

CALL FOR EVIDENCE  
**By a Select Committee of the House of Lords**

Inquiry into the replacement of the EU's Timeshare Directive

Response by  
**The Timeshare Consumers Association**

This response is based on the information and views expressed by the 10,000 or so consumers who contact the Timeshare Consumers Association ("TCA") each year.

[Paragraph numbering is as the numbering in the 'call for evidence']

1. There is a powerful rationale for binding legalisation rather than a voluntary agreement because the existing voluntary arrangements, based on the Code of Ethics of the timeshare trade body, Organisation for Timeshare in Europe ("OTE"), are ineffective:-
  - a. The OTE only represent a small fraction of the traders in the industry having 69 trade members out of an estimated 800 companies in the industry
  - b. The Code of Ethics lacks any substantial consumer protection over and above that already provided by statute law. In many cases the Code is weaker than existing laws.
  - c. OTE have systematically failed to enforce the Code on its members who now routinely breach the Code with impunity.
  - d. The Code does not have the endorsement of the Office of Fair Trading

We therefore see no prospect of a voluntary agreement system becoming effective within the EU.

2. Timeshare and Long Term Holiday Products are almost universally bought by consumers on holiday in a country other than their country of domicile – generally north Europeans buying in southern European countries. It is therefore essential that legalisation should be harmonised throughout the EU to ensure that consumers are quite clear as to their rights wherever they buy. Currently there are at least six different variations of law resulting from the "minimum" requirement of the current Directive which provide dishonest traders with opportunities to confuse consumers.
3. The existing Directive has provided a reasonable degree of consumer protection but has been overtaken by new products and practices, many designed to circumvent the protective nature of the Directive. Typically:-
  - a. "Holiday clubs" (Long Term Holiday Products) appear to have been created simply to avoid the current Directive. These are now incorporated in the proposed Directive as are other circumventions such as canal boats and periods of less than three years.
  - b. With more consumers now taking holidays lasting for more than one week the existing 10 day cooling off period is insufficient. This is discussed later at para. 7

- c. Both the existing Directive and the proposed Directive fail to address the problems now confronting *owners* of timeshare where annual costs, which are mostly outside their control, are escalating at a rate some three times faster than inflation. Not only does this put timeshare at a financial disadvantage with readily available accommodation rental but places a financial hardship on those consumers on fixed incomes such as retired couples.
4. The scope and definitions of the proposed Directive are generally acceptable. However the following amendments, together with others mentioned elsewhere in this response, would improve consumer protection:-
  - a. We believe that full harmonisation of all aspects of the Directive is essential for best consumer understanding of their rights. We therefore would like to see Article 1, Clause 2 removed. This is commented upon later under para. 8
  - b. There is some muddled thinking in the wording of Article 2, Clause 1c where the concept of a “resale” appears not to be fully understood by the Commission. See para. 14a below.
5. The proposals relating to disclosure and advertising lack sufficient precision to assist traders or give comfort to consumers. For example the word “exact” (clause 2 of Annexes I, III and V) is used. “Exact” is a word that will almost certainly be interpreted differently by salesmen and by consumers. We believe that the disclosure requirements should be laid down in detail, preferably in the form of a regulation which can be swiftly amended in the light of changing trader practices. All the main elements of disclosure should be clearly stated on the front face of the purchase agreement in print no smaller than the largest print on the page. [This is the requirement in the amended Timeshare Act 1992 which appears to work well] The main elements to be disclosed (in addition to those normally required within a contract) are:-
  - a. The current resale value (to the consumer) of the product being purchased. Many purchasers are encouraged to believe that the value of their purchase will improve over the years. This is not the case as timeshare periods, when eventually sold by the consumer, are only worth a fraction of what they originally cost and many are entirely worthless. All holiday club memberships are totally worthless in the secondary market.
  - b. The right to a cooling off period and the absolute ban on the taking of a deposit.
  - c. The current annual charges of using the product together with a 4 year history of these charges and a statement that owners/members have the ultimate say in the level of future annual charges.
  - d. For schemes which involve booking accommodation each year (ie. floating weeks, points and exchange) a list of concrete examples of availability covering all geographic regions and all months of the year should be provided, not just for exchange as required by Annex V.
6. Consumers can best be informed by national governments about their rights through specifically targeted promotions. Typically this would be leaflets distributed through travel agents; advertisements in in-flight magazines and notices in airport areas.

