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Directorate General for Justice and Consumers

Final Report

Evaluation Study on the Application of the Timeshare Directive 2008/122/EC

March 2015



Centre for
**Strategy & Evaluation
Services**

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Executive Summary

The assignment 'Evaluation Study on the Application of the Timeshare Directive 2008/122/EC' was carried out for the European Commission (DG Justice) in 2014 by the Centre for Strategy & Evaluation Services (CSES). Below, we summarise the aims of the study, the key finding of the research, and the main conclusions and recommendations

1. Study Aims and Background

The purpose of the study was to evaluate:

- The relevance, coherence, efficiency, effectiveness, utility, impact and added value of Directive 2008/122/EC.
- Degree to which the objectives of the Directive have been achieved – i.e. to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection in respect of certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as exchange contracts.
- Specific additional consumer protection issues in the timeshare sector which are not covered by Directive 2008/122/EC, including newly emerging practices.

Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (in the report referred to as 'Directive 2008/122/EC' or 'the Directive') strengthens and harmonises a number consumer rights at the pre-contract stage in a timeshare transaction. The provisions of the 2008 Directive aim to contribute to the very important objectives of protecting consumers and improving internal market conditions for traders in the timeshare sector, boosting consumer confidence in the industry and helping to eliminate the operations of rogue traders which bring legitimate traders into disrepute and cause problems to consumers.

The study is one of a number of the inputs to the Commission's evaluation report on the Directive which is required by Article 17 (this states that "The Commission shall review this Directive and report to the European Parliament and the Council no later than 23 February 2014. If necessary, it shall make further proposals to adapt it to developments in the area"). In terms of scope, the study covered the EU28 Member States but the focus was on the Member States with the largest number of timeshare resorts and consumers. The research was carried out during the first half of 2014.

2. Overall Conclusions

Overall, the research suggests that Directive 2008/122/EC has improved the situation for consumers but that its effects have so far been rather limited. This is partly because of its provisions being restricted to the pre-contract stage of timeshare transactions and partly because of new products being introduced that are designed to circumvent key provisions.

Moreover, in many EU Member States, transposition of the Directive only took place quite recently (e.g. 2012 in Spain). In some cases, there are still transposition problems (e.g. in relation to Art. 10(2)). Therefore, it could take longer for the full effects of the Directive to become apparent.

Recommendation 1: The Commission should continue efforts to ensure that all Member States have transposed the Directive's provisions correctly to prevent any differences in interpretation which may result in unequal level of consumer protections across the EU.

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The decrease in the number of complaints (according to the ECC statistics) relating to holiday products following the Directive's implementation is a positive indication of its effectiveness. However, it is too early to detect a meaningful trend, let alone to link the decrease specifically to the changes the Directive has brought about. Steps taken by some businesses in the sector, including the development of codes of conduct, systems to deal with complaints and alternative dispute resolution procedures, have also contributed to the reduction of the number of complaints.

3. Conclusions - Specific Provisions of Directive 2008/122/EC

Turning to the 2008 Directive's specific provisions, there are a number of conclusions to be drawn from the research:

- **Definitions (Article 2)** – the fact that the Directive is limited to timeshare contracts of over one year has created a loophole that is being exploited by rogue traders with new products that are designed to circumvent the legislation.
- **Pre-contractual information (Article 4)** – prescribing the information to be provided to consumers is seen as a reasonable requirement by consumer organisations and businesses alike. There is scope to simplify the format set out in the Directive's annexes.
- **Languages (Article 5)** – although potentially beneficial to consumers, the requirement to use the language of the consumer's country of nationality or residence for contracts is considered a burden by timeshare businesses. According to our research, these rules increase costs and thereby discourage smaller operators from targeting particular markets, limiting the sector's growth. Additionally, this requirement can create situations where non-EU consumers receive contracts in a language they may not understand (e.g. Russian tourists), resulting in unequal levels of protection between EU and non-EU consumers.
- **Right of withdrawal (Article 6-8)** - is seen as a positive development by all those in the timeshare sector. However, it may not apply to certain new products now on the market which are not covered by Directive 2008/122/EC. There is still little awareness that the right of withdrawal may still apply in such cases under the new Consumer Rights Directive.
- **Advance payments (Article 9)** – whilst supported by consumer bodies and not entirely new since it already existed under the previous 1994 Directive, business stakeholders argue that this provision is unnecessary because of the right of withdrawal. Moreover, it is argued that methods such as escrow accounts could be used to protect consumers as an alternative. A further argument is that the ban on deposits is harmful not so much because of the cash flow effects but because it means that many consumers do not take the commitments they enter into in signing a timeshare contract seriously and this wastes the considerable resources businesses have to invest in marketing their products.

Whilst the changes introduced by the Directive are generally seen as beneficial, some businesses argue that **the balance between consumer protection and business timeshare interests** has been tilted too much in favour of the former.

One of the most pressing issues relates to the difficulties faced by individual timeshare owners in **reselling or transferring their timeshare rights**. With its focus on the pre-contract

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stage, the Directive only protects prospective buyers of timeshare and related products rather than longstanding timeshare owners and yet the majority of consumer complaints recorded each year relate to timeshare contracts predating the Directive which means that timeshare owners (and sometimes their heirs) are locked into contracts they wish to exit. This is due to restrictive or unfavourable contract terms (e.g. in-perpetuity clause), national contract laws, but also due to a lack of demand for timeshare and related products which makes resale difficult.

5.3 Enforcement mechanisms

The research indicates that the key priority should be to improve enforcement of Directive 2008/122/EC as this is currently weak and limiting the potential effectiveness of the legislation. The Directive has not yet had a significant effect on the enforcement systems in the Member States and in some countries there is a lack of capacity to investigate and prosecute cases. Most timeshare complaints have a cross-border dimension and yet cross-border cooperation on timeshare-related cases between European Consumer Centres (ECCs) and the Consumer Protection Councils (CPC), and within the CPC network itself, remains very limited.

Business and consumer associations are playing an important role with regard to the enforcement of the Directive. Thus, the RDO and TATOC have developed codes of conduct and taken other measures (e.g. relating to ADR) to improve the image of the industry.¹ The industry and consumer groups provide a framework for self-regulation that could be reinforced by working with the public authorities to promote awareness of consumer rights and the dangers posed by rogue traders. More EU-level awareness-raising activities to improve consumer confidence in timeshare would be helpful (the work of the ECCs is a step in the right direction).

Recommendation 2: Consideration should be given to how joint working between key stakeholders involved in enforcement can be further developed so that measures to promote awareness of consumer rights and the dangers posed by rogue traders, and actions to combat malpractices, are as effective as possible.

At present consumers are not given enough possibilities to settle disputes with traders through the ADR. The ECCs have reported that traders very often refuse to resolve disputes through their ADR procedure. Companies are not specifically required to adhere to an ADR scheme unless they are a member of the RDO. The ADR Directive² may improve the situation as it will encourage the setting up in EU Member States of recognised ADR mechanisms for different industries, thereby ensuring minimum quality standards, transparency and impartiality, and dealing with both domestic and cross-border complaints.

¹ The RDO (Resort Development Organisation) is the trade association for timeshare businesses across Europe. TATOC (The Timeshare Association) represents timeshare consumers. It also has 92 resort businesses as members throughout Europe. It asks business members that run timeshare resorts to commit themselves to a code of conduct in relation to consumers.

² Directive 2013/11/EU on alternative dispute resolution for consumer disputes – to be implemented in all the EU Member States by 9 July 2015

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The Online Dispute Resolution Regulation³ is expected to further facilitate the use of ADR mechanisms.

The Directive fits well into the wider EU consumer protection legal framework, particularly in relation to the UCPD and UCTD. Enforcement authorities are in most cases able to apply the most appropriate legislative instruments depending on the problem in question. However, pressure selling still occurs in the industry and it can be difficult to apply the UCPD effectively as this requires adequate market surveillance implying the need for further resources and further guidance. Enforcement authorities have also indicated the need for further guidance in order to make more effective use of the UCTD in post-contract situations which are detrimental to the consumer.

Recommendation 3: Public enforcement authorities would benefit from further guidance on how to apply other EU consumer protection instruments (e.g. the UCPD, UCTD) to tackle the malpractices described above more effectively in the holiday sector.

5.4 New holiday products

The research has highlighted problems associated with new products that in many cases have been designed to circumvent the Directive (e.g. short term holiday discount clubs, leisure credit schemes). Other commercial practices have emerged to deliberately confuse consumers and to counteract their ability to exercise their rights (e.g. second contract requiring a deposit, offers advertised as not being 'timeshare' and not being subject to the Directive).

Recommendation 4: The extension of the Directive's coverage to long-term holiday products, exchange and resale schemes responds to the evolution of the market in the last few years, but further guidance would be useful on how to address problems linked to new holiday products that were designed to circumvent the Directive.

Other fraudulent practices involve the offer of timeshare and related products located in the EU to consumers holidaying outside the EU (e.g. Morocco), the offer of timeshare related products located outside the EU by EU-registered companies, and the offer of timeshare and related products in the EU by 'offshore' companies. Because of these loopholes, the Directive has not entirely eradicated fraud and other malpractices. It is however widely accepted that no legislation can hope to entirely eradicate rogue businesses. Nonetheless, consideration should be given to tackling these activities.

Recommendation 5: If in principle the Directive only applies to offences committed within the EU, the actual location of the timeshare product and of its owner should be taken into account for possible enforcement actions. Furthermore, the Commission should encourage Member States to seek mutual assistance arrangements with non-EU countries that receive many EU tourists (e.g. Morocco) and non-EU countries where many fraudulent companies are registered (e.g. Andorra).

³ Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes – to come into force on 9 January 2016

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Overall, the Directive is making an important contribution to improving practices in the ‘legitimate’ timeshare sector. Its ability to protect consumers at pre-contract stage would, however, be greatly enhanced by more effective enforcement mechanisms. As regards the post-contract stage, the difficulties faced by long-standing timeshare owners’ in seeking to exit their contracts is a major issue.

4. Methodological Note

The assignment was carried out in three main phases:

- **Phase 1: Preliminary tasks** – discussions with DG JUST and preparation of the research plan and tools. An inception report was submitted on 10 January 2014.
- **Phase 2: Research in EU Member States** – a combination of desk research, online surveys of timeshare providers and users, and interviews and workshops in five EU Member States to investigate key issues set out in the Commission’s terms of reference. An interim report was submitted on 25 March 2014.
- **Phase 3: Evaluation and final report** – EU-level workshop, completion of the research, analysis of the research findings, and preparation of a final report (30 May/30 June/30 October 2014).

An important part of the research was the online survey of timeshare/long-term holiday product (LTHP) owners and businesses. At the time when the final report was ready for submission, a total of 1,020 consumers had started the online questionnaire with 752 of these going on to complete most questions. Almost half (47%) of the consumers had purchased a timeshare property in Spain with just over a third (36%) in France. The remaining responses came from consumers who had bought properties in Austria, Belgium, Finland, Germany, Hungary, Netherlands, and the UK. A total of 19 timeshare companies completed the survey questionnaire.

In addition to the two surveys, we conducted an interview programme across the EU28 Member States with a range of stakeholders including national authorities, timeshare businesses, consumer organisations and a sample of individual consumers. A total of 72 consultations were conducted. Workshops were organised in France, Malta, Spain, Sweden, and the UK. Last but not least, we analysed a large amount of information including the text of national legislation transposing the Directive, statistical information from the European Consumer Centres on consumer complaints relating to timeshare, and various reports and other documents that were relevant to the evaluation.

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This document contains the final report prepared by the Centre for Strategy & Evaluation Services (CSES) for the assignment for DG Justice: 'Request for services JUST/2013/JCIV/FW/0077/A4 - Evaluation Study on the Application of the Timeshare Directive 2008/122/EC'. The research was carried out in 2014.

1.1 Resume – Study Objectives

The purpose of the study was to evaluate:

- The relevance, coherence, efficiency, effectiveness, utility, impact and added value of Directive 2008/122/EC.
- Degree to which the objectives of the Directive have been achieved – i.e. to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection in respect of certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as exchange contracts.
- Specific additional consumer protection issues in the timeshare sector which are not covered by Directive 2008/122/EC, including newly emerging practices.

The study was one of a number of the inputs to the Commission's evaluation report on the Directive, required by its Article 17: "The Commission shall review this Directive and report to the European Parliament and the Council no later than 23 February 2014. If necessary, it shall make further proposals to adapt it to developments in the area." In terms of scope, the study covers the EU28 Member States but the focus is on the Member States with the largest number of professionals (in particular, countries with large numbers of Timeshare resorts) and consumers concerned by Directive 2008/122/EC. The research was carried out in 2014.

1.2 Methodological Approach

The assignment was carried out in three main phases:

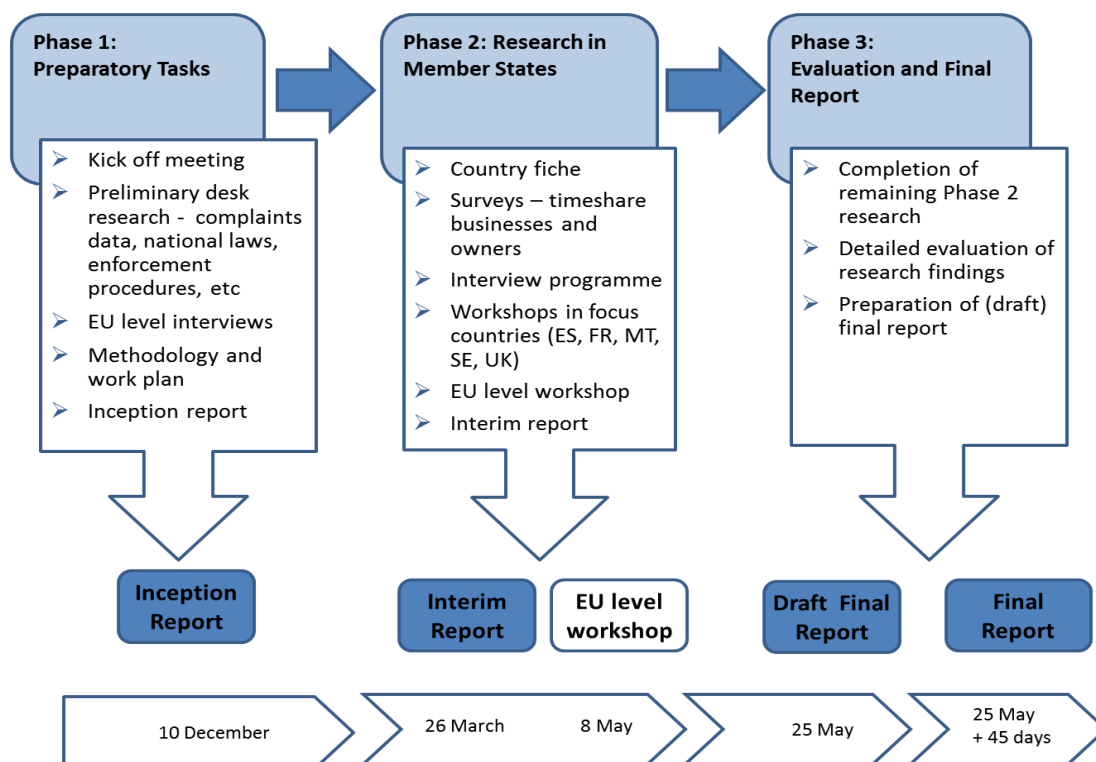
- **Phase 1: Preliminary tasks** – discussions with DG JUST and preparation of the research plan and tools. An inception report was submitted on 10 January 2014.
- **Phase 2: Research in EU Member States** – a combination of desk research, online surveys of timeshare providers and users, interviews and workshops in selected countries to investigate key issues set out in the Commission's terms of reference. An interim report was submitted on 25 March 2014 and finalised after receiving the Commission's feedback.
- **Phase 3: Evaluation and final report** – EU-level workshop, completion of the research, analysis of the research findings, and preparation of a draft final report (30 May 2014) and submission of the final report (30 October 2014).

It was agreed that the evaluation should focus on EU Member States which have the largest numbers of timeshare resorts and/or timeshare owners in the EU. These countries included France, Spain and the UK where (in addition to Malta and Sweden) workshops were held. The other EU Member States were covered through the interview programme and other research activities (e.g. completion of a 'fiche' providing details of the timeshare sector, relevant national legislation, etc). The following chart provides a summary of the research plan and timing of key activities:

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Figure 1.1: Overview of research plan



Phase 1 – Preparatory tasks

The Phase 1 preparatory tasks that were undertaken included:

- A kick-off meeting with the Steering Group;
- Desk research to review relevant documentation on Directive 2008/122/EC, an analysis relevant national legislation and of complaints data;
- Compiling a list of key stakeholder contacts and sources of information for the Phase 2 research;
- Finalisation of the research tools and work plan;
- Preparation of an inception report and a review meeting with the Steering Group.

A kick-off meeting took place with the DG JUST Steering Group on 16 December. The purpose of this meeting was to review the terms of reference for the assignment, to discuss the key issues, and to agree a detailed work plan and timetable.

During Phase 1, some desk research was undertaken to review relevant documentation on Directive 2008/122/EC. A number of secondary sources were examined on the timeshare sector. A preliminary analysis of Member States' legislation transposing the Timeshare Directive was also completed using information from the EC consumer law compendium website and the EC Pilot letters sent to 16 Member State authorities in the course of 2013 relating to issues around their transposition or interpretation of the Directive's provision.

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Based on the desk research and discussions with DG JUST, we also developed the key research tools: a list of contacts for the Phase 2 fieldwork; a country 'fiche' to be used to collect information on key issues from the EU28 Member States; interview checklists and a survey questionnaire for timeshare consumers and businesses. The consumer questionnaire was translated from EN into a number of other languages (DE, ES, FR, FI, SE) on the suggestion of the Commission and the European Consumer Centres (ECCs) that have been responsible for disseminating it.

An inception report was submitted on 22 January 2014 and subsequently discussed at a review meeting with DG JUST.

Phase 2 – Research in Member States

Phase 2 of the assignment involved:

- Continuing **desk research** to obtain and analyse information for the evaluation and dissemination of a 'country 'fiche' to the EU28 national authorities;
- **Online survey** – targeting both timeshare businesses and consumers who were likely to have experienced problems with their timeshare.
- **Interview programme** - mainly done on a face-to-face basis in EU Member States selected for in-depth research and by telephone elsewhere. The interview programme covered timeshare businesses, national authorities, individual consumers, and others.
- **Workshops** - in five Member States. Participants included representatives of timeshare businesses, the European Consumer Centres and national authorities.

Phase 2 involved **desk research** to collect information from all EU28 Member States on a range of issues including details of relevant national legislation, enforcement procedures including sanctions (criminal, administrative, civil) applied by Member States enforcement authorities.

Survey of Timeshare Consumers

An important part of the research was the online survey of owners of timeshare/long-term holiday products (LTHP) and businesses in the industry. The consumer survey was launched in February and was disseminated by the European Consumer Centres (ECC) as well as a number of national-level timeshare consumer associations. We relied on the advice on the ECCs in different EU Member States to decide in which countries to survey consumers (their advice was based on the number of enquiries and complaints received from timeshare owners). The questionnaire was translated into the relevant national languages. In the case of the business survey, this was promoted by the Resort Development Organisation (RDO). The questionnaires were semi-structured with a combination of open and closed (pre-coded) questions. The survey was being conducted on a no-names basis but respondents were asked to provide their name and contact details if they wanted to be interviewed.

As at 30 May when the draft final report was ready for submission, there had been a total of 995 'hits' on the online consumer questionnaire. This included a number of unusable entries (e.g. duplicates, incomplete entries where one or two questions had been answered and the respondent returned later to complete it, etc.). The following table provides a breakdown of the consumer survey sample. The number of 'hits' refers to the number of people who went into the survey, broken down by the language version they selected. However, several entries were unusable (for instance, when only one or two questions were answered, or when a

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respondent left an incomplete entry and returned later to begin again from scratch). The number of usable questionnaires is shown in the last column.

Table 1.1 (a): Breakdown of consumer survey responses

Survey version (language)	Started survey No. of 'hits'	Questionnaire s used
French	676	649
Finnish	52	42
German	29	23
Dutch	96	81
Spanish	3	0
Swedish	105	97
English	34	26
Total	995	918

Two key filter questions 'Did you have any problems with your timeshare transaction?' and 'Are you willing to answer further questions about your experiences with your timeshare transaction?' led to a further reduction in the sample used for the analysis. This is shown in this next table which shows that there were 372 responses that were relevant to the evaluation.

Table 1.1 (b): Breakdown of consumer survey responses

Summary of responses	Nº	%
Had experienced problems and completed survey questionnaire	372	40.5
Had problems but only willing to talk about them over the phone	54	5.9
Had problems but were not willing to answer further questions	95	10.3
No problems experienced	311	33.9
Not relevant – no experience of timeshare or related products	86	9.4
Total hits	918	100.0

Respondents who continued with the survey were then asked in which country they reside:

Table 1.1 (c): Breakdown of consumer survey responses

Country of residence	Nº	%
Austria	1	0.3
Belgium	10	2.7
Finland	13	3.5
France	254	68.3
Germany	5	1.3
Greece	1	0.3
Italy	1	0.3
Luxembourg	2	0.5
Netherlands	32	8.6
Spain	6	1.6
Sweden	24	6.5
UK	2	0.5
Other	12	3.2
Not given	9	2.4
Total	372	100.0

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A majority of the responses came from consumers residing in France (68.3%). Other countries for which a relatively statistically significant number of responses were obtained were the Netherlands and Sweden.

For the purposes of this analysis most relevant is a breakdown of the consumer responses according to whether the owner had concluded the contract before or after the Directive 2008/122/EC was implemented in national law and became applicable to the relevant contract. Although the formal implementation deadline was 23 February 2011, the Directive was only implemented in all Member States in 2012 (the last being Spain – March 2012). Only a small minority of respondents to the full questionnaire indicated that they bought their timeshare or LTHP in 2012 and 2013 – respectively, 9 (2.8%) in 2012 and 26 (8.1%) in 2013. A further 50 respondents did not indicate in which year they concluded their transaction. Their survey responses were therefore not taken into account in the pre-Directive/post-Directive statistical analysis.

Table 1.2 (a): Consumer survey responses according to year of transaction

Year	Nº	%
Up to 2011	287	89.1
2012	9	2.8
2013	26	8.1
Total	322	100.0

In the report, the survey data tables refer to the responses from the 33 consumers who concluded a contract for timeshare or related products in or after 2012 as post-Directive responses. The remaining 287 responses are referred to as pre-Directive responses. The 'overall' data refers to information obtained from the 322 respondents who indicated the year in which they concluded their contract for timeshare or related products.

Table 1.2 (b): Consumer survey responses according to country where the contract was concluded

Country	Pre 2012	Post 2012	Overall
Austria	0.3	0.0	0.2
Belgium	0.3	0.0	0.2
Finland	1.0	0.0	0.5
France	42.9	0.0	21.4
Germany	0.3	0.0	0.2
Greece	1.4	14.3	7.8
Netherlands	1.4	0.0	0.7
Poland	0.0	0.0	0.0
Portugal	1.4	14.3	7.8
Spain	46.7	71.4	59.1
UK	1.0	0.0	0.5
No response	2.8	0.0	1.4

N=322, Source: CSES survey

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The consumer survey results show that an overwhelming majority of the respondents concluded their contract in Spain (59.1%). An even greater proportion of respondents who bought timeshare or related products in or after 2012 indicated that they concluded their contract in Spain (71.4%). A fairly high proportion of the respondents who bought timeshare or related products before the implementation of the Directive indicated that they concluded their contract in France (42.9%) – this may be related to the fact that a majority of the respondents overall indicated France as their country of residence. Conversely, none of the post-Directive respondents indicated that they concluded their contract in France. Greece and Portugal are the other two countries for which relatively statistically significant responses were obtained.

The number of consumer survey responses was far in excess of our expectations (a target of just over 200 consumer responses had been set out in the inception report) with a very high response rate from one EU Member State (France), reflecting the measures taken by the ECC in that country to promote the survey. Although only a minority of the survey responses were relevant for analysing the application of the Directive as such, the other replies helped understand other issues outside the scope of the Directive relevant to the existing owners of timeshares. In the case of timeshare businesses, the outcome was close to the target (18 actual responses compared with a target of 15).

An important factor to be taken into account in interpreting the survey responses from consumers is that those who had a complaint were more likely to participate in the survey than those who were satisfied with their purchase. As such, the survey responses are not representative of the total population of the relevant consumers. The survey data nevertheless provides a good insight to the types of problems that can occur in purchasing a timeshare property/ LTHP and the extent to which these problems are resolved in a satisfactory manner. Similar considerations apply to the analysis of ECC consumer complaints data (ECC Net data) that was undertaken by us as part of the Phase 2 research.

Timeshare Business Survey

The second survey targeted timeshare businesses. A total of 23 companies started the survey questionnaire with 19 going on to complete most questions. The companies who took part in the survey were all RDO members and this should be borne in mind in interpreting the survey results. Most of the companies who responded to the survey were involved in selling conventional timeshare accommodation. A third of all the companies taking part in the survey were providers of holiday exchange schemes.

Table 1.3: Company survey responses according to type of product or service sold:

Type	%
Timeshare accommodation	83.3
Long-term holiday product (e.g. holiday club)	11.1
Holiday exchange schemes	33.3
Resale services	11.1

N=19. Multiple responses were possible. Source: CSES survey

Most business responses came from Spain (6 responses) and the UK (5) companies. Spain is the EU Member State with the highest number of timeshare and holiday club companies. Due to the popularity of Spain as a holiday destination among British holidaymakers, many

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timeshare and holiday club companies are UK-based. Other responses were obtained from Portugal (2 responses), Malta (2), Hungary (2), Germany (1), and Finland (1).

Interview Programme

In addition to the two surveys, we conducted an interview programme across the EU28 Member States. This targeted a range of stakeholders including national authorities, timeshare businesses, consumer organisations, and various EU level organisations. A total of 88 consultations were conducted, broken down as follows:

Table 1.4: Phase 2 interview programme and workshop participants

Key Stakeholders	Target Number	
	Target	Actual
(1) European Commission (DG JUST, DG SANCO), other EU bodies	5	2
(2) National authorities, Consumer Protection agencies, etc	20	34
(3) Timeshare associations, consumer associations (EU and MS)	10	10
(4) Law firms	10	4
(5) Timeshare businesses	10	18
(6) Individual timeshare owners	25	20
Total	70	88

The interview programme was undertaken through mainly face-to-face discussions in the case of the first three categories in Table 1.4 and through mainly telephone interviews in the other cases. In relation to the second and third category above, face-to-face interviews at the national level took place in the same Member States as the workshops with telephone interviews in the other countries. In the case of (6) individual timeshare owners, contact details were obtained from the survey where the respondents provided such information. A relatively large number of consumers said they were willing to be interviewed and so we selected a random sample. Telephone interviews were subsequently conducted with 5 consumers with written feedback from consumers via the survey in another 15 cases.

Workshops

Five workshops were organised in EU Member States with a significant timeshare market in terms of the number of timeshare resorts and/or owners, i.e. France, Malta, Spain, Sweden, and the UK. In each case, the workshop participants included representatives of timeshare businesses and consumer protection entities (notably the ECCs) as well as the national authorities in several cases. The workshops typically involved 5-10 participants in each case.

An interim report was submitted on 26 March with a revised version being submitted a month later that took the Commission's feedback into account.

Phase 3 – Evaluation and Final Report

During Phase 3 the remaining fieldwork was completed and CSES participated in a Brussels workshop to discuss Directive 2008/122/EC that was organised by DG Justice and attended by representatives from most EU Member States.

Following completion of the Phase 2 research and the Brussels workshop, a draft final report was prepared. A final version was submitted at the end of October 2014.

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1.3 Structure of the Final Report

The final report is structured as follows:

- **Section 2: Background & Role of the Directive** – provides background information on Europe's timeshare sector, a brief description of the provision of the Directive, and a brief analysis of the transposition of the Directive in the Member States;
- **Section 3: Problems & Complaints** – assesses the problems faced by consumers, trends with regard to the nature and volume of complaints, and how complaints are dealt with;
- **Section 4: Impact of the Directive** – draws on the survey results, interviews and other research to examine the effect of the Directive's various provisions on timeshare consumers and businesses;
- **Section 5: Other issues** – explores aspects and issues which are outside the scope of the Directive, i.e. timeshare rights, post-contract consumer issues, and the termination of contracts;
- **Section 6: Enforcement Mechanisms** – assesses how effectively cross-border mechanisms are in helping consumers to resolve disputes and other measures taken by national authorities and the timeshare industry itself to improve practices;
- **Section 7: Key Evaluation Issues** – summarises the Directive's performance against the key evaluation criteria;
- **Section 8: Conclusions & Recommendations** – sets out the overall conclusions and various recommendations.

Terminology

In this report, we use the term 'holiday sector' and 'holiday services' as a general description of the activities covered by Directive 2008/122/EC. These and more specific products are defined as follows:

Key terms

- **Holiday services** – include all products/services covered by the Directive;
- **Timeshare** - only refer specifically to timeshare contracts as defined in Directive; i.e. conventional timeshare accommodation;
- **Long-term holiday products (LTHP)**, i.e. holiday services involving primarily accommodation, other than conventional timeshare, for which contracts last more than 365 days such as "holiday clubs";
- **Timeshare exchange** - one-time trade for time in a different timeshare resort (applicable to both conventional timeshare and LTHP). Exchange schemes can be internal (i.e. within the same resort or resort group) or offered by specialised companies (e.g. RCI) across a wide range of affiliated resorts;
- **Resale** - contract under which a trader, for consideration, assists a consumer to sell or buy a timeshare or a long-term holiday product.

Background & Role of the Directive 2

This section of the report examines the background to the evaluation, the role of Directive 2008/122/EC and its transposition into Member States' national legislation.

2.1 Background - Europe's Timeshare Sector

After strong and sustained growth in the 1970s and 1980s, the **growth of the European timeshare market** slowed down in the early 1990s with annual sales growth rates halved from approximately 30% to 15%. Between 1994 and 1996 there was a certain consolidation and slow growth and a natural adjustment period to the new state of play in the market. From 1996 until the late 2000s the rate of increase in sales volumes in EU-15 further dropped from approximately 15% to less than 5%.

Significantly reduced consumer confidence in timeshare products in Europe has damaged the competitiveness of the EU as a market in comparison to the United States, the Caribbean, the Middle East and Asia Pacific markets. As a consequence, other world regions have consequently been receiving considerably higher timeshare-related investment flows in recent years.⁴

Timeshare, in its various variants, remains today an important segment of the tourism sector in the EU. According to the latest market figures from the RDO:

- Timeshare sales were estimated to be worth €1.24 billion in 2010.⁵
- Total spending by timeshare owners on maintenance and upkeep of the resorts was estimated at €290 million in 2010. The number of jobs created directly linked to the timeshare resorts in Europe is estimated to be 70,700 in the same year⁶.
- The economic activity of the industry in Europe is significant with a total economic output (i.e. the total value of all goods and services produced) of €5.4 billion.

