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D. Timeshare Directive (94/47)

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Executive summary

1. Transposition deficiencies

Although Directive 94/47¹ has been transposed in all member states, analysis has revealed some transposition deficiencies with regard to details. The following examples could constitute a transposition deficiency of at least some importance:

- The information document does not have to contain information on the right of withdrawal in LITHUANIA.
- The information stated in lit. (j)² of the Annex is lacking in the transposition laws in the CZECH REPUBLIC and SLOVAKIA.
- No transposition of the language requirements of Art. 4 in LATVIA and LITHUANIA (only the national language).
- No language requirements for the information document, e.g. in the CZECH REPUBLIC and SLOVAKIA.
- 90 days withdrawal period (instead of three months plus 10 days) in LATVIA in case of lack of information (Art. 5, 2nd indent of the Directive).

2. Enhancement of protection

a) Extension of scope

Some national laws provide a wider scope of application in the field of timesharing, for example:

¹ Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, OJ L 280, 29 October 1994, p. 83.

² A clause stating that acquisition will not result in costs, charges or obligations other than those specified in the contract.

- Definition of “purchaser”: inclusion of legal persons;
- Extension of the scope of application to contracts where timeshare rights are resold by another consumer through a professional agent;
- Definition of “contract relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis”:
 - No minimum duration of 3 years;
 - No minimum duration for the annual use of the immovable property;
 - Inclusion of timeshare objects other than buildings (caravans, camping grounds);
- Extension of the scope of application to legal constructions which do not relate to a certain building or a group of specified buildings, but simply promise special rates on tourist services (“holiday clubs”).

b) Use of minimum clause

Most member states made use of the minimum clause. Major examples of such findings are:

- Additional requirements concerning the information document in Art. 3(1) (e.g. manifold additional information to be included, some taken from the Directive’s Annex, others additionally introduced by member states).
- Additional information items to be included in the contract.
- Additional formal requirements for the information on the right of withdrawal (standard form, graphic accentuation, etc.).
- Prolongation of the regular withdrawal period.
- Extension of the list of information duties stated in Art. 5(1) 2nd indent (i.e. those information duties which lead to a prolongation of the withdrawal period, if infringed).
- Stricter language requirements
 - Also languages of EEA contracting states.
 - More languages than stated in the Directive.
- Additional right of withdrawal in other situations than granted in the Directive, e.g. in case of non-delivery of the information document or non-compliance with the formal and language requirements, or even if the vendor has received any advance payments.
- No costs for exercising the right of withdrawal can be burdened on the consumer.

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- More favourable provisions concerning the cancellation of related credit agreements.

c. Other instruments

Some member states have introduced protection instruments which are not stated in the Directive, e.g.

- Introduction of licensing procedures for vendors;
- Specific provisions for timeshare objects under construction;
- Requirement of a financial guarantee to be provided by the vendor securing the performance of the contract.

3. Use of options

- Article 4, 2nd indent, sent. 2 (language requirement of the member state where purchaser is resident): About half of the member states made use of this option.
- Introduction of formal requirement for the exercise of the right of withdrawal by consumers: About two thirds of the member states have made use of this option.

4. Inconsistencies or ambiguities

- It is unclear whether “in writing” means text on paper or also includes, e.g., electronic text on a durable medium.
- Different language versions of the Directive concerning the prohibition of advanced payment (the German version of the Directive refers to the regular withdrawal period of 10 days; other language versions might also refer to the prolonged withdrawal period in case of lack of information).

5. Potential barriers to (cross-border) trade

The following examples could be likely causes of barriers to trade in the European market:

- Additional elements to be included in the brochure (Art. 3(2)) or the contract (Art. 4(2)) diverging within the different member states.
- Different beginnings, lengths and computation methods of withdrawal periods and formal requirements for exercising the right of withdrawal (also influencing the duty to inform consumers of their right of withdrawal).

6. Conclusions and recommendations

In order to remove ambiguities, incoherencies or barriers to trade, the following issues could be considered:

- Definition of ‘consumer’: adaptation to a coherent definition in EC consumer law;
- Definition of ‘vendor’: adaptation to a coherent definition of the ‘business’ in EC contract law;
- Extension of the scope of application to contracts where timeshare rights are resold by another consumer through a professional agent;
- Dropping or lowering the requirements of the minimum duration of three years and the minimum annual period of 7 days;
- Inclusion of timeshare objects other than buildings, for example, camping grounds, caravans, boats, mobile homes and other movables, which can be used for the purpose of accommodation;
- Inclusion of holiday clubs;
- Reducing the detailed lists of information to be provided by using a general clause with an indicative list of core information, in particular, on costs including maintenance costs;
- Provision of a standard form for information on the withdrawal right;
- Clarification of whether “in writing” means text on paper or also includes, e.g., electronic text on a durable medium;

- Provision of some rules on computation of the withdrawal period (or – perhaps better – a reference to Regulation 1182/71)³;
- Prolongation of the regular withdrawal period to 14 days (perhaps considering a longer period for up to three months or at least leaving discretion to the member states to fix a longer period);
- Prohibition of any formal requirement for the exercise of the withdrawal right;
- Clarification in Art. 5(1) 2nd indent, that the information must be provided in writing;
- Clarification of whether the dispatch rule is also applicable when the consumer dispatches the declaration of withdrawal in time, but it does not reach the vendor;
- Introduction of a prolonged period of one year (instead of three months plus 10 days) in case information duties are not fulfilled;
- Clarification of whether the prohibition of advance payments is only applicable during the regular withdrawal period (10 days) or also during the prolonged period;
- Prescription of highly effective sanctions in order to enforce the prohibition of advance payments (penalties) on Community level;
- In the case the planned Rome I Regulation deals with the issue, Art. 9 could be deleted.

In order to ensure that the member states can no longer introduce or maintain additional protection instruments and thereby create barriers to trade, to envisage full harmonisation in the most sensitive areas could be considered, e.g. pre-contractual information duties, in particular with regard to the prospectus and information about the withdrawal right.

³ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, OJ L 124 of 8 June 1971, 1–2.

I. Member state legislation prior to the adoption of the Timeshare Directive

Before Directive 94/47 was transposed, there were no specific provisions on timeshare contracts in most of the member states' laws. Some basic protection of purchasers of timeshare rights was provided, primarily by general contract law and laws on unfair competition. Therefore, in the field of timeshare contracts, mainly general contract law applied, e.g. in AUSTRIA⁴, BULGARIA, BELGIUM⁵, CYPRUS⁶, DENMARK⁷, ITALY⁸, the NETHERLANDS⁹, POLAND¹⁰, ROMANIA, SLOVAKIA¹¹ and SPAIN¹².

In GERMANY¹³ and PORTUGAL¹⁴, consumers were protected by the general regulations of good faith and wilful deceit and by the rules concerning the review of standard business terms and conditions if the vendor made use of these. In HUNGARY¹⁵, some regulations of competition acts were applicable. Various member states, having recently joined the European Union, for example, ESTONIA¹⁶, HUNGARY¹⁷, LATVIA¹⁸, LITHUANIA¹⁹ and SLOVENIA²⁰, had Consumer Protection Acts partially applying to timeshare contracts.

⁴ Offence against public policy (*Sittenwidrigkeitsregel*) CC § 879(1); rescission of the contract because of error CC § 871 et seq.; in case of doorstep selling: rights provided in KSchG (Consumer Protection Act) § 3 and § 4.

⁵ General rules of contract law and the law of property in the Belgian CC applied.

⁶ Contract Law, Cap 149. The Hotel and Tourist Dwellings Law of 1969 (revoked in 2000) dealt with the licensing of immovable property intended to be used for residential purposes.

⁷ General clause of the Contract Act (principle of reasonableness or fair conduct). In addition, the general clause of the Marketing Practices Act (principle of good marketing practice) applied.

⁸ CC. Drafts of a ministerial commission in 1989 and a parliamentary bill of 1987 on the topic of timeshares have never been enacted.

⁹ E.g. general principle of good faith, CC Art. 6:2 and 6:248.

¹⁰ General principles of the law of contract as regulated in the CC.

¹¹ CC.

¹² Application of Law 26/1984 of July 19 on Consumer Protection and the common law rules of the Spanish CC with respect to contracts (mainly vices of consent and actions of nullity and termination); norms on information in cases of sale and lease of immovable goods (Royal Decree 515/1989).

In some cases, Spanish courts drew on the rules of the Directive before its transposition into national law for an interpretation in conformity with the Directive (e.g. Judgments of CA Castellón of 4 May 2001, *Fernando R. M. and Jacinta F. P. v "Mundivac, S. A."* and "Aqualandia S. A.", CA Valencia of 16 July 2001, *Hermann T. and Irgard T. v "Oliva Beach Title Limited"*, "Amapola Holiday Marketing Ltd.").

¹³ E.g. CC § 134, § 138; § 123, § 142. Review of contract terms according to the Act concerning the Regulation of Standard Business Terms.

¹⁴ Decree-Law 275/93 of August 5. It also applied the 1966 Civil Code rules on good faith (e.g. 227 – pre-negotiation duty of care) and the unfair terms legislation.

¹⁵ Competition Act. The public administrative body (Hungarian Competition Authority) has been dealing with several complaints regarding this area of law, where case handlers have been applying the relevant section of the Competition Act (Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices).

¹⁶ The Consumer Protection Act (in force since 1 February 1994) contained general provisions concerning responsibilities and restrictions of the seller.

¹⁷ Act CLV of 1997 on Consumer Protection. The public administrative body, responsible for the enforcement on deceptive practices, namely the Hungarian Competition Authority has been dealing with several complaints regarding this area of law, where case handlers have been applying the relevant section of the Competition Act.

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PORTUGAL²¹ and SPAIN²² had additional specific rules on timesharing with, in the latter case, the regional administrative rules of the Autonomous Communities Canary and Balearic Islands. A FRENCH law from 1986²³ regulated the functioning of the timeshare companies rather than protecting the consumers. Nevertheless, it obliged the seller to provide the purchaser of the immovable property with a description of the immovable property including the various parts of the building, information on the period within which the right that was the subject of the contract may have been exercised and information on the conditions of the use of the common facilities. In the UNITED KINGDOM, the Timeshare Act 1992²⁴ existed, which remains in force supported by the introduction of statutory instruments.²⁵ In BULGARIA, at first, the rules of the Law on Obligations and Contracts applied until in 1999 the first Law on Consumer Protection came into force. This was then applied to Timeshare contracts until the Law on Consumer Protection came into force in June 2006 which regulates Timeshare Contracts.

II. Scope of application

1. Personal scope

a. Purchaser

Directive 94/47 protects the purchaser of timeshare rights (rights to use immovable properties on a timeshare basis). A purchaser is defined by the Directive as “any natural person who,

¹⁸ Consumer Rights Protection Law.

¹⁹ Law on consumer protection.

²⁰ The Consumer Protection Act of 26 February 1998. The Act (prior to its amendment according to the Directive) already included two provisions regulating the field of the Directive, however only regarding the substance of the contract and withdrawal from it.

²¹ Decree- Laws: 130/89 of 18 April 1989 regulating some contractual forms of “timeshare” and 275/93 of 5 August 1993 regulating timeshares.

²² Related to the requisites of the commercial activity and insurance duties. With regard to civil aspects, the norms only refer to some advertising rules. Order of 25 August 1988, Law 7/1995 on Tourism in Canary Islands (Art. 46), Decree 272/1997 of November 27 on timesharing, Order of 15 January 1990 and Decree of 6 September 1997.

²³ Loi du 6 janvier 1986 relative aux sociétés d’attribution d’immeubles en jouissance partagée.

²⁴ In force since 12 October 1992.

²⁵ Timeshare (Cancellation Notices) Order 1992, SI 1992/1942, regulating the requirements of appearance and content of a cancellation notice to be given to consumers; Timeshare (Repayment of Credit on Cancellation) Order 1992, SI 1992/1943, regulating the form that can be used to request the repayment of credit following notice of cancellation; Timeshare (Cancellation Information) Order 2003 regulating additional cancellation rights introduced as a result of the implementation of the Timeshare Directive.

acting in transactions covered by this Directive, for purposes which may be regarded as being out of his professional capacity, has the right which is the subject of the contract transferred to him or for whom the right which is the subject of the contract is established”.

aa. Transposition technique

Nearly half of the member states have introduced a special definition in the field of timeshare (e.g. BELGIUM²⁶, BULGARIA,²⁷ GREECE²⁸, ITALY,²⁹ ROMANIA,³⁰ and SWEDEN³¹) whereas about the same number of member states made reference to a general consumer definition (e.g. the CZECH REPUBLIC³², FINLAND³³, GERMANY, HUNGARY³⁴, LATVIA³⁵ and PORTUGAL³⁶).

No legal definition exists in FRANCE, SPAIN and the UNITED KINGDOM. French legislation uses the notion of consumer („consommateur“³⁷), which is not defined by statutory provisions, but frequently used in French consumer law. Spanish law does not provide an express transposition. However, in the Law 42/1998, different terms such as “titleholder of the right”³⁸, the “final consumer”³⁹ and “purchaser”⁴⁰ are used synonymously but not clarified further. Spanish case-law has considered the purchaser of timeshare rights as a “consumer” in the sense of general legislation, and, therefore, deems applicable the Law 26/1984 of July 19 on Consumer Protection. In the United Kingdom, the person acquiring timeshare rights is introduced as the “offeree”, i.e. the “person on whom timeshare rights are conferred, or purport to be conferred”. Some provisions of the Timeshare Act only apply when the “offeree” is an individual not acting in the course of a business.⁴¹

²⁶ Article 2(5) of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

²⁷ Article 150(1) of the Law of Consumer Protection.

²⁸ Article 2(1)(d) of the Decree 182/1999.

²⁹ Article 69(1)(b) of the Consumer Code uses the term “consumer” in the definition of the purchaser.

³⁰ Article 1 of the Law No. 282.

³¹ Section 2, 1st indent of the Timeshare Contracts (Consumer Protection) Act 1997:218.

³² CC Art. 52(3)

³³ Chapter 1 sec. 4 of the Consumer Protection Act of 20 January 1978/38.

³⁴ CC Art. 685(d).

³⁵ Article 1(3) of the Consumer Rights Protection Law.

³⁶ CC Art. 874, Art. 2(1) of the Consumer Protection Act 24/96 of July 31.

³⁷ Code de la Consommation, Art. L. 121-60(1).

³⁸ Article 1(1), Art. 15-16 of the Law 42/1998.

³⁹ Article 1(4) of the Law 42/1998.

⁴⁰ Article 9(1)(9)(c), Art. 10-13 of the Law 42/1998.

⁴¹ E.g. sec. 1A(4) of the Timeshare Act 1992.

