way the consumers were approached by the trader

(could be combination of both), the traders may be expected to offer unconditional right to cancel the contract without stating reasons or being expected to make payments to traders.

D

DIRECTIVE 2008/122/EC

Directive 2008/122/EC regulates certain aspects of timeshare, long term holiday products, resale and exchange contracts. It has been transposed into the national laws of EU Member States. It repeals Directive 94/47/EC.

E

ECC - EUROPEAN CONSUMER CENTRES

Network of 30 offices located in all Member States and Iceland and Norway. These offices offer advice and mediation services to consumers who experience difficulties with contracts made with traders based in other countries within the network’s service area.

EXCHANGE CONTRACT

Timeshare owners can sign up to additional schemes allowing them to ‘trade in’ their weeks in particular years in exchange for points that enable them to book holidays at other resorts. The latter are usually weeks traded in by other members.

Memberships in such schemes will usually form separate contracts and may be subject to payment of membership fees.

F

FAQs

Section including Frequently asked questions. We have selected these based on the knowledge of what issues are mostly enquired about by consumers, etc.

FRACTIONAL OWNERSHIP

Some companies offer consumers the opportunity to actually own a fraction of the resort itself, as opposed to mere habitation rights as it is the case under timeshare agreements. It needs to be stressed that these contracts are not covered by Directive 2008/122/EC and usually involve a significant financial outlay (possibly tens of thousands as opposed to thousands).

H

HOLIDAY CLUBS

These are the most ‘popular’ long term holiday products (as defined by the Directive 2008/122/EC). The idea is for the consumers to access discounted holiday accommodation and other services, subject to payment of membership fees and a considerable amount of money to join in the first place. The complaints received suggest that some of these schemes are unable to provide the availability or levels of discounts promised.

L

LEISURE CREDIT

Product sold to consumers by a number of companies. The consumers purchase a number of ‘credits’ which can be used towards booking accommodation, leisure, entertainment services, etc. At this point, there is an ongoing dispute whether these are covered by Directive 2008/122/EC. To the best of our knowledge, this has not been subjected to court scrutiny as of yet.

M

MAINTENANCE CHARGES AND MEMBERSHIP FEES

Timeshare owners will usually be expected to pay the scheme operators a fee towards maintenance of the resort for the duration of the agreement. Failure to do so may (but does not have to) result in the

consumers being refused admission in the particular year of being expelled from the scheme altogether. This is subject to agreements' Terms and Conditions and/or traders' discretion. Other holiday schemes (exchange contracts, holiday clubs, etc.) may also require their members to pay membership fees with similar sanctions for failing to do so.

O

OTHER PRODUCTS SIMILAR TO TIMESHARE-LIKE CONTRACTS

Implementation of new laws on timeshares, long term holiday products, etc. has prompted a number of companies to devise products that do not meet the definitions included in these laws. It could be a good idea to subject some of these products to court scrutiny.

R

RESALE CONTRACTS

Consumers have been reporting approaches made by companies offering assistance with reselling their timeshares and even other holiday products. The consumers were usually told the buyer was readily available, etc. Important thing to note is that these traders are not permitted to take any payments from consumers until the sale is completed or the agreement is terminated.
will usually form separate contracts and may be subject to payment of membership fees.

T

TIMESHARE

Under the current law, it is defined as 'a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation'.

V

VOUCHERS

Product sold by a number of companies, usually entitling consumers to book discounted holiday accommodation. The 'catch' is that the consumers may be required to attend a presentation aimed at selling more expensive holiday products, etc.

To the best of our knowledge, these agreements are not covered by Directive 2008/122/EC. It is debatable whether cancellation rights should be offered under different laws (distance selling laws, etc.)

Help and advice
for consumers
in Europe