According to RCI, the largest timeshare vacation exchange network in the world, **around 1.45 million households hold rights to about 3.3 million European timeshare weeks or the equivalent in points**. The UK has the largest number of timeshare/LTHP consumers in the EU with 589,000 timeshare owners, followed by Germany and Italy with 197,000 and 136,000 owners respectively. Most resorts are concentrated in Spain and the Canary Islands in particular with 26% of the total, 14% in Italy and 11% in the UK⁷.

Today, there are a total of 1,345 timeshare resorts across Europe, offering over 85,000 timeshare units. The year round occupancy level stands at 73%⁸. According to one assessment⁹,

⁴ Commission Impact Assessment 2007

⁵ Resort Development Organisation (RDO) Media Pack 2010

⁶ Ibid

⁷ RCI Facts & Figures

⁸ RCI Facts and Figures

⁹ The European Timeshare Industry 2011, Prepared by the Market Research Group (MRG) for Bournemouth University, 2012

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78,118 sales were made across Europe in 2011 with an average of 121 sales per resort. The **total sales value at each resort averages around €1 million with the average sale value being over €9,500**¹⁰ (the type of product is not mentioned).

Timeshare resorts have been developed in areas of the EU that are typically very dependent on tourism, making an important contribution to local economies that do not usually have year-round employment. **Occupancy levels at timeshare resorts** average 73% year-round, compared with the seasonal peaks and troughs that most hotels experience.¹¹ This has benefits for local economies.

The timeshare sector also includes **alternative holiday products developed** around the notion of timeshare, notably exchange schemes and Long-Term Holiday Products.

Timeshare exchange schemes, although not involving the selling of timeshare accommodation per se, have been developed over the last thirty years or so exclusively for timeshare owners through weeks or points programmes that can be used in various affiliated resorts. Market concentration in this particular sector is very high with RCI (a division of Wyndham Worldwide) being the market leader in Europe. Exchange scheme members may exchange their property's shared time for another week at an equivalent or lower value property in any affiliated resort. Typically, timeshare owners pay annual fees to take part in an exchange scheme.

However, exchange schemes are today less popular with European holidaymakers as data on timeshare sales points to a new trend towards shorter term timeshare products. Shorter term timeshare products tend to be more economically priced, and this is a new and rising trend in the shared ownership industry.¹² Hence Holiday club schemes – defined in the Directive as **Long-Term Holiday Products (LTHP)** – have been sold since the 1990s as an alternative to 'conventional' timeshare enabling consumers to join a club which offers discounted travel and accommodation in different resorts for a fixed period of time. The LTHP sector experienced a boom in the 1990s and 2000s, not least because it was not entirely and thoroughly regulated at EU level prior to the implementation of the 2008 Directive.

Finally with the slowing down of the timeshare market in recent years and holidaymakers' preference for holiday products not requiring any long-term commitments, the sector has for the past 10-15 years seen the emergence of **timeshare resale services** targeting existing timeshare owners looking to transfer their timeshare rights. However, due to a lack of demand for timeshares, this particular subsector has been singled out for attracting fraudulent business activity (these particular issues are explored in throughout the report). The inclusion of resale contracts in the scope of the 2008 Directive was a move to ensure that existing timeshare owners looking to transfer their rights benefit from the same level of consumer protection as prospective buyers of timeshare products.

¹⁰ Ibid

¹¹ RCI Facts and Figures

¹² <http://www.aocap.org/strong-timeshare-sales-in-europe-new-study-reveal/>

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2.2 Directive 2008/122/EC

Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (in this report also referred to as Directive 2008/122/EC') was to be transposed by 23 February 2011. The last country to transpose was Spain where it became applicable on 17 March 2012.

Directive 2008/122/EC replaced **Directive 94/47/EC**¹³ which was of a narrower scope and applied only to timeshare in real estate if the contract was for three years and more. Directive 2008/122/EC has a much wider scope of application than Directive 94/47/EC. First, it applies to broader range of timeshare contracts (contracts of more than one year and in different facilities, including also boats and caravans). Second, it introduces regulation to long-term holiday product contracts (contracts mainly concerning discounts on accommodation and which last a year or more), timeshare exchange contracts, and resale contracts covering services which facilitate the sale and purchase by consumers of timeshare contracts and long-term holiday product contracts.

The 2008 Directive strengthens and harmonises a number of **consumer rights at the pre-contract stage** (we elaborate on this below in Section 2.2.1). The provisions of the 2008 Directive aim to contribute to the very important objectives of protecting consumers and improving internal market conditions for traders, boosting consumer confidence in the timeshare industry, and of eliminating the operations of rogue traders which bring legitimate traders into disrepute and cause consumers problems. Tourism plays an increasingly important role in the economies of Member States and by setting the conditions for fair trading by introducing common rules across the EU, the Directive also aims to encourage growth in timeshare and other holiday services.

Directive 2008/122/EC is without prejudice to the application of, in particular, the Unfair Commercial Practices Directive (UCPD), which is most relevant in tackling misleading and aggressive sales practices in the sector and the Unfair Commercial Terms Directive (UCTD), which is relevant in assessing the possible abusive nature of contract terms. On the other hand, the contracts falling under this Directive are not subject to the Consumer Rights Directive 2011/83/EU (CRD), which has become applicable as from 13 June 2014. The CRD would apply to holiday services not covered by Directive 2008/122/EC, for example, because they do not concern accommodation or do not meet the minimum duration requirement. CRD has many similarities with 2008/122/EC as it also largely focuses on pre-contractual information and the right of withdrawal.

2.2.1 Rationale for the extension of the scope of Directive 2008/122/EC

The extension of the scope of application of Directive 2008/122/EC to long-term holiday products, exchange and resale responds to the evolution of the industry characterised by a

¹³ 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.

Background & Role of the Directive 2

widening of the offer of timeshare-related products and services. This in turn reflects the evolution of consumers' holiday choices and expectations in recent years, with a new generation of holiday shoppers who tend to look at holidays in a more 'short-term' and spontaneous way.

According to the research, there has indeed been an increase in the offer of timeshare-like holiday products and services – such as exchange schemes¹⁴ – with a minimum duration of one year. At the same time, services to help an ever growing number of consumers resell timeshares they bought many years ago (in the 1980s/1990s) have proliferated on the market in the last 10-15 years. As such, the 2008 Directive's scope was also extended to ensure a minimum level of consumer protection as regards resale.

Similarly, the extension of the Directive's scope to LTHP, exchange and resale contracts takes into account the rising complexity in terms of the parties involved: e.g. property developers, estate agencies, marketing companies, exchange companies, resale companies. In this context, the extension of harmonised consumer protection rules to a wider range of contracts is undoubtedly a positive development.

In summary, the Directive addresses the diversity in the offer of timeshare and other related holiday products and services. This is reflected in the company survey data presented in Table 1.3 which gives an indication of the extent to which the industry has diversified.

The 2008 Directive thus aims to create a level playing field between timeshare traders and companies related holiday products and services (some of which being relatively new), which helps to prevent market distortions and to ensure the smooth functioning of the internal market. Additionally, companies selling both timeshare and holiday club products now can operate in a uniform regulatory environment thanks to the extended scope of the 2008 Directive.

2.2.2 Key provisions of Directive 2008/122/EC

The key provisions of Directive 2008/122/EC can be summarised as follows:

- **Definitions (Article 2)** – defines 'timeshare', 'long-term holiday products' and other key terms (see Section 1).
- **Pre-contractual information (Article 3)** – in its annexes, the Directive introduces set formats for the provision of pre-contractual information for consumers in respect of all the contract types covered, and for a standard form designed to facilitate the withdrawal by the consumer from a contract within the withdrawal period. The Directive requires the information to be provided on a durable medium (i.e. which can be kept in records) free of charge.

¹⁴ One-time trade for a stay in a different timeshare resort (applicable to both conventional timeshare and LTHP). Exchange schemes can be internal (i.e. within the same resort or resort group) or offered by specialised companies (e.g. RCI) across a wide range of affiliated resorts.

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- **Language (Article 4)** – all pre-contractual information is to be provided to the consumer in ‘the language of the Member State in which the consumer is resident or a national, at the choice of the consumer’.
- **Right of withdrawal (Articles 6, 7 and 8)** - the consumer is given 14 days to withdraw from a contract. The Directive clarifies that the exercise of the right of withdrawal terminates the obligation of the parties to perform the contract; in such situations, the consumer neither bears any costs nor is liable for any rental payments (Article 8). To guarantee this, the Directive requires Member States to prohibit advance payments (Article 9).
- **Advance payments (Article 9)** – any advance payment before the end of the withdrawal period is prohibited under the Directive.
- **Special provisions for LTHP contracts (Article 10)** payment must be made in yearly installments which must be of equal value. The contract can be terminated by the consumer from the second installment onwards.

Directive 2008/122/EC promotes **mediation, conciliation and arbitration** as alternatives in the case of consumer complaints as they avoid the high costs of legal consultation and long delays and psychological/ financial barriers related to the complexity of court procedures. Provisions concerning judicial redress, out-of-court settlements and sanctions are contained in Articles 13-15 of the Directive. Amongst other things, the provisions require Member States to guarantee proper judicial and administrative redress, out-of-court redress and sanctions for breach of national provisions adopted pursuant to the Directive in question in the interest of consumers. More generally, Member States are required to provide for penalties for traders in breach of the Directive that are ‘effective, proportionate and dissuasive’.

2.3 Transposition of the Directive in EU Member States

According to Article 16 of the Directive, it should have been transposed into national legislation by 23 February 2011. There are some variations in the way in which this was done:

- All 28 EU Member States have transposed the Directive into their national law. However, 14 Member States¹⁵ failed to transpose the directive on timeshares on time, but almost all took action by the end of 2011.
- Spain (the largest timeshare market in the EU), Lithuania, Poland and Slovenia only took action to transpose the Directive in early 2012.
- A total of 15 out of the EU28 Member States adopted a specific piece of legislation relating to timeshare in transposing Directive 2008/122E/EC.

¹⁵ Infringement proceedings were launched against Belgium, Cyprus, Czech Republic, Finland, Hungary, Italy, Lithuania, Luxembourg, Malta, Poland, Slovakia, Slovenia, Spain and Sweden.

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- A number of Member States transposed the Directive into their Consumer Code (FR, IT, LU), Civil Code (CZ, DE, LT, NL), or other existing legislation relating to Consumer Protection (BG, EE, FI, LV, SI).

To take some examples, in **France**, the Directive was transposed in 2009 through a number of amendments to the Consumer Code (*Code de la Consommation*) resulting from the adoption of Law 2009-888¹⁶. Article L121-60 covers all the pre-contract information requirements traders have to comply with in accordance with the Directive.

In **Portugal**, the Law Decree 37/2011 of 10 March transposes Directive 2008/122/EC. However, the standard information forms were only transposed with the adoption of 'Despacho' nº12878/2013, of 9 October 2013. In other words, the full transposition of the Directive was only achieved in 2013. As a result, consumers who bought timeshare in 2011-2012 received pre-contract information forms different to those set out under the 'Despacho' (which are identical to those in annexes to Directive 2008/122/EC). Whilst the Directive is fully transposed by the Law Decree 37/2011 and its 'Despacho', the registration of timeshare ownership, which is performed by the public administration, is regulated by the general legislation on real estate registration..

In **Spain**, the transposition of the 2008 Timeshare Directive into national legislation was achieved on 17 March 2012 through the Royal Decree-Law 8/2012 of 16 March on contracts for timeshare on property for tourist use, procurement of long-term holiday products, resale and exchange). This was subsequently endorsed by the Law 4/2012 of 6 July 2012 (Law 4/2012, of 6 July 2013, regulating timeshare contracts on property for tourist use, long-term holiday product, resale and exchange and tax rules). The former Decree-Law 8/2012 and Law 4/2012 of 6 July 2012 currently in force are virtually identical.

In the **United Kingdom**, the 'Timeshare, Holiday Products, Resale and Exchange Contracts' Regulations 2010 implementing Directive 2008/122/EC came into force on 23 February 2011. The provisions of the 2010 Regulations make information requirements part and parcel of timeshare contracts. Information on conditions for termination and liability for termination, and information relating to the management of timeshare properties (e.g. maintenance fees) must now be clearly integrated into the concluded contracts.

Although all EU Member States have transposed the Timeshare Directive, some recurrent problems have been identified by the Commission. The main issues with regard to transposition concern:

- **Article 10(2) on termination of long-term holiday product contracts** – several Member states had misinterpreted this provision as enabling termination only after full payment of second installment rather than when receiving invitation to pay the second and any subsequent installment.

¹⁶ Loi 2009-888 du 22 juillet 2009 de développement et de modernisation des services touristiques.

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- **Article 9(2) in the prohibition of advance payments in respect of resale contract** – in several Member States' laws it was not clearly stated that these are prohibited until the timeshare or Long-Term Holiday Product (LTHP) has been effectively sold.

Other differences in the transposition of the Directive stem from terminological variations (see Transposition Table in Appendix D for further information). For instance as regards 'durable medium'. In the UK, the concept of written notice is used. According to UK authorities the effect is the same - consumers supply documentation in a form they are able to retain. In Sweden, durable medium is interpreted as 'legible and durable form'.

Member States have **differences in the redress and implementation mechanisms and differences in terms of sanctions** - from administrative fines of up to EUR 1,500 to penalties in excess of €100,000 or penalties based on the annual turnover of the trader, such as up to 10%.

Following the intervention by the Commission several Member States have already amended their legislation. For instance, France recently modified its legislation to properly transpose Article 9(2) which prohibits advance payments as regards resale. A few other Member States are in the process of revising their legislation in the near future.

Dialogue is currently on-going between the Commission and some of the Member States as regards unresolved transposition issues. If no solutions are found, the Commission may open infringement procedures.

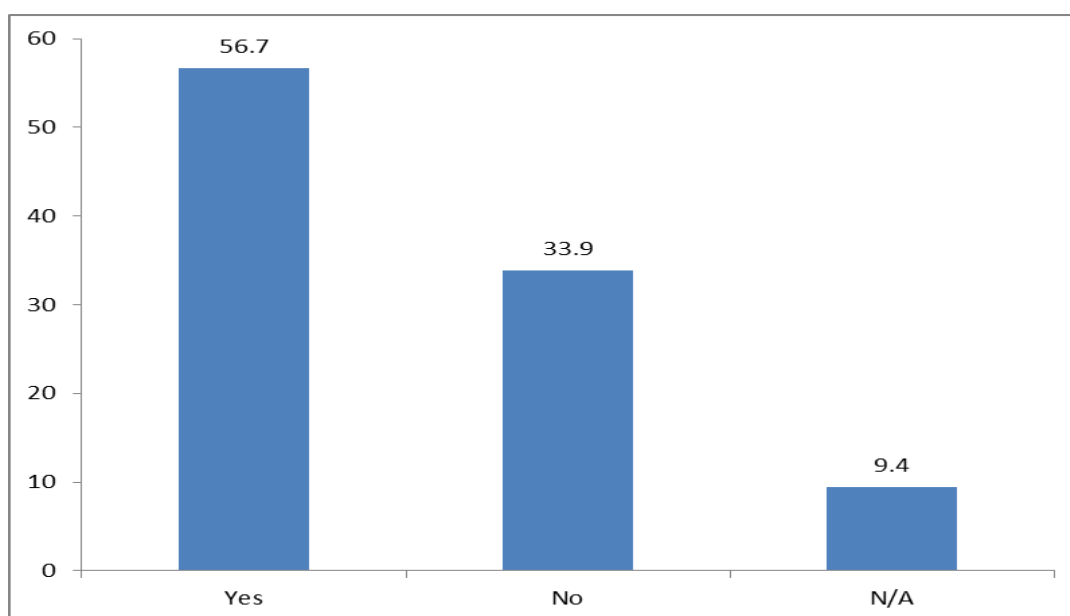
Timeshare Problems & Complaints 3

In this section, we draw on the survey data and other research to identify the problems faced by timeshare owners, the nature and volume of complaints and how these are dealt with.

3.1 Problems faced by consumers of timeshare and related products

To provide an overview, we start with the survey feedback. As mentioned in Section 1 (see Table 1.1 (b)), the starting (filtering) question was whether respondents had encountered problems with their “timeshare” (in this case used as a generic and familiar term covering all products under Directive 2008/122/EC: A high proportion of consumers responded affirmatively.

Figure 3.1: Do you have any problems with your timeshare? (% of consumers)



Source: CSES consumer survey (N = 918).

It is however important to note that the online consumer survey mainly caught the attention of those owners who had sought help from ECCs or other consumer protection organisations regarding some difficulty or other in connection with the product or service they had purchased. Hence, the survey results are inevitably biased in favour of consumers who had experienced problems.

To avoid any risk of bias, the rest of the analysis of the consumer survey feedback in this section is based on consumer respondent who experienced problems, i.e. 322 of the 918 consumers completing the survey. Although 520 respondents (56.7% of the total number of respondents) had experienced problems with their timeshares, the number who went on to answer the rest of the questionnaire was lower (322). Of those consumers who indicated having had problems and who proceeded to the detailed questions:

- The vast majority of the respondents (89.1%) had concluded their contract before 2012, i.e. before the 2008 Directive came into effect.

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- Just over 40% of the respondents who experienced problems indicated that they had entered into a contract for **'traditional' timeshare**. Interestingly, 46.3% of the respondents who have experienced problems indicated that they bought timeshare accommodation before the Directive was implemented compared to only 17.1% who bought timeshare accommodation after the Directive was implemented.
- More interestingly, a majority of the post-Directive respondents who indicated they have already experienced problems bought an **LTHP** after the implementation of the Directive (57.2%), compared with only 11.9% pre-Directive respondents. This is a useful indicator of the extent of consumer protection issues around LTHPs at pre-contract stage following the implementation of the Directive. These are explored further on in this report.
- Conversely, a relatively significant proportion of the consumer respondents who faced problems indicated that they purchased a **holiday exchange scheme** before the Directive was implemented (31%), compared with only 5.7% of post-Directive respondents. This also suggests that the Directive appears to have had a positive impact on consumer protection at pre-contract stage as far as holiday exchange schemes are concerned.
- Last but not least, 11.4% of the respondents who have ever experienced problems indicated that they resorted to sell their timeshare or related product via a specialized **'resale' agency** in or after 2012, compared to 5.6% before 2012. The survey data however does not indicate whether the problems experienced were with the timeshare or related product, the 'resale' agency itself, or both.
- In terms of market trends, the survey results below show that **LTHPs** appear to have become a more popular choice over **conventional timeshare** or **holiday exchange schemes** in recent years. This can be explained by the fact that LTHP contracts are typically of a shorter duration than exchange contracts. These results also appear to reveal there is today a wider offer resale services than in the timeshare 'boom' years.

The points raised above are illustrated in the table below:

Table 3.1: Having already experienced problems, what type of product/service did you purchase?

Type of product	Pre-Directive	Post-Directive	Overall
Timeshare accommodation	46.3	17.1	43.1
Long-term holiday product (e.g. holiday club)	11.9	57.2	16.8
Holiday exchange scheme	31.0	5.7	28.3
Agency to help sell timeshare rights or holiday club membership	5.6	11.4	6.2
Other	5.2	8.6	5.6

N=322 (pre-Directive : 287 / post-Directive : 35) Note: Multiple answers possible. Source: CSES consumer survey.

As part of the research, we invited individual consumers to provide us with feedback on their experience of timeshare transactions. Some consumers did so by providing written comments in

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the survey whilst others left their contact details and were telephoned by us to discuss the problems they had encountered. Examples of the feedback are provided below:

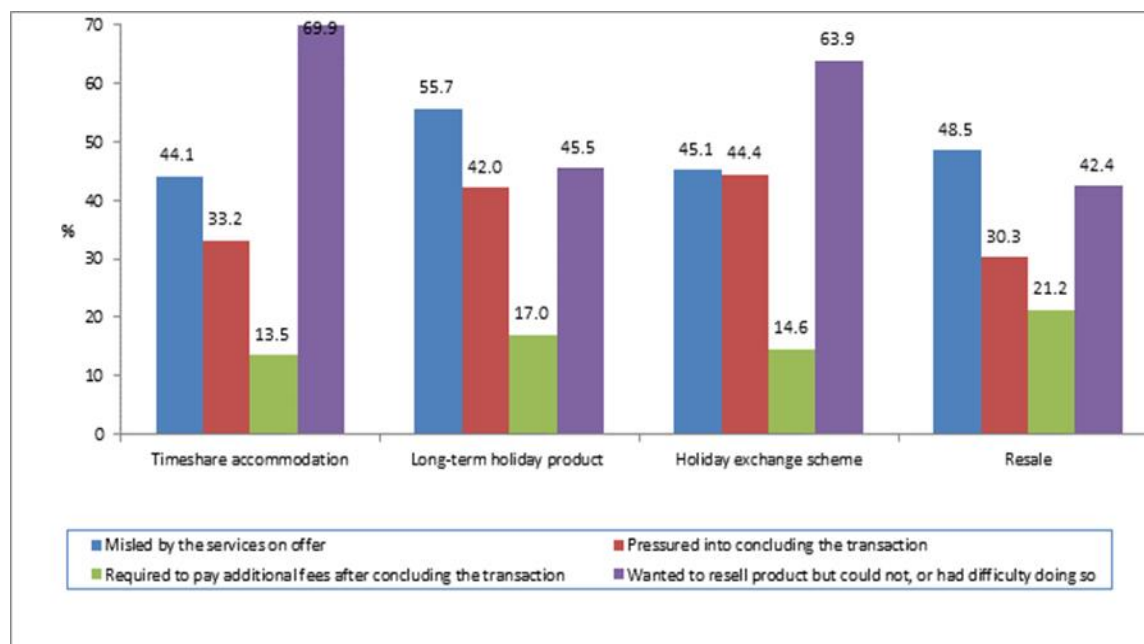
Consumer interviews – examples of problems with timeshare products

- **French consumer (holiday club):** He inherited a timeshare in a Club Hotel skiing resort in Tignes from his parents, who bought it some 45 years ago. He is unable to make use of it, but the company is not willing to let anybody get out of their contract and nobody wants to buy it as the resort is now very old-fashioned and the period is outside the school holidays. A law was recently introduced in France stipulating that timeshare arrangements have to be annulled at the death of the owner and cannot thus be passed on to their heirs, but this only applies for two years retroactively, so he is not covered. As a result he is forced to pay €500 à year for nothing. A **large number of French consumers** seem to be in a similar situation.
- **Norwegian consumer (Club La Costa):** Having initially been satisfied with his membership of this British/ Spanish club bought 10 years ago, the consumer is now regularly being harassed by the company with threats that if he does not upgrade his membership and pay in more capital, his conditions and choice will deteriorate. There has also been regular pressure to get him to invest in buying property off the company (at €150,000) and threats to take him to court if he does not conform.
- **Belgian consumer (holiday exchange scheme):** She inherited this French product from her disabled aunt who had tried to dispose of it for 30 years without managing to, spending a third of her pension in charges. After having fought for 3 years in the French courts at great expense, the niece finally managed to get the contract annulled in her third attempt with a change of barrister to someone more effective.
- **Finnish consumer (LTHP):** The package that they bought involved five weeks at a hotel anywhere in the world (choice of >over1,000 hotels). However, when they wanted to book a holiday, there was no availability to be found in any European country in spite of having tried all dates within one year. A **Swedish consumer** who had bought an agreement with Voyager had the same experience of not being able to find availability in any of the hotels that were part of the deal, but had to continue to pay the annual fees. Furthermore, they were not able to contact the company to complain.
- **French consumer (timeshare):** The hotel where this consumer had his timeshare went into liquidation and was subsequently sold for five million euros, but those who had apartments in the hotel did not receive anything in compensation for their lost investment.
- **Swedish consumer (recently bought timeshare):** After returning home these consumers were warned about timeshare scams and consulted the ECC. They had been required to pay up front, had not been informed about the right to withdraw nor about the fact that flights to the resort were not included in the price. They let the trader (Aegean Blue) know that they had changed their mind and returned all documentation by registered mail. After some discussion and attempts to dissuade them, the trader finally accepted their wish to withdraw and reimbursed their deposit of SKr 14,300 (€2,000).

In the following chart we analyse the main types of problem that respondents have experienced by type of product/service covered by the Directive.

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Figure 3.2: Problems experienced¹⁷ analysed by type of holiday product (% of respondents who had problems)



N=372 (includes respondents who did not indicate year of transaction). Source: CSES consumer survey. Multi-response possible

As can be seen, it is resale that caused the most problems to consumers, especially in connection with **traditional timeshare** (69.9%) and **holiday exchange schemes** (63.9%).

Within all product types, however, there is still a sizeable group of around half the number of respondents who feel that they have been misled by the services offered to them. This is particularly the case for **LTHP** with 55.7% feeling misled and **resale services** with 48.5%. The trend of consumers experiencing problems in connection with **resale services** was confirmed in the free-text fields of the survey and in the follow-up telephone interviews, as well as during the workshop discussions, where consumers and their associations gave various examples of the scams that are employed to make people believe that they can sell their timeshare or holiday product.

¹⁷ For the purpose of this analysis, misleading offers, pressure to conclude contracts, and difficulties with resale are all considered as problems falling within the scope of the 2008 Directive as they are understood as relating respectively to non-compliance with pre-contractual information requirements, and with the 14-day withdrawal period, including as regards resale contracts. Problems relating to the payment of additional unjustified fees after contracts are concluded are understood as falling outside the scope of the 2008 Directive.

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Consumer interviews – Issues relating to resale and relinquishment of the contract

- **French consumer (holiday club):** The Club Hotel claims that their contracts are signed for a period of 50 years and cannot be relinquished or changed, no matter whether owners are unable to use their share due to financial circumstances, illness or death. Resale could be allowed but does not happen in practice, given that resorts are so out-dated and old-fashioned that no-one is interested in buying them. If owners stop paying their annual maintenance fees, they are threatened with prosecution. A **Finnish consumer** was faced with a similar scenario - when inquiring the company (Club La Costa) about how to terminate the contract, he was threatened that he would have to pay for 30 years regardless of use and that even if he died, his children would have to continue to pay, or be faced with a debt recovery firm
- **Swedish consumer (timeshare):** The bungalow in which they had bought a share was never built since the company went bankrupt. They were offered a share in another complex but refused. Since then, several operators have contacted them offering to resell their share against a deposit which they never saw again. They were also approached by various so-called 'legal' firms who offered to help them present their case in the courts – again they paid a deposit which was lost when the firm 'vanished'.
- **Finnish consumer (timeshare):** The owners have discussed resale with the timeshare company several times, but each time they are offered a deal that involves even larger investments.
- **Swedish consumer:** After several years of not being able to find availability in the hotels included in their deal, this consumer was contacted to say that somebody in Germany was interested in buying their contract if they gave a deposit of €3,500. Then they contacted the consumer ombudsman.
- **French consumer (holiday club):** The managers of Clubhotel Multivacances seem to have realised that they did not need to maintain a quality service, since the clients were not able to leave their contracts anyway. So instead they appear to spend their time and energy on pursuing owners who do not pay their ever increasing maintenance fees.
- **Swedish consumer:** This couple was made to pay €1,900 up front at the sales meeting. When they wanted to use their right to withdraw, they were told that this was not possible as the seal on the CD they were given as a contract had been broken (actually by the sales people themselves). **Several other consumers** complained that they were not able to assert their right to withdraw for various reasons, among others because their withdrawal letter was returned with 'address unknown'.
- **French consumer:** Les frais de dossier de revente exigé par ces sociétés sont tellement élevé qu'il n'est pas possible d'y donner suite. souhaite revendre depuis quelques années. Mais si je le mets à la vente je ne peux plus l'occuper à compter de la mise en vente et cela peut durer quelques années avant qu'il ne soit vendu. Pendant tout ce temps je ne peux donc pas l'occuper Je trouve cela complètement idiot. Mais je dois payer les charges ?

One of the aims of the online consumer survey was however to identify the most prominent and recurrent problems faced by consumers of timeshare and related products before and after the implementation of the Directive. The research thus also looked survey results in relation to the type of problems faced by pre-Directive and post-Directive consumers broken down by type of product covered by the Directive. However, given the low number of post-Directive responses (35) compared to pre-Directive responses (287), the analysis yielded results that were not statistically significant to be included in this report, with the exception of LTHPs.