Table: Transposition technique

Specific definition	BE, BG, CY, DK, EL, IE, IT, LU, MT, NL, PL, RO, SE (13)
Reference to a general consumer definition	AT, CZ, DE, EE, FI, HU, LV, LT, PT, SK, SL (11)
No legal definition	ES, FR, UK (3)

Within the member states providing a definition, most have chosen to make use of the term ‘consumer’ whereas only some rest with the term ‘purchaser’ of the Directive. In MALTESE legislation, the notion of ‘buyer’ is known. In DENMARK, LUXEMBOURG, the NETHERLANDS and SWEDEN, a special definition for purposes of timeshare provisions exists, however, using the term of ‘consumer’. Thus, confusion is likely to emerge as to other ‘common’ definitions of ‘consumer’ in different fields of consumer law.

Table: Use of terms

Purchaser	BE, CY, EL, ES*, IE, IT, NL, PL, RO (9)
Consumer	AT, BG, CZ, DE, DK, EE, ES*, FI, HU, LT, LU, LV, PT, SE, SK, SL (16)
Buyer	MT (1)
Offeree	UK (1)

* *more than once*

The transposition throughout the member states shows that nearly half of the national legislators opt for the solution of providing one general consumer definition being applicable in the field of consumer law. A general notion of ‘consumer’ on the level of Community law would allow for this development and not only contribute to greater legal certainty but also to a coherent use of terminology.

bb. Content of the definitions

As prescribed in Directive 94/47, the vast number of transposition laws limits the scope of application to natural persons not acting within their professional capacity. Some national legislators have extended it to legal persons as well, provided that they do not act in their professional capacity. Among them, AUSTRIA, HUNGARY and LATVIA resort to general

consumer definitions. In SPAIN, despite lacking legislative transposition, the preponderant opinion in doctrine seems to also extend the scope of application to legal persons.

While the DUTCH definition of ‘purchaser’ applies – according to its wording – only to natural persons, it could possibly be applied per analogy to small businesses by case-law. In Dutch case-law, some examples of analogous application of comparable consumer protection measures exist, such as protection against unfair contract terms.

In GREECE, the definition of the purchaser includes all natural persons, regardless of whether they act in their professional capacity or not. This extension of the scope may be unintended by the legislator as it seems unreasonable to exclude legal persons from the scope of application but to include natural persons acting in their professional capacity.

Under GERMAN law, companies coming into existence without further requirements if two or more persons pursue a common purpose⁴², are not treated as legal persons⁴³ and may thus profit from the provisions of Directive 94/47 provided they do not act in their professional capacity.

Table: Content of the definitions

Limitation to natural persons	BE, BG, CY, DE, EE, EL, FI, IE, IT, LT, LU, LV, MT, NL, PL, RO, SE, SL (18)
Natural and legal persons	AT, CZ, DK, ES, FR, HU, PT, SK (8)
No requirement of acting within professional capacity	EL (1)

b. Vendor

The notion of ‘vendor’ in Directive 94/47 is defined as “any natural or legal person who, acting in transactions covered by this Directive and in his professional capacity, establishes, transfers or undertakes to transfer the right which is the subject of the contract”. Again,

⁴² «Gesellschaft bürgerlichen Rechts» CC § 705 et seq.

⁴³ BGH judgment of 23 October 2001, XI ZR 63/01, NJW 2002, 368.

similar to the definition of ‘purchaser’, more or less half of the member states have inserted a special definition of ‘vendor’ in the course of transposing the Directive (e.g. Bulgaria,⁴⁴ CYPRUS,⁴⁵ DENMARK,⁴⁶ MALTA⁴⁷ and ROMANIA⁴⁸). In contrast, a little less than the other half resort to a general definition (e.g. AUSTRIA⁴⁹, LATVIA⁵⁰, POLAND⁵¹ and SLOVAKIA⁵²).

Table: Legislative techniques

Special definition	BE, BG, CY, DK, EE, EL, ES, HU, IE, IT, LU, MT, NL ⁵³ , RO, SE (15)
Reference to a more general definition	AT, CZ, DE, FI, LT, LV, PL, PT, SK, SL (10)
No legal definition	FR, UK (2)

Most of the member states with a general definition do not, in consequence, make use of the term ‘vendor’ but rather employ the terms of ‘professional’ (e.g. POLAND), ‘seller’ (e.g. MALTA) or ‘entrepreneur’ (e.g. GERMANY). FRENCH legislation does not provide a special definition but mentions the term ‘professional’⁵⁴ which is neither concretised by statutory provisions nor seemingly specified by case-law. Moreover, in the UNITED KINGDOM, reference is made to a “person who proposes in the course of a business to enter into a timeshare agreement ... as offeror”, sometimes abbreviated as “operator”. SPANISH law provides a similar content of the definition, but using different terminology, such as “owner”, “developer” (promoter) or “any natural or legal person who participates professionally in the transmission or commercialisation of rights to use on a timesharing basis”.⁵⁵ Under

⁴⁴ Article 150(3) of the Law on Consumer Protection.

⁴⁵ Article 2 of the Timeshare Contract Law of 2001, L.113(I)/2001.

⁴⁶ Section 3(1), sent. 1 of the Act 234 of 2 April 1997 on Consumer Contracts Relating to the Purchase of the Right of Use to Real Estate on Timeshare Basis (the Timeshare Act).

⁴⁷ Article 2(1) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000.

⁴⁸ Article 3 lit. c of the Law No. 282.

⁴⁹ § 1(1) of the Timeshare Act.

⁵⁰ Article 1(1) sec. 5 of the Consumer Rights Protection Law.

⁵¹ Article 4(1) of the Act on the Freedom of Economic Activity.

⁵² CC sec. 52(2) and sec. 55(1), sent. 1.

⁵³ The definition of vendor is partly included into the definition of timeshare contract. Dutch CC 7:48a defines a contract of sale within the scope of chapter 7.1.10A as “any contract or group of contracts, concluded for the duration of at least three years, to the effect that one party – the vendor – shall, for the payment of a price, give or undertake to give to the other party – the purchaser – a right *ad rem* or a right *ad personam* to the use of one or more immovable properties, or parts thereof, for at least one week during each year.”

⁵⁴ Code de la Consommation, Art. L. 121-60(1).

⁵⁵ Article 1(5) of the Law 42/1998.

PORTUGUESE law, rights may be exercised against the ‘vendor’ or the ‘owner’ of timeshare rights.

Table: Use of terms

Vendor	BE, BG, CY, DK, EE, EL, HU, IE, IT, LU, NL, PT*, RO, SK (14)
Professional	FR, SE (2)
Trader	FI, PL, (2)
Undertaking	SL (1)
Offeror/operator	UK (1)
Seller	MT, LT, LV (3)
Supplier/entrepreneur	AT, CZ, DE (3)
Others	ES, PT* (2)

* more than once

Generally, the personal scope of the national provisions, as regards the counterpart of the consumer, is in accordance with the provisions of the Directive.

Under LATVIAN⁵⁶ and LITHUANIAN⁵⁷ law, the definitions of ‘seller’ include persons “selling or offering goods” which does not directly match to the field of timeshare, as here the seller may assign rights to immovable property.

Some countries however have extended the scope of application to contracts where timeshare rights are resold by another consumer through a professional agent (DENMARK⁵⁸, ITALY⁵⁹, PORTUGAL). Italy⁶⁰ and Portugal have consequently extended the purchaser’s rights and allow an exercise of all rights against professional agents who conclude a timeshare contract on behalf of a non-professional. The GERMAN statutory provisions on timeshare contracts do not extend the scope in such a way. However, it is being discussed whether a consumer who establishes or transfers a timeshare right to another consumer can be treated as a vendor if he makes use of an agent who acts in his professional capacity (e.g. a broker). In legal literature,

⁵⁶ Article 1(5) of the Consumer Rights Protection Law.

⁵⁷ Article 2(2) of the Law on Consumer Protection.

⁵⁸ Article 3(2) of the Timeshare Act.

⁵⁹ Article 70(2) of the Consumer Code.

⁶⁰ Article 69(1)(c) of the Consumer Code.

it is argued that the party acquiring the timeshare right should be granted a right of withdrawal which can be exercised against the person (consumer) who establishes or transfers the right (not the agent).⁶¹ In IRELAND, the regulations impose obligations on vendors which would, according to the law of agency, include both the vendor himself and his agent.

Following such models, it could be considered tackling the phenomenon of consumers reselling their timeshare rights with the aid of professional agents or resale companies on a European level in order to grant a certain consumer protection against the selling methods of these agents, which are often identical to timeshare companies. In this context, extending the application of the Directive's regulations to such cases could be considered, however, without fully neglecting the protection of the selling consumer. A possible solution for the conflicting consumer interests might be to only impose sanctions, like penalties, on the (professional) agent or resale agency, and to allow the purchaser a right of withdrawal against the consumer who sells the timeshare right.

2. Situations falling in the scope

a. Contracts

According to Art. 2, 1st indent of Directive 94/47 a 'contract relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis', hereinafter referred to as 'contract', shall mean any contract or group of contracts concluded for at least three years under which, directly or indirectly, on payment of a certain global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or is the subject of a transfer or an undertaking to transfer.

It should be borne in mind that this bulky definition intends to cover a broad variety of rights allowing the rotating use of immovable property (including connected services) for the purpose of accommodation. The reason is that member states have developed very different legal constructions to allow for timeshare rights, namely real property rights (shared rights *in*

⁶¹ *Martinek*, in: Staudinger, Teilzeit-Wohnrechtegesetz, § 1 no. 19; *Saenger*, in: Erman, BGB I¹¹, § 485 no. 3.

rem), but also personal rights arising from various legal grounds (e.g. tenancy, partnership in a civil law association or shareholder of a company) and different sorts of trusts.

Some member states, namely BULGARIA,⁶² IRELAND, ITALY, MALTA and ROMANIA⁶³ have literally adopted the definition of timeshare contracts given in the Directive. The definition is substantially in line with the Directive in GREECE⁶⁴, SLOVENIA⁶⁵ and the NETHERLANDS⁶⁶.

In several member states, contracts, which grant an annual use of the property for less than one week, are also included into the scope. In BELGIUM⁶⁷, the minimum duration of use must be two days. In AUSTRIA⁶⁸, CYPRUS⁶⁹, the CZECH REPUBLIC⁷⁰, ESTONIA⁷¹, FINLAND⁷², FRANCE⁷³, GERMANY⁷⁴, HUNGARY⁷⁵, LUXEMBOURG⁷⁶, POLAND⁷⁷, SWEDEN⁷⁸ and the UNITED KINGDOM, there is no minimum duration for the annual use of the building at all.

In PORTUGAL, the definition of timeshare right prescribes that the period of time in which such a right can be established may vary from 7 days to 30 days per year. As a consequence it is not possible for the parties to create a timeshare right in Portugal with an annual use of more than 30 days. The purchaser seems to be then protected insofar as he is not obliged by such an agreement due to invalidity. Furthermore, the timeshare right in Portugal is perpetual but a limit of no less than 15 years can be fixed.⁷⁹

⁶² Article 149 of the Law on Consumer Protection only speaks of “seven days” instead of “one week”.

⁶³ Article 3 lit. a of the Law No. 282.

⁶⁴ Article 2(1)(a) Decree No 182/1999: GREECE has omitted “real property”.

⁶⁵ Article 59(1) of the Consumer Protection Act.

⁶⁶ CC Art. 48a(a).

⁶⁷ Article 2(1), sent. 1 of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

⁶⁸ § 1(1), § 2 (1) of the Timeshare Act.

⁶⁹ Article 2, 9th indent of the Timeshare Contract Law of 2001, L.113(I)/2001.

⁷⁰ CC § 58(1), at least once a year .

⁷¹ Article 379(1) of the Law of Obligations Act.

⁷² Chapter 10 § 1 of the Consumer Protection Act of 20 January 1978/38.

⁷³ Code de la Consommation, Art. L.121-60.

⁷⁴ CC § 481(1).

⁷⁵ § 2(a) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

⁷⁶ Article 1(1) of the Timeshare Act of 18 December 1998.

⁷⁷ Article 1(1)) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Time Each Year.

⁷⁸ Article 1(1) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

⁷⁹ Article 3(1) of the Decree-Law 180/99.

Spanish law only differs on one essential point: it establishes two ways of creating the right: a right *in rem*, or as rent of a house for some seasons under some special conditions.⁸⁰

Several member states have not transposed the minimum duration of the contract of three years, which is provided by the Directive. In CYPRUS, FINLAND and HUNGARY, there is no minimum duration of the contract at all. In BELGIUM, the scope includes contracts of duration of more than one year and also contracts with duration of one year or less if they contain a taciturn prolongation.⁸¹ In LUXEMBOURG⁸², a contract with a duration of less than three years is included if it contains a clause which determines a taciturn extension and / or the conditions for an extension of the contract. SPAIN and PORTUGAL have laid down provisions that the owner of the immovable property has to reserve a period of at least seven days per year for repairs, maintenance and cleaning.

In the definitions of timeshare contracts in the transposition laws of the CZECH REPUBLIC, DENMARK, FINLAND, LATVIA, LITHUANIA, SLOVAKIA⁸³ and SWEDEN, there is no requirement of a global price.

Contracts falling in the scope	Member States
Literally adopted	BG, IE, IT, MT, RO (5)
Substantially equivalent as in the Directive	EL, NL, SL (3)
Deviations concerning:	
• Shorter or no period of use of property per year	AT, BE, CY, CZ, DK, DE, EE, FI, FR, HU, LU, PL, SE, UK (14)
• Shorter or no minimum duration of the contract	BE, CY, FI, HU, LU (5)
• No need for global price	CZ, DK, ES, FI, LT, LV, SE, SK (8)

⁸⁰ Article 1(6) of the Law 42/1998; the latter for a period of at least three up to a maximum of 50 years.

⁸¹ Article 2(1), sent. 2 of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

⁸² Article 1(1), sent. 2 of the Timeshare Act of 18 December 1998.

⁸³ CC §55(1), sent. 1, sent. 2, 1st part.

In order to prevent escaping from the Directive by offering contracts with a duration of less than 36 months or with an annual period shorter than seven days, following the model of several member states and dropping, or lowering, the requirements of the minimum duration of three years and the minimum annual period of seven days could be considered. However, such an amendment must avoid simple rental agreements (in particular if repeatedly concluded in advance) falling under the definition.

b. Immovable property

Directive 94/47 defines the notion of immovable property as “any building or part of a building for use as accommodation to which the right which is the subject of the contract relates”. This definition of immovable property has been literally transposed in BULGARIA, CYPRUS, IRELAND, MALTA, LUXEMBOURG and ROMANIA. It is transposed closely to the Directive in AUSTRIA, ESTONIA, ITALY⁸⁴ and SPAIN.

