

REASONS

supporting the **proposal** for a new
Timeshare Directive

by the
**Timeshare Consumers Association
(TCA)**

NOTE:

Numbering of reasons is same as numbering of proposals made in file tca_sanco_directive.doc/pdf

Purpose of the proposal

To create a market environment to help recover consumer confidence and provide a level playing field for responsible traders.

Introduction:-

As most reasons have been well rehearsed over the past year and are well known to SANCO we limit our reasons to key phrases for brevity.

1. Definition and Application.

The purpose of the definitions are to:-

- Include all products where a capital sum is paid creating the risk of a substantial potential financial loss by a consumer. The existing “products” that will be included are holiday accommodation:-
 - Periods of occupation of any number of days
 - For any period of time (years)
 - Fixed and floating weeks
 - Fixed and floating apartments
 - Fixed and floating resorts
 - Destination clubs
 - Accommodation of any sort (including boats, caravans etc.)

- Points clubs
- Holiday clubs (Discount Travel Clubs)
- Buy to rent holiday homes
- Fractional Timeshare and Private Residence Clubs
- Exclude products where only a small or no capital sum is paid where there is very much less risk of substantial potential financial loss
- Exclude established products such as package holidays, holiday accommodation rental etc.
- Provide a “level playing field” for responsible traders by inclusion of all existing “competition”
- Provide a degree of “future proofing” against the exploitation of loopholes by denying access to substantial sums of up-front money.

The definitions and further proposals are designed to include:-

- Developers and their agents (Marketers etc.)
- Management companies
- Exchange companies
- Resale brokers

Holiday clubs are included because they share the same characteristics – a capital payment for holidays in the future – as timeshare and there is no existing legislation under which they could be placed.

2. Requirements

The requirements are designed to ensure that:

- all traders must operate and bank within the EU to enable consumers and authorities greater opportunities for enforcement and recovery of funds
- consumers are fully aware that they are involved in “timeshare “ and that they have the protection of the Timeshare Directive anywhere within the EU
- Cl. 4.2 To help consumers to avoid wasting time and money on a product which does not interest them.

- Minimum disclosure items should be amendable by regulation to enable a rapid response to any loopholes that traders might identify/create. For the purposes of harmonisation the Commission should be authorised to amend the minimum disclosure items
- Cash back schemes should be strongly discouraged by ensuring they are governed by a official financial authority. But banning them altogether may be a knee jerk reaction to existing frauds as cash back schemes might work in the future

3. **Buyers right to cancel and ban on the taking of any money during the rescission period:-**

- There is a need for a clearly defined start and finish date of the cancellation period using calendar days which are widely understood – “working days” lacks a universal definition.
- There is no need to provide a “ reflection period” in advance of signing as well as a cancellation period after signing as this is an unnecessary burden for both traders and consumers and achieves no more consumer comfort than a reasonably period for cancellation after signing
- The cancellation period is increased from 10 days to 28 days because lengthening holiday periods now enjoyed by consumers means that it could be three weeks or more before the buyer get their brains in gear after getting back home
- there is no need for a pro-forma cancellation notice, which is often omitted by the seller anyway.
- The cancellation period should be very clearly disclosed in a manner similar to the current UK Timeshare Act which appears to work well
- The ban on the taking of a deposit is extended to a ban on the taking of ANY payment because:-
 - Payments are notoriously difficult to recover when a buyer properly cancels.
 - Some traders have found ways of taking a “deposit” through other means
- Different products and different marketing techniques require different cancellation periods so harmonisation of cancellation periods across the consumer Acquis would not be appropriate.

4. Ownership

The granting of absolute control to consumers who have paid to become “owners” appears to be a natural right. The proposals are designed to ensure that owners are not trapped for the rest of their lives at the mercy of a rapacious trader.

- To avoid developers attempting to claim earlier “subsidy” back from owners when the resort is more fully developed.
- Cl 4.2.2 Postal votes encourage the majority of owners to vote.
- Cl 4.2.2.5 To ensure that fixed week systems are not changed to floating (or points) without the consent of the majority of owners.
- Cl. 4.2.4 To stop developers etc. infiltrating the club or committee to further their financial benefits.
- Cl. 4.4 To ensure that developer do not make ordinary owners liable for the developers failure to sell
- Cl. 4.5 To ensure that:-
 - management companies did not fail owing the club money
 - independent auditors report to the club, not to the management company.

5. Purchase Agreement

The purposes of the proposals are:-

- To reduce document “clutter” by ensuring that all key information is clearly contained within a single document
- To put in writing the exact nature of what is being purchased .
- To ensure that the principle party to the agreement is the provider of the service and not a third party (agent, franchisee etc.) who could disappear if any problems arise with the performance of the agreement
- To ensure that the buyer is provided with every document necessary for them to:-
 - Make a decision about continuing with the agreement
 - Be clear as to rights and obligations as an owner/member

6. Minimum disclosure information in the purchase Agreement

To ensure much greater “certainty” for the buyer that the product will be delivered by including written statements of the benefits the consumer will receive and the obligations they have entered into. This written disclosure should also provide a quicker and simpler resolution to disputes that using the UCP Directive in respect of misleading statements or omissions.

- “None” is designed to warn purchasers that verbal promises made by the salesman are not to be relied on
- Cl 6.8 Provides a statement “guaranteeing” the principle benefits being purchased so as to avoid any doubt in the mind of the buyer.
- Cl 6.82 Is intended to encourage the industry to rationalise the existing “quality” grading systems into a single system compatible with the hotel industry.
- Cl 6.9 To ensure that a buyer is not put at financial risk during the construction of the property.
- Cl. 6.10 To allow for extensions and “up-grades”.
- Cl. 6.11 Ensures that all payments go to an EU based company, and bank account, to minimise risk of non-recovery of money in the event that the buyer is entitled to a refund
- Cl. 6.12 and Cl. 6.14 make it clear to a buyer that they have entered into financial obligations.
- Cl. 6.22 To ensure that the buyer fully understand that they are not making a financial investment

7. Sanctions

Sanctions are designed to be simple; avoid the need for resolution by the courts and “bite” where it hurts most, the profits of the trader.

8. Consumer awareness

Traders routinely ignore existing legislation confident that it will not be enforced. An active consumer awareness programme should minimise consumer detriment.

General Comments.

We have not made proposals in respect of:-

- The legal structure of timeshare believing that:-
 - The many different real estate laws throughout Europe would prohibit the introduction of a single legal system applying to timeshare
 - The cost and time taken to amend existing schemes to comply with any new Directive would be excessive
- Products as traders should be free to introduce new products where they see a potential market.
- A licensing system because it would take time to develop; would be expensive to operate (the expense being applied to the consumer further weakening the competitiveness of timeshare)
- A bonding or guarantee system because both would add considerably to the cost to the consumer, making timeshare less competitive.

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