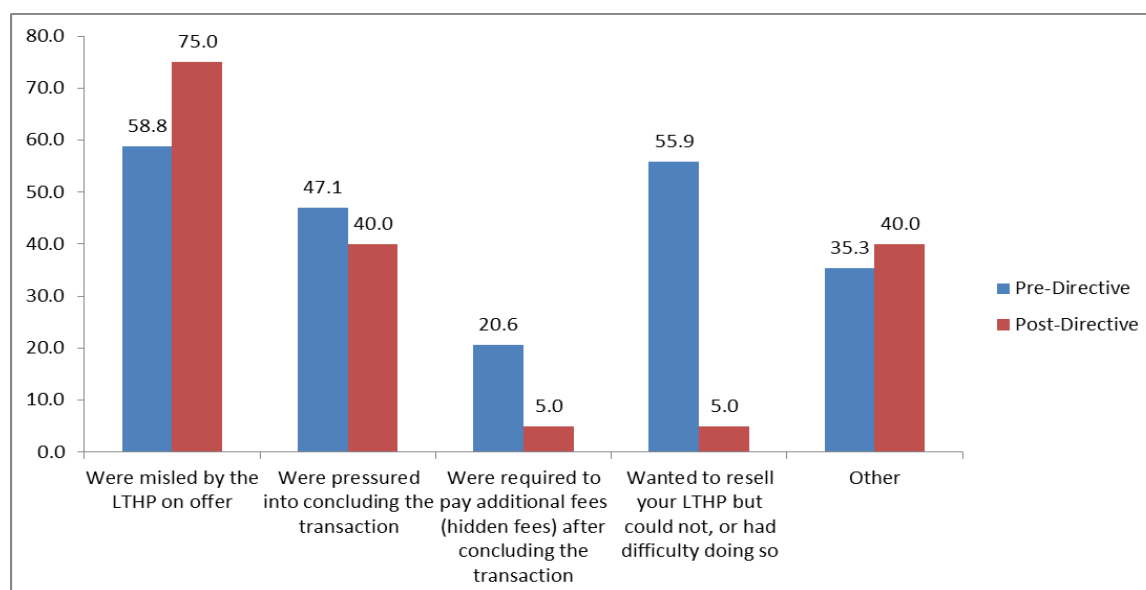
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Table 3.2: Consumer survey sample size by type of product/service according to period in which the transaction was concluded (pre-Directive/post-Directive)

Types of products	Sample size		
	Pre-Dir.	Post-Dir.	Overall
Timeshare accommodation	133	6	139
Long-term holiday product (e.g. holiday club)	34	20	54
Holiday exchange scheme	89	2	91
Resale services	16	4	20
Other	15	3	18
Total	287	32	322

Indeed, out of the 35 'post-Directive' respondents who had experienced problems, 20 indicated they had problems with their LTHP. This figure was of 34 for 'pre-Directive' respondents. Hence, this cross-comparison had some statistical significance. An overview of the problems encountered by respondents who bought LTHP either before or after the implementation of the Directive is provided below:

Figure 3.3: Problems in relation to LTHP contracts before and after implementation of the Directive



N=54. Multiple answers possible. Source: CSES survey

As regards pre-contract stage problems, the survey results above show that 75% of the respondents who bought LTHPs after the implementation of the Directive and who had experienced problems said they had been misled by the offer prior to concluding the transaction, compared to 58.8% of the 'pre-Directive' respondents. Elsewhere, 40% of the respondents who bought LTHPs in or after 2012 and who had experienced problems said they

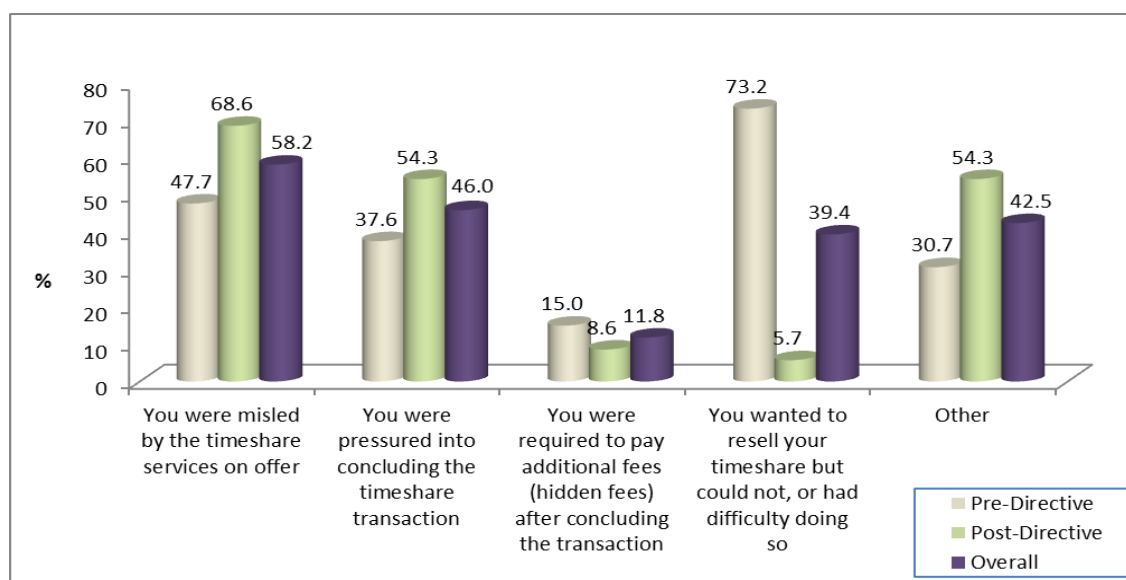
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were pressured into concluding the transaction compared to 47.1% of 'pre-Directive' respondents. **This may be an indication that fraudulent commercial activity is still quite rife in the LTHP sector despite the Directive's focus on protecting consumers at the pre-contract stage.** As regards post-contract stage problems, requirement to pay additional hidden fees once contracts are concluded was a problem encountered by 20.6% of the respondents who bought LTHPs before the implementation of the Directive and who had experienced problems, compared with only 5% of the 'post-Directive' respondents. **This may be an indicator of the positive effect of the Directive's provision on equal yearly instalments for LTHP contracts.**

Unsurprisingly, a much larger proportion of the respondents who bought LTHPs before the implementation of the Directive indicated that they experienced problems reselling them, whereas only 5% of the respondents who bought LTHP in or after 2012 have had such problems. **However the survey data does not allow us to see whether these respondents have had any further problems with resale agencies – either before or after the implementation of the Directive.** No further information was provided by the respondents on the other types of problem they may have faced with their LTHP.

The following charts provide a breakdown of the most common responses (based on proportion of survey respondents saying they had been affected by a problem) for all types of product /service covered by the Directive. It should also be noted that multiple responses were possible). The first chart highlights problems associated with the process of purchasing a timeshare while the second chart analyses the survey responses on problems after conclusion of timeshare contracts.

Figure 3.4: Problems associated with the purchase of timeshare and related products (% of consumers)



N=322 Source: CSES consumer survey. Multiple responses were possible.

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The survey results suggest that **problems with resale of timeshare or related products** are the most prominent among consumers who bought timeshare or related products prior to the application of the Directive. Feedback from the interviews confirmed that this type of problem is very common among long-standing owners of timeshare, particularly when they reach an age where they no longer want to make use of their facility and do not want to pass it on to their children. Whilst resale contracts are now within the scope of the 2008 Directive, problems around resale have intensified since its implementation according to the survey results.

Interestingly, a higher proportion of consumers who bought timeshare and related products after the Directive was implemented across the EU reported that they were **misled by the product or service they had purchased** or that they were **pressured into concluding the transaction**. This suggests that the Directive's focus on the pre-contract stage has not had a major impact yet on traders' behaviour overall, or more particularly on fraudulent traders' selling techniques.

Consumer interviews –problems relating to sales methods and contractual issues

- **Aggressive/fraudulent sales methods:** Several consumers with recent contracts informed us that had been approached while on holiday by sellers pretending that they had won a prize which could only be picked up if they attended a meeting (from which they found it difficult to 'escape' without signing a contract. Practically all had been lured into paying a deposit when signing the contract.
- **Lack of information about rights:** In most of the more recent cases, the contracts did not inform the buyers of their rights in accordance with the Directive (right to withdraw, ban on deposit payment, etc.)
- **Misleading information:** Practically all those interviewed complained that their contracts had been misleading in various ways, either with regard to the amounts and the regular increases of maintenance fees and charges, or relating to the possibility of changing the periods or the destination/accommodation initially booked, or concerning the scope for exiting from the contract or selling on the timeshare/holiday product to others.
- **Contract language:** Those interviewed felt that contracts tended to look very professional and the fact that they are made up in the consumer's own language made them seem more plausible. In several cases this fact was said to cause problems subsequently with regard to investigating and pursuing cross-border complaints, given that most lawyers or courts would find it difficult to understand contracts in foreign languages (e.g. Spanish courts having to deal with Scandinavian language contracts), unless these were translated which then adds to the costs involved.

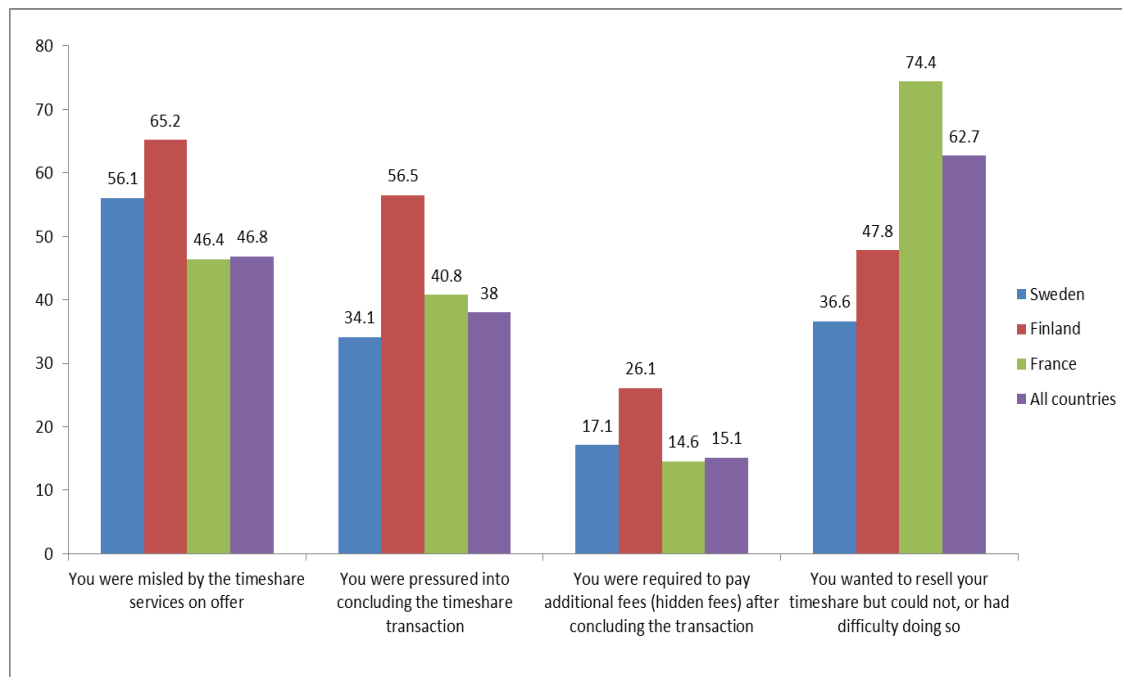
As regards complications occurring at the **post-contract stage** and for which the Directive cannot be invoked, only 8.6% of the respondents who bought timeshare or related products in or after 2012 and who had experienced a problem indicated that they had to pay hidden charges after concluding the contract as opposed to 15 % of the respondents who bought timeshare before the implementation of the Directive in all the Member States. In this respect, however, the Directive's focus on the pre-contract stage seems to have had a beneficial effect

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on the transparency of pre-contractual information. As such, there appears to be a strong relationship between improved transparency at the pre-contract and post-contract stage.

Looking at the survey responses broken down by country, the analysis reveals that some types of problem appear to be more prevalent than others in the different Member States. As in other parts of this section, the percentage breakdown is based on only the respondents to the online survey who had experienced problems.

Figure 3.5: Problems associated with the purchase of timeshare and related products by country (% of consumers)



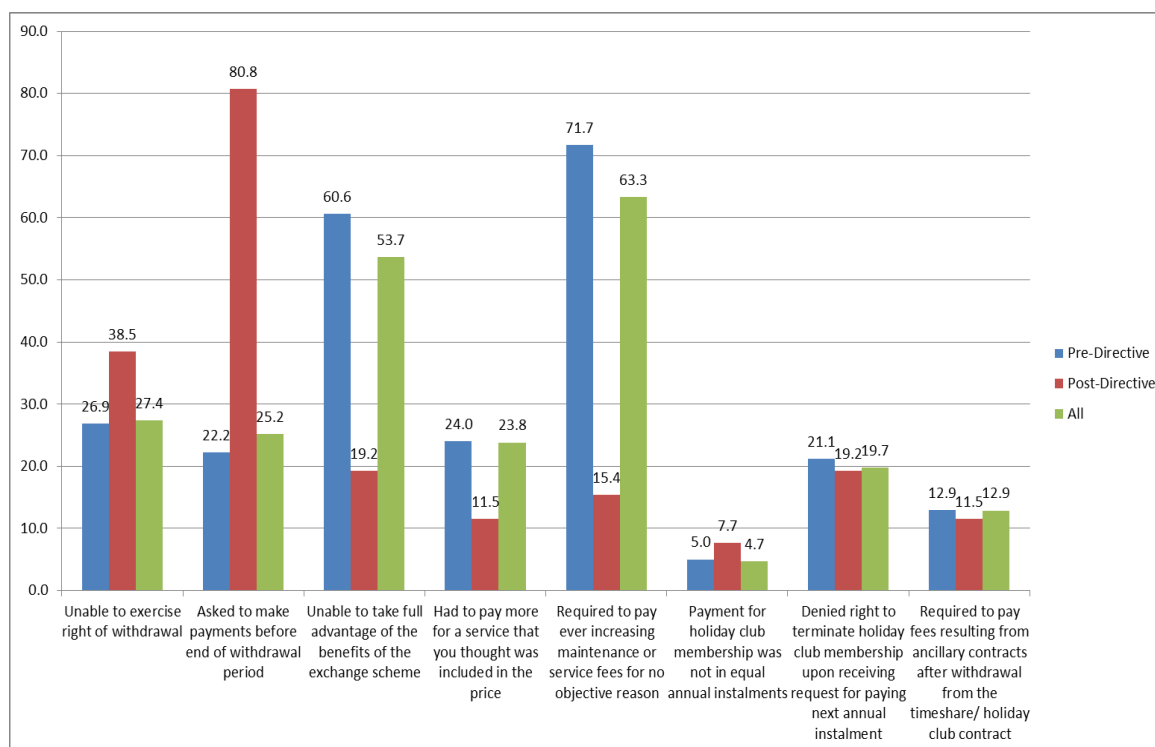
All countries N=372 (takes into account respondents who did not indicate year of purchase). Source: CSES survey. Multiple responses were possible

The data above shows that problems relating to misleading offers affect a relatively high proportion of Swedish and Finnish survey respondents (56.1% and 65.2% respectively). On the other hand, 74.4% of the French consumers who responded to the survey indicated that they faced problems trying to resell their timeshare.

Turning to the problems associated with timeshare contracts, the following chart provides a summary of the survey feedback:

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Figure 3.6: Problems in relation to contracts covered by the Directive (% of consumers)



N=322 Source: CSES consumer survey. Multiple responses were possible.

From the above analysis of the survey data, it would seem that problems occurring after conclusion of contracts are the most common:

- The most common complaint (63.3% of survey respondents who had experienced problems) was that the consumer is required to pay ever **increasing maintenance or service fees** for no reason specified in the contract. This post-contract problem was encountered by 71.7% of the respondents who bought timeshares or related products before the implementation of the Directive in all the Member States compared with 15.4% after implementation.
- Additionally, an overall 53.7% of the respondents who subscribed to an exchange were unable to take full advantage of it. Here, 60.6% of respondents whose contracts were taken out before implementation of the Directive indicated that they were **unable to take full advantage of the benefits** compared with only 19.2% of the consumers who subscribed to an exchange scheme in or after 2012 who faced similar problems. This may be an indication of the fact that the Directive aims to improve transparency in the provision of information on contract terms and conditions.

The survey results also suggest that consumers who buy timeshare or related products today will continue to be exposed to problems at pre-contract stage amounting to a denial of their consumer rights: 38.5% of the respondents who bought timeshare related products covered by

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the Directive in or after 2012 indicated that they were **unable to exercise their right of withdrawal**, and 80.8% of those who bought timeshare related products covered by the Directive in or after 2012 indicated they were **asked to make payments before the end of the withdrawal period**. This either highlights major shortcomings in the enforcement of the Directive, or the fact that consumers are now much more aware of their rights when buying timeshare or related products.

3.2 How complaints are dealt with

We now turn to the steps that consumers, who have encountered problems with their timeshare or other products, have taken to seek a satisfactory resolution. As can be seen from the following table, approaching half (45%) of those who said they had encountered a problem did not lodge a complaint. The proportion of respondents who have not sought to lodge a complaint is much higher amongst long-standing timeshare owners than among recent buyers of timeshare or LTHP.

Table 3.3: Regarding the problem(s) you may have encountered, did you seek to lodge a complaint? Please select all that apply

Types of problems	Pre-Directive	Post-Directive	Overall
Misleading offer	24.7	50.0	26.8
Denial of your rights as a consumer	12.9	46.2	15.9
Unjustified additional / rising fees	11.5	3.8	11.2
Resale	24.0	3.8	20.8
Professional (legal) services	3.9	3.8	4.1
Did not lodge a complaint	48.7	23.1	44.7

N=322 Source: CSES consumer survey. Note: multiple responses possible

The results suggest that the complaints mostly related to misleading offers (26.8% of complainants) or attempts to resale a timeshare (20.8%). A sizeable proportion of the complaints made by consumers who recently bought timeshare or related products related to misleading offers or the denial of their rights. This suggests that consumers today may be better aware of their rights when purchasing timeshare or feel more empowered to lodge complaints when their rights have been flouted by the trader. On the other hand, the proportion of complaints linked to resale is unsurprisingly lower amongst consumers who recently purchased timeshare or related products than amongst long-standing timeshare owners.

Most consumers directed their complaint at the timeshare trader they dealt with. ECCs and national consumer protection bodies were the next most used entities that timeshare owners turned to for help in dealing with their complaints. The following table provides a cross-tabulation of the survey data indicating who the consumer complained to for the different types of problems, distinguishing between the pre- and post-Directive situation.

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Table 3.4: To whom did you complain?

To whom the consumer complained	Misleading offer		Denial of rights		Unjustified or additional fees		Resale		Professional services	
	Pre-Dir	Post-Dir	Pre-Dir	Post-Dir	Pre-Dir	Post-Dir	Pre-Dir	Post-Dir	Pre-Dir	Post-Dir
Trader	36.4	43.8	17.8	43.8	18.7	12.5	30.8	6.3	6.5	0.0
Dispute resolution body	5.6	6.3	2.8	12.5	2.8	6.3	1.9	0.0	0.9	0.0
CPC in own country	15.9	37.5	5.6	25.0	5.6	0.0	9.3	0.0	6.5	6.3
CPC in trader's country	4.7	6.3	1.9	6.3	0.9	0.0	2.8	0.0	2.8	12.5
Police in own country	11.2	18.8	1.9	6.3	0.9	6.3	9.3	0.0	4.7	0.0
Police in trader's country	8.4	0.0	2.8	0.0	1.9	0.0	2.8	0.0	2.8	0.0
ECC	15.0	43.8	9.3	37.5	6.5	12.5	10.3	0.0	4.7	6.3

N=146 Source: CSES consumer survey.

There are some notable observations to be made:

- Taking an average across the different types of complaints, consumers participating in the survey generally turned to the trader first to lodge a complaint, followed by an ECC or a consumer protection authority in their own country.
- A relatively low proportion complained to the consumer protection bodies or police in the country of the trader, no doubt reflecting the complications of pursuing a complaint on a cross-border basis.
- Almost 44% of the consumers who bought timeshare or related products in or after 2012 and who were denied their rights indicated that they complained directly to the trader. It also appears that more recent buyers of timeshare and related products increasingly turn to the ECCs to make a complaint.

A caution needs to be added to the data shown above because of the relatively low number of responses in certain categories.

Because of the problems that can arise in timeshare transactions – particularly resale – many consumers turn to a lawyer and/or other professional adviser for help. They may resort to such services regardless of whether they have already lodged a complaint officially. In our survey, 180 respondents indicated they have already paid a professional person to settle a timeshare-related issue, which is more than the number of respondents who indicated they had officially lodged a complaint – including to the trader (146).

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Table 3.5: Have you ever paid a professional person (e.g. lawyer) for help with a timeshare-related issue? (Please select all that apply)

Options	Pre-Directive	Post-Directive	Overall
Representing you in your dispute with the timeshare company	27.2	3.8	25.8
Reclaiming your payments to the timeshare company	10.8	3.8	9.0

N=180 Source: CSES consumer survey.

Over a quarter of the respondents to the survey who bought timeshare or related products before the Directive was implemented across the EU, and who encountered problems, have already paid lawyers to represent them in their dispute with a trader. This proportion is much lower for respondents who bought timeshare or related products in recent years. Research suggests that most of these disputes arise from problems over resale but also from disagreements over higher maintenance fees, which mostly affect long-standing timeshare owners. Similar proportions of pre-Directive and post-Directive consumers have paid professional lawyers to reclaim payments from traders.

Although most timeshare consumers are satisfied with the professional services they received, a significant minority were not. The proportion of unsatisfied respondents is higher among consumers who took out a contract in or after 2012. As with the analysis elsewhere in this section, the following breakdown is based on only those respondents to the survey who encountered problems with their timeshares.

Table 3.6: Were you satisfied with the service(s) provided by the professional(s)?

Options	Pre-Directive	Post-Directive	Overall
Yes	56.3	75.0	58.9
No	32.6	12.5	28.9
No response	11.1	12.5	12.2
Total	100.0	100.0	100.0

N=180 Source: CSES consumer survey.

Finally, a high percentage (72.6%) of consumers in our survey said that their complaint had not been resolved in a satisfactory manner.

Table 3.7: Was the problem for which you made a complaint solved to your satisfaction?

Options	Pre-Directive	Post-Directive	Overall
Yes	6.5	43.8	10.3
No	78.5	50.0	72.6
No response	15.0	6.3	17.1
Total	100.0	100.0	100.0

N=146 Source: CSES consumer survey

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Examples of the feedback we received from individual consumers on the handling of complaints are provided below from the survey feedback and follow-up telephone interviews.

Consumer interviews – Issues in relation to complaints

- **Finnish consumer:** The Finnish consumer authorities agreed to take on their case and try to negotiate a cancellation of the contract with the operator, but they were not able to contact the company. The consumer then got in contact with a man who promised that he could help. Having met him in Finland and paid him to help, he disappeared without a trace, after which they contacted the police.
- **French consumer:** The main problem seems to be that complaints are dealt with on an individual basis and not in an organised manner through one or a few channels. It is also very difficult for any legal system to intervene in another country with a different jurisdiction. Even if a positive judgement is achieved it can still be extremely difficult to obtain redress given the complexity of the legal structures of the companies that are involved.
- **Swedish consumer:** In spite of their complaint, the trader continues to claim that they do not have the right to withdraw nor to have their deposit of €1,900 paid back. They also insist that the outstanding contractual amount has to be paid or they will engage a debt collector. Having got the ECC to help them negotiate their case with the trader so that at least they will not be pursued for the remaining amount, they have not had any news from the trader for the past 8 months.
- **French consumer:** If they do decide to go ahead with filing an official complaint it will have to be in relation to the misleading nature of the contract which they were unaware of having signed for 99 years, a fact which makes it impossible for them to sell.

Compared to other timeshare owners (6.5%), a higher proportion of the respondents who bought timeshare and related products in or after 2012 indicated that the problem for which they made a complaint was solved to their satisfaction (43.8%). This can be explained by the nature of the complaints lodged by new consumers of timeshare which mostly relate to the denial of their rights and which can be quickly resolved (for instance, through chargeback). On the other hand, feedback from the survey suggests that complaints are more difficult for authorities to resolve when they concern contracts that were taken out before 2001, in particular the resale or termination of 'old' contracts.

3.3 Analysis of ECC complaints data

Many respondents to the survey, after having received a negative feedback from traders about their problems, indicated they lodged a complaint with the European Consumer Centres network (ECC Net).¹⁸ The complaints recorded in 2007-2013 by the ECC-Net have therefore been analysed as a relevant source of information on cross-border¹⁹ complaints relating to the timeshare sector with a special focus on the complaints recorded in 2012 and 2013 (i.e. after the implementation of the Directive in the EU Member States). However, there are shortcomings

¹⁸ This data was also a principal source for the Commission's impact assessment of 2007.

¹⁹ The ECC-Net does not deal with "domestic" complaints, i.e. when the consumer and the trader are based in the same country.

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with the data. This includes poor encoding quality, impossibility of precise comparison of the situation before and after 2012 as the 2008 Directive was not in force and could not be reported on by ECCs) and this limits the type of analysis that can be undertaken.

The different encoding period has to be borne in mind as well: complaints relating to Directive 2008/122/EC started to be encoded as such by ECCs following its application (i.e. from 2011 onwards) and complaints relating to Directive 94/47/EC were encoded by ECCs between 2007 and 2013, i.e. ECCs continued to encode complaints relating to Directive 94/47/EC from 2011 onwards regarding complaints related to contracts signed during the period of the application of the 1994 Directive, i. e. between April 1997 and February 2011.

To provide an overall picture:

- 15,588 complaints were received by ECCs between 2007 and 2013. A total of 1 in 4 was serious enough to require the intervention of the ECC of the country of the trader. For the rest, the ECC of the consumer was able to advise on how to proceed in the case.
- Timeshare-related complaints represent a high proportion of complaints received by ECCs - between 6 to 8% in the years 2007 and 2012.
- Since the Directive was implemented, there has been a decrease in the number of all complaints recorded annually by ECCs across the EU, from an average of 2,150 per year prior to the implementation of the Directive (i.e. between 2008 and 2011) to an average of 1,820 after the Directive was implemented in all of the Member States (i.e. 2012-2013).

3.3.2 Complaints by country of the consumer and trader

As regards the source of the complaints, the ECC data indicates that **around half of all complaints concerning timeshare and related products were made by UK consumers between 2007 and 2013**. However there has been a slight decrease in the annual number of UK consumer complaints recorded by ECCs from around 1,400 in 2008-09 to less than 1,000 in 2013.

Almost one in five complaints received by the ECCs comes from consumers residing in the Nordic countries (in particular Sweden and Norway). The data shows a marked reduction in 2013 which apparently coincided with the Spanish police taking action against rogue traders²⁰. However, according to ECC **Sweden**, the figure for 2014, so far, appears to indicate a new increase in complaints, a trend which seems to correspond with comments suggesting that, after a while, holiday operators managed to develop products and services circumventing the legislation.

Other countries with a relatively high proportion of consumer complaints in regard of total complaints recorded by ECCs between 2007 and 2013 include **Germany** (annual average of 8% of all complaints), **Belgium** (annual average of 7%), and the **Netherlands** (annual average of

²⁰ See Mindtimeshare Annual Report 2013.

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4.5%). Whilst the percentage of complaints from German consumers has gone down by more than 2% annually since the implementation of the Directive, figures have remained more stable for Belgium and the Netherlands between 2007 and 2013.

Turning to the country where the timeshare business that is subject to a complaint is based, the overwhelming majority of consumer complaints are lodged **against Spain-based traders** (over 75% between 2007 and 2013). A slight decline has been observed since the implementation of the Directive in Spain in 2012 (from an annual average of 1,750 between 2008 and 2011 to an annual average of 1,350 for 2012-2013).

The second highest number of complaints has been against **Greece-based traders**, accounting for around 10% of total complaints against traders across the EU for the 2007-2013 period. Between 150 and 250 complaints against Greece-based traders were recorded each year by ECCs between 2007 and 2012, but only 65 in 2013. Greece is followed by **Malta** with an annual average of around 120 complaints lodged against its traders between 2007 and 2013, accounting for around 5% of total complaints against traders across the EU. These figures have remained stable between 2007 and 2013.

3.3.3 Trends in the nature of complaints

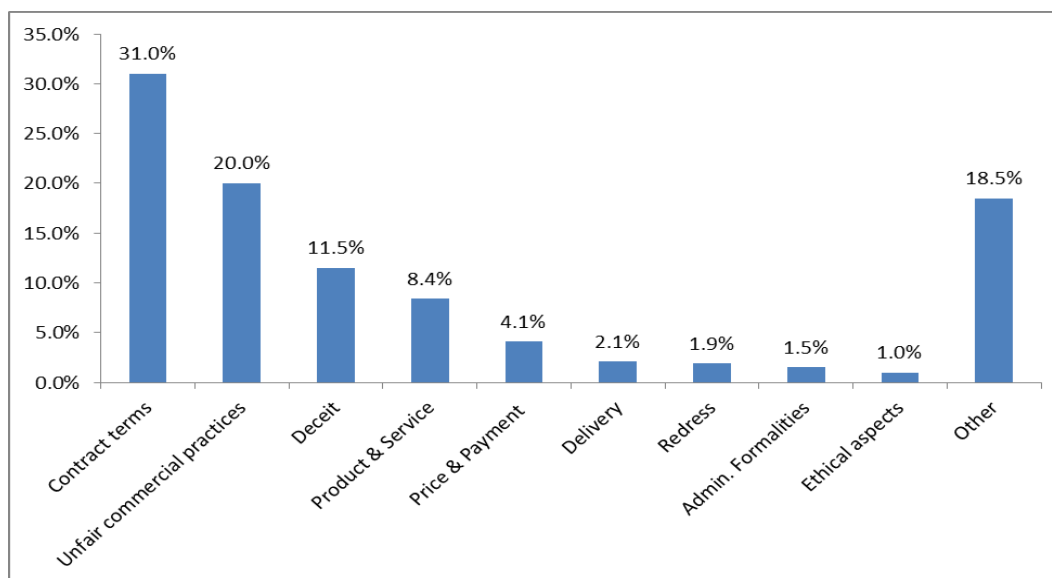
As regards the nature of complaints made by consumers, it is first of all important to understand how ECCs in the different Member States encode them. The categories used by ECCs to encode complaints are the following (by order of importance):

- Contract terms - relates to a breach of contract by the trader;
- Unfair commercial practices: relates to aggressive/pressure selling techniques;
- Deceit - relates to misleading product/service offers;
- Product and Service - relates to consumer dissatisfaction with the quality or features of the product;
- Price and payment - relates to hidden fees and additional charges;
- Delivery - relates to performance of the service;
- Administrative formalities - relates to errors in administration;
- Ethical aspects - relates to company ethics;
- Other - miscellaneous.

The table below gives an indication of the most common types of complaint ECCs received and dealt with between 2007 and 2013.

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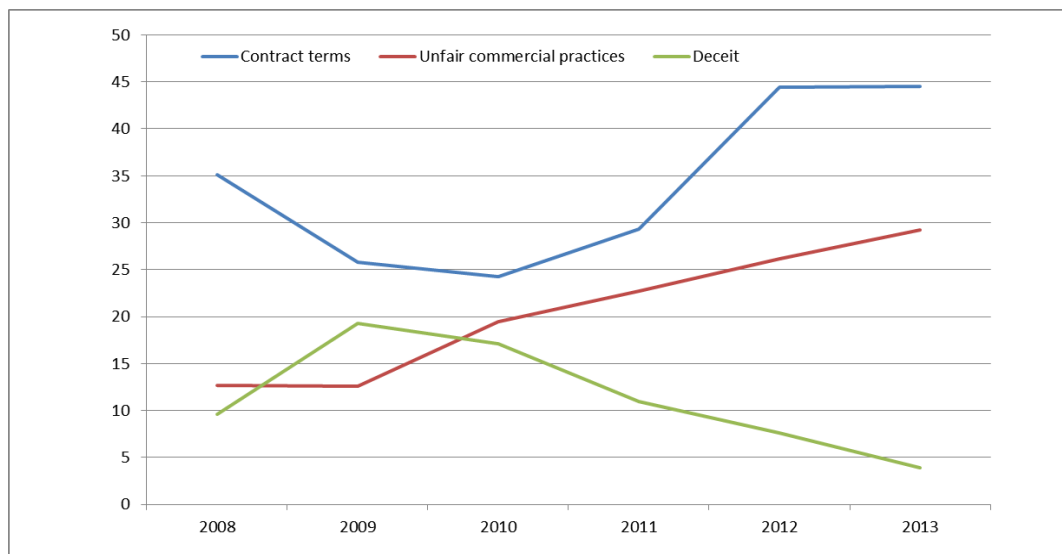
Figure 3.7: Nature of complaints concerning timeshare and related products for 2007-2013



Note: simple and normal complaints (15,588). Source: ECC Net data.

The figure above shows that almost a third of complaints concerning timeshare and related products were encoded by ECCs as relating to 'contract terms' while 20% were encoded as relating to unfair commercial practices between 2007 and 2013. Deceit (11.5%) was also a relatively common cause for consumer complaints. A relatively high number of complaints were encoded as 'other'. There are a number of trends which coincide with the transposition of Directive 2008/122/EC in the EU Member States in 2011-2012:

Figure 3.8: Trends regarding nature of complaints 2008*-2013 (in %)



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*Values for 2007 are not included as the ECC database was only launched in this year and did not include all complaints

Firstly, nearly 45% of the timeshare-related complaints recorded by ECCs in 2012 and 2013 were linked to **'contract terms'**²¹ compared to an average of 30% between 2008 and 2011. This could be a direct effect of the implementation of the Directive which harmonises information to be provided about contract terms. There is, however, no way of knowing in further detail the exact nature of the ECC complaints classified as linked to 'contract terms'. Such complaints may for instance relate to a breach of contract terms following the conclusion of a transaction, but also possibly to unfair or abusive contract terms.