The BELGIAN⁸⁵ definition only mentions buildings for accommodation, but leaves out “part of a building”. In the CZECH REPUBLIC⁸⁶ and SLOVAKIA, the term “immovable property or part thereof” is defined as a building intended for habitation and accommodation. FINLAND has two definitions, firstly “timeshare housing”, being a building or an apartment whose possession rotates among shares at defined or definable intervals, and, secondly, the “timeshare object”, defined as an entity comprising timeshare housing and the common rooms available to the shareholders, as well as the services connected to it.

The PORTUGUESE⁸⁷ legislator has created the term “accommodation units”, which are parts of apartment hotels, holiday resorts or holiday apartments. Moreover, the Portuguese transposition law contains a specific chapter on “holiday accommodation systems”, defined as accommodation rights in holiday developments which do not constitute timeshare rights, and contracts under which, by means of an advance payment, such accommodation rights are transferred. Thus, the aforementioned chapter broadens the scope of application to rights not

⁸⁴ Article 69(1)(d) of the Consumer Code (“immovable property shall mean any building, also used as a hotel...).

⁸⁵ Article 2(3) of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

⁸⁶ CC § 59(2).

⁸⁷ Article 1 of the Decree-Law 275/93 of August 5.

covered by the Directive in order to make some of the protective instruments of the Directive also applicable to such rights.⁸⁸

In several member states, there is no specific legislative transposition of immovable property. In DENMARK, FRANCE, GERMANY, HUNGARY, LITHUANIA⁸⁹ and the NETHERLANDS⁹⁰, the general definitions of immovable property are used. In the UNITED KINGDOM, there is no specific transposition of the definition of immovable property. As the British definition of the contract is based on the term of “timeshare accommodation” the content of the Directive’s definition can partly be found in the British definition of accommodation, which means accommodation in a building or – insofar going beyond the Directive – in a caravan. In SLOVENIA⁹¹ the immovable property can be land, a building, a part of a building or a piece of land and must be destined for use as accommodation constantly or temporarily and be in legal commerce according to the law of the country where it lies. The mentioning of “land” could be interpreted as an inclusion of, for instance, camping grounds. If this understanding is correct, the Slovenian law goes beyond the Directive which is only applicable to buildings.

Literally transposed	BG, CY, IE, LU, MT, RO (6)
Substantially equivalent as in the Directive	AT, EE, ES, IT (4)
Small deviations	BE, CZ, EL, FI, SK (5)
Inclusion of obligatory holiday accommodation rights (‘holiday clubs’)	PT (1)
Inclusion of caravans, camping grounds	SL, UK (2)
No specific legislative transposition, but general definitions or concepts used	DK, DE, FR, HU, LT, LV, NL, PL, SE (9)
No restriction of accommodation	EE (1)

The definitions of “contract” and “immovable property” provided by the Directive in principle seem to cover perfectly not only an *ius in rem*, but also the personal rights and trust

⁸⁸ Article 45 of the Decree 180/99 of May 22.

⁸⁹ Article 4.2(2) of the Civil Code.

⁹⁰ CC Book 3 Art. 3, Book 7 Art. 48a(a).

⁹¹ Article 59(2) of the Consumer Protection Act. The Slovenian definition of the Directive’s “immovable property” is not clear, but since the title already includes the words “dwelling building” and since, according to Slovenian law a building is only a part/a component of land (land is immovable and a building on it is its part), it can nevertheless be deduced that the definition is in accordance with the Directive.

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constructions, as long as the right in question relates closely to a certain building or to a specified group of buildings, in the latter case combined with an exchange or point system. Only very few member states have extended their definitions to objects other than buildings e.g. caravans or camping grounds. Nevertheless, including camping grounds, caravans, boats mobile homes and other movables, which can be used for the purpose of accommodation could be considered.

Other legal constructions which do not give rights to repeatedly use a certain building or a group of specified buildings, but simply promise special rates on tourist services ('travel discount clubs') do not fall under the definition of the Directive. Seemingly only one member state, PORTUGAL, has broadened its transposition of the Directive to such timeshare-like constructions.

III. Consumer protection instruments

1. Information duties, Art. 3

a. Information document (prospectus)

According to Art. 3 of the Directive, the vendor must be required to provide any person requesting information with a document, which contains a general description of the immovable property along with at least brief and accurate information on certain details listed in the Annex⁹² of the Directive, and on how further information may be obtained.

All member states have used the list of information duties provided in Art. 3 of the Directive as a model for their transposition legislation and have created a similar list. Some member states (e.g. CYPRUS, DENMARK, GREECE, IRELAND, MALTA, ROMANIA, the NETHERLANDS⁹³ and the UNITED KINGDOM) have used the same technique as in the Directive by implementing an annex containing all the information obligatory for both the information document and the contract. These member states refer to the Annex when laying down the obligatory details for the information document and the contract. BULGARIA⁹⁴ has also made one list, which can be

⁹² Litera (a), (g), (i) and (l) of the Annex.

⁹³ A separate decree: Decree of 25 June 1997 containing rules concerning information that sellers of timeshare rights must mention in the contract in the interest of the buyer.

⁹⁴ Article 152(2) of the Law on Consumer Protection.

found in the law (i.e. not in an annex). The other member states have split up the information for the information document and the contract by using two different lists of information duties for the contract and the information document, e.g. ESTONIA, GERMANY, ITALY.

Many member states have added further information obligatory for the prospectus. Such additional information has been partially taken from the list in the Annex of the Directive (i.e. the items from the list that are to be included in the contract under Art. 4, but not in the prospectus under Art. 3 like lit. (h) or lit. (k)). In CYPRUS⁹⁵ and in the NETHERLANDS⁹⁶, the information to be provided in the prospectus is the same as the information in the contract document. The following table shows which additional information duties the other member states have stated for the prospectus:

Additional information duty	Member States
Lit (h) of the annex of the Directive ⁹⁷	CZ, EE (partially), LT (3)
Lit. (k) of the annex of the Directive ⁹⁸	AT, BE, CZ, DE, EE, ES, FI, HU, LU, PL, SE, SK, SL (13)
Information on whether the consumer becomes the owner of the building or not	EE, DE, HU (3)
Information on the prohibition of advanced payments	HU, SE (2)
Information on the distance to the next means of transport	DK (1)
Information that the written information shall become part of the contract	HU (1)
Information that joining an exchange system does not guarantee that an exchange can be realised	BE, LU (2)
Information on the payment method	CZ, SK (2)

⁹⁵ Annex I of the Timeshare Contract Law of 2001, L.113(I)/2001.

⁹⁶ In Dutch law, the vendor has to provide any person requesting information a draft of the purchase contract, cf. CC Book 7, Art. 48f.

⁹⁷ Litera (h): The exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the purchaser may start to exercise the contractual right.

⁹⁸ Litera (k): Whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, and any costs involved should an exchange and/or resale scheme be organised by the vendor or by a third party designated by him in the contract.

The transposition in LITHUANIA, where the information document does not have to contain information on the right of withdrawal, is rather problematic. FRENCH law refers only to the information the offer has to contain but does not regulate anything about a possible prospectus.⁹⁹ The reason seems to be that under French law a prospectus would be considered as an offer anyway.

aa. Information provided in the information document (prospectus) forms an integral part of the contract

Article 3(2), sent. 1 of the Directive states that the information provided in the information document forms an integral part of the contract. Except for FRANCE, all the member states have transposed this rule according to the Directive. In France, there has not been a specific legislative transposition of Art. 3(2), sent. 1 of Directive 94/47, but because of general rules a written offer as the information document becomes part of the contract. Therefore, the effect that Art. 3(2), sent. 1 is supposed to achieve is reached in France as well.

	Member States
As in the Directive	AT, BE, BG, CY, CZ, DK, DE, EE, EL, ES, FI, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SL, UK (26)
Variations	FR (1)

bb. Changes resulting from circumstances beyond the vendor's control

Article 3(2), sent. 2, sent. 3 and sent. 4 of the Directive state that, unless the parties expressly agree otherwise, only changes resulting from circumstances beyond the vendor's control may be made to the information provided in the information document. Any changes to that information shall be communicated to the purchaser before the contract is concluded. The contract shall expressly mention any such changes.

⁹⁹ Consumer Protection Act, Art. L.121-61.

More than half of the member states have transposed the rule similarly to the Directive. Additionally, in AUSTRIA and LITHUANIA, no specific transposition measure was used, but general law principles apply and cover this gap. Therefore, the same result is reached as if Art. 3(2), sent 1, sent. 2 and sent. 3 of the Directive were legislatively implemented. Nevertheless, it is questionable whether this way of transposition complies with the requirements of the ECJ rulings in the cases C-144/99 – *Commission v Netherlands* and C-478/99 – *Commission v Sweden*. According to these rulings, it is essential that the legal situation resulting from national implementing measures is sufficiently precise and clear and that individuals (also from other member states) are made fully aware of their rights so that, where appropriate, they may rely on them before the national courts.

The transposition laws of several countries vary from the rule laid down in the Directive. In BULGARIA, the CZECH REPUBLIC, POLAND, SLOVENIA and the UNITED KINGDOM, the vendor is obliged to inform the consumer about the changes in writing. In SLOVAKIA and the Czech Republic, the consumer has to be informed about any changes at least 10 days before the conclusion of the contract. Also the FINNISH law is stricter than the Directive, as it does not only set the requirement that the changes were outside the vendor's scope of control, but in addition to that, the vendor must not have been able to reasonably foresee the changes.

In AUSTRIA¹⁰⁰, the contract may only deviate from the information document if the consumer and the vendor expressly agree upon it. There is no requirement that the changes result from circumstances beyond the vendor's control. The situation is similar in ESTONIA and GERMANY, where the transposition laws also do not fully comply with the Directive since they do not require that the changes must result from circumstances beyond the vendor's control. On the contrary, in POLAND¹⁰¹, the document may only be changed if the amendment results from circumstances beyond the trader's control. Due to the estimation that the parties are not in an equal position, the document may not be changed just by the agreement of the parties.

Moreover, in the CZECH REPUBLIC, GERMANY, SLOVAKIA, SLOVENIA, POLAND and SPAIN, there is no rule that the deviation from the information document has to be expressly

¹⁰⁰ § 4(2) of the Timeshare Act.

¹⁰¹ Article 3(2) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Times Each Year.

mentioned in the contract. FRANCE did not transpose Art. 3(2), sent. 2, sent. 3 and sent. 4 at all.

	Member States
As in the Directive	BE, BG, CY, DK, EL, HU, IE, IT, LU, LV, MT, NL, PT, SE, RO <i>(15)</i>
Variations	AT, CZ, DE, EE, ES, FI, LT, PL, SK, SL, UK <i>(11)</i>
Not transposed	FR <i>(1)</i>

cc. Advertising shall indicate the possibility of obtaining the information document

All member states seem to have transposed the obligation stated in Art. 3(3) of Directive 94/47 that advertising shall indicate the possibility of obtaining the information document referred to in Art. 3(1) of the Directive. The SPANISH provisions¹⁰² refer to the duty of the vendor to inform the purchaser of how to obtain general information on rights and to inform the purchaser on organisations and professionals that may help him (instead of how to achieve the document).

Advertising	Member States
As in the Directive	AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK, SL, UK <i>(26)</i>
Variations	ES <i>(1)</i>

It has been criticised that the Directive does not regulate the time when the document should be given to a possible purchaser.¹⁰³ As a consequence, it might happen that the consumer does not receive the information document far enough in advance of signing the contract, so that he cannot take note of the information. This could be avoided by inserting a provision similar to

¹⁰² Mainly Art. 8(3) of the Law 42/1998.

¹⁰³ *Howells/Wilhelmsson*, EC Consumer Contract Law, 252.

Art. 4(1) of Directive 97/7¹⁰⁴ (“in good time prior to the conclusion of any contract”), perhaps clarified along the model of Directive 2002/65.¹⁰⁵

b. Information duties in the contract

Article 4 , 1st indent of Directive 94/47 states that the contract must include the items referred to in the Annex. Again, the vast majority of member states has transposed this provision closely to the Directive. GREECE, MALTA, the NETHERLANDS, IRELAND, ROMANIA and the UNITED KINGDOM have used the copy and paste method. Member states like e.g. BULGARIA, FINLAND, GERMANY, ITALY, LATVIA, POLAND and SLOVENIA have transposed this provision and the items listed in the Annex with some slight variations in the wording.

Some member states have stated - besides the information provided in the Annex of the Directive - additional information duties which have to be part of the contract. This additional information is often the same as that which these member states already regulate in the provisions for the information document according to Art. 3(1) of the Directive (cf. above under III.1.a.). The following chart gives a short overview on some of these additional information duties:

Additional information duty to be included in the contract	Member States
Information on whether the consumer becomes the owner of the building or not	EE, DE, HU (3)
Information on the prohibition of advanced payments	HU (1)
Information on the distance to the next means of transport	DK (1)
Information that the written information shall	BG, HU (2)

¹⁰⁴ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts; OJ L144 of 4 June 1997, 19 – 27.

¹⁰⁵ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC; OJ L 271 of 9 October 2002, 16 – 24.

become part of the contract	
Information that joining an exchange system does not guarantee that an exchange can be realised	BE, LU, PT ¹⁰⁶ (3)
Information on the payment method	CZ, SK (2)

Further additional information duties are only regulated with regard to the contract. For instance, the AUSTRIAN¹⁰⁷ provisions concerning the list of information that has to be given, also include the year of construction of the building, reserves for maintenance and repair or restrictions concerning the conveyance of the right. In PORTUGAL, the vendor is obliged to provide the purchaser with additional information concerning the administration, the value of the immovable property, a description of the furniture and confirmation that the immovable property is in conformity with the national building laws. In BELGIUM, the contract has to state all the particulars on the mortgage situation of the immovable property or on any existing rights *in rem* that might directly influence its use. Furthermore, in Belgium, the information about the right of withdrawal and the text of provision stating the right of withdrawal must be given in bold letters and in a separate frame on the first page of the contract.¹⁰⁸ Also in LUXEMBOURG, this information has to be provided in bold.¹⁰⁹ According to CYPRIOT law, the purchaser has to receive a form for the notification of withdrawal and an information document containing the purchaser's rights and the vendor's obligations.¹¹⁰ Also, the GERMAN Regulation on duties to supply information in civil law¹¹¹ contains in its Annex 2 a standard form, which suppliers can use in order to fulfil the obligation to inform the consumer on the existence, the exercise and the effects of the right of withdrawal.

Some member states have not transposed all items of the Annex. In LITHUANIA, the information stated in lit. (j), (k) and (l) of the Directive's Annex has not been transposed, neither for the prospectus nor for the contract. The seller is only obliged to inform the consumer more generally of his rights. It is questionable whether this transposition is sufficient, especially with regard to the information on the right of withdrawal. In the CZECH

¹⁰⁶ Article 11(2)(g) of the Decree-Law 180/99.

¹⁰⁷ Section 3(1), No. 1 of the Timeshare Act.