7. The terms of the right of withdrawal are satisfactory for consumers except in respect of the period, which is proposed as 14 days. In the UK we have had a 14 day cooling off period for 13 years and it is now too short as many consumers take 14 day holidays and are caught early in their holiday and do not get a chance to check out their purchase until some days after their return. A cooling off period of 21 days would provide those consumers with a much better chance of obtaining the information they need to make a rational decision. However, as the Commission has indicated that it wants to “future proof” the new Directive, we consider that a 28 day would satisfy this objective.
8. The Directive fails to provide a fully consistent regime by allowing national governments to apply more stringent provisions in respect of the cooling off period. We are strongly of the view that the length, start point, modularity and effects of exercising the rights to cancel should be the same throughout the EU otherwise consumers will be left in the same uncertainty as present where at least six different rules apply depending on the country of purchase and/or the country of domicile.
9. Consumers can best be protected from any demand for advance payments by having the ban on deposits clearly disclosed on the purchase agreement alongside where they sign. See para. 5 b above.
10. The taking of a deposit will become a major problem for consumers if it is allowed under the proposed Directive (it is already banned under the current Directive):-
  - a. The prospect of failing to recover a deposit; or simply the complex mechanism that traders would place in the way of consumers trying to recover their deposit on a legitimate cancellation, is a strong incentive on consumers to continue with an agreement that they really want to terminate.
  - b. The importance of a total ban on taking of a deposit is reinforced by the very strong campaign by rogues in the industry to have the ban removed as they perceive the retention of a substantial sum as a means of locking-in purchasers to an unwanted agreement.
11. The Commission have failed to take the opportunity to establish an effective sanctions, monitoring and enforcement regime. A licensing system with a Timeshare Ombudsman empowered to fine, order compensation or, in the ultimate, to withdraw the licence from a trader, would be an economically effective means of ensuring that the Directive works. And a licensing scheme would also overcome the problems for consumers seeking compensation from traders registered outside the EU.
12. Failure to penalise breaches of the current Directive in Spain (and, to a lesser extent, Portugal) encourage us to believe that sanctions should be established at EU level which would provide a more powerful voice to persuade the Spanish authorities to act. Additionally we believe that the new Directive, because it mostly applies to “cross border” transactions, should be harmonised as far as it is possible to do so.
13. [It is not clear what is the purpose of this question]

14. We have further comments on the proposed Directive:-

- a. The Directive completely excludes any protection for timeshare *owners*. This is an important omission as ownership is now the major area where consumers are suffering detriment. We consider that the proposed Directive should be extended to provide detailed rights for owners (and club members) in respect of the quality standards of their resorts and the annual costs of ownership. However, as shown above at para. 5 c , we believe that some protection for owners can and should be included within the disclosure requirements.
- b. We do not consider it necessary to legislate for “resales” except to ensure that a consumer wishing to sell his ownership to or through a trader should not be required to make any payment to the trader. Our understanding of the proposed Directive is that all sales by traders “in the course of business” to consumers would be regulated by the Directive, so ‘B > C’ transactions would be already be covered. We suspect that the Commission has failed to understand the word “resale” and have added complications which are unnecessary.
- c. The proposed Directive makes no attempt to legislate on the legal structure of timeshare. Whilst weaknesses in the existing system are now becoming apparent as resorts are closing (making owners “homeless”) we consider it impracticable to impose a legal structure on existing resorts but all future resorts should have a structure – probably based on public registration of individual owners rights where that is lawful - that provides security of tenure for timeshare owners.
- d. Article 5, Clauses 2 & 3 do not include the extension of the cooling off period for the purchase of Long Term Holiday Products (Annex III). This omission has been recognised by the Commission who intend to correct it.
- e. The proposed Directive is imprecise about the effect of a trader failing to provide the information (Article 5, clause 3) as required by the Annexes. We believe that failure to provide the required information within the 3 months and 14 days should automatically render the agreement null and void.
- f. Article 5, clause 1 extends the cooling off period by one day if the fourteenth day is a public holiday. This is confusing as each state has different public holidays and it is not clear whether the relevant public holiday is that of the country of purchase or country of domicile of the purchaser. This extension should be removed for clarity.
- g. There should be no penalty of any sort on a consumer who cancels in a timely and proper fashion, as indicated by Article 5, clause 5.
- h. Finally, the Directive should be reviewed every five years to avoid anti-consumer practices becoming enshrined within the industry.

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