Secondly, and rather surprisingly, **complaints relating to unfair commercial practices** regarding timeshare and related products have risen from an average of 17% between 2008 and 2011 to 26.1% in 2012 and 29.2% in 2013 respectively. This suggests that the Directive is having little effect on the behaviour of fraudulent traders who are increasingly developing new techniques to approach consumers by exploiting loopholes in the legislation. Thirdly, on the other hand, complaints relating to **'deceit' or fraud'**²² dropped from an average of 13% of all complaints between 2008 and 2011 to 7.6% in 2012 and 3.9% in 2013 respectively. This seems to be related to the fact that the Directive requires more transparency in the provision of information at pre-contract stage.

3.3.4 Complaints relating to Directives 94/47/EC and 2008/122/EC

It is important to note that for the encoding purposes of the ECC database only one Directive can be chosen as the main source of complaint, but in practical terms one complaint may have several aspects and thus may concern several Directives. It is expected that the choice of the Directive was linked to the most important aspect of the complaint. As Directive 94/47/EC and Directive 2008/122/EC do not deal with all the aspects of timeshare and related products, only 22.7% of all complaints concerning timeshare and related products recorded by the ECC were encoded as either relating to (a breach of) Directive 94/47/EC or Directive 2008/122/EC, as the table below shows

Table 3.9: Proportion of all complaints concerning timeshare and related products relating to Directive 94/47/EC and Directive 2008/122/EC – 2007-2013

Timeshare Directive	No. and % of all complaints concerning timeshare and related products	
	Nº	%
Directive 2008/122/EC	2,219	14.2
Directive 94/47/EC	1,327	8.5
Directives 94 and 2008	3,546	22.7

Source: ECC Net data

²¹ Term used by ECCs for classification purposes.

²² Term used by ECCs for classification purposes.

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The ECC data shows that the majority of complaints concerning timeshare and related products were classified as relating mostly to breaches of other consumer protection Directives such as Package Travel, Distance Selling, Unfair Contract Terms Directive or Unfair Commercial Practices Directive. Complaints mainly relating to the provisions of Directive 2008/122/EC started to be encoded as such by ECCs following its application (from 2011 onwards). Complaints relating to Directive 94/47/EC were encoded by ECCs between 2007 and 2013, i.e. ECCs continued to encode complaints relating to Directive 94/47/EC from 2011 onwards regarding contracts signed during the time of the application of the 1994 Directive, prior to the application of Directive 2008/122/EC, i. e. between April 1997 and February 2011.

When analysing the complaints classified as relating to one or the other Directive, the table below shows that 57.6% of the complaints relating to (a breach of) Directive 2008/122/EC were made against discount holiday clubs, compared to only 23.4% for Directive 94/47/EC. This can be explained by the fact that the 2008 Directive now covers LTHP (including discount holiday clubs) whereas the 1994 Directive did not.

Table 3.10: Complaints relating to Directives 94/47/EC and 2008/122/EC by type of product/service

Product type by Timeshare Directive	Directive 94/47/EC		Directive 2008/122/EC	
	Nº	%	Nº	%
Timeshare	792	59.7	356	16.0
Timeshare-like	69	5.2	88	4.0
Discount holiday clubs	310	23.4	1,279	57.6
Exchange	4	0.3	13	0.6
Resale	124	9.3	265	11.9
Other related propositions	28	2.1	218	9.8
Total	1,327	100.0	2,219	100.0

Source: analysis of ECC Net data

As the 1994 Directive covered only timeshare products, it is not surprising that 59.7% of the complaints relating to (a breach of) the 1994 Directive were against 'conventional' timeshare companies. However, only 16% of the complaints for the 2008 Directive concern the conventional timeshare market, which is an indication that contracts concluded at a later stage in this market are causing fewer problems and therefore that consumer protection in this respect is better. As regards resale, the number of complaints relating to (a breach of) the Directive 2008/122/EC is relatively higher than for Directive 94/47/EC. On the other hand, the proportion of complaints against resale companies relating to either the 1994 or 2008 Directive has remained stable.

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3.4 Analysis of TATOC complaints data

The Association of Timeshare Owners Committees (TATOC) is another useful source of information on complaints, particularly regarding those made by UK consumers. TATOC has 92 resort members throughout Europe. It asks businesses that run timeshare resorts to commit themselves to a code of conduct and other measures to protect the interests of timeshare consumers. TATOC operates a UK-based helpline for timeshare consumers and the table below provides an analysis of the number and type of complaints over the period 2010-13.

Table 3.11: TATOC Helpline case analysis 2010-13

CASE TYPE	2010		2011		2012		2013	
	Enquiry	Complaint	Enquiry	Complaint	Enquiry	Complaint	Enquiry	Complaint
Resale General	1429	0	1562	0	1748	0	1480	0
Resale Specific (Company)	910	846	655	645	579	393	370	277
Sales & Marketing (non-timeshare)	24	278	19	102	9	58	9	39
Sales & Marketing (timeshare)	39	88	37	64	16	34	28	54
Bonus weeks	17	25	5	1	27	60	37	9
Timeshare or points clubs	100	20	47	15	31	2	83	33
Legal	199	37	266	99	262	52	194	2
Timeshare Exchange	2	1	8	6	4	3	6	14
Exit Route	232	7	103	4	113	20	132	7
Maintenance fees	54	25	31	25	31	16	86	50
Takeover offers	38	16	38	33	70	49	55	2
Rental scheme offers	11	0	10	0	13	0	5	16
Unsolicited calls	7	30	0	21	4	31	3	0
Foreign language	0	0	6	2	19	2	8	0
Cash-back failure	8	162	11	124	4	26	5	6
Miscellaneous	44	2	14	0	9	0	7	0
TOTALS	3114	1537	2842	1171	2939	746	2684	781

Source: TATOC. Note - the numbers in pink indicate enquiries and complaints against products and services offered by fraudulent businesses.

The statistics provided by TATOC confirm that resale is the largest area of complaint by consumers amounting to more than half of all complaints received. This does not reflect the activities of reputable companies but reflects the continued and fraudulent activities of companies who contact consumers. As stated in the Commission's impact assessment of the

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future directive 2008/122/EC²³, it was well understood that the new EU Directive alone cannot influence the activities of companies that are fully prepared to act in an illegal and fraudulent manner. Companies were acting fraudulently before the new legislation and they continue to do so.

On fraudulent timeshare resale practices the TATOC helpline has recorded a reduction of approximately 50% in both enquiries and complaints against resale companies. In 2010 there were 910 enquiries and 846 complaints against specific resale companies and in 2013 this has reduced to 370 enquiries and 277. There has been a steep reduction each year in both enquiries and complaints in these cases since the Directive was implemented.

In 2013 The TATOC website listed 230 different companies who were cold-calling consumers on a variety of matters and the vast majority of these would be misleading, deceptive or fraudulent activities.

3.5 Conclusions – timeshare problems and complaints

This section has focused on the nature and extent of consumer problems. **Just over half (56%) of the respondents to our consumer survey indicated that they had experience complications with their timeshare or related product.** In interpreting the CSES consumer survey results, however, the fact that people with a complaint are more likely to complete the questionnaire than those who are happy with their holiday product also needs to be borne in mind and for this reason the analysis in this section is limited to respondents who had complaints.

The results from our research show that resale [or termination of the existing contract] is one of the most prevalent issues consumers are faced with today. A sizeable proportion of the survey respondents also indicated that they are required to pay increasing maintenance fees for no objective reason – a recurrent post-contract problem which falls outside the scope of the Directive. These two problems are indeed linked and affect mostly long-standing timeshare owners. It is also important to point out that a large majority of the respondents to our survey had concluded their contracts prior the implementation of the 2008 Directive.

Similarly, the statistics provided by TATOC on consumer complaints received through the helpline indicate that a majority of the complaints relate to **resale services**. However, it should also be pointed out that the annual number of complaints received by TATOC in relation to resale has substantially dropped between 2010 and 2013. This may be an effect of the Directive which was implemented in the course of 2011 and 2012 across EU Member States.

Both the ECC and TATOC statistics indicate a drop in the annual number of complaints in the last few years since the implementation of the Directive, particularly as regards conventional timeshare. This is clearly a positive development. However, it is difficult to interpret the extent to which this can be attributed to the Directive. This trend nevertheless suggests that overall compliance with EU legislation has improved within the **conventional timeshare industry** in recent years.

²³ Commission 2007 Impact Assessment, SEC(2007) 743 COM

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ECC statistics for 2007-2013 show a growing proportion of complaints relating to **'contract terms'** and **'unfair commercial practices'** in recent years, whilst complaints relating to **'deceit'** dropped over that period. The sharp increase in the number of complaints received by the ECCs classified under the **'contract terms'** category in 2012-2013 can be explained by the fact that these actually relate to a breach of Directive 2008/122/EC. This again may be an indication that the Directive has enabled consumers to be aware of their contractual rights and to take action to defend them.²⁴ This finding also emerges from the analysis of the responses to our consumer survey which shows that a relatively large number of the respondents who recently bought timeshare or related products lodged a complaint in relation to a **misleading offer** or the denial of their rights. This also suggests that consumers feel more empowered to lodge complaints when their rights have been flouted by the trader.

In light of these findings, it is also possible to detect a correlation in the ECC data between the proportion of complaints relating to contract terms under the 2008 Directive and the proportion of complaints made against discount holiday clubs (i.e. **LTHP**) under the 2008 Directive. This tendency is further supported by the consumer survey data results on misleading information and consumer rights denial (see Figure 3.3, p18). **This raises issues as to the overall level of compliance with the provisions of the 2008 Directive in the LTHP sector.**

According to the survey responses, consumers who experience problems with their timeshare or related product first turn to the trader. Smaller numbers of survey respondents indicated that they have sought to make a complaint to the **ECC or a consumer protection authority** in their own country. It also appears from the survey results that recent buyers of timeshare and related products are more likely to turn to the ECCs to make a complaint compared to consumers who bought timeshare or related products prior to the implementation of the Directive. This can also be explained by the fact that a growing number of complaints recorded by the ECCs in the last two years relate to a breach of contract terms.

Over a quarter of the respondents to our survey who bought timeshare or related products before 2008 have resorted to legal services to help resolve complaints which, according to survey feedback, mostly relate to disagreements with the trader over high maintenance fees. A much lower proportion of the respondents who bought timeshare in recent years have resorted to legal services to solve their problems. The survey results also reveal that consumers who bought timeshare or related products recently are more likely to have their problem solved to their satisfaction than consumers who bought timeshare or related products many years ago. This suggests that problems linked to contracts pre-dating the Directive are more difficult to solve.

²⁴ This analysis rests upon the terms used by ECCs for classifying complaints. No further details were given on the exact nature of complaints relating to either **'contract terms'**, **'unfair commercial practices'** or **'deceit'**.

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The terms of reference for this study focused on a number of questions relating to the effect of the 2008 Directive on consumers including the effects of the extension of the scope of the Directive and of its harmonised requirements.

In this section we examine issues relating to pre-contractual information and languages, the introduction of a standard withdrawal period, the ban on advance payments. Special attention is given to the new products covered by the Directive (i.e. LTHP, exchange schemes, and resale services) as well as to the extent to which the Directive has given rise to new products and practices designed to circumvent its provisions.

4.1 Pre-contractual information

Article 4 of the 2008 Directive requires that 'in good time before the consumer is bound by any contract or offer, the trader shall provide the consumer, in a clear and comprehensible manner, with accurate and sufficient information ...' The annexes set formats for the provision of pre-contractual information for consumers in respect of all the contract types covered and for a standard form designed to facilitate the withdrawal by the consumer from a contract within the withdrawal period. The Directive requires the information to be provided on a durable medium (i.e. which can be kept in records) free of charge.

4.1.1 Consumer perspective – Pre-contractual information

The aim of these requirements is to protect consumers from being misinformed, or taking a decision without having sufficient information to make an informed choice, when purchasing timeshare or other timeshare-related products. There is of course an implicit understanding that consumers will read the relevant documentation at the pre-contract stage containing information about their rights.

Whilst the amount of pre-contract information to be provided regarding a transaction has increased since the Directive was implemented, according to the survey results consumers do not on the whole feel that they have been informed enough about many of the terms and conditions of their contract. The way these results can also be interpreted is that some of the respondents may not have been aware at all of their rights under the Directive before taking part in this survey, which suggests that the respondents who indicated they were not well-informed about the contracts terms and conditions may have had their rights flouted by the trader at the pre-contract stage.

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Table 4.1: To what extent do you believe you were sufficiently informed about the contract's terms and conditions?

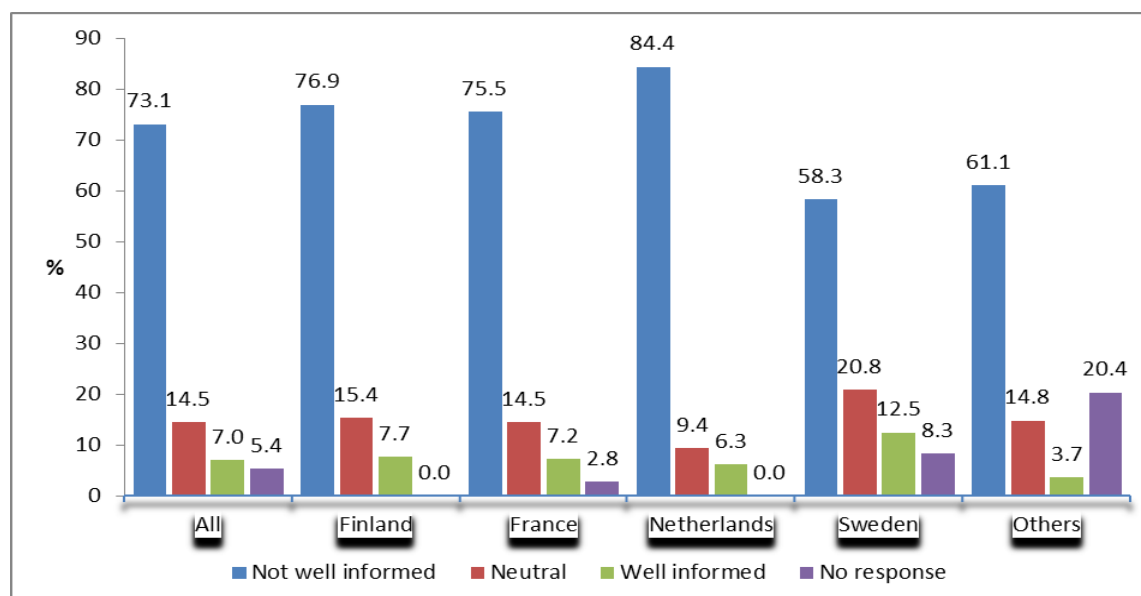
Options	Pre-Directive	Post-Directive	Overall
Not well-informed at all	43.4	26.9	41.4
Not very well-informed	31.9	42.3	32.1
Neutral	14.3	19.2	13.7
Quite well-informed	6.5	3.8	5.8
Very well-informed	1.8	0.0	1.4
No response	2.2	7.7	5.8
Total	100.0	100.0	100.0

N=322 respondents Source: CSES consumer survey.

The survey results above reveal a very mixed picture in relation to the intended effects of the Directive to ensure consumers are well-informed about contractual terms and conditions before concluding a transaction for all of the products and services covered by the Directive. It can be argued that the information requirements imposed by the 2008 Directive on traders has led to more paperwork, longer contracts with potentially more confusing clauses for consumers.

Similar results were observed overall in the Member States from which a significant number of survey responses were received.

Figure 4.1: To what extent do you believe you were sufficiently informed about the contract's terms and conditions?



N=372 (includes respondents who did not indicate year of transaction). Source: CSES survey

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The survey results show that regardless of the Member State, a majority of consumers believe that they were not sufficiently informed about contract terms and conditions when purchasing a timeshare or related products. Interestingly, percentages of 'no response' are higher for Sweden and the category 'other' which mainly includes responses from Norwegian consumers.

These results go some way towards explaining why consumer problems relating to misleading offers and complaints linked to contract terms have risen since the implementation of the Directive as regards LTHPs whose sales have boomed in recent years. At the same time, complaints about a lack of pre-contract product information for 'reputable products'²⁵ (i.e. **conventional timeshare** and **exchange schemes**) have all but disappeared since the implementation of the 2008 Directive, according at least to TATOC (see Section 3). Overall, the harmonisation of pre-contract information requirements, together with the standardisation of how this information should be presented, has been beneficial for consumer protection. It guarantees the same marketing rules for everyone everywhere in the EU and creates a better trading environment and clearer rules that the consumer should be able to understand.

Overall, openness and transparency can only improve consumer confidence and reduce the risk of complaints about a lack of upfront information. Additionally, the harmonisation of pre-contract information requirements and of consumer rights at EU level is all the more positive as most timeshare transactions have a cross-border element.

4.1.2 Business perspective – Pre-contractual information

According to our survey, the harmonisation of consumer rights and of pre-contract stage information requirements brought about by the 2008 Directive has had an unfavourable impact on businesses in terms of costs.

Table 4.2: Have your operational costs increased or decreased as a result of complying with the provisions of the Timeshare Directive?

Options	Nº	%
Costs have increased	15	78.9
There has been no change in costs	2	10.5
Costs have decreased	0	0.0
Not applicable	2	10.5
Don't know/ no response	0	0
Total	19	100.0

²⁵ According to TATOC, reputable products include timeshare resort products or services sold by developers in compliance with TATOC and/or RDO codes of conduct. Conversely, TATOC defines as non-timeshare or 'disreputable' products the following: Bonus weeks (multiple holiday opportunities); Cashback schemes (multiple holiday opportunities with difference paid from initial fee depending on use); Resale schemes (with fees payable upfront); Legal service (anything from class action to reclaim).

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A number of the companies who took part in the survey indicated that the information requirements set out in the Directive have resulted in additional paperwork pushing up operational costs. It should however be noted that this rise in costs resulting from necessary operational adjustments was foreseen in the Commission's IA of 2007²⁶. On the other hand, the IA indicated that these adjustment costs would eventually become a minimal part of ongoing marketing efforts over time. Given that in most EU Member States, the Directive was only implemented 2-3 years ago, this evidence suggests that timeshare businesses are still going through an 'adjustment period' in relation to their operational costs.

4.2 Language requirements

According to Article 4 of the 2008 Directive, all pre-contractual information is to be provided to the consumer in 'the language of the Member State in which the consumer is resident or a national, at the choice of the consumer'.

4.2.1 Consumer perspective – Language requirements

According to the data gathered from the ECCs for the period 2010-2013, almost no complaints have been reported in relation to language issues since the implementation of the Directive for all the types of product it covers. This positive situation is also reflected in our consumer survey results:

Table 4.3: Did you receive your full contract in a language that you understand (i.e. your country of nationality or residence according to your choice)?

Options	Pre-Directive	Post-Directive	Overall
Yes	85.7	69.2	79.5
No	9.0	7.7	9.3
Not applicable	3.6	11.5	4.9
No response	1.8	11.5	6.3
Total	100.0	100.0	100.0

N=322 Source: CSES consumer survey.

Overall, just over 9% of the surveyed timeshare buyers indicated that they received pre-contract stage information in a language they did not understand. The proportion of survey respondents indicating that they had received their contract in a language they could not understand is slightly lower for post-Directive timeshare purchasers than for pre-Directive consumers. On the other hand, the proportion of post-Directive consumers who indicated they had received their contract in a language they fully understood is lower compared to pre-Directive consumers. This could be due to the higher proportions of 'Not applicable' and 'No response' options among post-Directive consumers. These values may be interpreted as outliers. Overall, language requirements have remained a minor issue from the perspective of consumers.

²⁶ Commission Staff Working Document SEC(2007) 743

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4.2.2 Business perspective –Language requirements

Our timeshare business survey did not include specific questions on language issues. However, 70% of the businesses responding to the survey indicated that their operating costs had increased since the 2008 Directive was introduced (see Table 4.2) and feedback from the interview programme suggests that the most significant and costly element for many traders has been the translation and proofing of documents, including lengthy disclosure information, into more than 20 European languages.

Due to the financial outlay involved, the majority of legitimate businesses have to be selective about which nationalities they sell to as it is simply too expensive to process contracts in every single language of the EU. This includes both large European developers as well as the smaller developers that can only concentrate on certain key nationalities. Feedback from the interviews conducted for this study indicates that some of the smaller developers have even made the decision to concentrate on just one nationality as it is too costly for them to deal with more than one language, thereby restricting the growth of the sector. For example, if an English-speaking Croatian national and resident staying at a resort approaches the developer with a request to purchase or upgrade, he would have to be turned away if the developer does not have translations in Croatian.

Businesses also argued that the Directive's language requirements put them at a disadvantage compared their competitors operating outside the scope of the Directive, i.e. the wider tourism industry. They are in favour of a relaxation of the rules so that it would be permissible for a developer to sell to a consumer in a language of their choice, regardless of his or her nationality or country of residence.

One point that was raised by a timeshare business we interviewed is that the language requirements as enshrined in the Directive can lead to situations where consumers may not necessarily receive pre-contract information in a language they understand. This is particularly true for non-EU citizens seeking to buy timeshare or LTHP in the EU (e.g. Russian consumers). Potential buyers who do not understand any of the EU official languages may still buy timeshare or related products in the EU, but may be at a higher risk of being defrauded as a result. Whilst this might result in higher additional costs for businesses, the business suggested that ultimately pre-contract information should be provided in the language of the consumer's choice. The reference to consumers' country of nationality or residence should thus ideally be removed from the Directive.

Last but not least, it was argued by one of the timeshare businesses we interviewed that the annexes to the Directive setting out standard information forms could be simplified. In particular, they complained that consumers were expected to provide a signature in several places which can be confusing, especially when the signature is required in the main body of the annexes (e.g. in the case of Annex I, between Parts 2 and 3) as well as at the end (in the case of Annex 1, after Part 6).

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4.3 Right of withdrawal

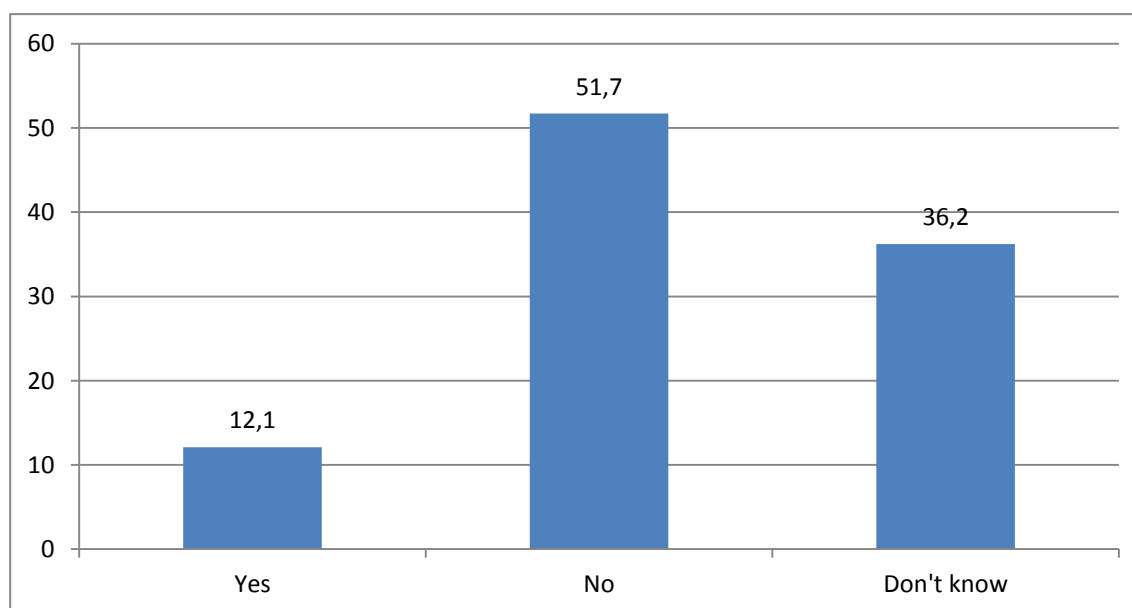
Articles 7 and 8 of the Directive give the consumer up to 14 days to withdraw from a contract. The Directive clarifies that the exercise of the right of withdrawal terminates the obligation of the parties to perform the contract; in such situations, the consumer neither bears any costs nor is liable for any rental payments (Article 8).

Prior to the implementation of the 2008 Directive, uncertainties linked to differences in the duration of the cooling-off period across EU Member States would have acted as a disincentive for consumers to purchase timeshares and related products. The very different rules from one country to another with regard to cooling off periods under the 1994 EU Directive on timeshare created a fragmentation in the market leading to the legitimate industry supporting the introduction of a uniform cooling off period for timeshare contracts. The harmonisation of the right of withdrawal under the 2008 Directive has made it easier for business to apply the rules; it also better protects consumers and is better understood by all parties.

4.3.1 Consumer perspective – right of withdrawal

According to the consumer survey feedback, approaching a quarter of consumers did not believe that the information regarding the contract terms and conditions was clear enough, as regards the right of withdrawal.

Figure 4.1: Do you believe that the information regarding the contract terms and conditions was clear enough, as regards the right of withdrawal?



N=372. Source: CSES survey

Similarly, as noted in Section 3 relatively high proportion of recent buyers of timeshare and related products reported having been denied their right of withdrawal. A majority of them had

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bought LTHP, and among them many reported having been pressured into concluding their contract (see Figures 3.3 and 3.6 in Section 3).

That said, the extension of the right of withdrawal to 14-days and the prohibition of advance payments during that period has benefited potential purchasers of timeshare and timeshare-like products. National legislation has also helped. For instance, under Spanish²⁷ and UK²⁸ laws, a contract can be declared null and void if a trader requests a down-payment from the consumer during the cooling-off period. Additionally, under Section 75 of the Consumer Credit regulations in the UK ('chargeback'), consumers who are forced to make a down-payment during the 14-day cooling-off period by credit or debit card are entitled to reclaim their money from the trader's bank. Similar rules apply in Sweden: ECC Sweden has been successful in helping consumers recover money from their credit or debit card payments made to fraudulent traders through the card issuers Visa and MasterCard. The harmonization of consumers' right of withdrawal has undoubtedly contributed to creating a level playing field in terms of consumer protection, particularly in those countries where the regulatory regime allowed previously for cooling-off periods of less than 14 days.

In cases where consumers are not provided information at pre-contract stage relating to their 14-day right of withdrawal, this right is extended by a year to 1 year and 14 days. However, the consumers would need to be aware of this right in order to take full advantage of it. Ill-informed consumers are potentially vulnerable to fraudulent practices in this respect.

4.3.2 Business perspective – right of withdrawal

For a majority of the businesses that responded to our survey, the harmonisation of the withdrawal period under the 2008 Directive has had a neutral impact on their business. The table below shows that in a majority of cases (58%), there has been no effect.

Table 4.4: What have been the consequences of the changes to the length of the withdrawal period for your business?

Options	Nº	%
Very positive	0	0.0
Quite positive	0	0.0
No change	11	57.9
Quite negative	7	36.8
Very negative	1	5.3
Don't know/ no response	0	0
Total	19	100.0

²⁷ Chapter IV, Article 13 of Decree-Law 8/2012 whereby the breach of the ban on advance payments nullifies a contract; Chapter V, Article 16 of Decree-Law 8/2012 whereby a waiver or denial of the consumer rights nullifies the timeshare contract and deeds (also in accordance with Article 6 of the Spanish Civil Code).

²⁸ Part 4, Article 19 of the Timeshare Regulations 2010 whereby a waiver or denial of the consumer rights under the Regulations makes the contract null and void.

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Source: CSES business survey.

Eight of the businesses that responded to the survey said that this harmonised rule – which, in many cases, amounted to an extension of the withdrawal period to 14 days – has had a negative effect on their business. The businesses argued that the longer withdrawal period increases the likelihood of cancellations. This is also compounded by the fact that the 2008 Directive prohibits traders from taking payments during a longer withdrawal period. Some timeshare businesses indicated that they already offered a 14-day withdrawal period prior to the 2008 Directive which perhaps explains why a majority of the businesses who took part in the survey indicated that the Directive's right of withdrawal has had no effect on their activity.

4.4 Ban on advance payments

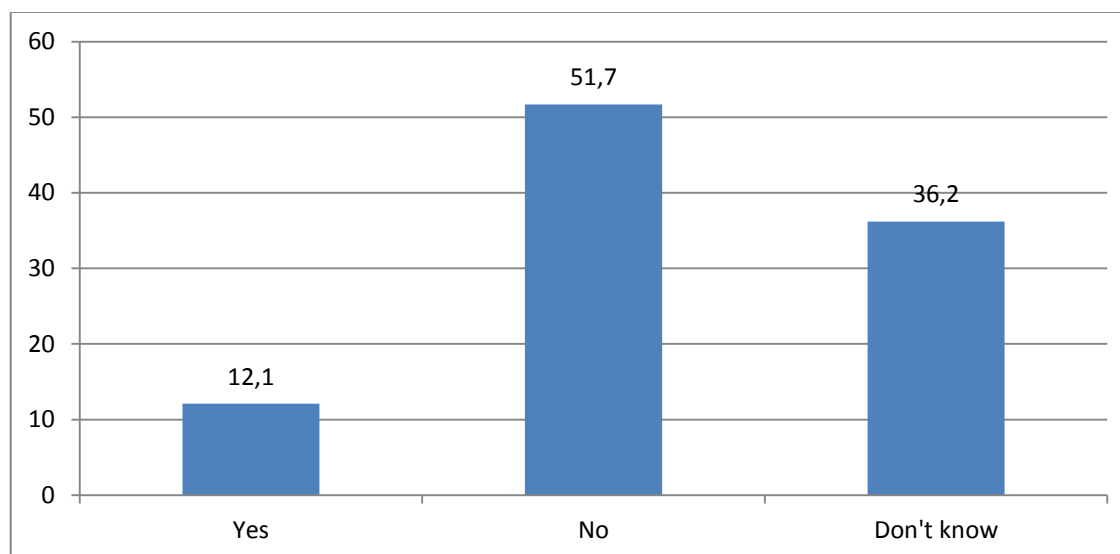
Under Article 9 of the Directive, any advance payment before the end of the withdrawal period is prohibited under the Directive. There are special provisions for LTHP contracts where payment is to be made in equal annual instalments.

4.4.1 Consumer perspective – Ban on advance payments

According to the consumer survey conducted by CSES, 25% of the respondents were asked to make payments or block money on their account before the expiration of the withdrawal period of 14 days from conclusion of the contract. After being unable to take full advantage of the benefits of an exchange scheme, ever increasing maintenance or service fees, and not being able to exercise the right of withdrawal, this was the most frequently encountered problem.

As the following chart shows, most consumers we surveyed felt that the information they received regarding the contract terms and conditions was not clear enough as regards the ban on advance payments:

Figure 4.2: Do you believe that the information regarding the contract terms and conditions was clear enough as regards the ban on advance payments?



N=372. Source: CSES survey

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Whilst the ban on advance payments was also a feature of Directive 94/47/EC, this ban only applied to conventional timeshare accommodation, and during shorter withdrawal periods, whilst at the same time certain Member States allowed deposits to be paid either to third parties or escrow account holders. The maintenance, clarification of the ban on advance payments, and the extension of its application to LTHP, exchange and resale contracts under Directive 2008/122/EC was to enhance consumer confidence, and to remove any ambiguities that had appeared following the implementation of Directive 94/47/EC concerning third party mechanisms²⁹.