¹⁰⁸ Article 7(1) of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

¹⁰⁹ Article 7(1)(3) of the Timeshare Act of 18 December 1998.

¹¹⁰ Annex II Part A and B of the Timeshare Contract Law of 2001, L.113(I)/2001.

¹¹¹ BGB-Informationspflichten-Verordnung (BGB-InfoV).

REPUBLIC, SLOVAKIA and SPAIN¹¹², the contract also does not have to contain the information referred to in lit. (j)¹¹³ of the Annex. However, the impact of this lack of transposition may be rather limited as the information needs to be provided in the information document anyway, which then, finally, becomes part of the contract.

The overall picture shows extremely detailed information obligations, which are probably rather burdensome to the vendor. At the same time it can be doubted whether such catalogues lead to effective consumer protection instead of simply overloading the consumer with more information than he can make use of sensibly. It might be rethought whether it really is useful to give the consumer most of the information twice.

From the viewpoint of a vendor who wants to undertake cross-border business lawfully, the actual situation in the member states must be seen as a substantive barrier to trade. As most member states have made use of the minimum clause, it is rather costly to find out what information has to be given under the law of a certain member state (as to the formal and language requirements to be fulfilled see below in the next chapter).

In the course of the review of the Directive, identifying some items of core information which must in any case be provided could be considered. The starting point could be a general clause, saying that the vendor has to provide such information concerning the goods or services to be provided as the average consumer can reasonably expect and as he needs in the given context to take an informed transactional decision. Such a general clause could be supplemented by an indicative list of core information which must be provided, if appropriate, in the case of timeshare contracts.

¹¹² Article 9(1) of the Law 42/1998 which, nevertheless, states expanded information duties. Most of them have a more detailed structure than those stated in the Directive.

¹¹³ A clause stating that acquisition will not result in costs, charges or obligations other than those specified in the contract.

2. Requirements with regard to form and language of the information document and the contract

a. Formal requirements for the contract

Article 4, 1st indent of Directive 94/47 states that the contract must be concluded in written form. Almost all member states have implemented this obligation very closely to the Directive. Only GREECE sets out a stricter requirement in the written form, namely the deed. In POLAND, the contract does not have to be in written form whenever a different specific form for the conclusion of a contract has been laid down. Regarding this different specific form, there is no explicit requirement that it must be stricter than the written form. But this should follow from the rule that member state law has to be interpreted in the light of the Directive.

In ESTONIA and GERMANY, the transposition laws are conform to the Directive, but also set out the possibility that more stringent requirements concerning the form of a contract can be provided by law. In Germany, for example, it does often not suffice that the contract is in writing (CC § 126). It also requires authentication by a public notary in accordance with CC § 128 and § 311b. This applies, for instance, to timeshare contracts through which the purchaser acquires joint ownership of a property. In SPAIN, the purchaser has the right to demand the conclusion of the contract in a notarial deed and he has to be informed of this option.¹¹⁴

Formal Requirements	Member States
As in the Directive	AT, BE, BG, CY, CZ, DK, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SK, SL, UK (23)
Variations	DE, EE, EL, PL (4)

b. Language of the contract and the information document, Art. 4, 2nd indent

According to Art. 4, 2nd indent of the Directive, the contract and the information document must be drawn up in the language or in one of the languages of the member states in which the purchaser is resident or in the language or one of the languages of the member state of

¹¹⁴ Article 9(1)(11)(b) of the Law 42/1998.

which he is national which shall be an official language or official languages of the Community, at the purchaser's option.

Most of the member states have transposed this provision. The provisions in LATVIA and LITHUANIA are rather problematic, where the contract has to be drawn up in the official language of the state, thus in Latvian and Lithuanian respectively.

MALTA¹¹⁵ offers the consumer an even wider choice than the Directive requires. It is possible to choose between the language of the member state where the purchaser is resident, the language of the member state of which he is national and any official language of the Community that he understands. In ESTONIA, the purchaser can choose between the language of the state where he is resident, the language of the state of which he is a national and the Estonian language. In DENMARK, FINLAND¹¹⁶ and SWEDEN (only for the information document), the consumer can choose not only one of the official languages of the EEC, but also Norwegian or Icelandic. SLOVENIAN law rules that a contract or an information document referring to a property in the Republic of Slovenia, or one given to a citizen of the Republic of Slovenia or an individual with permanent residence in the Republic of Slovenia must also be available in the Slovene language.¹¹⁷ The CZECH REPUBLIC and SLOVAKIA have not stated language requirements for the information document. Finnish law only rules that for promotional events the information document shall be at least available in the language used in the invitation.¹¹⁸ This seems to be an infringement of the Directive. However, according to the preparatory works, this provision (Chapter 10 sec. 6(2) of the Consumer Protection Act) is meant to correctly transpose the language requirements also with regard to the information document. This might be at least partially true because of an indirect effect of the Finnish provisions on the language of the contract. According to these provisions in Chapter 10 sec. 7 of the Consumer Protection Act, the prospectus automatically becomes part of the contract. The effect is that a trader cannot enter into contracts at all unless complying with the language provisions in the information document.

¹¹⁵ Regulation 6(1)(3) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000.

¹¹⁶ Chapter 10 sec. 6(2) of the Consumer Protection Act of 20 January 1978/38.

¹¹⁷ Article 60(4) of the Consumer Protection Act.

¹¹⁸ Chapter 10 sec. 6(2) of the Consumer Protection Act of 20 January 1978/38.

In SPAIN, foreign purchasers may request a translation in an EC language of their choice. Furthermore, consumer organisations' and tourist bodies can require a translation.

Language	Member States
As in the Directive	AT, BE, BG, CY, DE, EL, ES, FR, HU, IE, IT, LU, NL, PL, PT, RO, UK (17)
Variations	CZ, DK, EE, FI, MT, SE, SK, SL (8)
Not transposed	LT, LV (2)

It is evident, that the language provisions can become very burdensome for the vendor. This can become even more so, because the necessary content of the information document also depends on the applicable law. In theory, a vendor could be obliged to provide up to 25 different types of information documents (one for each jurisdiction) and to translate these documents in all the (not only official) languages a consumer may be entitled to choose from. However, it has to be considered that timeshare contracts are complicated and that the timeshare objects are often located in a country other than the consumer's home country and frequently sold to tourists during their holiday. It would invalidate the information duties if the consumer did not have the possibility to obtain a version in a language he could understand. It follows from the idea of an EU-wide internal market that all possible consumers should be enabled to participate. Therefore, it would be difficult to find reasons for lowering the language requirements. The solution should be sought by simplifying the long lists of the information items to be given. If, for instance, the EU legislation provides for a standard form for the information on the withdrawal right, it would be easy for the vendors to provide it in all official languages.

c. Option stated in Art. 4(1) 2nd indent, sent. 2

Article 4(1) 2nd indent, sent. 2 of Directive 94/47 states that the member state in which the purchaser is resident may, however, require that the contract has to be drawn up in any case in its language or languages. 9 countries have made use of this option, whereas 8 member states did not (cf. the table enclosed). Some member states' legislation have also laid down some provisions varying from the Directive. In GREECE, LATVIA, LITHUANIA and PORTUGAL, the contract has to be written in the official language of the respective state in any case. The

FRENCH ‘Code de la Consommation’ states that the contract has to be drawn up in French if the purchaser is resident in France or if the immovable property is situated in France.¹¹⁹ An equivalent regulation can be found in BULGARIA.¹²⁰ In IRELAND, the seller is required to provide a version of the contract in English, or in English and Irish (which has become an official language)¹²¹ at the purchaser's request, in the case of a purchaser residing within Ireland. MALTA goes further because the seller shall provide the buyer with a certified translation of the contract in Maltese or in English if the buyer so requests, irrespective of whether the buyer's residence is in Malta.¹²² In SPAIN, the contract has to be drawn up in Castilian or any other of the official Spanish languages as chosen by the purchaser. These can be languages other than the official languages of the Community.¹²³ SLOVENIAN law rules that a contract or an information document referring to a property in the Republic of Slovenia, or one given to a citizen of the Republic of Slovenia or an individual with permanent residence in the Republic of Slovenia must also be available in the Slovenian language.¹²⁴

Option stated in Art.	Member States
4 (1), 2nd indent	
Option used	CY, CZ, FR, HU, IT, LU, PL, RO, SK, UK (10)
Option not transposed	AT, BE, DE, DK, EE, FI, NL, SE (8)
Variations	BG, EL, ES, IE, LT, LV, MT, PT, SL (9)

d. Certified translation of the contract in the language of the member state in which the immovable property is situated

A great majority of member states has transposed the vendor's obligation to provide a certified translation of the contract in the language of the member state in which the immovable property is situated (cf. the enclosed table). There are only a few deviations in some member states. MALTESE law states that the seller shall provide the buyer with a

¹¹⁹ Consumer Protection Act, Art. L121-68.

¹²⁰ Article 153 (1) of the Law on Consumer Protection.

¹²¹ Regulation 6(1)(d) European Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations 1997 and 2000.

¹²² Regulation 6(2) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000.

¹²³ According to Spanish doctrine, this deviation is deemed to be legitimate; Lete *Achirica*, La configuración de la multipropiedad en España, 125, 149 ; Munar *Bernat*, La regulación española de la “multipropiedad”, 205.

¹²⁴ Article 60(4) of the Consumer Protection Act.

certified translation of the contract in Maltese or in English as the buyer so requests, but in the language of the country where the immovable property is located.¹²⁵ In GERMANY¹²⁶, SLOVENIA¹²⁷ and HUNGARY¹²⁸, the obligation to give to the consumer a certified translation of the contract in the language of the country where the residential property is located, does not apply if subjects of a timeshare contract are parts of residential properties located in two or more countries. In FINLAND¹²⁹, the translation has to be authenticated by a licensed translator, in POLAND by a “sworn translator”.¹³⁰ In some member states, the official version of the Directive does not request a “certified translation” and, subsequently, the national legislation does not contain this requirement, e.g. ITALY, SPAIN.

Certified translation	Member States
As in the Directive	AT, BE, BG, CY, CZ, DK, EE, EL, FR, IE, LT, LU, LV, NL, PT, RO, SE, SK, UK (<i>19</i>)
Variations	DE, ES, FI, HU, IT, MT, PL, SL (<i>8</i>)

e. Sanctions for non-compliance with the form and language requirements

Most transposition laws lay down sanctions for not complying with the Directive regarding the written form and the language obligation. Hereby nullity of the contract, a right of the consumer to cancel or withdraw from the contract or fines are popular sanctions.

Regarding non-compliance with the obligation to conclude a timeshare contract in written form, in AUSTRIA, BELGIUM, BULGARIA, CYPRUS, FRANCE, GERMANY, GREECE¹³¹, ITALY, LUXEMBOURG, the NETHERLANDS, POLAND and ROMANIA, for instance, the contract is void. In the CZECH REPUBLIC, DENMARK, ESTONIA, FINLAND, SPAIN and SWEDEN, for example, if the contract is not set up in writing, the consumer is not bound by that agreement and can terminate the contract or withdraw from it within specified periods.

¹²⁵ Article 6(2) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000.

¹²⁶ CC § 484(2)(3).

¹²⁷ Article 60a(3) of the Consumer Protection Act.

¹²⁸ § 5(3) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

¹²⁹ Chapter 10 sec. 6(2) of the Consumer Protection Act of 20 January 1978/38.

¹³⁰ Article 5(3), sent. 2 of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Times Each Year.

¹³¹ Deed as formal requirement.

In CYPRUS, for instance, administrative fines can additionally be imposed on the vendor. In BELGIUM, a vendor can only be sanctioned by a fine from EUR 150 up to EUR 10 000, if he did not respect any of the provisions in the Timeshare Act. Furthermore, his registration can be revoked. In SLOVENIA, vendors who do not meet the obligation of concluding contracts in written form are sanctioned by fines. The law distinguishes between different kinds of vendors. Whereas a natural person can be sanctioned by a fine between SIT 1.000.000 – 5.000.000, a fine between SIT 3.000.000– 10.000.000 can be imposed on a legal person and, additionally, on the person accountable for the undertaking of this figure between SIT 300.000 – 1.000.000. In IRELAND, a vendor or his agent who fails to comply with Regulation 4, 5 (on information), 6 (on withdrawal) or 8 (prohibition on advance payments) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,500 [€1,904.61], to be prosecuted summarily by the Director of Consumer Affairs.¹³²

Concerning the obligation to set up the contract in a specific language, the same kinds of sanctions as mentioned above have been chosen to punish the vendor for not complying with the Directive. For instance, in AUSTRIA, BULGARIA and FRANCE, the timeshare contract is void, if it is not set up in the required language. In Austria, the purchaser has to claim nullity of the contract within two years of the beginning of the contract. In the CZECH REPUBLIC, ESTONIA, FINLAND, SPAIN and SWEDEN, if the timeshare contract has not been set up in the required language, the consumer has the right to terminate or withdraw from the contract. BELGIUM, CYPRUS and DENMARK, for instance, lay down that the vendor shall be fined. In HUNGARY, the withdrawal period is prolonged up to 30 days if the information document was not provided in the correct language.¹³³ In GERMANY, the withdrawal period is one month, if the information document is not provided at all or not provided in the correct language.¹³⁴ ROMANIAN law 282/2004 provides that in the case this obligation is breached, this represents a contravention and is subject to fines amounting from 15.000.000 ROL to 75.000.000 ROL.

¹³² Regulation 16 of the European Communities (Contracts for Time Sharing of Immovable Property—Protection of Purchasers) Regulations 1997 and 2000.

¹³³ § 8(2) of the Government Decree 20/1999. (II. 5.) on contracts for the purchase of the right to use immovable property on a timeshare basis.

¹³⁴ CC. § 485 (3).

3. Right of withdrawal

a. Information duty

According to lit. (1) of the Annex in conjunction with Art. 3 and 4 of the Directive, the information document and the contract must include information on the right to withdraw from the contract and must indicate the person to whom any letter of withdrawal should be sent [...]. Thus, the information document and the contract have to contain information on the right of withdrawal and how to exercise it. This provision has been transposed closely to the Directive by most of the member states. In contrast to all the other member states, LITHUANIA does not oblige the vendor to indicate the right of withdrawal to the consumer, neither in the information document nor in the contract.

Many member states have additionally laid down precise provisions on how to inform the purchaser, e.g. by standard forms or precise wordings to be used. Such countries are, e.g., BELGIUM, CYPRUS, FRANCE, GERMANY, GREECE, LATVIA, LUXEMBOURG, MALTA and the UNITED KINGDOM¹³⁵. In Malta¹³⁶, a clause with the following wording must be included in the contract:

“You as the buyer have the right to withdraw or cancel such a contract in accordance with ‘The Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations, 2000’. These Regulations provide that a buyer may withdraw, without giving any reason, from such a contract within ten days from when the parties sign the contract.”

If the clause is missing, the buyer may claim that the contract is null and void.

In BELGIUM¹³⁷ and LUXEMBOURG, the information about the right of withdrawal must be given in bold letters and in a separate frame. GERMAN law also prescribes that the vendor must formally inform the consumer about the right of withdrawal. For this purpose, the vendor can use an information form of withdrawal designed by the legislator. This information does not necessarily have to be in written form, but must be sufficiently provided in text form (email, fax, CD-ROM). Some authors assume that this is an infringement of EC

¹³⁵ Article 3(5) of the Timeshare (Cancellation of Information) Order 2003.

¹³⁶ Regulation 4.4 of the Timeshare Regulations.

¹³⁷ Article 7 § 1 in fine TA.

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law because Art. 4 states that the contract with the information referred to in the Annex including the information on the right of withdrawal needs to be in writing.¹³⁸ In the course of a review of the Directive, it could be made clear whether “in writing” means text on paper or also includes, e.g., electronic text on a durable medium.

In CYPRUS¹³⁹ and LATVIA, traders also have to inform consumers about their right of withdrawal by a separate written notice and, in FRANCE¹⁴⁰, the vendor must provide the consumer with a special form which the consumer can use for exercising his right of withdrawal. In GREECE, the consumer also has to be given a separate form containing information about the right of withdrawal and its exercise and a specimen/sample of the explanation of withdrawal.

As already said, it might really be helpful for improving cross-border trade if a standard form for the information about the withdrawal right were provided on a European level.

b. Withdrawal period

aa. Right of withdrawal within 10 calendar days of both parties signing the contract

The Directive states in Art. 5(1) 1st indent a period of withdrawal of 10 calendar days after the signature of the contract by both parties or the signature of a binding preliminary contract. If the last day of the period is a Sunday or a holiday, the period is prolonged to the next working day.

The 10 calendar days period has been adopted by DENMARK, ESTONIA, FINLAND, FRANCE, GREECE, IRELAND, LITHUANIA, LUXEMBOURG, MALTA, the NETHERLANDS, POLAND, ROMANIA, SLOVAKIA, SPAIN and SWEDEN. Many member states have used the minimum clause to prolong the withdrawal period. The period lasts for 10 working days in BULGARIA, ITALY and PORTUGAL, 14 calendar days in AUSTRIA, LATVIA and the UNITED KINGDOM, two weeks (in some cases one month) in GERMANY, 15 calendar days in CYPRUS, the CZECH REPUBLIC, HUNGARY and SLOVENIA and even 15 working days in BELGIUM.

¹³⁸ *Kelp*, Timesharing-Verträge, 63; *Mankowski*, VuR 2001, 364.

¹³⁹ Article 6(a) of the Timeshare Contract Law of 2001, L.113(I)/2001.

¹⁴⁰ Article L. 121-63.

Withdrawal Regular Period	Member States
10 calendar days	DK, EE, EL, ES, FI, FR, IE, LT, LU, MT, NL, PL, RO, SE, SK (15)
10 working days	BG, IT, PT (3)
14 calendar days	AT, LV, UK (3)
Two weeks	DE (one month, if the necessary information is provided after conclusion of contract) (1)
15 calendar days	CY, CZ, HU, SL (4)
15 working days	BE (1)

In BULGARIA, CYPRUS, FINLAND, IRELAND, LUXEMBOURG, MALTA, ROMANIA and SPAIN (Finland, Spain and LITHUANIA not referring to the preliminary contracts), the beginning of the withdrawal period is regulated as in the Directive. Alternatively in Bulgarian law, the period starts with the end of the precontract. Many member states do not refer to the signing of the contract but to the conclusion of the contract. They are: the CZECH REPUBLIC, DENMARK, ITALY, LATVIA, LITHUANIA, PORTUGAL, SLOVAKIA, SLOVENIA and the UNITED KINGDOM. In BELGIUM and SWEDEN, the period begins the day after the signature of the contract by both parties. In FRENCH law, the 10 day period starts when the purchaser sends the accepted offer to the professional. In addition to that, France attempts to improve the protection of the consumer by requiring that the offer should be maintained for at least 7 days.¹⁴¹ However, this provision just regulates the period during which the vendor is bound by his offer.¹⁴² The consumer is not detained from accepting the offer before the 7 day period expires.

In AUSTRIA, GERMANY, GREECE, ESTONIA, HUNGARY, the NETHERLANDS and POLAND, the withdrawal period starts running from the day when the contract document is delivered to the purchaser. In Germany, the period does not start running before the vendor additionally has informed the purchaser on the right of withdrawal and provided some further information.¹⁴³ These provisions improve the position of the consumer and are therefore in accordance with the Directive.

¹⁴¹ Code de la Consommation, Art. L. 121-63.

¹⁴² Cf. *Calais-Auloy, Steinmetz*, Droit de la Consommation, no. 483.

¹⁴³ Stated in § 2 BGB-InfoV.

Only some member states have seen the necessity to include an explicit provision on the signature of a binding preliminary contract in their national law, e.g. BULGARIA, CYPRUS, GREECE, HUNGARY, IRELAND, LUXEMBOURG, MALTA, ROMANIA and SLOVENIA.

Table: Start of the withdrawal period

After the signature of the contract	BG, CY, ES, FI, IE, LU, MT, RO (8)
After the conclusion of the contract	CZ, DK, IT, LT, LV, PT, SK, SL, UK (9)
Day after the day of signature of the contract	BE, SE (2)
Delivery of the contract copy	AT, DE ¹⁴⁴ , EE, EL, HU, NL, PL (7)
Day of sending the offer to the vendor	FR (1)

Article 5(1) 1st indent, sent. 2 of Directive 94/47 states the extension of the period in case of Sundays or public holidays. This is an odd provision because the EEC-Regulation 1182/71 determining the rules applicable to periods, dates and time limits, regulates the rule in its Art. 3(4) that, where the last day of a period is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day. Therefore, the only function of Art. 5(1) 1st indent, sent. 2 of Directive 94/47 is to amend the general rule in Art. 3(4) of Regulation 1182/71 in the sense that periods shall end on Saturdays. It is doubtful that this was meant. The issue should be clarified, preferably by striking out Art. 5(1) 1st indent, sent. 2 of Directive 94/47 and referring to Regulation 1182/71. This would also make clear that the period has to be calculated according to the rules laid down in this Regulation.

Several member states, for instance, GERMANY, ITALY, LITHUANIA, MALTA, POLAND and SLOVENIA, have transposed Art. 5(1) 1st indent, sent. 2 of Directive 94/47 by referring to pre-existing provisions in their civil law. In ITALY and PORTUGAL, the withdrawal period is 10 working days, in BELGIUM 15 working days, thus the period always expires on a working day.

The overall picture shows a great variety between the member states. It is obvious that the differences of the length and the beginning (also of the rules on calculation) of the withdrawal period can make cross-border business difficult and therefore may amount to a barrier to

¹⁴⁴ The period does not start running before the vendor has additionally informed the purchaser of the right of withdrawal and provided some further information stated in § 2 of the Regulation on BGB - Information Duties.

trade. This is in particular true with regard to the information of the consumer about his right of withdrawal. For this reason a (full) harmonisation of the regular period seems desirable. A 14 day period would not substantially deprive consumers from the rights they currently enjoy under the national laws.

But it should be borne in mind that the period of withdrawal provided for in Directive 94/47 may be considered as being too short for fulfilling its purpose. This might be the case, especially, when a consumer signs a contract at the beginning of his holidays, and may need to exercise his right of withdrawal during the holidays, but has no possibility to speak to a lawyer in his home country. Moreover, timeshare contracts are often rather complicated and difficult to compare; in particular in cross-border cases it may also be difficult and time consuming to get competent legal advice. Much more than in case of the withdrawal periods granted under Directives 97/7¹⁴⁵ and 85/577¹⁴⁶, it could be considered as problematic to prohibit longer periods the member states may want to provide. Therefore, leaving some discretion to the member states might also be considered. Potential barriers to trade could perhaps be avoided by prescribing a maximum (regular) period. It is a political decision as to how long such a regular maximum period could be. The considerations made here would lead to a duration of the withdrawal period from one month up to about three months.

bb. Right of withdrawal in case of lack of information

According to Art. 5(1) 2nd and 3rd indent of Directive 94/47, the member states shall make provisions in their legislation to ensure that:

“in addition to the possibilities available to the purchaser under national laws on the nullity of contracts, the purchaser shall have the right:

- [...]

- if the contract does not include the information referred to in points (a), (b), (c), (d) (1), (d) (2), (h), (i), (k), (l) and (m) of the Annex, at the time of both parties signing the contract or of both parties signing a binding preliminary contract, to cancel the contract within three months thereof. If the information in question is provided within those three months, the purchaser's withdrawal period provided for in the 1st indent, shall then start,

¹⁴⁵ Directive 97/7 on distance selling.

¹⁴⁶ Directive 85/577 on doorstep selling.

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- if by the end of the three-month period provided for in the second indent the purchaser has not exercised the right to cancel and the contract does not include the information referred to in points (a), (b), (c), (d) (1), (d) (2), (h), (i), (k), (l) and (m) of the Annex, to the withdrawal period provided for in the 1st indent from the day after the end of that three-month period;”.

The provisions of Art. 5(1) 2nd and 3rd indent of Directive 94/47 have not been transposed at all in FRANCE. The French legislator only transposed a right of withdrawal within 10 days. In addition to that, it is stipulated in the French transposition law that, in consequence of a failure to give the necessary information in the contract, the contract shall be null and void.¹⁴⁷

In the other member states, non-compliance with information duties leads to a prolongation of the withdrawal period. However, the lists of information duties which have this effect in case of non-compliance by the vendor, vary considerably in the member states. For the general transposition of Art. 4 of the Directive, which regulates the information to be included in the contract, see above under point D III 1 b.

It should be noted that non-compliance with information duties does not lead in any case to a prolongation of the withdrawal period. The Directive and several member states distinguish between information duties which, if infringed, have the effect of prolongation of the withdrawal period, and others, which do not have this effect (but may lead to other sanctions if breached).

For instance, GREECE, IRELAND, MALTA, ROMANIA and the UNITED KINGDOM make the same distinction as the Directive, i.e. only the information items listed in Art. 5(1) 2nd and 3rd indent have the effect of prolongation. In contrast to this, many other member states do not differentiate between the information items they prescribe to be included in the contract and grant a prolonged right of withdrawal if any of the obligatory information is lacking in the contract, e.g. AUSTRIA, BELGIUM, the CZECH REPUBLIC, ESTONIA, FINLAND, GERMANY, LATVIA, LITHUANIA, LUXEMBOURG, the NETHERLANDS, PORTUGAL, SLOVAKIA, SLOVENIA, SPAIN and SWEDEN.

¹⁴⁷ Code de la Consommation, Art. L. 121-76, L.121-61.

Some member states differentiate between the information duties, but they also grant a prolongation of the withdrawal period for some information items other than those stated in Art. 5(1) 2nd indent of the Directive, but not for their whole catalogue of information duties. Such countries are e.g. CYPRUS and HUNGARY (information on prohibition of advanced payments), DENMARK (information about the guarantee regarding the completion of the immovable property and the person where the consumer may address complaints) and POLAND (lit. (j) of the Directive's Annex).

ITALIAN law seems to infringe the Directive, because a breach of the information duties listed in lit. (d)(2) and lit. (m) (concerning the parties) of the Directive's Annex does not lead to a prolongation of the withdrawal period.

Table: Information duties sanctioned by a prolongation of the withdrawal period

Incomplete transposition of Art. 5(1) 2 nd and 3 rd indent	IT (lit. (d)(2), and lit. (m) are missing) (1)
Substantially equivalent to Art. 5(1) 2 nd and 3 rd indent	BG, EL, IE, MT, RO, UK (6)
All information items to be included in the contract (NB: differing in the member states)	AT, BE, CZ, DE, EE, ES, FI, LT, LU, LV, NL, PT, SE, SK, SL (15)
Other additional information	CY, DK, HU, PL (4)
No prolongation of withdrawal period at all	FR (but contract is void) (1)

Some variation could also be observed with regard to the length of the prolonged period. Most of the member states have adopted a period of three months in line with the Directive. In LITHUANIA, the period is prolonged to 4 months. In GERMANY, in case of missing information the purchaser is entitled to revoke the contract even up to 6 months after the conclusion of the contract. The withdrawal-period of two weeks does not start until the purchaser has received all the necessary information in written form. In the event of an ongoing lack of information concerning the right of revocation the withdrawal period is unlimited. The transposition in LATVIA, where the period is 90 calendar days instead of three months is problematic. The FRENCH legislator has not specifically transposed these provisions (see above).

Table: Withdrawal period in case of lacking information (Art. 5(1) 2nd indent)

Period of three months	AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, HU, IE, IT, LU, MT, NL, PL, PT, RO, SE, SK, SL, UK (23)
Period of 4 months	LT ¹⁴⁸ (I)
Period of 90 calendar days	LV (I)
Period of up to 6 months; if information on withdrawal is incomplete or missing, even unlimited	DE (I)
No period, contract is void	FR (I)

cc. Withdrawal period, if the information is provided within the three months

Article 5(1) 2nd indent, sent. 2 of the Directive states that, if the information in question is provided within those three months, the purchaser's "regular" withdrawal period shall then start. It should be borne in mind that the length of the regular period is different in the member states (for details see above). In GERMANY, an extended withdrawal period of one month starts to run if the missing information is provided subsequently.

Regarding the beginning of the period, most member states have adopted the starting point as prescribed by the Directive. DUTCH and POLISH law extends the regular period of withdrawal by the period between the provision of a copy of the contract and the provision of the missing data. Some member states lay down explicitly that the missing information must be provided in writing, e.g. in DENMARK, GERMANY, HUNGARY, the NETHERLANDS, POLAND and SLOVENIA. This could be clarified in the Directive. In BELGIUM and SWEDEN, the period starts on the day following the day on which the missing information was provided. In AUSTRIA and FINLAND, the purchaser has to receive a corrected version of the contract. FRANCE has not stated any provisions similar to that in the Directive because the contract is void if the offer does not contain all obligatory information.

¹⁴⁸ Article 22(2), sent. 2 of the Law on Consumer Protection.

Table: Start of regular period after provision of missing information

After the provision of the information	BG, CY, CZ, DE ¹⁴⁹ , DK ¹⁵⁰ , EE, EL, ES, HU ¹⁵¹ , IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SK, SL, UK (22) Explicitly in writing: DE, DK, HU, NL, PL, SL (6)
Day following the day on which information is provided	BE, SE ¹⁵² (2)
Delivery of a copy of the contract	AT (“Ergänzungsurkunde”), FI ¹⁵³ (“rectified contract”) (2)
No specific legislative transposition	FR (1)

dd. Withdrawal period, if missing information is not provided within three months

According to the Directive, if by the end of the three-month period the purchaser has not exercised the right to cancel and the contract does not include the information referred to in points (a), (b), (c), (d) (1), (d) (2), (h), (i), (k), (l) and (m) of the Annex, the consumer has the right to withdraw from the contract within the regular withdrawal period (in the Directive: 10 days) from the day after the end of that three-month period.