The 2008 Directive's provision on the ban of advance payments during the 14-day withdrawal period has undoubtedly been beneficial for consumers. Indeed, this provision was above all designed to protect consumers from paying traders before realizing the true nature of the service they have signed up to. Consumer associations have consistently supported the view that the ban on any deposit is an efficient way of allowing consumers to exercise their right of withdrawal. In their view, with deposits, it would become more cumbersome for consumers to withdraw, because of the paperwork and the procedures that they would have to follow to get his money back³⁰.

In Member States such as Spain and the UK contracts can be declared null and void if consumers were asked to make a payment during the cooling-off period³¹. For these respective Spanish and UK legal provisions to be enacted, consumers would have to notify the relevant authorities and provide proof of a breach of the provisions on pre-contractual consumer rights. However, as noted above and mentioned in Sections 3 and 4.1, consumers may not always be well-informed of the fact that traders are prohibited by law to take deposits during the cooling-off period. Moreover, in recent years some traders have found a way to circumvent this ban and by making consumers sign a second contract for a service or product outside the scope of Directive 2008/122/EC sold together with the product falling under Directive 2008/122/EC. Fraudulent activity in this respect has also been reported in relation to **resale services**. These practices are further explored under Section 4.6.

4.4.2 Business perspective – Ban on advance payments

Perhaps unsurprisingly, the majority of timeshare businesses that took part in our survey indicated that the ban on advance payments had a negative impact on their business although a significant minority said it had made no difference.

²⁹ Commission Staff Working Document SEC(2007) 743

³⁰ Commission Staff Working Document SEC(2007) 743

³¹ Chapter IV, Article 13 of Decree-Law 8/2012 whereby the breach of the ban on advance payments nullifies a contract; Chapter V, Article 16 of Decree-Law 8/2012 whereby a waiver or denial of the consumer rights nullifies the timeshare contract and deeds (also in accordance with Article 6 of the Spanish Civil Code)

Part 4, Article 19 of the Timeshare Regulations 2010 whereby a waiver or denial of the consumer rights under the Regulations makes the contract null and void

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Table 4.5: What have been the consequences of the ban on deposits for your business?

Options	Nº	%
Very positive	0	0.0
Quite positive	0	0.0
No change	4	21.1
Quite negative	5	26.3
Very negative	9	47.4
Don't know/ no response	1	5.3
Total	19	100.0

Source: CSES business survey.

Most of the businesses that took part in the survey indicated that the Directive obliges traders to complete a contract before any monies can be collected, allowing the consumer to order a product or service but to have the possibility to 'shop around' in the meantime (i.e. during the 14-day withdrawal period) since there is no financial commitment. These results echo the views of timeshare businesses on the ban on advance payments, who believes that, prior to the implementation of the 2008 Directive, most Member States clearly understood the positive contribution timeshare was generating to their tourism economy and allowed for third-party deposits. This included Spain, Europe's most popular country for timeshare and where tourism itself accounted for over 10% of its total economic output in 2012.

The respondent business also point out that timeshare is today one of the few sectors that have a full ban on deposits during the withdrawal period. In many other jurisdictions around the world, including the US, timeshare companies are permitted to take a deposit through a third-party and large numbers of international hospitality companies operate highly successfully in those markets. Most durable consumer purchases representing a significant financial outlay are accompanied by the requirement to make a deposit (e.g. package travel, car purchase etc.). It is argued that the ban on advance payments is unfairly prejudicial to legitimate timeshare businesses and that the rule prohibiting advance payments can potentially discourage non-EU timeshare companies from operating and investing in European economies. It is further argued that the EU regulatory regime should allow, as an alternative to the current rules, independent licensed third parties, such as a trustee, to be able to hold a deposit on behalf of the consumer for the duration of the withdrawal period.

As previously mentioned, the main argument put forward by businesses is that the ban on advance payments is detrimental to the sector not so much because of the cash flow consequences for companies but rather because without making a financial commitment, consumers are less likely to take their decision to purchase a timeshare seriously and more likely to withdraw from a contract. Withdrawing from a contract is costly to timeshare businesses

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because of the investment made in marketing and selling their products.³² The argument put forward by businesses in favour of abolishing the ban on advance payments is that having a cooling off period is sufficient in give the consumer time to decide whether or not they really want to go ahead and make the financial commitment required for a timeshare purchase and that being able to cancel the contract means they would in any case be able to get their money back.

An alternative argument is, of course, that it is preferable not to put consumers in a position where they have to seek repayment of a deposit, with or without a cooling off period, because it is always going to be more difficult to obtain a refund than to not make a payment in the first place. The question of advance payments highlights very clearly the difficulty of ensuring a balance between the interests of consumers and businesses in the holiday sector.

4.5 Impact on the timeshare and timeshare-related products and services

The Directive's provisions on information and language requirements, right of withdrawal and ban on advance payments equally apply to timeshare, LTHP, exchange and resale contracts. Under the Directive, timeshare, LTHP, exchange and resale contracts are subject to particularly consumer protective rules – namely no advance payments to the seller are allowed before the transaction is concluded. Furthermore, the Directive imposes rules for the termination of LTHP contracts under Article 10 (i.e. upon receiving the request to make the second annual instalment payment).

4.5.1 Consumer perspective – timeshare, LTHP, exchange schemes and resale services

Whilst sales of conventional timeshare have dropped substantially in recent years, so have consumer complaints against providers of conventional timeshare since the implementation of the 2008 Directive. The consumer survey results and ECC data presented in Section 3 suggest that prospective buyers of conventional timeshare accommodation today experience fewer problems than prospective buyers in the 1980s or 1990s. Many of those consumers who bought timeshare in those decades are today exposed to problems linked to **resale services**. These are further explored in this subsection and in Section 4.6.

Feedback from the consumer survey supported by evidence gathered from analysing ECC complains statistics suggests that complaints against providers of LTHPs have gone up in recent years (see Section 3), partly because these are now covered by the Directive. Issues have however been raised by consumer associations and ECCs during workshops as regards the extent to which the Directive effectively captures LTHPs, pointing out that further guidance would be needed to interpret the definition it gives regarding LTHPs³³. As a result, consumer protection in this particular respect could be improved. As mentioned earlier, problems relating

³² Note: we have asked the RDO to provide statistics on the cancellation rate for timeshare contracts before and after the 2008 Directive came into effect. An increase in the cancellation rate post-2008 could support the argument regarding the negative effects of the ban on advance payments.

³³ These issues are further explored in Section 4.6.

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to misleading offers and complaints relating to contract terms are particularly prominent today and mainly relate to the LTHP sector.

The research found that problems around exchange schemes have remained relatively minor – linked to consumer dissatisfaction and of a post-contractual nature– and that the situation has further improved since the implementation of the Directive due to its transparency requirements. At the time of the adoption of Directive 2008/122/EC, there was a general perception of problems relating to **timeshare exchange** amongst consumer associations. However, according to the Commission's Impact Assessment of 2007³⁴, the views held at the time were that these problems were somewhat inflated, and were generally related to complaints about the service delivery of exchange companies rather than any real consumer difficulties surrounding the marketing or purchase of exchange products (i.e. pressure selling, deceit, advance payments). Very few complaints linked to exchange were recorded by TATOC in the four years from 2010 to 2013, and very few if any have been relating to the sales/marketing of exchange schemes. In the UK, both the BIS³⁵ and the CMA (ex-OFT)³⁶ have confirmed that consumer protection as regards legitimate exchange schemes is not a pressing issue today. If anything, stakeholders agree that Directive 2008/122/EC better protects consumers in relation to exchange as it harmonises information requirements for exchange contracts for the sake of transparency (cf. Annex IV of 2008/122/EC). In this context, research has revealed so far that the Directive is proving to be particularly effective in relation to exchange schemes.

Conversely, the resale of timeshare and related products has been identified by the research as one of the most problematic issue for consumers. According to our survey, just over half (55%) of timeshare owners had tried to sell (transfer) their timeshare rights or holiday club membership to another person (resale). In fact, the survey results reveal that an overwhelming majority of consumers who bought timeshare or timeshare-like products several years or decades ago have been seeking to resell them.

Table 4.6: Have you ever tried to sell your timeshare rights or holiday club membership to another person?

Options	Nº	%
Yes, (via a resale company)	200	54.8
Yes, (privately)	59	16.2
No/ no response	106	29.0
Total	365	100.0

Source: CSES consumer survey.

However, the survey data shown below confirms the many difficulties encountered by consumers looking to resell their timeshare:

³⁴ Commission Staff Working Document SEC(2007) 743.

³⁵ BIS: Government Department for Business, Innovation & Skills.

³⁶ CMA: Competition and Markets Authority (replaces the Office of Fair Trading as the UK enforcement authority as of 1 April 2014).

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Table 4.7: If you engaged a resale company to sell your timeshare rights or holiday club membership to another person - did the sale actually take place?

Options	Nº	%
Yes	6	4.0
No	187	93.5
No response	5	2.5
Total	200	100.0

Source: CSES consumer survey.

An overwhelming majority of the respondents have indicated that the resale company they used in order to transfer their timeshare rights to another individual failed to deliver. This underlines the lack of potential timeshare buyers in Europe due to the general unpopularity of timeshare among European consumers today. Additionally, owners looking to sell their asset may be targeted by fraudulent resellers who do not respect the strict rules governing resale contracts. Issues around fraudulent resale companies are explored later in this section.

4.5.2 Business perspective – timeshare, LTHPs, exchange schemes, and resale services

The European timeshare market has slowed down since the early 1990s with a sharp drop in sales growth due to the emergence of shorter-term holiday products. Since then, the conventional European timeshare market has concentrated and is now mainly represented by the RDO.

Compliance with EU legislation has improved in recent years in the conventional timeshare industry with the establishment of the RDO codes of conduct. Some of the provisions of the 2008 Directive are however proving challenging for the timeshare industry (see Sections 4.1 to 4.4), but market concentration in the sector means that the main timeshare developers in Europe have been able to adapt their operations to the requirements of the 2008 Directive. The harmonised pre-contract rules set out by the Directive have also clarified the legal environment in which the timeshare industry operates. The only downside is that the Directive appears to have had an impact on the level of investment in timeshare resorts in Europe.

According to interview feedback, the Directive seems to have had an impact on the offer of **Long-Term Holiday Products (LTHP)** lasting minimum a year, at least as far as the UK is concerned. The business model may indeed not be as profitable today under the 2008 Directive as it used to be. This is because the current regime allows consumers to terminate their LTHP contract after a year and every year after the first year prior to paying their yearly instalment. This tighter regulatory environment brought about by the 2008 Directive may therefore have prompted a number of companies that were previously selling LTHP to go out of business. Incidentally, a concentration of the industry has been observed in a number of Member States (e.g. Portugal) in recent years. However, the extension of the Directive's scope to LTHP lasting a minimum of one year has however prompted the emergence of holiday products with contracts lasting less than or just under 365 days or allegedly not covering holiday accommodation, such as leisure credit schemes, which are purposefully designed to fall outside the scope of Directive 2008/122/EC.

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Regarding **exchange schemes**, it is already well known that market concentration is quite high as with conventional timeshare. A small number of multinational companies operate in the timeshare exchange market (e.g. RCI). According to feedback from the workshops, the regulatory environment under the 2008 Directive has not had a major impact on providers of exchange schemes who have been easily able to absorb any adaptation costs given their size.

Resale services have been identified by the timeshare industry representatives who were interviewed and who took part in workshops as problematic. This can be explained by the existence of many 'fake' resale companies trying to exploit the vulnerability of those consumers who have difficulties selling their timeshare or related products, often resorting to dubious commercial practices (e.g. cold calling). These issues are further explored in the following section.

4.6 Fraudulent activity linked to products and practices circumventing the Directive

As might be expected, the implementation of the 2008 Directive across the EU has given rise to products designed to circumvent its provisions.

There is a very mixed picture amongst consumers covered by our survey regarding awareness of commercial malpractices in the timeshare and holiday club industry:

Table 4.8: To what extent do you think that consumers today are aware of commercial malpractices in the timeshare and holiday club industry?

Options	Pre-Directive	Post-Directive	Overall
Not aware at all	36.2	23.1	33.2
Not very aware	32.6	53.8	35.3
Neutral	4.7	0.0	4.1
Quite well-aware	9.3	3.8	8.5
Very well-aware	1.8	0.0	1.4
Don't know/ no response	15.4	19.2	17.5
Total	100.0	100.0	100.0

N= 322 Source: CSES consumer survey.

It is worth highlighting that a majority of the respondents who bought timeshare or related products in or after 2012 indicated that consumers are on the whole not very aware of commercial malpractices in the timeshare and holiday club industry. Overall these results suggest major shortcomings in awareness-raising activities to inform consumers of their rights under Directive 2008/122/EC

Industry representatives and timeshare businesses share the view that fraud will continue to occur regardless of the legislation. Indeed, it is argued that although the 2008 Directive is robust, the main problem is about enforcement of it when it comes to stopping the activities of rogue traders. This view is partly reflected in the results of our survey which, as the table below shows, suggest there are very mixed views as regards the effectiveness of the 2008 Timeshare Directive in driving rogue traders out of business:

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Table 4.9: In your opinion, do you think that the Timeshare Directive is effectively driving out rogue traders and contributing to the clean-up of the industry?

Options	Nº	%
Very effectively	0	0.0
Quite effectively	4	23.5
Neutral	3	17.6
Not very effectively	5	29.4
Not effectively at all	5	29.4
Don't know/ no response	2	11.7
Total	19	100.0

Source: CSES business survey

It is worth noting that consumer protection laws, including Directive 2008/122/EC, are only effective to the extent that traders are willing to observe the rules and enforcement measures have a strong deterrent effect (for example, through high level of fines). When a trader is intentionally breaking consumer laws, however, criminal procedures may become necessary. For those rogue traders, changing the content of consumer laws is likely to have only a very limited impact. Timeshare businesses we surveyed acknowledged the existence of products designed to circumvent the provisions of the Directive.

Table 4.10: Are you aware of any businesses developing new holiday products and services which you believe are not regulated by the Timeshare Directive?

Options	Nº	%
Yes	8	42.1
No	9	47.4
No response	2	10.5
Total	19	100.0

Source: CSES business survey

The new products circumventing the Directive can have serious implications for legitimate businesses as they can potentially create a situation of unfair competition on the market and also cause reputational damage that affects legitimate businesses.

4.6.1 Emerging fraudulent products and practices targeting prospective buyers

As pointed out by some stakeholders, traders have recently tried to exploit the definition of 'Long-Term Holiday Products' presenting their products as not meeting the criteria for LTHP. In this context, many stakeholders have called for the current definition to be further clarified.

This issue has been raised because new products presented by traders as falling outside the Directive such as **leisure credit schemes** have recently received a lot of media attention, particularly in the UK. The UK ECC has reported that consumer complaints about leisure credit schemes rose by 140% in the year to the end of March 2013 compared to the previous year

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(year to the end of March 2012). There were 60 complaints in the year to the end of March 2013, compared to 25 complaints in the year to the end of March 2012.

Leisure credits are sometimes bought outright or represent a product discount. Normally one-off purchases, the credits can cost consumers up to £15,000 and can then be exchanged for leisure products such as holiday accommodation, spa days and theatre trips.

Whilst the Directive applies to long-term holiday products lasting minimum 365 days, leisure credit schemes may last just under 365 days (typically 360 days) with the promise of free or discounted future holiday bookings. Similarly, while the Directive's definition of a long-term holiday product (LTHP) centres on accommodation, leisure credit schemes offer a range of various services with accommodation being only one of them or not mentioned in the written contract at all.

Last year, legal opinion was sought in the UK by the RDO on the activities of one particular company offering leisure credit schemes. The Leisure credit scheme in question included a variety of holiday products and services, including accommodation which may was not advertised in the offer as the main holiday product. The conclusion of the legal opinion, however, was that the scheme offered by this particular company had been designed to enable consumers to acquire the right to discounts of benefits in respect of accommodation. The scheme was, therefore, a Long Term Holiday Club even if presented as falling outside the Directive. It was subsequently decided by the UK Trading Standards Institute and the Office of Fair Trading that the company in question will in future trade under Directive 2008/122/EC, and it is now addressing consumer complaints, providing refunds where necessary.

Another practice by traders to avoid the application of the Directive is a system of '**double contracts**'³⁷: the operators approach people in the street and persuade them to go to a sales room where they are pressed into sign a contract to join a holiday club, often at apparently heavily discounted rates (e.g. 60%). They are required to make a deposit - typically of EUR 1,000. As this first contract is for a period of less than 12 months, it does not fall under the 2008 Directive. A second contract is signed at the same time which is for a longer period but doesn't require a deposit. This second contract is used to pay the balance due under the first contract in instalments starting after the cooling off period and over a period in excess of 12 months. The explanation for the two contracts given to the customer is that this is needed for tax reasons. The customer can use the rights enshrined in the 2008 Directive to cancel the second contract but this is not possible with the first as it is not covered. In effect, therefore, customers are locked into the contract with the discount holiday club. However, the first contract under 1 year is likely to be classified as "off-premises" contract under the Consumer rights Directive 2011/83/EU, which enters into application as from 13 June 2014 and also provides for the right of withdrawal.

A similar practice, which occurs in several countries (e.g. Greece, Spain) is where companies offer consumers a traditional timeshare contract and an additional 'short-term' contract for a week or two weeks' holidays in one of the company's resorts. Whilst the first timeshare contract

³⁷ This issue was raised and discussed at the ECC meeting of 10 March 2014 in Las Palmas

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falls under and is designed in conformity with the provisions of the 2008 Directive, confusion arises from the second contract for which the consumer has to pay a deposit upfront and for which there is no cooling-off period. Furthermore, in the second contract, consumers may be entitled to book a week or two weeks' holidays in a resort at a certain period, but typically no dates are specified in advance. In cases where no dates are specified in the contract, the right of withdrawal under the Consumer Rights Directive would in principle not apply.

However, in **Greece**, because of the law on booking cancellations, disputes arising from these second contracts can be resolved amicably. Greek legislation indeed allows consumers to cancel hotel reservations for free, if the cancellation is made within a certain delay prior to arrival. As arrival dates are not specified in these second contracts, free-of-charge cancellations can be made at any time.

A variation of this situation is in **Spain** where it has been reported that certain new buyers have had to sign two contracts, one to purchase the principal product or service (e.g. conventional timeshare or LTHP) and a second contract for a subscription to an exchange system allowing them to propose their own week in exchange for another one in another residence of the group. This practice can be described as confusing the consumer deliberately given that, in such cases, the exchange scheme subscription can be cancelled easily but not the contract which does not propose the obligatory 14-day cooling-off form. The practice is confusing for the average consumer as it is deceptive. Exchange is covered by the Directive, but the double contract practice is a trick to sell two products, which are in theory covered by the same laws, as having different contractual terms and conditions.

However, **holiday products falling outside the scope of Directive 2008/122/EC (e.g. certain Leisure Credit Schemes, short term products sold through a double contract) are now covered by the Consumer Rights Directive³⁸** which provides additional consumer protection as regards distance or off-premises transactions.

Fraudulent holiday club companies will also typically deceive consumers on price guarantees, often substituting price for points which results in inflated prices³⁹. Such companies also generally promise consumers to book them accommodation at heavily discounted prices, but this rarely happens. This is equivalent to a misleading commercial practice to encourage consumers to sign up for such long-term holiday schemes. **Very often, it is the same fraudulent businesses that sell these products on the basis of false promises that set up reclaim companies to further deceive the consumer.** At the same time, they also aggressively collect debts from those consumers that have been mis-sold timeshare or LTHP when they fail or refuse to pay their annual maintenance fees.

³⁸ Directive 2008/122/EU will repeal and replace Directive 85/57/ECC on contracts concluded off-premises and Directive 97/7/EC on distance contracts as of 13 June 2014

³⁹ Prices are typically given per week per timeshare or LTHP (i.e. price of a week's holiday in a given resort) whereas point schemes would typically allow consumers to have more flexibility as regards the duration of their stay with points being accepted in different resorts across different locations (e.g. RCI points scheme). Points may also be used for special rewards or features provided by the resorts.

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The circumvention of the Directive provisions also occurs in relation to the location where the products are sold or the country in which the companies are registered. In this respect, there are three types of case where fraud can potentially occur: cases where a non-EU company sells outside the EU LTHPs which are located in the EU to EU consumers (e.g. Moroccan companies selling to French tourists in Morocco LTHPs in resorts located in Spain), cases where a company registered in the EU performs sales outside the EU of LTHPs located outside the EU (e.g. UK-registered company selling LTHPs located in Thailand to EU consumers), and cases where a company registered 'offshore' or outside the EU trades in the EU selling LTHP located within the EU (e.g. Andorra-registered company trading in France and Spain).

In such cases, the consumer rights upheld under Article 12(2)⁴⁰ of the Directive are not respected by the traders. The main issue here relates again to enforcement and to the ability of authorities to track down traders who operate fraudulently on the basis of the location of the point of sale or of the company's registered address.⁴¹

As mentioned earlier, with a majority of consumers not being fully aware of their rights under the 2008 Directive, **such fraudulent practices result in consumers being denied their legal rights.** As these practices often involve pressure selling, it is only once the timeshare contract is concluded that consumers realise that the product or service they have purchased is a bad deal or a scam by doing research on the Internet or by consulting a consumer forum. The other difficulties consumers face in such situations is that the sellers are difficult to track once a complaint has been made. Very often, companies subcontract professionals to 'hard sell' their products to potential buyers. Generally, fraudulent companies subcontract a number of intermediaries and change location frequently (most often outside the EU). This deliberate dilution of responsibility complicates investigative work in relation to complaints which results in consumers being left in the lurch. Our research revealed that problems resulting from pressure selling affected consumers from the Nordic countries in particular.

Apart from issues relating to the existence of new holiday products purposefully designed to circumvent the 2008 Directive, **it is argued that fraud takes place primarily with products that are not timeshare proper. As noted earlier, this includes discount and long-term holiday clubs, resale, and reclaims. Fraudulent marketing practices involving products that are not timeshare proper – or that are simply outright scams – damage the reputation of the legitimate timeshare industry.** It has negative repercussions on the activity of legitimate businesses in the

⁴⁰ Art. 12(2) Dir. 2008/122/EC: Where the applicable law is that of a third country, consumers shall not be deprived of the protection granted by this Directive (...) if any of the immovable properties concerned is situated within the territory of a MS, or in the case of a contract not directly related to immovable property, the trader pursues commercial activities in a MS or directs such activities to a MS and the contract falls within the scope of such activities.

⁴¹ The fact that the Directive can only be enforced against offences committed within the EU potentially creates a number of perverse effects. To remedy this problem, enforcement authorities and the Commission could consider working more closely with the authorities of certain non-EU countries which receive many EU tourists (e.g. Morocco) and with the authorities of those countries hosting 'offshore' timeshare companies (e.g. Andorra).

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industry as whole. Fraudulent businesses will in fact target consumers by selling their products as not being 'timeshare' as they know that timeshare has already a bad reputation among consumers. Some contracts will actually state that the business does not operate under Directive 2008/122/EC. It is a 'double whammy' or a 'lose-lose' situation both for consumers and the legitimate timeshare industry.

4.6.2 Fraudulent activity linked to resale and targeting existing owners

According to the research feedback from ECCs and other stakeholders representing consumer interests, in recent years there has been a reduction in the number fraudulent timeshare traders in Europe. **They point out however that fraudulent activity is now mainly concentrated in the timeshare resale sector and other products such as long term holiday clubs.**

As indicated earlier in this section, the consumer survey results suggests that 93.5% of the respondents who declared that they had used the services of a resale company to sell off their timeshare or timeshare-like products indicated that the sale never took place. The survey results below show that most of these respondents have actually suffered considerable financial losses due to the unlawful practices of the resale companies they used.

Table 4.11: Regarding contracts with resale companies, have you ever been in one of the following situation? (Please select all that apply)

Options	Nº	%
You were not duly informed in your contract of all the costs	35	15.2
You were required to pay a resale company an upfront fee before the sale had taken place, and it never did take place	135	70.7
You were persuaded to buy another timeshare upon selling your own and the sale of your timeshare never took place	35	15.2

N= 187 Source: CSES consumer survey.

Resale is particularly susceptible to fraud because the consumers in question may be desperate to sell their timeshare by all means. This is also reflected in the fact that many timeshare owners are ageing, sometimes unable to physically travel to their timeshare property, but locked into contracts which provide no exit routes. Some contracts have an in-perpetuity clause; others impose a number of restrictions on resale⁴², which can come in the form of restrictions imposed on the buyer of a timeshare sold by a consumer⁴³.

In most cases, ageing timeshare owners who took out their contracts many years ago may not be fully aware of these unfavourable clauses. Problems with regard to exiting and legacy, i.e. when the estate is passed on to the next of kin when the owner deceases, are likely to grow in years to come with the ageing of timeshare owners. This means that fraudulent activity on

⁴² E.g. consumers may be contractually required to give the original seller first right of refusal when selling their timeshare

⁴³ E.g. for timeshares bought via third-party resale, the private buyer may not have access to the resort's internal exchange system and/or various other features

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resale is likely to increase in this context. Fraudulent activity on resale also exists because of objective economic reasons - there is very little demand today for timeshare or related products. Owners who are mostly unlikely to find buyers privately turn to fraudulent resale companies claiming successful track records.

Fraudulent resale companies offer to resell an owner's timeshare for an upfront fee notwithstanding the clear prohibition under the Directive. Once the fee is paid, sales rarely take place and, where they do, it is often at a selling price that barely covers the fees. It has also been reported by ECC France that victims of resale scams receive fake Spanish administration documents requiring them to pay tax associated with resale when there is actually no such tax that exists. In this regard, it is worth noting that two court cases were recently concluded in France in which the scammers were handed a prison sentence for, amongst other things, falsifying official documents to extort funds from their victims⁴⁴.

It is also quite common for fraudulent resale companies to try to sell another property to consumers seeking to resell their timeshare. Our research suggests that some timeshare owners who want to sell their timeshare are encouraged to turn to operators who help them on condition that they enter into a long-term holiday club contract. Owners are offered a sale price for their timeshare property (e.g. £10,000) that is much more than its market value and are then asked to visit the resort where their new 'timeshare' unit is (in this case an LTHP). The purchaser of their timeshare is, in fact, the discount or long-term holiday club and the contract they are offered is at a higher price to compensate for the discount on the timeshare resale price. This transaction is meant to be a direct sales transaction with the holiday club rather than a resale contract. The operator then disappears leaving the customer with a loss on their long-term holiday club payment and no sale of their timeshare. The worst case scenario is when consumers sign a second contract for the new timeshare they have just been sold without managing to resell their timeshare as they had first set out to do. According to our consumer survey results, just over 15% of the respondents who attempted to resell their timeshare via a resale company ended up buying a second timeshare.

The existence of fraudulent products and practices, particularly concerning resale, has given rise to legal services offering consumers the possibility to "reclaim" money from payments made to unlawful traders. However, consumers are at risk of contracting "legal services" which are provided by fraudulent traders (sometimes the same ones who offer resale services). Fraudulent companies offering "legal services" manage to obtain the contact details of timeshare owners and typically proceed by 'cold calling' them..

A sizeable number of complaints about the aggressive sales methods used by timeshare or discount holiday club sellers are still received today (see Section 3). According to our consumer survey results, 38% of the respondents indicated that they were pressured into buying timeshare and related products. Surprisingly, 50% of the respondents who bought timeshare or related products in or after 2012 indicated that they were pressured into concluded the

⁴⁴ Affaire BOURI Hakim, 9 janvier 2014; Affaire DRICOT Christine, 24 janvier 2014

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transactions whereas only 37.4% of those respondents who bought timeshare or related products prior to 2008 reported this problem.

Although Directive 2008/122/EC specifies that timeshare or timeshare-like products should not be advertised and/or sold as an investment, it remains extremely difficult to monitor traders' sales pitches at so-called promotional events. In such circumstances, consumers are at risk of signing timeshare contracts on the basis of misleading oral statements which actually diverge from the actual content of the pre-contract information forms, which can thus result in a form of consumer detriment. Although the UCPD would be the most appropriate instrument to tackle aggressive selling practices, its application on the ground remains difficult in such circumstances. Consumers would need to be better aware of their rights both under Directive 2008/122/EC and the UCPD.

On **timeshare resale**, however, whilst the Directive provides strong consumer protection it has not produced the improvements that were hoped for because of the significant levels of outright fraud in this business sector. Whilst few complaints about bona fide resale companies have been recorded according to TATOC figures, complaints in relation to bogus and fraudulent resale companies have risen substantially. It thus seems that the Directive has not proven to be an enormous deterrent to fraudulent resale companies.

4.7 Conclusions – Impact of the Directive

Whilst the Directive has improved consumer protection at pre-contract stage thanks to the harmonisation of a number of rights and requirements, it has not yet had a similar impact on consumer confidence in the industry.

The following table suggests that both long-standing timeshare owners and consumers who bought timeshare or related products in more recent years share similar views on the extent to which it is possible to make well-informed choices today when purchasing timeshare or related products.

Table 4.12: To what extent do you believe that consumers today are well enough informed to make choices when purchasing a timeshare or long-term holiday product, timeshare exchange or resale services offered by traders?

Options	Pre-Directive	Post-Directive	Overall
Not well-informed at all	48.4	34.6	45.8
Not very well-informed	24.4	50.0	26.8
Neutral	5.4	3.8	4.9
Quite well-informed	4.3	0.0	3.6
Very well-informed	0.0	0.0	0.0
Don't know/ no response	17.6	11.5	18.9
Total	100.0	100.0	100.0

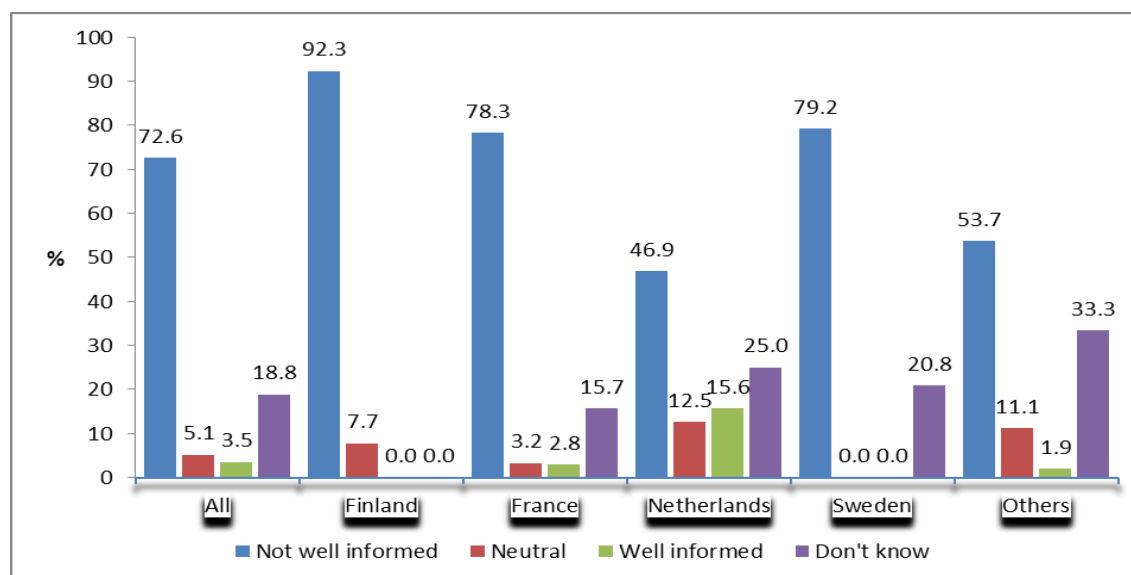
N=322 Source: CSES survey

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The survey results presented in this section suggest that there is no effect/ small effects on consumer confidence in the holiday service industry which generally continues to suffer from a negative image as an industry that is not transparent vis-à-vis the consumer. Views on the extent to which consumers receive enough information to make informed choices when buying timeshare and related products are similar across EU Member States, according to our analysis of survey responses.