The transposition in the member states varies considerably, partially also because the length of the regular withdrawal period is different in the member states. For instance, in LITHUANIA, the period is 4 months counting from the conclusion of the contract. In BELGIUM, the period of withdrawal is one year, counting from the day following the day on which the contract was signed, if the missing information has not been provided within three months. In GERMANY, the length of the period depends on the type of information that is lacking. If the information about the right of withdrawal is lacking or incomplete, there is no period for the withdrawal at all. In this case, the consumer has in effect an eternal right of withdrawal. If other necessary

¹⁴⁹ In GERMANY, instead of the regular 2 week period, an extended period of one month starts running when the information is provided subsequently.

¹⁵⁰ Section 9(2) of the Timeshare Act.

¹⁵¹ The day when information is provided in written form and becomes part of the contract by agreement, cf. § 8(3) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

¹⁵² Article 12(2), sent. 2, Art. 11(3) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

¹⁵³ Chapter 10 sec. 9 of the Consumer Protection Act of 20 January 1978/38.

information is lacking, the extended withdrawal period is 6 months.¹⁵⁴ Also in AUSTRIA, the withdrawal period does not begin before the purchaser is informed of his right of withdrawal.

Table: Period of withdrawal if information is not provided

Three months plus 10 days	BG (working-days), DK, EE, EL ¹⁵⁵ , ES, FI, IE, IT ¹⁵⁶ , LU, MT (working days), NL ¹⁵⁷ , PL, PT (working days), RO, SE, SK, UK (<i>17</i>)
Three months plus 14/15 days	CZ, CY, HU, SL (<i>4</i>)
90 calendar days plus 14 days	LV (<i>1</i>)
4 months	LT ¹⁵⁸ (<i>1</i>)
One year	BE ¹⁵⁹ (<i>1</i>)
Three months plus 14 days or unlimited	AT ¹⁶⁰ (<i>1</i>)
6 months or unlimited	DE ¹⁶¹ (<i>1</i>)
No specific legislative transposition	FR (<i>1</i>)

In general, the Directive's provisions on the prolongation of the withdrawal period in case of lacking information are rather intricate. Regarding the case where information about the right of withdrawal is lacking, they are not in coherence with the ECJ case C-481/99 – *Heininger*. It can also be doubted whether a three month plus 10 days period is long enough. A possible way to simplify the provisions could be to follow BELGIUM'S model and introduce a prolonged period of one year, starting from the point when the contract is concluded. It would then have to be considered, whether this period shall also be applicable in *Heininger* cases.

ee. Additional right of withdrawal

Some member states have additionally granted a right of withdrawal in situations not regulated in the Directive. Many member states grant a right of withdrawal if the form and

¹⁵⁴ CC § 355(3)(1).

¹⁵⁵ Article 4(1)(c) of the Decree 182/1999.

¹⁵⁶ Article 73(2) and (4) of the Consumer Code.

¹⁵⁷ CC Book 7 Art. 48c(1), sent. 2.

¹⁵⁸ Article 22(2), sent. 1 Law on Consumer Protection.

¹⁵⁹ Article 9(1)(3) of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

¹⁶⁰ § 6(2) of the Timeshare Act.

¹⁶¹ CC § 355(3) and § 485(3).

language requirements have not been observed. In POLAND¹⁶², the consumer can withdraw within three months from delivery of the contract document if the prospectus was not delivered to the purchaser or if the prospectus or the contract were not written in the correct language. In SLOVENIA¹⁶³, withdrawal is also possible within a maximum of three months and 15 days, if a prospectus was not presented, or if the contract was drawn up in a language not compliant with the provisions of the Consumer Protection Act. In HUNGARY¹⁶⁴, the consumer can exercise the right of withdrawal within 30 calendar days in case the information form is missing or if the latter does not meet the language requirements. In ESTONIA¹⁶⁵, the consumer has the right to withdraw within one month after receipt of the signed contract, if an information document is not submitted to the consumer before entry into a contract or if the document is not submitted in the prescribed language. In SWEDEN¹⁶⁶, the right to withdraw within a period of three months also applies if the provisions concerning the language of the contract are not fulfilled.

In the CZECH REPUBLIC¹⁶⁷, the consumer can additionally withdraw from the contract within three months counting from the date of the agreed completion of the building, if it is not properly completed by that date. In SPAIN, the purchaser has a right of withdrawal if the prohibition of the label *multi propiedad* (“shared property”, “joint ownership”) ¹⁶⁸ has been disregarded.¹⁶⁹

c. Formal requirements for exercising the withdrawal

The Directive does not stipulate any formal requirements for the exercise of the right of withdrawal and only states in its Art. 5(2) that the consumer has to notify the recipient appearing in the contract by a means that can be proven. The result is that the member states have discretion to regulate formal requirements for the exercise of the withdrawal.

¹⁶² Article 6(3) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Times Each Year.

¹⁶³ Article 60c(2) of the Consumer Protection Act.

¹⁶⁴ § 8(2) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

¹⁶⁵ Section 383(3) of the Law of Obligations Act.

¹⁶⁶ Article 11(1) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

¹⁶⁷ CC § 63(1)(d).

¹⁶⁸ Article 10(2) and Article 8(1) of the Law 42/1998.

¹⁶⁹ See also the CA Alicante judgment of 19 September 2002 No. 545/2002, “*Sain 333 S. L.*” v *Francisco Javier G. B. and Amparo M. G.* The Court sanctioned the use of this label with the nullity of the contract due to the infringement of a mandatory rule (CC Art. 6(3)).

AUSTRIA, BULGARIA, CYPRUS, FINLAND¹⁷⁰, GREECE¹⁷¹, HUNGARY¹⁷², LATVIA, LITHUANIA¹⁷³, POLAND, ROMANIA, SLOVENIA¹⁷⁴ and the UNITED KINGDOM¹⁷⁵ have regulated that the withdrawal must be notified to the vendor by a written notice. In Slovenia, the purchaser can also implicitly express his withdrawal. In IRELAND¹⁷⁶, the notice can, but need not be in writing. In Cyprus¹⁷⁷, the consumer must complete and send written notification of withdrawal which has to contain the purchaser's decision to withdraw, the date at which the notice is given and the name and address of the recipient of the notice according to the recipient named in the contract. In SLOVAKIA¹⁷⁸, the notice of withdrawal needs to meet the form in which the contract was agreed. As the contract has to be concluded in writing, the notice of withdrawal must be in writing, too.

¹⁷⁰ 10:11 CPA stipulates that a written informal notice must be sent and that there is no need to use a means which can be proved.

¹⁷¹ Although the wording „declaration in writing“ is unambiguous, in GREEK legal literature Art. 4(2) of Decree 182/99 is seen as a burden of proof provision only. As a consequence, the purchaser could also withdraw from the contract by other means if the purchaser can prove it. The jurisprudence is inconsistent in this point but tends to interpret this provision as a formal regulation.

¹⁷² § 10(1) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

¹⁷³ CC Art. 6.370(1)(1).

¹⁷⁴ Article 60c(1) of the Consumer Protection Act.

¹⁷⁵ Regulation 12(6) Timeshare Act 1992.

¹⁷⁶ Article 8 of the European Communities (Contracts for Time Sharing of Immovable Property—Protection of Purchasers) Regulations 1997 and 2000.

¹⁷⁷ Article 9 (1), sent. 1 of the Timeshare Contract Law of 2001, L.113(I)/2001.

¹⁷⁸ CC § 55(1)(o), § 48 para. (1) and (2), § 49.

¹⁷⁹ § 6(3), sent. 1 and sent. 2 of the Timeshare Act.

¹⁸⁰ Article 8(1) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000.

¹⁸¹ Article 10(2), sent. 1 of the Timeshare Act of 18 December 1998.

¹⁸² Article 73(5) of the Consumer Code.

¹⁸³ Article L. 121-63.

¹⁸⁴ Article 9(3) provides that the purchaser can use any other written form that satisfies the requirements of Art. 9(1) and (2) of the Timeshare Act No 113(I)/2001.

In AUSTRIA¹⁷⁹, the withdrawal can be exercised by a written notice to which the fax is equated. Additionally, the consumer can return the contractual document with a notation that indicates that the consumer does not want to draw up or to maintain the contract.

In BELGIUM, MALTA¹⁸⁰ and LUXEMBOURG¹⁸¹, the notification of the withdrawal must be in writing and sent as a registered letter. In FRANCE, ITALY¹⁸² and PORTUGAL, the consumer has to send a signed registered letter with return receipt. In ITALY, it is also possible to use telegram, telex or fax to meet the period of withdrawal, if they are confirmed by a registered letter with return receipt within the following 48 hours.

In FRANCE¹⁸³, the vendor is also obliged to fix a withdrawal form to the contractual document given to the consumer. The consumer can use this form to exercise his right of withdrawal. In CYPRUS, the purchaser can also use the notification form.¹⁸⁴

In the CZECH REPUBLIC, the consumer has to indicate the reason for exercising the right of withdrawal in case of the prolonged withdrawal period because of lack of information.¹⁸⁵

Withdrawal Formal Requirements	Member States
None	CZ, DK, EE, ES ¹⁸⁶ , IE, NL (6)
In writing	AT ¹⁸⁷ , BG, CY ¹⁸⁸ , EL, FI ¹⁸⁹ , HU, LT, LV, PL, RO, SL, UK (12)

¹⁸⁵ CC § 63(1) lit. (b) and (c).

¹⁸⁶ By any means which guarantee the proof of the communication, the reception and the date of sending.

¹⁸⁷ Fax is equated. Additionally the consumer can return the contractual document with a notation that indicates that the consumer does not want to draw up or to maintain the contract.

¹⁸⁸ Or by any other means which can be proved.

¹⁸⁹ Informal written notice, 10:11 CPA.

¹⁹⁰ Unless agreed otherwise, the notice of withdrawal must be written in case of written contract.

¹⁹¹ Article L. 121-64(1) of the Code de la Consommation states that if the consumer doesn't send a letter with a return receipt, he can use any other means that provide for the same guarantees as to the determination of the date.

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Text form	DE (1)
As agreed in contract	SK ¹⁹⁰ (1)
Registered letter	BE, LU, MT (3)
Registered letter with return receipt	FR ¹⁹¹ , IT ¹⁹² , PT (3)
Transposition not entirely clear	SE (1)

Such formal requirements for the exercise of the withdrawal right might cause a barrier to trade, because, if the vendor is also obliged to inform the consumer about formal requirements, it is impossible to draft such information which can be used in all member states. Therefore, harmonising the national laws in the way that formal requirements must not be introduced by the member states could be considered.

d. Dispatching rule

According to Art. 5(2), sent. 2 of the Directive, the deadline of withdrawal is observed if the consumer dispatches the notification before the deadline expires.

This provision has been transposed by the vast majority of member states. Only the CZECH REPUBLIC, FRANCE, HUNGARY, LATVIA and SLOVAKIA have no specific legislative transposition. Some of these member states may achieve the same result acquired by the Directive with the application of their general rules on the computation of periods. ITALY has not laid down a dispatch rule, but the purchaser has to send a registered letter with advice of delivery and may therefore prove that the notice was sent within the withdrawal period. The legislator in the UNITED KINGDOM has chosen a different wording. If the notice is sent by post in a properly addressed and pre-paid letter, it is to be treated as given at the time of posting.

Substantially equivalent as in the Directive	AT, BE, BG, CY, DE, DK, EE, EL, ES, FI, IE, IT, LT, LU, MT, NL, PL, PT, RO, SL, UK (21)
No specific legislative transposition	CZ, FR, HU, LV, SK (5)

¹⁹² Registered letter with advice of delivery. It is also possible to use telegram, telex or fax to meet the period of withdrawal, if they are confirmed by a registered letter with advice of delivery within the following 48 hours, cf. Art. 73(5) of the Consumer Code.

¹⁹³ Article 10(3) of the Timeshare Act of 18 December 1998.

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Transposition not entirely clear	SE (1)
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It is unclear whether the dispatch rule is also applicable, if the consumer dispatches the declaration of withdrawal in time, but it never reaches the vendor. This could be clarified.

e. Costs

aa. Art. 5(3)

According to Art. 5(3) of Directive 94/47, the purchaser may, where he exercises the right of withdrawal provided for in the 1st indent of paragraph (1), be required to defray, where appropriate, only those expenses which, in accordance with national law, are incurred as a result of the conclusion of and withdrawal from the contract and which correspond to legal formalities which must be completed before the end of the period referred to in the 1st indent of paragraph (1). Such expenses shall be expressly mentioned in the contract.

Member states like the BULGARIA, CZECH REPUBLIC, GREECE, LUXEMBOURG,¹⁹³ ROMANIA and SWEDEN have transposed Art. 5(3) of the Directive by using nearly exactly the Directive's wording. Furthermore, GREECE has stated that the costs must not exceed 3 % of the purchase price.

A remarkable number of member states has increased the consumer protection level by ruling that no costs and damages can be charged on the consumer, e.g. BELGIUM¹⁹⁴, CYPRUS¹⁹⁵, DENMARK¹⁹⁶, the NETHERLANDS¹⁹⁷, PORTUGAL¹⁹⁸, SPAIN¹⁹⁹ and the UNITED KINGDOM²⁰⁰. ITALIAN²⁰¹, HUNGARIAN, POLISH²⁰² and the SLOVENIAN²⁰³ law only allows the imposition of the costs of entering into the contract on the purchaser, but not of the costs of withdrawal.

¹⁹⁴ Article 9(2), sent. 3 of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

¹⁹⁵ Article 10 of The Timeshare Contract Law of 2001, L.113(I)/2001.

¹⁹⁶ Section 10 of the Timeshare Act.

¹⁹⁷ CC Art. 48c(3).

¹⁹⁸ Article 16(1) of the Decree-Law 275/93 of August 5.

¹⁹⁹ Article 10(1), sent. 3 of the Law 42/1998.

²⁰⁰ Section 5(8) of the Timeshare Act 1992.

²⁰¹ Article 73(1) of the Consumer Code.

²⁰² Article 7(2) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Time Each Year.

²⁰³ Article 60c(3), sent. 3 of the Consumer Protection Act.

Contrary to these countries, in SLOVAKIA, the vendor can only request reimbursement of “demonstrably expended unavoidable costs connected with withdrawal from the contract”.²⁰⁴ Some member states have specified which costs the purchaser has to defray, e.g. AUSTRIA²⁰⁵ (the costs of a notarisation or necessary translation of the contract and the duties and taxes that result from agreeing on the contract, if the purchaser has been informed of this possibility in the contract), ESTONIA²⁰⁶ (the costs for notarisation and attestation of the contract), FINLAND²⁰⁷ (costs that must be paid before the end of the cooling-off period and because of formal requirements “or are otherwise of a public nature”), GERMANY²⁰⁸ (the costs for a necessary notarisation of the contract) and HUNGARY²⁰⁹ (costs for preparation and translation of the contract). In Austria, Germany, Hungary and SLOVENIA, the legislator explicitly stated that the vendor cannot demand interest for use of the immovable property.

In IRELAND and MALTA, this provision has not been transposed. In Malta, the intention was to maintain the more favourable rights the purchaser has under the general rules.

Table: Costs in case of withdrawal within cooling-off period

Cost Provisions	Member States
Substantially equivalent to the Directive	BG, CZ ²¹⁰ , EL ²¹¹ , LU, RO, SE ²¹² (6)
Expressly: no costs for use of the residential property	AT, DE, HU, SL (4)
No costs and damages	BE, CY, DK, ES, LT, NL, PT, UK (8)
Costs and defrayal specified	AT, DE, EE, FI, HU (5)
Unavoidable costs connected with conclusion of the contract necessary to enter into the agreement	IT, PL, SL ²¹³ (3)

²⁰⁴ CC § 59(3), sent. 1.

²⁰⁵ § 6(4) of the Timeshare Act.

²⁰⁶ Section 383(5) of the Law of Obligations Act.

²⁰⁷ Chapter 10 Section 14 of the Consumer Protection Act of 20 January 1978/38.

²⁰⁸ CC § 485(5), sent. 1 and sent. 2.

²⁰⁹ § 10(2) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

²¹⁰ CC § 63(2), sent. 1.

²¹¹ As in the Directive, but costs may in any case not exceed 3 % of the price.

²¹² § 14(2) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

²¹³ Article 60c(3), sent. 2 of the Consumer Protection Act.

Unavoidable costs connected with withdrawal	LV ²¹⁴ , SK (2)
Fees necessarily incurred	FR ²¹⁵ (1)
No specific legislative transposition	IE, MT (2)

bb. Art. 5(4)

According to Art. 5(4) of the Directive, the purchaser shall not be required to make any defrayal where he exercises the right of cancellation provided for in the 2nd indent of paragraph 1 (in case of missing information).

AUSTRIA, BULGARIA, the CZECH REPUBLIC, GREECE, IRELAND, ITALY, LUXEMBOURG, POLAND, ROMANIA, SLOVAKIA, SPAIN and SWEDEN have transposed Art. 5(4) of the Directive. In the GERMAN and HUNGARIAN national law, it is additionally stated that the consumer can claim damages from the vendor. In BELGIUM, CYPRUS, DENMARK, LITHUANIA, MALTA and the NETHERLANDS, the general rule on costs for every case of withdrawal is applicable (see above). In PORTUGAL and the UNITED KINGDOM, the Directive's provision is transposed indirectly, as all sums paid by the consumer must be refunded by the vendor. Thus, in consequence, no costs are left with the consumer.

In SLOVENIA, the provision is not explicitly transposed, but can be deducted from the general provision.²¹⁶ According to the LATVIAN regulation, the consumer shall not pay any costs except those for returning the goods to the vendor. In FINLAND, the provision, which also transposes Art. 5(3) of the Directive, applies. According to this provision, the costs which must be paid before the end of the cooling-off period are imposed on the consumer. In FRANCE, the provision is not specifically transposed, but as the contract is void anyway, the result should be the same.

²¹⁴ Article 12(4) of the Consumer Protection Act. Only costs for the return of goods, general rule for all rights of withdrawal.

²¹⁵ Consumer Protection Act, Art. L.121-64(2).

²¹⁶ Article 60 c(3)(2) of the Consumer Protection Act.

Table: Costs in case of withdrawal within prolonged period

Substantially equivalent to the Directive	AT ²¹⁷ , BG ²¹⁸ , CZ ²¹⁹ , EE ²²⁰ , EL ²²¹ , ES ²²² , IE ²²³ , IT ²²⁴ , LU ²²⁵ , MT, PL ²²⁶ , RO ²²⁷ , SE ²²⁸ , SK ²²⁹ (12)
General exclusion of costs and damages for all rights of withdrawal granted in Art. 5 of the Directive	BE, CY ²³⁰ , DK ²³¹ , LT, NL (5)
Refund all sums received from the consumer	PT ²³² , UK (2)
Expressly mentioned that consumer can claim damages	DE ²³³ , HU ²³⁴ (2)
Deviances	FI, LV ²³⁵ (2)
Not expressly transposed	FR (1)

4. Prohibition of advance payments before the end of the withdrawal period

According to Art. 6 of the Directive, the member states shall make provision in their legislation to prohibit any advance payments by a purchaser before the end of the period during which he may exercise the right of withdrawal. Although not entirely clear, this wording probably also covers the prolonged three months plus 10 days period provided for in Art. 5(1) 2nd and 3rd indent of the Directive. If so, the German version of the Directive has a

²¹⁷ Section 6(4), sent. 3 of the Timeshare Act.

²¹⁸ Article 155 (3) of the Law on Consumer Protection.

²¹⁹ CC § 63(2), sent. 2.

²²⁰ Section 383(5) of the Law of Obligations Act.

²²¹ Article 4(4) of the Decree 182/1999.

²²² Article 10(2) *in fine* of the Law of the Law 42/1998.

²²³ Article 9 European Communities (Contracts for Time Sharing of Immovable Property—Protection of Purchasers) Regulations 1997 and 2000.

²²⁴ Article 73(2) of the Consumer Code.

²²⁵ Article 10(4) of the Timeshare Act of 18 December 1998.

²²⁶ Article 7(1) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Time Each Year.

²²⁷ Article 6(5) of the Law No. 282 of 23 June 2004.

²²⁸ § 14(1) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

²²⁹ CC § 59(3) sent. 2.

²³⁰ Article 10 The Timeshare Contract Law of 2001, L.113(I)/2001.

²³¹ Section 10 of the Timeshare Act.

²³² Article 16(7) of the Decree-Law 275/93 of August 5.

²³³ CC § 485(5), sent. 3.

²³⁴ § 10(3) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

²³⁵ Article 12 (1) and (4) of the Consumer Rights Protection Law.

different content as it only refers to the 10 day period prescribed in Art. 5(1) 1st indent. This discrepancy should be clarified, preferably in the sense of the English version as understood here.

a. Prohibition of advanced payments

All member states have transposed the prohibition of advanced payment provided in Art. 6 of the Directive.

In BELGIUM²³⁶, FINLAND, FRANCE²³⁷ and PORTUGAL²³⁸, the prohibition only applies to the regular period of withdrawal (which is 15 days in BELGIUM and 10 days in the other countries mentioned), but not to the longer periods (e.g. three months plus X days) in the case of non-compliance with information duties. According to the wording of the ESTONIAN²³⁹ regulation, payments must not be received within 10 days after the submission of the signed contract to the consumer. In SLOVENIAN²⁴⁰ law, any contract clause stipulating that the consumer must pay a partial amount of the price or costs before the expiry of the cancellation period (usually 15 days) is void.²⁴¹

In SWEDEN²⁴², advanced payments are prohibited during the normal period of withdrawal and in the time until a surety is provided in the case that the property is still under construction.

In AUSTRIA²⁴³, BULGARIA²⁴⁴, CYPRUS²⁴⁵, the CZECH REPUBLIC²⁴⁶, DENMARK²⁴⁷, GREECE²⁴⁸, HUNGARY²⁴⁹, IRELAND²⁵⁰, ITALY²⁵¹, LATVIA²⁵², LUXEMBOURG²⁵³, MALTA, the

²³⁶ Article 9(3) of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis).

²³⁷ Consumer Rights Protection Act, Art. L121-66.

²³⁸ Article 53 and 14 of the Decree-Law 275/93 of August 5.

²³⁹ Section 385 of the Law of Obligations Act.

²⁴⁰ Article 60č of the Consumer Protection Act.

²⁴¹ Article 60c(3), sent. 1, Art. 45d of the Consumer Protection Act.

²⁴² § 13(1) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

²⁴³ § 7(1) of the Timeshare Act.

²⁴⁴ Article 156 of the Law on Consumer Protection.

²⁴⁵ Article 11 of the Timeshare Contract Law of 2001, L.113(I)/2001.

²⁴⁶ Article 61 of the Act of 15 April 2002 amending the Act 40/1964 (CC).

²⁴⁷ Section 12 of the Timeshare Act.

²⁴⁸ Article 5 of the Decree 182/1999.

²⁴⁹ § 11(1) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis. Cf. also the CA Budapest (Fővárosi Ítéltábla) judgment of 1 December 2004, 2.Kf.27.379/2003/3. The Court held that the vendor must not claim any payments - even payments held in trust - within the withdrawal period.

²⁵⁰ Article 10(1) of the European Communities (Contracts for Time Sharing of Immovable Property—Protection of Purchasers) Regulations 1997 and 2000.

²⁵¹ Article 74 of the Consumer Code.

NETHERLANDS²⁵⁴, POLAND²⁵⁵, SLOVAKIA²⁵⁶, SPAIN²⁵⁷ and the UNITED KINGDOM²⁵⁸, payments are prohibited for the duration of the normal and of the prolonged period of withdrawal in the case of missing information, which can amount up to three months and 10 days. In ROMANIAN law clauses which require advance payments by the purchaser before the end of the withdrawal period are void. In LITHUANIA²⁵⁹ and GERMANY²⁶⁰, the prohibition also applies within the whole period of withdrawal, which can, in the case of missing information, be up to 4 months in Lithuania and up to 6 months in Germany. In GREECE, the prohibition of advanced payment does not apply to the costs of the contract, the costs of withdrawal and the cost of acts which have to take place within the cooling-off period of 10 days (which may be a maximum 3 % of the agreed price). In SPAIN²⁶¹, the parties can make appropriate agreements to guarantee the payment. These must not be contrary to the prohibition of advanced payments and not mean a direct or indirect compensation for the vendor in case of withdrawal.

b. Table: Prohibition of advanced payments

Prohibition for normal period of withdrawal	BE (15), EE (10), FI (10), FR (10), PT (10), SE (10; cooling-off period) (6)
Prohibition also for prolonged period of withdrawal (three months plus 10 days, if not agreed otherwise)	AT*, BG*, CZ, CY, DE (up to 6 months), DK, EL, ES, HU, IE, IT, LT (up to 4 months), LU*, LV*, MT, NL, PL*, RO*, SK, SL*, UK (21) *The transposition laws just read „withdrawal period“. It is assumed that this has to be interpreted in line with the Directive and

²⁵² Article 11(3) of the Consumer Rights Protection Law.

²⁵³ Article 10(6) of the Timeshare Act of 18 December 1998.

²⁵⁴ CC Book 7 Art. 48d.

²⁵⁵ Article 8(1) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Time Each Year.

²⁵⁶ CC § 57(b).

²⁵⁷ Cf. also the CA Cantabria judgment of 24 May 2004 No. 196/2004, *Sergio and Carmela v “Free Enterprise S. L.”*. The CA held that the prohibition of advanced payment also applies to the prolonged withdrawal period. Furthermore, the Court ruled that it does not suffice to make general references to appendices since that information has to be inserted in the contract.

²⁵⁸ Article 5B(1) of the Timeshare Act 1992.

²⁵⁹ Article 22(5), sent. 1 of the Law on consumer protection.

²⁶⁰ CC § 486.

²⁶¹ Article 11(1) of the Law 42/1998.

	therefore means for the full duration of the withdrawal period, even if prolonged.
Prohibition also for a period until a surety is provided in case of property under construction	SE (<i>I</i>)
Exemption: costs of the contract and withdrawal	EL (<i>I</i>)
Exemption: appropriate agreement to guarantee payment, provided it is not contrary to the prohibition	ES (<i>I</i>)
Also no payment on credit agreement	FI (<i>I</i>)

Such differences show that the Directive has been understood differently within the member states and, therefore, clarification is still required on this point.

c. Refund of sums paid

It goes without saying, that, if any advanced payments have been made by the consumer, the vendor has to return the sum. Many member states rely on their general rules (e.g. BULGARIA , GERMANY, where the refund has to be made immediately). Others have specific rules, for instance, LITHUANIA (refund within a period of 10 days) or SLOVENIA.²⁶²

In some member states, the obligation to return the amount, which has already been paid, is aggravated. In AUSTRIA²⁶³, the vendor is obliged to pay interest on the sum amounting to 6 percentage points above the base rate (which means a total of about 8 % at the moment).²⁶⁴ In HUNGARY²⁶⁵, the vendor has to pay additional default interest, too. The interest on the sums

²⁶² Article 60c(3), sent. 1, referring to Art. 43d of the Consumer Protection Act.

²⁶³ Interdiction of advanced payment in § 7(1) of the Timeshare Act.

²⁶⁴ § 7(2) of the Timeshare Act.

²⁶⁵ § 11(2) of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

starts with the day of their payment. In SPAIN²⁶⁶, the vendor is obliged to return double the amount of the sum which the consumer has paid in advance.²⁶⁷ In addition, the consumer is given a period of three months within which he can choose, if he wishes, to terminate the contract or claim its performance.

Some member states have established fines, if the vendor infringes upon the interdiction of demanding and receiving any advanced payment. In SWEDEN²⁶⁸, a person is liable to a fine in case of a deliberate infringement of the prohibition of advanced payment. In AUSTRIA²⁶⁹, the obligation to pay the interest described above is combined with a fine because of an administrative offence amounting up to EUR 7 260. In FRANCE, Art. L. 121-71 of the ‘Code de la consommation’ states that if the seller asks or receives any payment before the 10 day withdrawal period ends, he will have to pay a fine of EUR 30 000. GREECE states fines between EUR 1 467 and EUR 58 694 and other public law sanctions. In PORTUGAL²⁷⁰, the fine is between ca. EUR 10 000 and ca. EUR 100 000. In the ITALIAN²⁷¹ law, a penalty between EUR 500 and EUR 3 000 is foreseen. In case of repeated infringements an additional administrative penalty or a suspension of pursuit of business between 15 days and three months can be imposed. In the UNITED KINGDOM²⁷², the infringement constitutes a criminal offence, as well as in IRELAND²⁷³, where the fine amounts to EUR 1 904,61 (1500 pounds). In MALTA²⁷⁴, any violation of the regulation that prohibits advanced payment is also an offence.

²⁶⁶ Article 11(2) of the Law 42/1998.

²⁶⁷ See also the CA Las Palmas judgment of 22 November 2003, no. 682/2003, *Benedicto and Margarita v “Palm Oasis Maspalomas S. L.”*. The Court ruled that the refund of double the amount of the sum that was paid in advance constitutes the legal compensation for the purchaser for the abuse of rights carried out by the seller. Therefore, Article 11(2) of the Law 42/1998 can also be applied to contracts which are invalid due to the omissions and negligence of the vendor.