Figure 4.2: To what extent do you believe that consumers today are well enough informed to make choices when purchasing a timeshare or long-term holiday product, timeshare exchange or resale services offered by traders?



N=372 (includes respondents who did not indicate year of transaction). Source: CSES survey

Whilst the percentage of 'not well informed' responses is very high for Finland (92.3%), it is a lot lower for both 'Others' (chiefly Norway) and the Netherlands (53.7% and 46.9% respectively). On the other hand, a third of the 'Others' respondents and a quarter of the respondents from the Netherlands did not have an opinion.

From a consumer perspective, our survey work suggests that the poor image of timeshare persists which further suggests that consumer confidence in the industry is still relatively low.

Table 4.14: Based on your own experience, would you recommend others to purchase a timeshare or long-term holiday product?

Options	Pre-Directive	Post-Directive	Overall
Yes	1.8	0.0	1.4
No	87.1	84.6	84.7
Don't know/ no response	11.1	15.4	14.0
Total	100.0	100.0	100.0

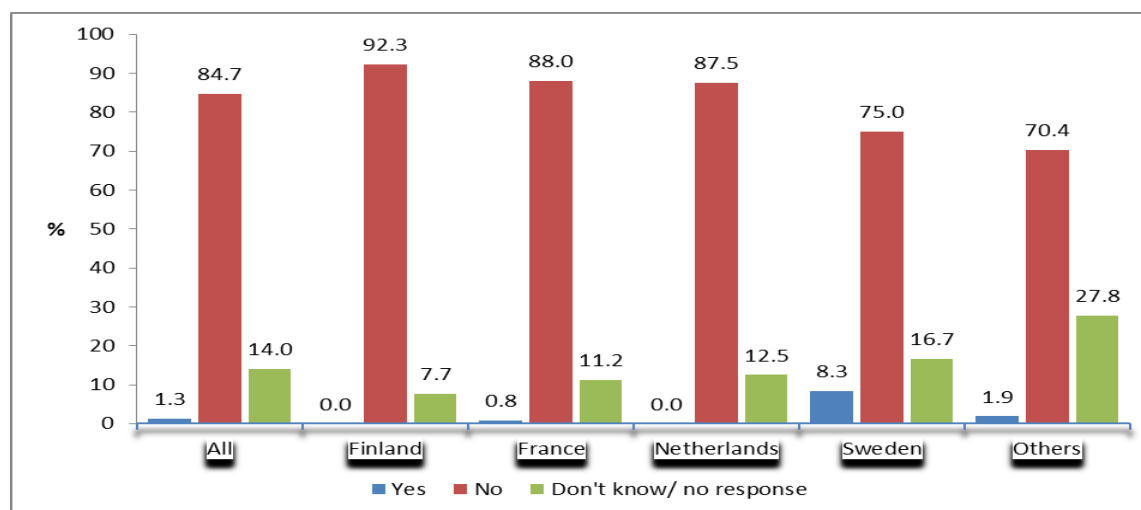
N=322 Source: CSES consumer survey

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The timeshare industry still tends to have a poor reputation amongst consumers in general in the different EU Member States, according to our survey results.

Figure 4.4: Based on your own experience, would you recommend others to purchase a timeshare or long-term holiday product? (by country)



N=372 Source: CSES consumer survey

In a related question, the survey responses suggest that there are widespread doubts as to whether the 2008 Directive has provided sufficient protection to consumers. Despite the considerable progress made with the 2008 Directive in terms of strengthening and harmonising consumer rights across the EU, the persisting negative perception of timeshare among the surveyed consumers may also explain why a majority of them believe the Directive is not doing enough to protect the consumer. It should be noted that a quite high proportion of the respondents were unable to express a view on this question.

Table 4.13: Do you believe that the 2008 Timeshare Directive provides sufficient protection to consumers?

Options	Pre-Directive	Post-Directive	Overall
Not enough at all	33.7	15.4	31.8
Rather insufficient	32.6	53.8	33.2
Neutral	5.7	3.8	5.8
Quite sufficient	1.4	3.8	1.4
Fully sufficient	0.0	0.0	0.0
Don't know/ no response	26.5	23.1	27.9
Total	100.0	100.0	100.0

N=322 Source: CSES consumer survey

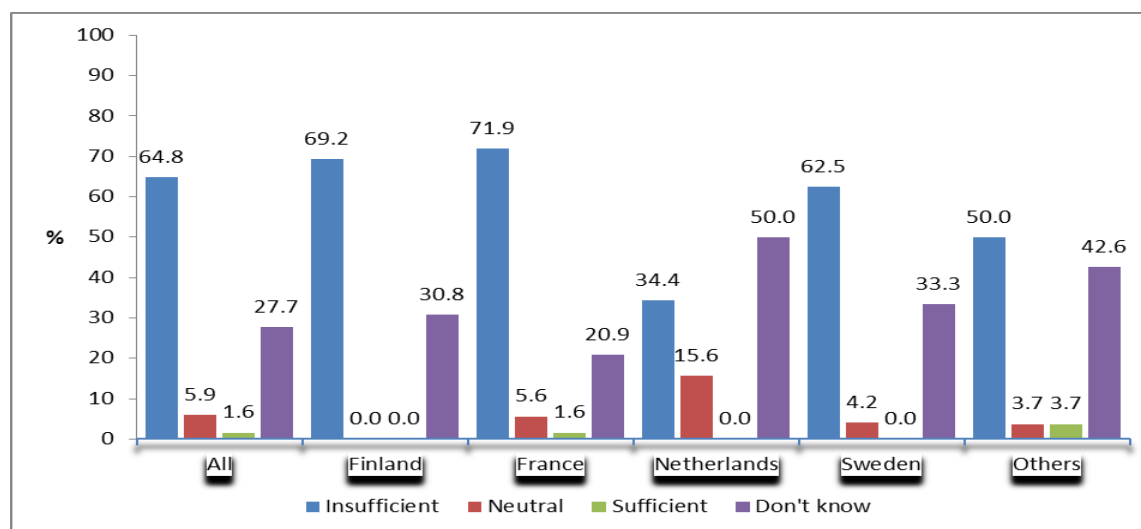
These findings nevertheless suggest that a majority of consumers are not sufficiently aware of their rights under the 2008 Timeshare Directive. In this regard, the problem seems to lie with

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the inadequate level of public awareness-raising activity. At Member-State level, it also appears that not enough is being done to inform consumers of their rights under the Directive. This is clearly reflected in our survey results:

Figure 4.5: Do you believe that the 2008 Timeshare Directive provides sufficient protection to consumers?



Source: CSES survey

Up to half of the respondents in the Netherlands were unable to say whether the Directive provides sufficient protection to consumers. In Finland and France, more than two-thirds of the respondents thought that the Directive did not provide sufficient protection to consumers of timeshare and related products.

From a business perspective, pre-contract stage the rules and requirements traders have to comply can potentially raise costs and affect their revenue (e.g. ban on advance payments and language requirements). Only three out of the 19 timeshare companies that took part in our survey indicated that the 2008 Directive has facilitated cross-border trade, mainly thanks to the harmonised rules it has introduced.

Table 4.14: As far as your company is concerned, has the Timeshare Directive facilitated cross-border business activity?

Options	Nº	%
Yes	3	15.8
No	11	57.9
Not applicable	3	15.8
Don't know	2	10.5
Total	19	100.0

Source: CSES business survey

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This can be explained by the fact that the provisions of Directive 2008/122/EC centre mainly on strengthening and harmonising consumer rights. Arguably, the Directive was designed to favour consumers over traders, partly in response to the perceived bad image of the 'timeshare' industry amongst consumers.

Last but not least, the impact of the Directive on fraudulent activity in the sector as a whole appears to be rather limited given the recent emergence of products circumventing its provisions, but also given that practices which contravene the law still persist today. Although the overall situation with regard to consumer protection has improved, the Directive alone cannot eradicate fraudulent activity. As such, consumers' views of the sector as a whole have remained rather negative whilst law-abiding traders are still suffering from the industry's poor reputation.

Other Issues

5

This section deals with aspects and issues which fall outside the scope of Directive 2008/122/EC.

Whilst the Directive harmonises a number of consumer rights and requirements traders have to comply with at pre-contract stage, its scope do not cover relations between consumers and traders once contracts for timeshare, LTHP, exchange or resale have been concluded. Similarly the Directive does not harmonise timeshare contractual rights and, at the same time, modalities for contract termination. This has an impact on the type of issues faced by consumers at post-contract stage, particularly those who concluded their contract prior to the implementation of Directive 2008/122/EC.

This section provides an overview of differences in rights and modalities for termination among EU Member States and explores issues linked in particular to timeshare management costs, possibilities for consumers to privately sell, rent out or exchange their timeshare or LTHP and contract termination.

5.1 Differences between EU Member States regarding timeshare rights

Whilst the Directive introduces the principle of harmonisation as regards pre-contract consumer rights, differences continue to exist between Member States as regards the **nature of timeshare in terms of the rights conferred on individual owners**. The key distinction is between 'right of ownership' (e.g. as in Spain and France) and right of occupancy (e.g. in the UK). The provisions of the Directive 2008/122/EC on timeshare contracts apply regardless of the legal form of the acquired timeshare right including:

- Timeshare regarded as a real property right ('right in rem'), e.g. in Italy, Spain, Portugal and other Member States;
- Timeshare regarded as a right of tenancy (Greece);
- The case of France, where timeshare is deemed to be a equivalent to a shareholder right for owners (i.e. owner assemblies or '*Société Civile Immobilière*');
- The 'Trustee-Club System' which is in force in the UK and Ireland.

In **Spain**, the timeshare contract creates a property right (ownership) and must be formalized in deed, and also be registered in the Property Registry (article 25 of the Law 4/2012). The acquisition and transfer of rights of timeshare may be registered in the Property Registry, provided that the contract was concluded or executed by public deed (article 31 of the Law 4/2012).

In **Greece**, the conclusion of a timeshare contract creates a right of tenancy whereby traders are requested notify the conclusion of a contract to the Hellenic Tourism Organization which is responsible for controlling and monitoring the execution of the timeshare contracts. Additionally, the authentication of timeshare contracts by a public notary is also required in accordance with the provisions of the Greek Civil Code.

In **France**, the original law 86-18 of January 6, 1986 was revised and amended by the Law of 2009 that implemented the Directive. Timeshare contracts are governed by owner assemblies known in French as '*Société Civile Immobilière*' (or SCI). SCIs are constituted for the ownership

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and management of timeshare properties. In France, an owner cannot terminate his or her timeshare ownership without the unanimous consent of the assembly of owners or SCI. This law is integrated into the French Consumer Code.

In the **UK**, the legal form of a timeshare contract amounts to a right of occupation and not ownership. In other words, consumers have a contractual right to occupation. There is no formal registration of timeshare contract owners in the UK. Trusts are set up and are in charge of the timeshare properties. Trusts are thus responsible for the day-to-day running of the property. This can be organised in a number of ways: timeshare contract owners may form a committee to run the timeshare; the timeshare owner (or trust) might run the timeshare or subcontract a private company to run the timeshare.

All these different approaches have given rise to different management schemes which mainly determine methods for calculating maintenance fees and impose conditions for private use, rental and, of course, private resale of timeshare accommodation units and other related products.

As regards 'traditional' timeshare accommodation, maintenance is most often performed by an external service provider – maintenance costs are fixed annually by the committee of owners (i.e. at the Annual General Meeting) and divided up by the number of owners. The trustee system also allows timeshare occupiers to take part in decision regarding maintenance costs at the Annual General Meetings.

For timeshare involving stays in multiple destinations (i.e. resorts), exchange and LTHPs such as holiday clubs, maintenance fees are fixed by the company itself which may perform maintenance activities or sub-contract them to a third party.

5.2 Post-contract issues

The results presented in the table below suggest that out of the 322 respondents who completed the survey, 255 had problems following the conclusion of their contract, i.e. nearly 80% of the respondents.

Table 5.1: Have you had any problems following the conclusion of your timeshare contract? (Please select all that apply)

Options	Pre-Dir	Post-Dir	All
Rising maintenance costs without justification	67.4	0.0	59.2
Unilateral diminishing of the facilities made available to you without extra charge	18.3	7.7	15.6
Prohibition imposed by the timeshare resort for you to privately sell, exchange or rent out your timeshare	10.4	7.7	9.0
Other	22.2	11.5	21.9

N=255 Source: CSES consumer survey.

Perhaps unsurprisingly, respondents who bought timeshare and related products in or after 2012 reported less post-contract problems.

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As can be seen, most post-contract problems affect consumers who bought timeshare and related products many years ago. Just over two-thirds of them indicated that they were paying rising maintenance fees without justification and nearly 20% of them indicated that the quality or availability of the product or service they were paying for had diminished in the years following the signature of the contract. On the other hand, the survey data suggests that problems with regard to the possibility for consumers to privately sell, rent out or exchange their timeshare are less frequent.

Whilst certain companies do have limitations on the how timeshare assets may be rented out, these are usually rules that are established clearly in contracts right from the outset. TATOC has pointed out that it has not received any complaints about abusive restrictions on the private resale or renting out of timeshare assets, and that in general terms it is not a problem for consumers.

The same can be said with regard to conditions for private resale. Some timeshare companies have clear rules about private resale which often stipulate that consumers have to pay a transfer fee. In some cases (e.g. as is often the case in Malta), the owner can sell their property back to the developer where the developer contractually has first right of refusal on resale. It is indeed common practice for companies to reserve the right to refuse the private transfer of ownership in certain conditions. For example, some companies will not allow it because there have been cases where disreputable dealers set up bogus companies specifically to sell 'take-over' schemes⁴⁵ to owners seeking potential buyers privately. This practice leaves a resort or owners' committee with no path for redress on defaulting of fees. Given problems surrounding resale and in a context where more and more timeshare owners reach an age where they no longer want to use their properties (e.g. because of infirmity and the travel involved), it is clearly important that there are ways in which they can sell their interest on reasonable terms.

For traditional timeshare properties, maintenance fees are typically divided equally between the owners, but as the number of owners tends to decrease year after year the maintenance fees increase for the remaining owners. This can be due to several factors such as trustees or owners committees deciding to allocate the part of the property for classic seasonal renting. In many cases, some of the remaining ageing landlords do not use their week or the exchange market anymore despite having to continue to pay maintenance fees. A number of public authorities have reported cases where ageing timeshare owners are required to pay fees for a timeshare property they no longer use and where there is suspicion that the timeshare was transformed into a seasonal renting property or resort.

According to a number of ECCs, other similar problems are linked to cases where a timeshare company is taken over by another company. In such cases, the consumers who contracted with a timeshare company notice a few years after the purchase that the official documentation (e.g. maintenance bills) is issued by a different company, i.e. the new company in charge of managing the timeshare. Logically, the older the timeshare contract, the more likely it is that a company

⁴⁵ Schemes whereby a new buyer assumes ownership of the timeshare by taking over the payments of the previous owner

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takeover or several company takeovers will occur. The problem with such situations is that different timeshare companies have different business models, and hence different ways of calculating maintenance fees, and do not provide transparent information on how these maintenance fees are calculated. In such situations, consumers requested to pay maintenance fees can be easily confused and taken advantage of.

Moreover, consumers may not know which company to target when making a complaint as a result of a company takeover or successive company takeovers. Such practices may be in breach of Article 3.1 of the UCTD which states that contractual terms that have not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, they causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer (regardless of whether this occurs at pre-contract or post-contract stage). Similarly, such practices may constitute a breach of UCPD – also applicable at post-contract stage – given the fact that requesting payment for a product or service on the basis of misleading information (or omissions) is deemed to be unfair in the context of B2C relations under the UCPD.

5.3 Termination of contracts

Directive 2008/122/EC does not impose specific rules on contract termination, with the exception of the rule for LTHPs contracts (Article 10, i.e. upon receiving the request to make the second annual instalment payment).

However, the termination of old timeshare contracts has also been identified by the research as one the most problematic issue for consumers. The procedures and conditions for terminating timeshare contracts vary according to the type of product/service, individual company policy, and are linked to Member States' legislation on the nature of the timeshare rights. The different national regimes regulating the unilateral termination of contracts can be classified into two categories: those relating to the trust regime and those relating to the multiple-ownership system.

In those countries where it is not permitted to have more than a limited number of owners in one property (e.g. the UK), the property is placed into an independent trust. When a timeshare sale is made, individual purchasers have a contractual right to occupation but not ownership. There is no formal registration of timeshare contract owners under this regime. The termination of occupation rights is a fairly straightforward procedure under this system. Consumer may, however, incur financial penalties if they terminate their contracts prior to the minimum period of occupation, as stated in bona fide contracts, i.e. contracts which provide clear information on minimum period of occupation as one of the conditions for termination. On the other hand, there are no provisions in the 2010 Timeshare Regulations governing those contracts which provide no conditions for termination, also known as in-perpetuity contracts. However, thanks to the trustee regime, termination can take the form of an eviction and/or repossession if the owner fails to pay the maintenance fees.

In those countries where multiple-ownership of a single property is permitted (e.g. France, Spain), timeshare buyers are registered as owners and constitute an assembly or 'civil company' (e.g. in France, owners constitute a *societe civile immobiliere* for the ownership and

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management of property). In this context, timeshare owners usually cannot terminate a contract without the unanimous consent of the assembly or 'civil society' of owners. An owner wanting to terminate his contract who fails to pay maintenance fees will remain as owner of the timeshare, but may not have the right to occupy the timeshare property. In addition, reselling timeshare rights can prove difficult as potential buyers may not be easy to find in the current economic climate.

Important legal developments have however taken place in Member States with a multiple-ownership system, such as France and Spain, following the implementation of the 2008 Directive.

Legislation passed in **France** in 2009 to implement the Directive states that any timeshare contract is now equivalent to a '*contrat de jouissance*' or contract of use/occupation, as opposed to a '*contrat de propriété*' or real estate contract⁴⁶. The concept of multiple-ownership is thus being phased out in France, with legislation to be introduced in September 2014 offering permissible conditions for exiting a contract (e.g. if the property or resort is said to be inaccessible or unfit for use) and the possibility to leave an SCI by deed without going to court, i.e. contract exits will no longer be necessarily subject to a court decision⁴⁷. Furthermore, advertising timeshare and LTHP as multiple-ownership contracts will become unlawful in France from September 2014⁴⁸.

In **Spain**, as regards timeshare systems and rights, while the previous law 42/1998⁴⁹ established the rules to create a timeshare legal system under Spanish law based on real-estate rights of rotational use (i.e. multi-ownership), and intended that this should have been the only applicable legal system in Spain, the law of 2012 recognises systems based on personal rights created under non-Spanish laws (i.e. UK-style trust regime) according to the EU Regulation Rome I. According to the 2012 law, non-Spanish legal systems rules can be registered at the relevant Land Registries which might be advantageous for the security of the consumers. Indeed, under the UK-style 'Club Trustee' system, which is now widely in use in Spain, there is the possibility of 'repossession', i.e. of cancelling an owner's right and its inherent entitlement to occupy a timeshare, if they stop paying the management fees.

Last but not least, with the implementation of Law 42/1998, all contracts issued since January 1999 have a maximum duration of 50 years. The maximum duration of contracts taken out in Spain before 1998 was also fixed to 50 years by Law 42/1998 unless they had a shorter duration, or in the adaptation deed to the Law 42/1998 it was declared that their duration was indefinite.

⁴⁶ Loi 2009-888 du 22 juillet 2009 de développement et de modernisation des services touristiques

⁴⁷ Loi 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové (Art.50). To come into effect on 24 September 2014

⁴⁸ Loi 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové (Art.50). To come into effect on 24 September 2014

⁴⁹ Ley 42/1998, de 15 de diciembre, sobre derechos de aprovechamiento por turno de bienes inmuebles de uso turístico y normas tributarias (Law implementing the 1994 EU Timeshare Directive)

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This however creates a complex legal environment in Spain where contractual conditions for termination have thus to be often checked on a case by case basis.

The most serious issue which has arisen due to the existence of different national practices for contract termination concerns legacy, i.e. situations where the timeshare owner deceases and the contract is inherited by the next of kin. For example:

- In **Spain**, the death of an owner does not mean the termination of the contract. Contractual obligations are transmitted to the owners' heirs. Additionally, the debts of the owner are passed on to the heirs.
- In **France**, the death of an owner also means that the timeshare is inherited by the next of kin. However, legal provisions are due to come into force in September 2014⁵⁰ which allow the next of kin to exit a timeshare which he or she inherited within two years from the date the contract was passed on.
- For contracts concluded in the **UK**, the timeshare of a deceased owner would not be automatically inherited by the next of kin. In the UK, timeshare contracts are considered to be personal contracts and therefore do not outlive a contracting party. The next of kin has no obligation to accept the timeshare. In all cases, acceptance would result in a new contract.

Finally, it is worth noting that whilst it has been reported that consumers wishing to terminate their contract may have difficulties identifying the applicable national legislation, they are in principle entitled to seek redress on the basis of the national legislation of their choice (usually the legislation of their country of residence) according to the provisions of Regulation (EC) No 593/2008 on the law applicable to contractual obligations (also known as Rome I).

In summary, a substantial number of consumers who were sold timeshare or timeshare-like products as investments many years ago (e.g. 1980s, 1990s) were told that they would have the possibility to resell it one day and make a profit. They are now finding it almost impossible to terminate their contract or to resell their timeshare. Many of these owners are locked in in-perpetuity contracts (i.e. contracts with no get-out clause) and, as such, cannot relinquish their ownership, and often continue to pay escalating maintenance fees. In-perpetuity contracts also imply that contracts can be passed on to the heirs (usually the children) of the timeshare owners when they die, who are in turn required to pay the fees often against their will. Issues around legacy have been identified as the most pressing by the public authorities and consumer associations we interviewed.

Last but not least, both the RDO and TATOC have been working closely with their affiliated companies over the last two years to find exit solutions for owners who want to dispose of their timeshare (see Section 6). By the end of 2012, all RDO members were required to have some form of an exit programme in place, and, additionally, any deserving cases – for example due to ill health or old age – had to be dealt with swiftly and sympathetically. The RDO Board

⁵⁰ Loi 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové (Art.50). To come into effect on 24 September 2014

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has since required members to allow exit in the case of the death of an owner whose spouse or family does not wish to keep the timeshare and also in the event of the personal bankruptcy of an owner. According to the RDO, this programme of self-regulation is proving to be effective and it has urged non-member companies to adopt similar schemes that protect the interests of owners.

5.4 Conclusions - other issues

In relation to post-contract issues, consumer dissatisfaction is mainly linked to a perceived lack of transparency from companies, particularly as regards the fixing of maintenance fees, according to the public authorities we interviewed. This problem again mainly concerns timeshare contracts signed well before the implementation of Directive 2008/122/EC when traders were not bound by harmonised rules on pre-contract information requirements. According to interview and workshop feedback, a more thorough enforcement of the UCPD or UCTD could be the remedy to solve consumer problems linked to unjustified rising maintenance fees.

Being unable to terminate contracts, particularly those that were taken out many years ago, has been identified by stakeholders as the most serious problem faced by consumers. According to interview and workshop feedback, issues around legacy in particular are the most pressing as they may take even greater proportions in the years to come if no actions are taken. Enshrining workable conditions for the termination of timeshare contracts in EU legislation could however pose a number of challenges given the existing variations in timeshare rights amongst EU Member States (as illustrated by the British, French and Spanish examples). France has already developed legal provisions allowing for retrospective contract termination under certain specific conditions whilst the RDO and TATOC require from their affiliated companies to put in place exit strategies which also apply retrospectively to timeshare contracts. These could be as many sources of inspiration if the EU was to legislate on timeshare contract termination. As regards legacy issues, banning timeshare contract inheritance across the EU may possibly be more straightforward to enforce.

In the consumer survey and follow-up telephone interviews we asked for opinion on what should be done to improve the way in which the timeshare sector operates. A summary is provided below:

Consumer interviews – actions to improve timeshare sector

- **Marketing and awareness-raising:** Several consumers suggested that more should be done to inform prospective timeshare purchasers of the risk of getting involved in unwanted timeshare or holiday products before they go on holiday to resorts where these aggressive sales methods are being used. Especially travel agents ought to get involved in the awareness-raising.
- **Exit possibilities:** Nearly all those who were consulted wanted to see a change to the indefinite nature of timeshare and holiday club contracts. They felt that it was important for consumers to be given a way of exiting existing contracts, especially when their circumstances change as a result of job loss, age, illness, etc. Some people suggested that

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contracts should only be allowed to be signed for a limited period of a couple of years, which would then be renewed if the consumer wanted to do so. It was argued that if these products were as attractive as they are claimed to be, operators should not have any problems in getting their clients to renew their contracts.

- **Annulment in the case of death:** There was a strong feeling among those interviewed that timeshare and holiday club contracts should automatically be annulled in the case of the owner's death. There are many examples of French consumers, in particular, who have inherited contracts that they are not at all interested in, but are unable to relinquish - even if they take their case to court. Legislation has recently been introduced in France to address this problem, but the right to annul timeshare contracts if the owner has died only applies retroactively for two years prior to the legislation being introduced.
- **Sales techniques:** Some interviewees were adamant that operators should not be allowed to threaten and harass their customers, whether it be in the form of pressure to upgrade their product or invest more money in the company, or in connection with ever increasing charges threats to employ debt recovery firms or take customers to court if they do not pay accept to pay up.

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We now review the research findings with regard to enforcement mechanisms. Overall, the feedback suggests that lack of effective enforcement of the Directive's provisions is the reason why many of those we have consulted feel that the legislation has not yet achieved the desired impact.

6.1 Functioning of national enforcement systems

Enforcement of the 2008 Directive is mainly the responsibility of Member States. When there is a cross-border element, the Consumer Protection Co-operation (CPC) network which brings together the designated bodies of the 28 Member State charged with enforcing, amongst other things, the 2008 Directive can be of assistance. It is important to bear in mind that many consumer complaints concerning timeshare and long-term holiday products are of a cross-border nature, hence the importance of cooperation on enforcement and information exchange at EU level.

It is possible to distinguish between several broad types of institutional set-up among EU Member States as regards enforcement:

- Member States where a **single enforcement authority** is in charge of enforcing all legislation implementing Directive 2008/122/EC (e.g. France, the Netherlands, Nordic countries);
- Member States where **several public agencies** are in charge of enforcing specific aspects of Directive 2008/122/EC (e.g. Hungary, Portugal, UK).
- Member States where **regional authorities** are in charge of enforcing all legislation implementing Directive 2008/122/EC. This category includes Spain, the EU Member State with the largest market for timeshare and other relevant products.

Very little feedback was available on whether national authorities have become more efficient in enforcing the Directive since its implementation. This is partly due to the fact that the Directive was only transposed in 2011/2012 in most EU Member States. Nevertheless, interviews with certain national public authorities and agencies have highlighted a number of issues regarding enforcement of the Directive:

Examples of Enforcement Issues

- In **France**, the DGCCRF is the single national enforcement authority and, as such, it is empowered to carry out investigations relating to breaches of the Directive and it can also impose sanctions on unlawful traders. An important number of complaints recorded in France are against traders located in Spain or Greece, and the DGCCRF is finding it difficult to establish contacts with enforcement authorities there. Another challenge relates to the fact that many French consumer complaints relate to incidents outside the EU (e.g. Morocco) for LTHP offers located in the EU (e.g. Spain), i.e. French consumers holidaying in Morocco being sold LTHPs located in Spain. The DGCCRF has however no contacts with authorities outside the EU.
- In the **Nordic countries**, responsibility for enforcement of the Directive has been placed within the countries' consumer agencies: the Swedish Consumer Agency

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‘Konsumentverket’, the Finnish Competition and Consumer Authority ‘Kilpailu- ja kuluttajavirasto - KKV’ and the Consumer Ombudsman ‘Forbrugerombudsmanden’ in Denmark. In all three countries full transposition of the Directive happened in 2011. In connection with complaints, the agencies are able to carry out investigations and prosecute unlawful traders in their own countries.

- However, the cases they receive mostly concern traders in other European countries, especially **Spain** and to some extent **Greece**, which limits their powers. They can, however refer cross-border complaints to the pan-European Consumer Protection Cooperation network - CPC (see below). In practice, however, it appears to be rare that the cooperation leads to concrete results and that individual complaints are acted on by the relevant CPC partners.
- The CPC in **Spain**, in particular, seems to have limited enforcement powers. The interviewees also mentioned that there are problems around translation, since holiday contracts would typically have been issued in the language of the consumer (e.g. Swedish or Finnish) and would therefore need to be translated in order for a foreign court (e.g. Spanish court) to use them as evidence. But such services are both costly and time-consuming for the enforcement authorities. There were equally reports that CPC bodies in Spain and other destination countries would typically fail to react as regards individual complaints from Scandinavia-based consumers. None of the interviewees in the Nordic countries felt that the Directive had had any effect on the level of cooperation between enforcing consumer authorities and judicial and police authorities.
- In the **Netherlands**, the Authority for Consumers and Markets (ACM) is the institution in charge of enforcing Directive 2008/122/EC which falls under the scope of the Dutch Act on Enforcement of Consumer Protection (CA). The ACM investigates complaints from consumers and businesses in order to be able to tackle the root cause. Their powers have been laid down in several laws and regulations. ACM officers are authorized to enter premises, ask for information, demand inspection of documents, and take data with them. Despite this robust setup, enforcement of timeshare legislation remains problematic, especially in relation to cross-border cases.

According to the research feedback, similar problems exist in Member States where different public authorities enforce different aspects of the Directive. On the other hand, there is no evidence to suggest that this type of institutional set-up is less efficient, particularly in relation to domestic enforcement.

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Examples of institutional setups involving different public enforcement bodies

- In **Hungary**, the Authority for Consumer Protection acts as the main enforcement authority and monitors businesses' compliance with the legislation as regards pre-contract information requirements. More generally, the authority also monitors compliance with the UCPD and the UCTD. Timeshare companies are regulated by the Hungarian Licencing Office. The Hungarian Licencing Office monitors the registered companies and their compliance with the remaining provisions of the Directive. The public registry is accessible to the public.
- In **Portugal**, there are three institutions in charge of enforcing Directive 2008/122: the ASAE, the DGC and TDP. The ASAE (Autoridade de Segurança Alimentar e Económica) is in charge of market surveillance and fiscal matters, and has investigative powers and can impose administrative sanctions against traders in breach of the Directive. The DGC (Direcção-Geral do Consumidor) enforces provisions relating to the advertising of timeshare offers only and can also impose administrative sanctions. The TDP (Turismo de Portugal) deals with the registration of timeshare traders and maintains a registry of legitimate traders. The institutional set-up to enforce the Directive remained unchanged following its transposition in Portugal. There is no data available on public spending in relation to enforcement (for the moment). Also, the full transposition was only achieved in 2012, so it might be difficult to get accurate estimates. There is good collaboration between the different public bodies in charge of enforcement with the ASAE and DGC receiving national-level complaints and ECC Portugal receiving cross-border complaints. To illustrate this, the Rede Telemática de Informação Comum (RTIC) launched in August 2009 ensures that consumers' complaints are registered by the relevant regulatory authorities and market surveillance bodies in Portugal, providing consumers and businesses information about the status of the complaints and, furthermore, improves the communication of data regarding consumer issues.
- The public institutions in charge of enforcement in the **UK** are the TSI (Trading Standards Institute) and the Competition and Markets Authority (CMA) (OFT before 1st April 2014). Their enforcement role also implies that they have investigative powers. As far as timeshare and related products are concerned, the National Trading Standards Board is responsible for gathering information and intelligence to establish the profile of companies, especially fraudulent ones (the Board is working on clarifying its powers to work outside the UK jurisdiction). Investigated cases are then typically passed on to civil courts. In term of actual enforcement, however, court action has been pretty minimal. More generally, there has not been a need for heightened enforcement as sales falling under directive 2008/122/EC have dropped considerably as far as UK consumers are concerned. As such, it is thought that public enforcement costs are going down in the UK.

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Last but not least, major shortcomings in relation to enforcement have been identified in Spain where the institutional set-up for consumer protection cuts across different levels of governance: national, regional, and even municipal. This is problematic given that Spain has the largest timeshare and LTHP market in the EU, and also given the fact that most consumer complaints across the EU are against Spain-based traders.

Example of institutional set-ups involving authorities at different levels of governance

- In **Spain**, the national consumer protection agency (AECOSAN) is the single authority in charge of enforcing the Directive in Spain. However, as Consumer Affairs are decentralized to the autonomous regions, the powers of sanction and inspection are delegated to the consumer protection authorities of the autonomous regions. Although there is appropriate legislation in place, there is no adequate monitoring of business activity.
- This is also because municipalities are ultimately responsible for ensuring businesses' compliance with legal requirements, and failings have been reported as regards cooperation between the municipalities and regional authorities. Whilst the legitimate businesses have taken steps to comply with the Directive, rogue businesses do not seem to bother complying with the law as the perceived risk of consequences in terms of persecution or sanctions is low.
- These companies and their contracts are difficult to track down in most cases. There are not enough resources for public enforcement, which means that rogue businesses are not deterred from breaking the law. Nationally, both consumer authorities and the ECC Spain notify larger cases that involve fraud to the police. In 2013, three large police operations were carried out which led to the arrest of several rogue traders⁵¹.

Despite the existence of the CPC network, it appears that public enforcement authorities have some difficulties dealing with cross-border cases related to a breach of the Directive especially in relation to fraudulent activities taking place in Spain.

6.2 Cross-border cooperation between public authorities

Cross-border collaboration to deal with consumer timeshare complaints is still quite under-developed. As highlighted earlier, cross-border consumer complaints are often addressed to the ECCs, but these centres have no enforcement powers.

ECCs regularly attempt to take up complaints about foreign operators with their counterparts in the relevant countries. The ECCs in the countries concerned usually have to turn to the CPC network for cross-border cases as they are not able to prosecute foreign traders directly. This is because CPC bodies have usually the competence to launch court action (even class action), and

⁵¹ Mindtimeshare Annual Report 2013.

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and/or issue injunctions in order to defend collective consumer rights. As such, these national bodies are able to prosecute traders established on their countries.

The CPC network has been formally in place since 2007. The CPC network only acts in cases (there are around 100 new cases per year) where there is alleged collective consumer detriment. Thus, individual cross-border complaints are not acted on. Complaints are also sometimes transferred directly from one country to another via the national enforcement authorities themselves to deal with. It seems, however, that the effectiveness of such cross-border collaboration in dealing with issues under 2008/122/EC is quite limited.

Examples of cross-border case handling by ECCs

- The ECCs in both **Germany** and **Sweden** have referred cross-border cases on behalf of consumers who have approached them for help to the ECCs and foreign enforcement authorities in other countries, mainly in Spain. Both ECCs complain that little action is taken by enforcement authorities to resolve cases as the efforts of the ECC in Spain to approach traders remained vain with the concerned companies not feeling compelled to move.
- In the **Czech Republic** only few complaints have been lodged since the application of the Directive. However, these complaints did not include any cross-border element and therefore they have been dealt with by the Czech enforcement authority.
- In **France**, the ECC communicates cross-border complaints cases to the CPC (DGCCRF) in charge of notifying its counterparts abroad. However, the DGCCRF does not inform ECC France of the outcomes of the investigations in relation to cross-border cases. The same problem has been reported in a number of other Member States (e.g. Portugal, Hungary). In this respect, the EU-wide public enforcement system appears to lack transparency.

6.3 Public prosecution and sanctions

Procedures for prosecution as well as penalties vary considerably from one Member State to another. Member States have discretion in how to comply with Directive 2008/122/EC with regard to providing adequate and effective prosecution means and imposing 'effective, proportionate and dissuasive' penalties to ensure traders' compliance with its provisions. Several examples of national prosecution and sanctioning regimes are provided below:

Examples of prosecution mechanisms and sanctions

- In **Cyprus**, sanctions imposed are of an administrative nature. Penalties of up to 5% of the annual turnover are imposed on firms that are in breach of the Directive with a fine ranging from €85-1700 for every additional day of non-compliance.
- In **France**, prosecution mechanisms effectively identify the appropriate legislation that applies depending on the nature of the offence. Consumers that suffer detriment will take action under the Directive and use the ADR; for more serious cases, enforcement authorities such as the DGCCRF will sanction the offenders using the most appropriate

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legislative instrument (e.g. UCPD, UCTD).

- In **Hungary**, the Competition Authority can impose financial sanctions to unlawful timeshare businesses under Hungarian civil law. Civil courts can deal with contractual disputes between consumers and companies. The Hungarian police lead investigations into timeshare fraud at domestic level but tend to be less active in relation to cross-border cases.
- In **Portugal**, only administrative sanctions are imposable to companies failing to comply with the Directive. Penalties usually range from €5,000 to €10,000. However, Portuguese enforcement authorities have reported that they often fail to impose penalties in time due to the fact that companies often 'disappear' or re-emerge under a new name by the time an investigation is completed.
- In **Spain**, breaches of the Directive do not constitute a criminal offence but a civil offence. Sanctions for infringements of the timeshare legislation are administrative and are governed by the consumer protection rules applicable in each autonomous region. The types of penalty and the fines are often similar. In fact, the revised text of the General Law for the Protection of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16 November is applied by default in the absence of specific provisions under regional legislation.

Positive developments have been reported in Member States that traditionally record a high number of cross-border consumer complaints:

Examples of sanctions and other measures

- In **France**, the owner of a bogus resale company 'Strategy Connection' was condemned in January 2014 to a three-year prison sentence after more than 150 consumers had been pressured into paying an upfront fee in order to resell their timeshare⁵². The French consumer association APAF-VTP alerted the French judicial authorities after frequently receiving complaints from its members against Strategy Connection. APAF-VTP subsequently filed a civil action in the criminal proceeding. It is however important to point out that ECC France, after receiving many complaints, was unable to take any action against Strategy Connection via the CPC. Whilst the company was registered in France, consumers in other Member States had also been victims of its scams.
- In the **Netherlands**, the ACM can impose on businesses an order subject to periodic penalty payments. The aim of such orders is to end a violation or to prevent the continuation of one. The ACM can also impose a preventive order, and this may be an option when a violation is imminent. Alternatively, businesses can make a commitment to comply with certain imposed conditions in order to prevent future enforcement

⁵² Affaire DRICOT Christine, 24 janvier 2014; For more information: http://www.apaf-vtp.com/index.php?option=com_content&view=article&id=52:proces-strategy-connection&catid=2:actualite&Itemid=30

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actions. Ultimately, the ACM can fine offenders, if necessary. The final level of a fine depends on the type of violation, and on the specific circumstances of the case in question. Repeated offenses are punished more severely. In 2012, the ACM fined Hotel Group International (HGI) €105,000 in relation to the way it sold its HotelGroup Passport product⁵³. As this product fell under the Directive's LTHP definition, the legal basis for this action was Book 7 Art. 50a – 50i of the Dutch Civil Code in which the provisions Directive 2008/122/EC are transposed.

- There is very little experience of unlawful traders being prosecuted and sanctioned in the **Nordic countries** under Directive 2008/122/EC. This is partly linked to the fact that very few, if any, companies in this particular sector are based in Scandinavia, but it is also a result of the cross-border nature of the problem. However, the Swedish Consumer Protection Agency is currently investigating Skistar – the largest ski resort developer in Sweden – as this company markets timeshares as investments and its contracts do not contain any information on the withdrawal period and other consumer rights.
- A positive development as regards the enforcement of consumer rights under the Directive, which was raised by interviewees in **Sweden, Denmark and Finland**, is the possibility for consumers to request a 'chargeback' via their own bank. Through this arrangement consumers who feel they have been 'tricked' into signing holiday contracts and make upfront payments and who want to use their right to withdraw from the contract may ask their bank to assist them in getting their money back by employing international bank card rules. Although this option does not have any direct legal relation with the Directive, it has been particularly successful in assisting Swedish consumers in relinquishing their contract. It is however only available to customers who have used international bank cards to make a deposit, and not all banks are willing to get involved in the process, especially not if they are likely to lose money or if the case in question is legally complex. However, in many cases the chargeback procedure has been enough to terminate the contract and ensure that consumers did not continue to receive invoices subsequently.
- In the **UK**, enforcement authorities can engage criminal proceedings (summary conviction) against unlawful companies covered by 2008/122/EC. In most cases, unlawful companies are required by law to pay a £5,000 fine. For more serious offences, cases can be taken to the Crown Court where fines are unlimited. The TSI can take injunctive action against unlawful companies to stop and prevent any wrongdoing. Consumers themselves can take their case to the civil courts in accordance with Section

⁵³ Consumers were contacted by phone and were told they had won a prize or had been offered a free trip. However, it turned out they had actually taken out a subscription to a hotel discount card, called the HotelGroup Passport. Canceling the subscription proved to be very difficult. The sale of products such as the HotelGroup Passport is subject to the so-called timeshare rules, which had not been observed. For more information: <https://www.acm.nl/en/publications/publication/10997/The-Netherlands-Consumer-Authority-fines-Hotel-Group-International-for-selling-method/>

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35 of the 2010 Timeshare Regulations. Furthermore, the CMA (ex-OFT) has the power to take action against merchants and businesspeople in other EU Member States when such merchants or businesspeople breach the consumer-protection legislation and negatively affect the collective interest of British consumers under the Stop Now Orders Regulations 2001, which is based on Directive 98/27/EC on injunctions for the protection of consumers. In 2011, the High Court of Justice granted the OFT enforcement orders against two holiday clubs: Personal Travel Group Limited (PTG) and Geo Demographic Market Research Ltd (GDMR). The orders also applied to seven individuals, two of whom are directors of PTG and were directors of holiday club Incentive leisure Group Limited (ILG) which later went into liquidation.

As mentioned in the example from the Nordic countries above, **chargeback has been identified as one of the most effective short-term ways of enforcing the Directive, and of ensuring redress for consumers who were unable to exercise their right of withdrawal and who suffered a financial loss as a result.**

Chargeback is a process that allows consumers to ask their credit or debit card provider to reverse a card transaction if there is a problem with the good or service purchased. However, the provisions allowing chargeback on debit cards are not consumer rights provided by law, and chargeback has no technical relation with Directive 2008/122/EC. Chargeback is part of a set of rules which participating banks sign-up to.⁵⁴ In order to support its own action and the action of consumer associations, the enforcement authorities in Nordic countries may rely on the Europay interbank agreements. The general rule established by this interbank agreement on the cancellation of timeshare transactions states that the consumer's bank must ensure that the trader's bank must repay entirely the consumer when the transaction was debited on his behalf and that he had cancelled during the 14-day withdrawal. However, these operating rules do not guarantee direct access to chargebacks to consumers and are binding only between banks⁵⁵.

Most Member States have similar routes for chargeback requests and ECCs usually advise consumers to ask banks for a chargeback where available. It is also possible for consumers to have a dispute with a trader handled in an **Alternative Dispute Resolution (ADR)** body or to turn to FIN-NET for help as regards the handling of cross-border disputes in cases where chargeback was unsuccessful. ADR mechanisms exist in the Member States in this respect, but these vary. If the bank is not a member of an ADR body, in some Member States, consumers will have difficulties to find an out-of-court dispute resolution system to turn to.

The chargeback solution sometimes works to the consumers' satisfaction. But in many cases, chargebacks are unsuccessful because the banks do not want to upset the trader's bank through which the transaction went. Most problems relate to the banks' willingness to reimburse the

⁵⁴ Also known as the 'Europay' agreement, cards covered include Visa, MasterCard, Maestro and American Express, although the detailed application of the rules may differ between card providers.

⁵⁵ For more information: <http://europaysolutions.com/> ; and the ECC-Net report 'Chargeback in the EU/EEA', February 2014

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consumers, particularly when the traders cannot be traced (in such cases, the bank would incur a loss of money). The use of a general time limit⁵⁶ may also prevent the consumers from obtaining a refund.

6.4 Awareness-raising efforts by public authorities

It is clearly important that consumers are aware of their rights under the Directive and can take informed decisions in entering into a contract. **Awareness-raising has been identified by many stakeholders as another way of enforcing the Directive preventatively. Preventative work is critical given that most of the Directive's provisions are applicable before consumers complete a purchase.** Awareness-raising efforts have been undertaken in a number of Member States, including prior to the implementation of the 2008 Directive. There have been many awareness-raising initiatives in countries with relatively high numbers of timeshare owners such as the UK, Nordic countries, or France.

Examples of awareness-raising initiatives

- In **Denmark**, the ECCs and their host, the Consumer Ombudsman, have developed a small film on timeshare and holiday products on their website and have also covered the issue in their newsletter. What really made a difference, though, was a television programme on one of the main channels (DR1 'Kontant') in autumn 2013 which investigated holiday scams. This led to the ECC receiving a lot of inquiries from consumers who needed help. They have subsequently started negotiations with a long-standing citizen information TV programme 'OBS' to produce an episode about the most common problems and fraudulent practices to be aware of in connection with holiday products.
- The ECC in **France** is very active in terms of prevention. Every year before the summer break, ECC France issues a press release on malpractices in the timeshare sector. These press releases are sometimes picked up by the media. It is worth noting that in France in the 1990s, many television investigation programmes exposed scams and commercial malpractices in the timeshare sector. Since then, French consumers have been very suspicious of timeshare.
- Equally, the ECC in **Sweden** and the Consumer Agency have included a lot of information about timeshare and holiday clubs on their websites, including a well-developed FAQ page. The ECC's site is the first that appears, if consumers google 'timeshare'. The problems surrounding timeshare and long-term holiday products are regularly discussed on radio and in newspapers. The ECC is currently in discussions with a journalist about making a television programme to address some of the latest problems that occur. Previously, the ECC has also tried to alert Swedish travellers by sending out 20,000 information leaflets to travel agents and hotels, especially in the Canaries, for them to

⁵⁶ The time limit on chargeback claims - typically 120 days - which starts from the day a consumer becomes aware of a problem. There is also an overall cut off point of 540 days for Visa chargeback. Therefore, deadline for requesting a chargeback is 120 days from discovering a problem, or 540 days from the transaction date, whichever comes first.

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distribute to their customers. There are also reports of holiday agents in **Finland** and their hotels in Spain having been requested by the ECC to provide customers with warnings about possible scams, but in both cases it would appear that the hotels have not been actively disseminating the warnings to consumers.

- In the **UK**, a special police task force (Action Fraud⁵⁷) was set up in order to inform consumers on holiday related scams as well as to identify and investigate roguery. The OFT and citizens advice bureaus have also been active for a number of years in raising consumers' awareness and in handling complaints. For instance, the OFT has been running campaigns at airports in the UK to warn consumers of the risks associated with purchasing timeshare abroad. The OFT published information on bogus holiday clubs in 2008 describing to consumers the selling techniques used by bogus traders. A more recent leaflet disseminated by the OFT was on the topic of holiday clubs and was published in February 2011.

Efforts are now also being undertaken at EU-level to raise consumers' awareness about the dangers they can be faced with when buying timeshare, long-term holiday products, or when looking to resell their timeshare.

As part of a Joint Project, a number of ECCs have started working together in 2014 on developing ideas for effective prevention campaigns in relation to timeshare. Acting as the Joint Project leader, ECC Spain launched in early February 2014 a survey to obtain feedback from other ECCs on how assistance/guidance should be provided to consumers who have made a complaint or a request for information in relation to timeshare. The ECC is seeking to use the media to broadcast awareness-raising campaign, and also aims to target specific groups such as the over 50s. The ECCs have also been discussing how to make their websites more user-friendly to consumers needing guidance on timeshare or looking to make a complaint. The Joint Project will ultimately lead to the creation of an ECC website entirely dedicated to timeshare by 2015.

The role of the media in raising consumers' awareness of the dangers associated with buying timeshare and related products was also identified as critical by public sector stakeholders in different countries. Public authorities and ECCs in particular are keen to harness the power of the media (television or radio programmes) as an effective means of bringing cases to the attention of the public.

Although this does not concern public authorities, it is worth mentioning that the RDO and consumer associations such as The Association of Timeshare Owners Committees (TATOC) in the UK, Mindtimeshare in Spain, and APAF-VTP⁵⁸ in France have also taken measures regarding awareness-raising amongst consumers. Their respective websites provide detailed information about the risks associated with certain products as well as a list of fraudulent operators, generally cold-calling resale or legal advice companies.

⁵⁷ <http://www.actionfraud.police.uk/fraud-protection/timeshare-fraud>

⁵⁸ Association des Propriétaires Adhérents Francophones de Vacances en Temps Partagé.

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6.5 Alternative means of enforcement

Apart from public bodies, both the industry (i.e. the RDO) and certain consumer associations such as TATOC) are involved in the enforcement of the Directive in various ways. This involvement often takes the form of collaboration with public authorities through the exchange of information.

The **RDO** set up an enforcement division in 2007 and, more recently, created a Timeshare Task Force, bringing together the industry, timeshare owners, consumer organisations and law enforcement agencies to target rogue operators through a coordinated Europe-wide approach. According to the RDO, its Timeshare Task Force has been very active in engaging with policy makers such as politicians, police authorities (mainly in Spain), as well as the ECCs to improve cross-border coordination in tackling exclusively timeshare problems. The Task Force currently works closely with UK authorities in the context of the National Fraud Initiative (NFI), an exercise that matches electronic data within and between public and private sector bodies to prevent and detect fraud. Thus the Task Force has been lobbying public authorities to dedicate more resources to tackle fraud in the timeshare sector.

The RDO Task Force and TATOC work closely together. TATOC provides to the RDO information about complaints which helps the Task Force in its mission. At the same time, the RDO funds TATOC's consumer helpline which collects timeshare-related complaints (see Section 3.4). A website⁵⁹ run by the RDO's Timeshare Task Force provides extensive feedback to consumers and industry players on the nature of businesses in the industry. The website also warns about fraudulent businesses - these are characterised by 'transparency failure', i.e. there is no (clear) information on the legal entity, company ownership, registered address, etc. Similarly, the **TATOC** website provides useful information on the typical features of fraudulent businesses. In 2013, the TATOC website listed 230 companies that were cold-calling consumers and the vast majority of these are likely to have been engaged in misleading, deceptive and/or fraudulent activities. This list of 'cold callers' is regularly updated on the TATOC website.

Mindtimeshare, a Spanish Registered Association, which positions itself as representing the interests of European Timeshare Owners that have been victims of any kind of fraud related to their membership, also offer similar information on its website and in its annual reports. It has also been very active in assisting public authorities in taking action against unscrupulous companies in Europe that defraud timeshare buyers and timeshare owners (particularly in relation to resale). It reported that in 2013 two large police operations were undertaken related to Timeshare in Spain, leading to a total of 18 companies being closed down, and that this action was based on complaints and reports filed against these companies by Mindtimeshare. Mindtimeshare also handles consumer complaints, including those originating from abroad. However, it does not have the resources to deal with the very high number of cases and, likewise, it complains that is not worth referring anything other than the most serious cases to the authorities because they too do not have sufficient resources to investigate all cases or to take rogue traders to court.

⁵⁹ <http://timesharebusinesscheck.org/>

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In France, the **APAF-VTP** is very active in defending the interests of consumers who have purchased timeshare or other holiday products. This consumer association has already successfully contributed to the public prosecution and the conviction of fraudulent traders of timeshare and related products⁶⁰. Consumers pay €55 for membership and entrust their cases to APAF-VTF which then covers the legal fees for its members. It is an association that also represents consumers in court. APAF-VTP has about 800 members today, but the association had 1,750 members ten years ago. This is also an indication that consumer problems linked to timeshare and related products are not as prevalent today as they were ten years ago.

Overall, it appears that RDO and the consumer associations are very active in the fight against fraud. As far as the RDO is concerned, the timeshare industry has been seeking to improve its image amongst consumers in a tougher regulatory environment for businesses since the implementation of the 2008 Directive and it is very much in the interests of the sector to combat fraud and other rogue trader practices. To the extent that there are shortcomings with regard to the role of the authorities, this would appear to mainly relate to the lack of action taken by the enforcement bodies and criminal authorities to investigate and prosecute rogue businesses. According to the feedback from industry stakeholders and the consumer associations, resourcing constraints mean that the law enforcement agencies and judiciary have serious difficulties to handle all the cases that could potentially be referred to them.

6.6 Alternative dispute resolution mechanisms

Across the EU, ECCs can help consumers make an initial complaint to traders through their dispute resolution mechanism (which is not specific to Directive 2008/122/EC). ECCs have no enforcement powers and their only way to help resolve cases is via ADRs. Nevertheless, many ECCs have reported that most businesses refuse to cooperate in resolving consumer complaints in this way. In such cases, mediation or adjudication could work but it would require cases to be referred to a legal process.

With the forthcoming implementation of the **EU Directive on ADR**⁶¹ which aims to lead to the modernisation of B2C ADR mechanisms across the EU, ECCs expect to be able to refer B2C 'timeshare' disputes to appropriate ADR mechanisms more effectively by the second half of 2015. It is also likely that the EU ADR Directive will prompt many more Member States to require companies in various sectors to adhere to an ADR mechanism. In this context, it can therefore be expected that this will bring significant improvements to the ECCs' ability to solve timeshare-related consumer complaints by swiftly bringing cases to ADR mechanisms.

In this context, and given the significant of B2C internet transactions, the **EU Regulation on Online Dispute Resolution (ODR)**⁶² is also expected to further facilitate the use of ADR

⁶⁰ Cf. Affaire BOURI Hakim, 9 janvier 2014; Affaire DRICOT Christine (Strategy Connection), 24 janvier 2014.

⁶¹ Directive 2013/11/EU on alternative dispute resolution for consumer disputes – to be implemented in all the EU Member States by 9 July 2015

⁶² Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes – to come into force on 9 January 2016

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mechanisms by establishing from 2016 onwards a free, interactive websites in through which parties can initiate ADR in relation to disputes concerning online transactions only (not offline transaction) both on a domestic and cross-border basis. This could prove particular useful in cases where, for instance, consumers are asked by the trader to transfer online their second annual instalment payment before being able to terminate their LTHP contract.

Whilst ECCs find it difficult to bring certain companies to an ADR, some companies, as well as timeshare owners committees, are already providing ADR schemes, notably those affiliated to the RDO and TATOC respectively.

The **RDO** established its dispute resolution scheme for the timeshare industry in 2005. This scheme is only available to consumers who have conducted business with an RDO member company. It does not extend to companies that are outside of membership. The RDO has reported that the vast majority of complaints about its members have been resolved to the satisfaction of the consumer. Consumers who are dissatisfied with the ruling of the RDO ADR arbitrators have the opportunity to take legal action against the RDO member company. Just five cases where the ADR decision was against the consumer have been escalated to court action since the RDO scheme was established in 2005: three were ruled in favour of the complainant, one case was dismissed and one case ruled in favour of the RDO member.

TATOC has a relationship with all its member resorts and affiliated companies for the resolution of consumer complaints, reinforced though its Code of Conduct and Codes of Practice. TATOC thus offers a mediation facility to consumers and businesses who will agree for a dispute to be handled in this way. However, there have been very few cases so far and no problems have been reported with the dispute resolution scheme offered by TATOC.

The introduction by the RDO and TATOC of ADR mechanisms is certainly a positive development. However, these mechanisms remain rather ineffective in relation to fraudulent operators as the ECCs have revealed. It will be interesting to see whether the current situation will improve once the ADR Directive comes into force.

6.7 Timeshare businesses' codes of conduct

The introduction of codes of conduct is an important development that could, potentially at least, promote 'self-regulation' and improved practices in the timeshare sector.

The **RDO** introduced its first code of conduct in 1998. The primary objective of this code of conduct is to promote strong ethical standards and the delivery of high levels of service. Over the years, the Code has been reviewed and updated. Today, the RDO Code of Conduct is closely aligned with the provisions of the 2008 Directive after it substantially revised in 2010. It includes trading principles which require transparency from the trader through disclosure of all elements of a product or service to consumers in a manner they fully understand, as well as marketing principles which precludes members from using aggressive selling techniques.

The RDO Code also requires member companies to provide clear evidence that a robust complaint handling process exists at the resort. Companies adhering to this Code are entitled to promote the fact that they are members of RDO at the point of sale, and feature the logo on their websites and printed materials, thus reinforcing what they consider as the message of

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quality, security and high service standards. It should be noted that the RDO's Timeshare Task Force has recently been further involved in enforcing the Code of Conduct. This has resulted in a small number of companies losing their RDO membership after they were found to be in breach of the Code.

As the main trade body representing the timeshare industry, the RDO's Code of Conduct applies to the majority of timeshare businesses that are actively selling products in the EU. The only other codes in place for traders in Europe are those established by **The Association of Timeshare Owners Committees (TATOC)**. To support its mission, TATOC has developed a Timeshare Code of Conduct and associated Codes of Practice. These codes are a commitment by TATOC, its affiliated companies and accredited resorts to focus on the best interests and protection of consumers and to protect the good name of the reputable timeshare industry. TATOC also runs a programme of 'Resort Accreditation' for quality timeshare resorts or clubs that choose to be examined to ensure they meet the stringent consumer-based standards of TATOC's Code of Conduct and associated Codes of Practice. Accredited resorts have to prove they provide an excellent timeshare holiday experience to their owners and visitors.

Membership of recognised associations such as RDO and TATOC, by requiring compliance with their respective codes of conduct, has further entrenched the distinction between legitimate and fraudulent traders. The RDO and TATOC members want to be seen today as being in tune with the EU's regulatory regime.

6.8 Conclusions – Enforcement mechanisms

As this section has shown, **the holiday sector has taken a number of steps to improve the compliance with consumer protection rules.** However, these initiatives apply to legitimate businesses and there is still a problem of dealing with rogue traders.

As noted earlier, **to the extent that there are enforcement shortcomings, this mainly relates to the lack of action taken by public authorities to investigate and prosecute rogue businesses.** According to the feedback from industry stakeholders and consumer associations, resource constraints mean that the law enforcement agencies and judiciary have serious difficulties to handle all the cases that could potentially be referred to them. This lack of capacity among public authorities in certain countries where most rogue traders are operating is also manifest in the shortcomings in terms of cross-border cooperation despite the existence of the CPC Network and the ECCs.

Article 14 of the Directive encourages the setting up of ADRs by the Member States, yet it has not really led to any tangible actions except from parts of the industry (i.e. RDO) and TATOC. **ADR in relation to timeshare is still in its beginnings but there is hope that the ADR Directive will improve the situation.** The ECCs are hoping to make effective use of these mechanisms over the next few years in the context of the ADR Directive. Presently, ECC feedback suggests that companies rarely accept to cooperate to resolve disputes with consumers amicably. The ODR Regulation is also expected to further facilitate the use of ADR mechanisms for disputes over online transactions with companies in the sector of timeshare and related products or services.

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The **chargeback solutions and awareness-raising efforts** are alternative ways of enforcing the Directive. Chargeback may be an effective short-term solution for consumers who have already been denied their rights under the Directive, in most cases by being asked to make advance payments during the 14-day withdrawal period by bank card. ECCs have the possibility of advising and assisting consumers with chargeback, however the success of chargeback depends mostly on banks' internal rules and relations.

Awareness-raising is a preventative way of enforcing the Directive by informing consumers of their rights, thus helping them detect any unlawful trading practices before they conclude a contract.

The research suggests that since the implementation of the Directive, business associations and consumer associations have been active in contributing to its implementation by helping the authorities to identify and prosecute fraudulent companies. As far as the RDO is concerned, this move is driven by the necessity to improve the image of the timeshare industry, but also by wanting to make a clear distinction between timeshare businesses that operate legitimately and other businesses that offer dubious holiday or resale services.

Last but not least, currently the Directive only applies to offences committed within the EU. There is a case for developing mutual assistance arrangements with **non-EU countries that are the destination for many EU citizens** (e.g. Morocco) and where timeshare or timeshare-related holiday products are increasingly available. Mutual assistance could, for example, relate to the development of codes of conduct, legal frameworks and enforcement mechanisms. The same applies to **non-EU countries where fraudulent companies are often registered** (e.g. Andorra).

Key Evaluation Issues

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This section assesses the key evaluation issues that any assessment of an EU intervention should tackle and which were set out in the terms of reference for this study. The key evaluation issues are summarised below:

Overview – Key Evaluation Issues

- **Relevance** – the extent to which Directive 2008/122/EC corresponds to the needs of target groups, Member States and the EU as a whole.
- **Effectiveness** – the extent to which the objectives of Directive 2008/122/EC have been met and to the extent that this is not the case, the factors that have hindered their achievement.
- **Efficiency** - the extent to which the outputs and effects linked Directive 2008/122/EC have been achieved at a reasonable cost and value for money (could the same results have been achieved with lower costs?).
- **Coherence and complementarity** - how well Directive 2008/122/EC works together with other EU consumer law instruments which have similar objectives; the extent to which Directive 2008/122/EC proved complementary to other Member States measures in the relevant areas and markets.
- **European added value** - the additional value resulting from Directive 2008/122/EC, compared to what could be achieved by Member States at national and/or regional levels.

7.1 Relevance

Do the objectives of Directive 2008/122/EC as described above (still) correspond to the needs within the EU? To what extent has the Directive proved relevant to the needs, also described above, which were at the basis of its adoption?