²⁶⁸ Article 13(2) of the Timeshare Contracts (Consumer Protection) Act 1997:218.

²⁶⁹ § 12(2) of the Timeshare Act.

²⁷⁰ Article 54(1), Art. 55 of the Decree-Law 275/93 of August 5.

²⁷¹ Article 81 of the Consumer Code.

²⁷² Article 5B(2) of the Timeshare Act 1992.

²⁷³ Article 16(1) and 2 of the European of the Communities (Contracts for Time Sharing of Immovable Property – Protection of Purchasers) Regulations 1997 and 2000.

²⁷⁴ Regulation 10(1) and 10(2) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations, 2000.

²⁷⁵ Regulation 13(1) Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations, 2000

²⁷⁶ Article 12 of the Timeshare Act of 18 December 1998.

²⁷⁷ Article 17 Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Time-Share Basis.

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A person who has committed an offence will be liable on conviction to a fine (*multa*) of not less than MTL 100 but not exceeding MTL 1000, and to a fine (*multa*) of not less than MTL 25 and not exceeding MTL 50 for every day during which the offence continues.²⁷⁵ In LUXEMBOURG²⁷⁶, in the case of infringement the vendor is fined with a sum between FLUX 10 001 and FLUX 1 000 000. In BELGIUM²⁷⁷, a similar regulation exists with fines between EUR 150 and EUR 10 000.

In CYPRUS²⁷⁸, it is the Competition and Consumers' Protection Service in the Ministry of Commerce, Industry and Tourism that can take measures, for example, confirm a contravention, recommend to the offender to cease the infringement, impose an administrative fine (up to 10 % of the offender's annual turnover; or in case of repetitive infringement 50 to 1 000 pounds per day of continuation of the infringement) or apply to the Court and ask for a prohibitory, mandatory or interim order.

As the prohibition of advance payments seems to be a rather effective consumer protection instrument, prescribing certain sanctions, in particular criminal sanctions, on Community level could be considered.

5. Credit agreements

According to Art. 7 of the Directive, the member states shall make provisions in their legislation to ensure that:

- if the price is fully or partly covered by credit granted by the vendor, or
- if the price is fully or partly covered by credit granted to the purchaser by a third party on the basis of an agreement between the third party and the vendor,

the credit agreement shall be cancelled, without any penalty, if the purchaser exercises his right to cancel or withdraw from the contract as provided for in Art. 5. The member states shall lay down detailed arrangements to govern the cancellation of credit agreements.

²⁷⁸ Article 18(2) of The Timeshare Contract Law of 2001, L.113(I)/2001.

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These provisions have been closely transposed to the Directive by AUSTRIA²⁷⁹, BELGIUM²⁸⁰, BULGARIA²⁸¹, CYPRUS²⁸², the CZECH REPUBLIC²⁸³, DENMARK²⁸⁴, ESTONIA²⁸⁵, FINLAND²⁸⁶,

²⁷⁹ § 8 of the Timeshare Act.

²⁸⁰ Article 10 of the Act of 11 April 1999 on the Purchase of the Right to Use Immovable Properties on a Timeshare Basis.

²⁸¹ Article 157 of the Law on Consumer Protection.

²⁸² Article 12(1) of the Timeshare Contract Law.

²⁸³ CC Article 58, 62, 63.

²⁸⁴ Section 11 of the Timeshare Act.

²⁸⁵ Section 384 of the Law of Obligations Act.

²⁸⁶ Chapter 10 sec. 12 of the Consumer Protection Act of 20 January 1978/38.

²⁸⁷ CC § 358.

²⁸⁸ Article 6 of the Decree 182/1999.

²⁸⁹ § 12 of the Government Decree 20/1999 (II. 5.) on Contracts for the Purchase of the Right to Use Immovable Property on a Timeshare Basis.

²⁹⁰ Article 77 of the Consumer Code.

²⁹¹ Cabinet Regulation 325.

²⁹² 10 November 1994 Law No. I-657 of the Republic of Lithuania "On Consumer Protection".

²⁹³ Article 11 of the Timeshare Act of 18 December 1998.

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GERMANY²⁸⁷, GREECE²⁸⁸, HUNGARY²⁸⁹, IRELAND, ITALY²⁹⁰, LATVIA²⁹¹, LITHUANIA²⁹², LUXEMBOURG²⁹³, MALTA²⁹⁴, the NETHERLANDS²⁹⁵, POLAND²⁹⁶, PORTUGAL²⁹⁷, ROMANIA²⁹⁸, SLOVENIA²⁹⁹, SPAIN³⁰⁰, SWEDEN³⁰¹ and the UNITED KINGDOM³⁰².

In FRANCE³⁰³, it seems that only a credit agreement which has been announced to the vendor can be cancelled with the timeshare contract. In SLOVAKIA³⁰⁴, the purchaser is obliged to inform the third party about the withdrawal. In AUSTRIA³⁰⁵ and GERMANY³⁰⁶, the purchaser also has the possibility to withdraw from contracts concluded with a third party which are related to the timeshare contract. This can be more favourable to the consumer, as there does not need to be an “agreement” (cf. Art. 7, 2nd indent) between the third party and the vendor.

6. Provisions transposing this Directive shall be binding

All member states have regulated in their national law that the provisions transposing Directive 94/47 are binding.

7. Private International Law

Article 9 states that, regardless of the law that is applicable to a specific contract, if the immovable property is situated within the territory of a member state, each country must take

²⁹⁴ Article 11(1) of the Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000.

²⁹⁵ CC Book 7, Art. 48e(2).

²⁹⁶ Article 8(2) of the Act of 13 July 2000 on the Protection of Purchasers in Respect of the Right to Use Buildings or Dwellings During Certain Time Each Year.

²⁹⁷ Article 16 (6), Art. 49 (2) of the Decree-Law 275/93 of August 5.

²⁹⁸ Article 8 of Law no. 282 of 23 June 2004.

²⁹⁹ Article 60d (1)(2) of the Consumer Protection Act.

³⁰⁰ Article 12 of Law 42/1998 forbids the imposition of clauses containing sanctions or penalties on the purchaser in case of withdrawal or termination.

³⁰¹ § 16 of the Timeshare Contracts (Consumer Protection) Act 1997:218.

³⁰² Section 6A of the Timeshare Act 1992

³⁰³ Consumer Protection Act, Art. L. 121-67. This regulation is seen as a possible breach of EC Law.

³⁰⁴ CC § 58. Termination of the loan contract cannot be connected with any sanctions exerted by the supplier or third party.

³⁰⁵ § 9(1) of the Timeshare Act.

³⁰⁶ CC § 358.

the necessary measures in order to ensure that the consumer is not deprived of the protection afforded by Directive 94/47.

Because of the overlaps with the general rules on International Private Law, the transpositions found in the member states vary considerably. However, at least BELGIUM, CYPRUS, the CZECH REPUBLIC, HUNGARY, IRELAND, ITALY and ROMANIA have transposed the provision closely to the Directive.

Many other countries have tried to reach the aims of the Directive by other means. As the number of possible constellations is very high, the following reference concentrates on some significant examples. For instance, AUSTRIA, ESTONIA and POLAND, require that the timeshare contract is somehow linked to the territory of these countries. The required relation between the country and the contract can result from the fact that, for example, an offer was made by an entrepreneur to a consumer or vice versa in that specific member state. Furthermore, concerning Estonia and Poland, the timeshare contract shall be deemed as linked to the country, if the purchaser is a resident of that country or if the immovable property is located in that member state.

In SLOVENIA, domestic law is applicable to a contract concluded on the basis of business activity managed by a Slovenian enterprise, and if the consumer is a current resident of Slovenia, the immovable property does not even have to be situated within the territory of a member state of the European Union. The laws of BULGARIA, MALTA, PORTUGAL and SPAIN generally require that the concerned building is located within the territory of their countries in order for the respective Maltese, Portuguese or Spanish consumer protection law to be applicable. Besides that, Bulgarian law is also applicable in cases where the law of the member state in which the building is located either does not comply with the directive or where such law is not applicable.³⁰⁷

DENMARK, the NETHERLANDS, SWEDEN and the UNITED KINGDOM have expressly regulated that the immovable property does not necessarily have to be situated within a member state of the European Union, but can also be located within the territory of a member state of the EEA. In order for the consumer protection laws of the UNITED KINGDOM to apply, either the

³⁰⁷ Article 151 of the Law on Consumer Protection.

parties of the timeshare agreement must to some extent be subject to the jurisdiction of any court in the United Kingdom in relation to the agreement or the offeree must ordinarily reside in the United Kingdom. SWEDISH law, however, sets out that consumers will only be granted protection by Swedish rules, if the law which is actually applicable to the contract, is the law of a country which is not a member of the EU or the EEA. Similarly, in FINLAND, if the immovable property is located in an EEA state and the law of a non-EEA state would apply, Finnish consumer protection law applies to timeshare contracts insofar as it offers more effective consumer protection than the law that would be applicable otherwise.

GERMANY applies its domestic consumer protection laws to cases where the law applicable is not one of an EU member state or EEA contracting state and the immovable property is situated either within the territory of the EU or of the EEA.³⁰⁸ This is considered to be contrary to the Directive, because the obligatory application of German law may deprive the consumer of a more favourable law. In other cases, German International Private Law makes the law of the member state which is the most closely related to the case, applicable, if there is a relation between the timeshare contract and one of the member states. Such a specific relation is deemed to be given, if the contract is concluded due to business activities in a member state of the EU or within the EEA. Furthermore, the contract is linked to the member states, if the consumer is a resident of one of these states.

In FRANCE and LUXEMBOURG, domestic consumer protection rules are also applicable to contracts where the building concerned is situated in a non-EU member state. But in this case, the consumer will only be granted protection, if the timeshare contract was concluded in a country, in which he is normally a resident or if the contract was preceded in that country by a specially drawn up offer or by an advertisement or action carried out by the consumer. Furthermore, the consumer protection law of France and Luxembourg will apply if the contract has been concluded in a country that the consumer has travelled to on the grounds of an offer of travel or accommodation made to him by the professional with the intention to induce him to sign the contract.

³⁰⁸ Article 29a(3) of the Introductory Act to the CC (EGBGB); for more details see also Art. 29 and Art. 29a(1) of the same Act.

Under AUSTRIAN law, the application of Austrian consumer protection law to timeshare contracts is restricted to certain Articles if the immovable property is situated in another EEA-State. The consumer is only provided with protection measures that are regulated in Art. 6, Art. 7(2), Art. 8 and Art. 9 of the Timeshare Act. These Articles deal with the right of withdrawal from the timeshare contract (Art. 6) and from any relating agreements (Art. 9). Furthermore, it contains rules regarding the effect of the exercised right of withdrawal of Art. 6 on other contracts (Art. 8) and regarding the right to reclaim payments that the vendor has already taken illegally.

In LATVIA, Art. 9 has been transposed in a way that is not quite clear. It is laid down that when a timeshare contract is concluded and the immovable property is located in a foreign country, then the law in force in that particular state shall apply insofar as it complies with the provisions of the Latvian Consumer Rights Protection Law. This regulation neither states whether the building needs to be situated within the territory of a member state of the European Community, nor does it say how the case, that the law of the foreign state does not comply with Latvian law, should be handled. LITHUANIA does not seem to have transposed Art. 9 of Directive 94/47 at all.

It is highly questionable whether such a punctual provision on International Private Law should be located in individual consumer protection directives like Directive 94/47. This may lead to interferences and confusion with the Rome Convention and the planned Rome I Regulation.³⁰⁹ Therefore, leaving the question to the Rome I Regulation could be considered. It should also be borne in mind that the lines of the C-381/98– *Ingmar*³¹⁰ ruling of the ECJ could lead to the result that a choice of law clause which deprives the consumer from his rights granted under the Directive is contrary to mandatory law and, therefore, void.

8. Other consumer protection instruments

Some member states provide for further consumer protection instruments. Only some instructive examples shall be pointed out here. For instance, in MALTA, the seller (and any salespersons acting on his behalf) is obliged to hold a license and to use a distinctive identification document. There are also stringent provisions prohibiting the excessive selling

³⁰⁹ See the Greenbook COM (2002) 654 final, 17.

³¹⁰ ECJ judgment of 9 November 2001, C-381/98 - *Ingmar GB Ltd and Eaton Leonard Technologies Inc.*

techniques and harassment of prospective timeshare buyers.³¹¹ The seller has to ensure that a period of at least 7 consecutive days in a calendar year is reserved for repairs, maintenance, cleaning and other purposes related to the upkeep of the property; a person who fails to abide with this requirement is guilty of an offence. Also BELGIUM and SPAIN require a licence.

In ITALY³¹², the vendor is required to provide a bank or insurance guarantee for the execution of the contract, if it is not a company with share capital, or if it is a company without capital of at least EUR 5 164 569 and where the head office is not registered, or which has no offices in a Member State. In any case the vendor is required to provide a bank or insurance guarantee for the completion of the property, when the property is under construction. If the guarantees are not expressly mentioned in the contract, the contract is void. In SPAIN, the creator of a timeshare right that needs to be registered has to conclude an insurance contract to cover the risks until the transfer of the right is completed. The owner of the building is obliged to conclude an insurance contract to cover the liability for torts caused by the titleholders of the timeshare rights. Additionally, Spanish law states a duty for the seller to terminate any contracts with suppliers of the services in case of non-performance of the services related to the right.

Some member states stipulate more specific provisions for the marketing of timeshare contracts. In BELGIUM, advertising for timesharing contracts has to be presented in a clear way, that it is a direct or indirect promotion for the sale of rights concerning the use of immovable property on a timesharing basis. Assuming that timeshare objects are often promoted by inviting consumers to sales promotion events by sending marketing letters or by giving leaflets in the streets, often strengthened with promises of free gifts, FINNISH law stipulates that if the timeshare housing is to be offered to a consumer in person at a promotion or sales event, the business shall clearly indicate the nature of the event in the invitation and supply the most significant information on the nature of the timeshare right, the selling prices the other costs and the time-share object. The marketing document shall be available to the consumer at any time during the event, at least in the language used in the invitation to the event.

³¹¹ See Regulation 6 of the Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations.

³¹² Article 76(1), Art. 76(2), Art. 76(3) of the Consumer Code.

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In ROMANIA, according to Law 282/2004, the legal regime of the contemplated contracts is further completed with the general rules or other provisions on special laws, if applicable. In this respect, it may be sustained that the provisions in the Romanian Ordinance on consumer protection No. 21/1992, or the consumer's code in Law 292/2004 apply.

In BULGARIA, the consumer is granted a higher level of protection by a rule in the CC where to deprive the consumer of his rights is prohibited.

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