The research findings suggest that the 2008 Directive is certainly relevant to the needs of consumers in the EU. The extension of the scope of EU legislation to long-term holiday products, exchange and resale schemes, corresponds to the market changes of the last 15-20 years, characterised by the evolution of consumers' holiday choices and expectations towards more 'short-term' and multi-destination product offers.

However, results from the survey show that many consumers are not sufficiently aware of their rights under the Directive. There is therefore a gap between the intended levels of consumer protection under the Directive and consumer confidence in the holiday industry. The survey results indeed suggest that consumer confidence remains relatively low.

This is partly due to the continuing presence of rogue traders on the market which harm the reputation of the legitimate businesses. Rogue traders continue to adapt their practices to bypass the Directive's provisions and/or continue to break the law – sometimes by claiming that they are selling products and services that are not subject to the Directive. Such

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practices are particularly prevalent in typical holiday destinations, such as Spain (e.g. Canary Islands).

New products have also entered the market that circumvent the provisions of the Directive (e.g. leisure credit schemes) by lasting less than a year or being presented as not related to holiday accommodation. Some of these products may not fall under the definition of 'long-term holiday product' because of the lack of accommodation element. This precondition for the application of the rules on LTHP has been criticised in some quarters. Also, traders may also claim that their products have a validity of less than a year, although this is clearly not the case in practice with leisure credit points that have no limitation of term for their spending. Such contracts have developed increasingly since the implementation of the Directive.

The minimum one-year duration rule for Timeshare and LTHP was a policy choice when designing the Directive. Now it results in certain products not being covered by Directive 2008/122/EC. However, when not covered by Directive 2008/122/ these products will be covered by the new CRD and, of course, they are fully subject to the UCPD and UCTD

From the consumer perspective, major issues concerning timeshare today relate to contracts concluded well before the implementation of the 2008 Timeshare Directive. The Directive's focus on the pre-contract stage means that its provisions are relevant as far as new contracts are concerned but that there is little help available, beyond the general consumer law and provisions of civil law (e.g. in relation to fraud) to consumers who face difficulties with an existing timeshare contract. In other words, the Directive is not so much relevant to existing timeshare owners as to prospective buyers of timeshare or related products. Whilst the Directive covers resale, owners face difficulties reselling which are due to the low demand for timeshare and related products. As a result, they are exposed to fraudulent business activity linked to resale.

Whilst the Directive has facilitated cross-border trade by harmonising pre-contract information requirements, many businesses find that its provisions have resulted in increased operational costs. This is mainly due to the ban on advance payments, increased paperwork and increased translation costs. These effects on businesses' operational costs were anticipated in the Commission's 2007 impact assessment and the benefits to the sector from greater consumer confidence arguably outweigh the disadvantages associated with the costs of compliance with Directive 2008/122/EC.

Conclusions - Relevance

Overall, therefore, it can be said that the Directive is certainly relevant to the needs of the timeshare sector with the harmonisation of pre-contract information requirements and pre-contract consumer rights, but the fact that its scope is limited to the pre-contract stage means that it cannot tackle certain problems and malpractices that are of greatest concern to existing timeshare owners.

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7.2 Effectiveness

To what extent do the effects of Directive 2008/122/EC correspond to the objectives? To what extent have the objectives been met? Where expectations have not been met, what factors have hindered their achievement?

The key provisions of the Directive were transposed into the legislation of all the EU Member States without any major problems. However, the fact that differences in interpretation exist between EU Member States in relation to some specific provisions (in particular Art. 9(2) and Art. 10(2)) can potentially result in unequal levels of consumer protection across the EU, which limits the intended effects of the Directive.

The level of consumer complaints against operators is a good indication of how effective Directive 2008/122/EC has been in achieving its objectives. According to ECC statistics, there has been a slight decrease in the number of complaints since 2012 when the Directive was implemented across the EU. Furthermore, recent ECC statistics show that the proportion of complaints relating to the breach of contract terms has increased whilst complaints relating to pressure selling or deceit have dropped since 2008, which may be an indication that the 2008 Timeshare Directive has enabled consumers to be aware of their contractual rights and to defend them.

Judging by our survey, the majority of complaints today relate to 'old' contracts, i.e. those contracts predating the 2008 Directive. As a result, the Directive's effectiveness in protecting consumers is limited to prospective buyers of timeshare or timeshare-related products. In particular, there are calls for harmonised EU rules on exit possibilities to allow for contract termination. Regarding new contracts however, consumers are less likely to be misled on offers given that the Directive requires traders to provide transparent information to consumers prior to their signing the contract. In this context, research has revealed so far that the Directive is proving to be particularly effective in relation to exchange schemes.

There are constraints on the effectiveness of Directive 2008/122/EC in terms of eradicating rogue practices. The Directive's provisions could be used for tackling fraudulent practices at pre-contract stage but this requires more effective enforcement. Although the Directive has not entirely eradicated aggressive sales practices and misleading offers in the holiday sector, it has had a positive effect in many Member States as the blacklisting of fraudulent holiday club companies (e.g. on the TATOC and Mindtimeshare websites) has become less frequent in the last few years. However, this may have more to do with awareness-raising initiatives targeting consumers in recent years than with the Directive's enforcement as far as the investigation and prosecution of rogue businesses is concerned. This may also be due to market concentration or to the fact that traders have moved on to the hotel and catering sector due to the stringency of the Directive's provisions.

As regards other issues not covered by Directive 2008/122/EC but nevertheless important for the consumers concerned, **an outstanding major problem is the termination of timeshare ownership.** Member States have different rules on contract termination or the transfer of timeshare rights. Contracts predating the 2008 Directive when timeshare could still be sold as a private investment are often without limitation of their duration and without any possibility of termination. Furthermore, the problem is aggravated by the low demand for timeshare and related products which makes resale virtually impossible. This

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has attracted rogue resale traders to defraud timeshare owners desperate to get out of their contract.

Certain businesses have reacted to the Directive by introducing new products (e.g. leisure credit schemes) and new commercial practices (e.g. double contracts) that may in certain cases not be covered by the Directive It is however expected that many of these new products will fall under the Consumer Rights Directive 2011/83/EU as off-premises contracts and will be in particular subject to the right of withdrawal similar to the one under Directive 2008/122/EC.

Although the Directive's effectiveness in improving consumer confidence is so far limited, in every commercial area there is a substantial time lag in changes to consumer confidence even where significant changes have taken place. The results of our consumer survey show that a sizeable proportion of individuals are not aware of the heightened level of consumer protection brought about by the Directive. Further efforts need to be undertaken to inform consumers about the benefits of the Directive to enhance consumer confidence in the sector.

The Directive's effectiveness in terms of stimulating trade and market expansion is rather limited due to its stringent provisions for businesses, such as the prohibition of advance payments during the withdrawal period and the requirement to provide information to consumers in the language of the consumer's country of nationality or residence. Such requirements can potentially increase the financial burden on legitimate businesses, and can also act as a curb to investment in the timeshare sector in the EU. It is nevertheless important to note that this situation had been foreseen in the Commission's impact assessment of 2007. These stringent provisions on businesses were deemed necessary to address the risks and problems inherent to the timeshare sector.

Conclusions - Effectiveness

The Directive's effectiveness in protecting consumers across the EU is limited to the pre-contract stage of transactions. In this respect, the Directive has been very effective in promoting consumer protection.

Less positively, the Directive has had a limited impact on rogue traders and does not address issues relating to the termination of pre-existing contracts which is one of the main consumer concerns. The first of these problems is mainly due to the lack of effective enforcement of the Directive while the second is beyond its scope.

7.3 Efficiency

Were the outputs and effects achieved at a reasonable cost? Could the same results have been achieved with lower costs? Could the use of other policy instruments or mechanisms have provided better cost-effectiveness?

The harmonised rules brought about by the Directive at pre-contract stage have simplified and standardised procedures for enforcement in this area with such a strong cross-border

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element. However, as it stands, there are a number of barriers to efficient cross-border public enforcement via the CPC network.

The CPC Network became operational in 2007. The CPC network only acts in cases (there are around 100 new cases per year) where there is alleged collective consumer detriment. Thus, individual cross-border complaints are not acted on. Complaints are also sometimes transferred directly from one country to another via the national enforcement authorities themselves to deal with. It seems, however, that the effectiveness of such cross-border collaboration in dealing with issues under 2008/122/EC is quite limited. Overall, notwithstanding a few notable cases of collective consumer detriment which involved large-scale criminal investigations (e.g. in Spain, France) that have been successfully resolved, there are still shortcomings as regards the public enforcement of the Directive.

A key priority should be to develop more active and efficient enforcement to better tackle both fraud and the emergence of products and practices deliberately circumventing the Directive. In this context, better supervision of the market, particularly popular destinations, is very important. This would, however, require a substantial increase in resources in a context where economic austerity has resulted in reduced funding for public administrations in a considerable number of Member States. As it stands, therefore, in many cases, public enforcement authorities do not have the capacity to identify and trace rogue traders in order to bring them to justice. As a result, it can take several months or even years to initiate prosecutions. There is a lack of public funding which limits the action of public enforcement authorities and the police. Responsibility for rectifying this situation lies with Member States.

The Directive has not yet been effective in encouraging traders in the Member States to put in place alternative dispute resolution (ADR) mechanisms specifically dedicated to timeshare and related products to address consumer problems, apart from the RDO and TATOC member companies. ECCs report that it is in most cases difficult to persuade companies to settle a dispute via their ADR. There is, however, an expectation that the situation will improve following the implementation of the ADR Directive.

For their part, the RDO and TATOC claim to be quite successful in tackling problems associated with timeshare fraud and in offering consumers the possibility to settle disputes with traders through their ADR schemes. The tighter regulatory environment brought about by the 2008 Directive has prompted the industry to encourage public authorities to take measures to put an end to fraudulent practices which distort competition on the market to the detriment of legitimate businesses. Certain consumer associations have also been active in helping consumers with their problems, and in contributing to the prosecution of unlawful companies. In this context, the legitimate industry along with consumer associations could play a critical role in improving the efficiency of the way in which the Directive is enforced.

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Conclusions - Efficiency

More active and efficient enforcement is needed to tackle both fraud and the practices of rogue traders in circumventing the Directive. Moreover, as it stands, there are a number of barriers to successful and efficient cross-border public enforcement. Likewise, in many cases, public enforcement authorities do not have the capacity to identify and trace rogue traders in order to bring them to justice.

7.4 Coherence and Complementarity

To what extent are individual measures of Directive 2008/122/EC coherent? How well does Directive 2008/122/EC work together with other EU consumer law instruments which have similar objectives?

Overall, Directive 2008/122/EC complements other EU Directives on consumer protection. For instance, the UCPD applies to B2C commercial practices in general and is therefore also relevant to transactions subject to Directive 2008/122/EC whenever there is no applicable provision under the Timeshare Directive. The UCPD is a regulatory tool used by enforcement bodies to tackle deceptive business activities or to force rogue businesses to withdraw from the market altogether, whilst Directive 2008/122/EC specifically protects consumers by requiring traders to provide them with transparent information at pre-contract stage as regards their rights and the nature of the contract. E.g. UCPD is the instrument to use to fight misleading sales claims, aggressive sales methods.

However, the UCPD does not give any contractual rights to consumers unlike Directive 2008/122/EC, but it regulates traders' behaviours and commercial activities more generally, and thus it operates in the background of Directive 2008/122/EC. The UCPD sets the overall trading environment across different sectors. It introduces obligations including the regulation of misleading actions/omissions and also tackles pressure selling. From this perspective, the UCPD provides protection to consumers over and above that provided by Directive 2008/122/EC before a contract is concluded. Furthermore, the public enforcement authorities interviewed indicated that this clear delimitation between the UCPD and Directive 2008/122/EC allows them to use the most appropriate legislative instrument depending on the nature of cases (e.g. UCPD for cases of pressure selling). However, pressure selling still often occurs in the holiday sector which suggests that public enforcement authorities need more guidance or more means to apply the UCPD effectively.

Similarly, the UCTD applies to B2C commercial contracts in general – not just timeshare / holiday contracts. UCTD introduces a notion of 'good faith' in order to prevent significant imbalances in the rights and obligations of consumers on the one hand and sellers and suppliers on the other hand. It also requires contract terms to be drafted in plain and intelligible language and states that ambiguities will be interpreted in favour of consumers. Unfair standard contract terms can be declared not binding on the consumer. From this perspective, the UCTD complements the Directive 2008/122/EC in protecting consumers after a contract is concluded. In other words, the UCTD is generally applicable in situations where the trader employs abusive general terms against the consumer.

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Again, the public enforcement authorities interviewed indicated that the UCTD, whilst applying to all products covered under Directive 2008/122/EC, complements and strengthens it as it deals explicitly with any contract term presenting the characteristic of being abusive or detrimental to the consumer. Furthermore, the UCTD is also applicable after the signature of contracts. However, enforcement authorities should make further use of the UCTD in post-contract situations in the area of timeshare (e.g. in cases where maintenance fees are raised without any justification). Whilst individual consumers have understandable difficulties with launching court actions to challenge their contract under the UCTD, the consumer associations defending their interest could play a more active role in this regard bringing class actions to the courts

The Consumer Rights Directive 2011/83/EU (CRD) provides general protection rules for consumers on any holiday products that do not fall under Directive 2008/122/EC. Indeed, the CRD will replace the Directives on distance and off-premises contracts and apply to all such contracts concluded between a trader and a consumer. As such, the CRD is expected to strengthen the protection of consumers of holiday products in cases where Directive 2008/122/EC is not applicable e.g. because the contract is under 1 year or does not involve accommodation.

Conclusions – Coherence and complementarity

Overall, Directive 2008/122/EC, the UCPD and the UCTD complement each other well: Directive 2008/122 enhances the protection in the area of marketing addressed by the UCPD and provides protection at the pre-contractual stage.

In general, there is no risk of duplication in the application of these various instruments. Enforcement authorities are in most cases able to pick out the most appropriate legislative instruments depending on the problem in question. However, some public sector stakeholders have indicated that further guidance in relation to the application of the UCPD and the UCTD in the holiday sector would be welcome.

Finally, the new Consumer Rights Directive will apply to all products falling outside the scope of Directive 2008/122/EC. In particular its strict rules on off-premises contracts will provide consumer protection for many holiday products outside the scope of directive 2008/1122/EC.

7.5 European Added Value

What is the additional value resulting from Directive 2008/122/EC, compared to what could be achieved by Member States at national and/or regional levels?

The main added value of Directive 2008/122/EC lies in the harmonisation of consumer rights in relation to the pre-contract stage of transactions, and thus of the level of consumer protection across the EU. The Directive has made it easier for individual consumers to conduct the relevant transactions of a cross-border nature by ensuring that different countries have the same laws. It would not have been possible, or at least very difficult, for EU Member States to achieve such harmonisation of consumer rights on their own through bilateral cooperation. Consumers can expect the same protection across the EU on issues regulated by the Directive in particular the same right of withdrawal from

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timeshare and LTHP purchases thanks to the uniform period for withdrawal and the ban on advance payments.

The harmonisation of requirements relating to pre-contractual information, contracts and advertisements is a major advantage because contracts for timeshare and related products often have a cross-border element, and can potentially be legally complex. Given the cross-border nature of the timeshare market, it would have been unworkable if all Member States had had their own legislation in this field. The other strength of the Directive is its wider scope in the sense that it covers a wider range of holiday related products. As such, the Directive has undoubtedly led to improved practices in the sector, although fraudulent business practices are far from being eradicated. Furthermore, consumer confidence in the holiday services sector as a whole remains rather low and, in this respect the Directive's full potential can only be realised if consumers are made aware of its objectives and provisions, and there is effective enforcement by national authorities.

Directive 2008/122/EC simplifies the work of businesses operating in different EU Member States by providing a harmonised regulatory environment and although it also has drawbacks for timeshare operators. This is mainly due to the provisions relating to the ban on advance payments during the cooling-off period, which can potentially penalise the efforts of legitimate businesses offering timeshare and related products to consumers in good faith. In this respect, the added value brought by the Directive in the field of consumer protection has to be balanced against the benefits it brings in terms of consolidating the single market in the area of timeshare and the benefits to business of greater consumer confidence in the sector.

An area where there is scope for a greater demonstration of European added value is cross-border enforcement of the Directive. The capacity to address cross-border enforcement issues at Member State-level, both resource-wise and from an organisational point of view, need to be increased so as to be more effective. The capacity of public authorities to investigate cases and prosecute unlawful traders has remained mostly unchanged after the adoption of the Directive, and the same applies to cross-border cooperation. The delayed transposition of the Directive by a majority of Member States also points to the low priority attached by certain countries to the regulation of this sector.

Conclusions – European added value

The main added value of Directive 2008/122/EC is the harmonisation of consumer rights and therefore of consumer protection levels across the EU at the pre-contract stage of transactions. Whilst the Directive has also achieved a harmonised regulatory environment for businesses, and greater consumer confidence benefits the sector, it also has drawbacks for timeshare operators.

The Directive has provided legal certainty that helps enforcement authorities in different Member States to cooperate together.

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Table 4.1: Summary - the Timeshare Directive's performance against key evaluation criteria

Key issues	Positives	Negatives
Relevance	<ul style="list-style-type: none"> Extension of product coverage corresponds to evolution of the market Harmonization of rules at the pre-contract stage across the EU suited to the cross-border nature of timeshare transactions 	<ul style="list-style-type: none"> Emerging products and services not captured under the Directive (e.g. due to one-year minimum duration definition) Directive has little relevance to contracts pre-dating its implementation
Effectiveness	<ul style="list-style-type: none"> Drop in number of consumer complaints suggesting enhanced consumer protection at pre-contract stage Reduction of market distortions as regards new sales – partial clean-up of the industry 	<ul style="list-style-type: none"> Lower consumer protection on termination – no exit rules applying to contracts predating the Directive Disincentive for companies to invest in the sector due to stringent provisions (e.g. ban on deposits)
Efficiency	<ul style="list-style-type: none"> Legitimate industry and consumer associations contributing to enforcing the Directive by reporting on fraudulent companies Legitimate industry offering options for dispute settlement 	<ul style="list-style-type: none"> Lack of capacity of public authorities in charge of enforcement Low cross-border cooperation between public bodies Lack of ADRs – Companies are rarely cooperative on ADR
Coherence & Complementarity	<ul style="list-style-type: none"> Member States report no major problems in the implementation of the Directive's key provisions Comprehensive EU legislative setup e.g. with the Directive covering contractual rights, and the UCPD covering traders' general commercial practices and behavior. 	<ul style="list-style-type: none"> Further guidance needed on the application of the UCPD and UCTD in the area of timeshare
EU Added Value	<ul style="list-style-type: none"> The Directive harmonizes consumer rights at pre-contract stage, thus it harmonizes consumer protection levels across the EU in this respect The Directive puts an end to legal uncertainty at pre-contract stage 	

Conclusions & Recommendations

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In this final section, we summarise the overall conclusions of the research and present a number of recommendations.

8.1 Overall Conclusions

Overall, the research so far suggests that Directive 2008/122/EC has improved the situation for consumers but that its effects have so far been limited, partly because of its provisions are restricted to the pre-contract stage of timeshare transactions and partly because of new products being introduced that are designed to circumvent key provisions.

Moreover, in many EU Member States, transposition of the Directive only took place quite recently (e.g. 2012 in Spain) and, in some cases, it was not fully correct until even more recent changes or there are transposition problems even still today in some countries (e.g. in relation to Art. 10(2)). Therefore, it could take longer for the full effects of the Directive to become apparent.

Recommendation 1: The Commission should continue efforts to ensure that all Member States have transposed the Directive's provisions correctly to prevent any differences in interpretation which may result in unequal level of consumer protections across the EU.

The (albeit small) decrease in the overall number of complaints relating to holiday services under the Directive at the EU level (according to the ECC statistics) following the Directive's implementation is a positive indicator. However, it is too early to detect a meaningful trend, let alone to link the decrease to the changes the Directive has brought about. Steps taken by some businesses in the sector, including the development of codes of conduct, systems to deal with complaints and alternative dispute resolution procedures, have also arguably contributed to the reduction of the number of complaints.

8.2 Specific provisions of Directive 2008/122/EC

Turning to the 2008 Directive's specific provisions, whilst the changes are generally seen as having been beneficial, some businesses argue that the balance between consumer protection and business timeshare interests has been tilted too much in favour of the former. In relation to the main provisions of the Timeshare Directive:

Definitions (Article 2) – the fact that the Directive is limited to timeshare/ LTHP contracts of at least one year has created a loophole that is being exploited by rogue traders with new products that are designed to circumvent the legislation.

Pre-contractual information (Article 4) – prescribing the information to be provided to consumers is seen as a reasonable requirement by consumer organisations and businesses alike. But businesses believe that there is scope to simplify the format set out in the Directive's annexes.

Languages (Article 5) – although potentially beneficial to consumers, the requirement to always produce in the language of the consumer's country of nationality or residence is considered a burden by certain timeshare businesses. According to our research, these rules may discourage smaller operators from targeting particular markets, thereby limiting the sector's growth. Additionally, this requirement can create situations where non-EU

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consumers receive contracts in a language they may not understand (e.g. Russian tourists), thus resulting in unequal levels of protection between EU and non-EU consumers.

Right of withdrawal (Article 6-8) is seen as a positive development by all those in the timeshare sector. However, it may not apply to certain new products now on the market which are presented as not covered by Directive 2008/122/EC. There is still little comprehension that the right of withdrawal may still apply in such cases under the new Consumer Rights Directive.

Advance payments (Article 9) – whilst supported by consumer bodies and not entirely new since it already existed under the previous 1994 Directive, business stakeholders argue that this provision is unnecessary because of the right of withdrawal. Moreover, it is argued that methods such as escrow accounts could be used to protect consumers as an alternative. A further argument is that the ban on deposits is harmful not so much because of the cash flow effects but because it means that many consumers do not take the commitments they enter into in signing a timeshare contract seriously and this wastes the considerable resources businesses have to invest in marketing their products.

One of the most pressing issues relates to the difficulties faced by individual timeshare owners in reselling or transferring their timeshare rights. With its focus on the pre-contract stage, the Directive only protects prospective buyers of timeshare and related products rather than longstanding timeshare owners. And yet the majority of consumer complaints recorded each year relate to timeshare contracts predating the Directive in which timeshare owners (or sometimes their children) are locked in. This is often due to restrictive or unfavourable contract terms (e.g. in-perpetuity clause), national contract laws, and to a lack of demand for timeshare and related products which makes resale difficult. Consumers who desperately want to resell their timeshare are therefore in a vulnerable position and this has become an attractive prospect for fraudsters who set up bogus resale companies and provide fake legal services. Such problems are likely to grow in the years to come with the ageing of long-standing timeshare owners.

The RDO and TATOC are currently working on exit solutions for timeshare owners based on a number of criteria (e.g. old age, ill health). France is to adopt new legislation offering further exit solutions to timeshare owners under specific circumstances⁶³. All timeshare companies should be encouraged to offer exit strategies for contracts pre-dating the Directive. Exit strategies should strike a balance between giving consumers the possibility to terminate their contract and ensuring the sustainability of companies.

8.3 Enforcement mechanisms

The research indicates that key priority should be to improve enforcement of Directive 2008/122/EC as this is currently weak and limiting the potential effectiveness of the legislation. In some countries there is a lack of capacity to investigate and prosecute cases. Most timeshare complaints have a cross-border dimension and yet cross-border

⁶³ Loi 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové (Art. 50)

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cooperation on timeshare-related cases between ECCs and the CPC and within the CPC network remains very limited.

There is a need to strengthen cross-border cooperation between public authorities in relation to Directive 2008/122/EC by strengthening the CPC or by redefining the role of ECCs to extend their remit beyond an essentially advisory role.

The research indicates that certain business and consumer associations are willing to contribute to enforcement of the Directive. Thus timeshare businesses member of RDO and TATOC have developed codes of conduct and taken other measures (e.g. relating to ADR to improve the image of the industry as a whole. These provide a framework for self-regulation that could be reinforced by working with the public authorities to promote awareness of consumer rights and the dangers posed by rogue traders. More EU-level awareness-raising activities to improve consumer confidence in timeshare would be helpful (the work of the ECCs is a step in the right direction).

Recommendation 2: Consideration should be given to how joint working between key stakeholders involved in enforcement can be further developed so that measures to promote awareness of consumer rights and the dangers posed by rogue traders, and actions to combat malpractices, are as effective as possible.

At present consumers are not given enough possibilities to settle disputes with traders through the ADR. ECCs have reported that traders very often refuse to resolve disputes through their ADR procedure. Companies are not specifically required to adhere to an ADR, unless they are a member of the RDO. The ADR Directive⁶⁴ may improve the situation as it will encourage the setting up in EU Member States of recognised ADR mechanisms for different industries ensuring minimum quality standards, transparency and impartiality at no nominal cost to the consumers dealing with both domestic and cross-border complaints. Furthermore, the ODR Regulation⁶⁵ is expected to further facilitate the use of ADR mechanisms in the Member States by establishing a free, interactive website through which consumers can initiate ADR in relation to disputes concerning online transactions both at domestic and cross-border level.

The Directive fits well into the wider EU consumer protection legal framework, particularly in relation to the UCPD and UCTD. Enforcement authorities are in most cases able to apply the most appropriate legislative instruments depending on the problem in question. However pressure selling still occurs in the industry and it is practically difficult to apply the UCPD effectively as this would require adequate market surveillance implying the need for further resources and further guidance. Enforcement authorities have also indicated the need for further guidance in order to make more effective use of the UCTD in post-contract situations which are detrimental to the consumer.

⁶⁴ Directive 2013/11/EU on alternative dispute resolution for consumer disputes – to be implemented in all the EU Member States by 9 July 2015

⁶⁵ Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes – to come into force on 9 January 2016

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Recommendation 3: Public enforcement authorities would benefit from further guidance on how to apply other EU consumer protection instruments (e.g. the UCPD, UCTD) to tackle the malpractices described above more effectively in the holiday sector.

8.4 New holiday products

The research has highlighted problems associated with new products that in many cases have been designed to circumvent the Directive (e.g. short term holiday discount clubs, leisure credit schemes). Other commercial practices have emerged to deliberately confuse consumers and to counteract their ability to exercise their rights (e.g. second contract requiring a deposit, offers advertised as not being 'timeshare' and not being subject to the Directive).

Recommendation 4: The extension of the Directive's coverage to long-term holiday products, exchange and resale schemes responds to the evolutions of the market in the last few years, but further guidance would be useful on how to address new holiday products that were designed to circumvent the Directive.

Other fraudulent practices involve the offer of timeshare and related products located in the EU to consumers holidaying outside the EU (e.g. Morocco), the offer of timeshare related products located outside the EU by EU-registered companies, and the offer of timeshare and related products in the EU by 'offshore' companies. The Directive has thus not eradicated fraud and other malpractices. It is however widely accepted that no legislation can hope to entirely eradicate rogue businesses. Nonetheless, consideration should be given to tackling these activities.

Recommendation 5: If in principle the Directive only applies to offences committed within the EU, the actual location of the timeshare product and of its owner should be taken into account for possible enforcement actions. Furthermore, the Commission should encourage Member States to seek mutual assistance arrangements with non-EU countries that receive many EU tourists (e.g. Morocco) and non-EU countries where many fraudulent companies are registered (e.g. Andorra).

Overall, the Directive is delivering good results against its intended effects. Its ability to protect consumers at pre-contract stage would however be greatly enhanced with more effective enforcement mechanisms. As regards the post-contract stage, the possibility for long-standing timeshare owners' to exit their contracts is a major problem. Establishing reasonable conditions for contract exit is also an incentive for the industry to renew itself and improve its image to consumers.

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The table below provides information on the interviews and consultations completed up to 30 May 2014

	Name	Organisation (& role)
EU	Martins Prieditis	DG Justice (EC)
EU	Marie-Paule Benassi	DG Sanco (EC)
EU	Beata Hauk-Botykai	DG Sanco (EC)
Belgium	Xavier Hopchet	Service juridique – ECC Belgium
Bulgaria	Ignat Arsenov	Director – ECC Bulgaria
Croatia	Danijela Markovic-Kristic	Director – ECC Croatia
Czech Republic	Jana Hylmarová	Czech Trade Inspection Authority
Cyprus	Elena Papachristofourou	Director – ECC Cyprus
Denmark	Anette Jin Kristensen	Lawyer, ECC Denmark
Finland	Leena Lindström	Director, ECC Finland
France	Aurelien Hauser	DGCCRF
France	Camille Bertrand	ECC France
France	Lise Nicolle	APAF-VTF (consumer organisation)
France	M. Persyn	APAF-VTF (consumer organisation)
France	Jacques Andreu	ADCSTP (consumer organisation)
France	Phillipe Pages	Groupe Pierre & Vacances – Center Parcs
Germany	Suzanne Trier	General Counsel, Hapimag AG (CH) (Company)
Germany	Andrea Sack	ECC Germany (Kiel)
Greece	Dimitris Manikis	RCI (Company)
Greece	Michael Staehly	Diamond Resorts Greece
Greece	Antonis Sougioultzoglou	Developer – Nostos Village
Greece	Vassilis Avramopoulos	Lawyer, Avramopoulos & Partners
Greece	Yanna Antonopoulou	Lawyer, Avramopoulos & Partners
Hungary	Attila Kriesch	ECC Hungary
Italy	Monica Nardo	ECC Italy - legal advisor and coordinator
Latvia	Vivita Vataga	Consumer Rights Protection Centre of Latvia
Lithuania	Aida Gasiūnaitė	Consumer Rights Protection Authority
Luxembourg	Karin Basenach	Director – ECC Luxembourg
Malta	Dr Phyllis Bezzina	Director – ECC Malta
Malta	Perry Newton	Project director, Azure Services Ltd
Malta	Mary Anne Pule	Managing Director, MAP Destinations
Malta	Tony Coleiro	Chairman- Malta Tourism Authority
Malta	Mr David Bonello	Assistant Manager, Malta Tourism Authority
Malta	Gavin Dickinson	Azure Services Ltd
Netherlands	Eva Calvelo Muiño	Director – ECC Netherlands
Netherlands	Larissa Ensink	Authority for Consumers and Markets

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Netherlands	Bob Boelema	Authority for Consumers and Markets
Netherlands	Cees Peek	Stichting TeCin (Timeshare Consumers in the NL)
Norway	Ragnar Wiik	Director – ECC Norway
Norway	Warvin Rasheed Ringkjøb	ECC Norway
Poland	Piotr Stańczak	ECC Poland
Portugal	Sandra Figueiredo	ECC Portugal
Portugal	Fernanda Dias	DG Consumer Protection
Portugal	Helena Sanches	Autoridade de Segurança Alimentar e Económica (ASAE)
Portugal	Ana Blanco	Turismo de Portugal (TDP)
Portugal	Paulo Fonseca	Associação Portuguesa para a Defesa do Consumidor - DECO
Portugal	Peter Booth	Pestana Group
Romania	Mihali Meiu	National Authority for Consumer Protection
Slovakia	Nadežda Machútová	Slovak Trade Inspectorate
Slovakia	Pavel Pavlovkin	Legal advisor, ECC Slovakia
Slovenia	Romana Javornik	Director – ECC Slovenia
Spain	Jose Tamames	Director and Head of ECC Joint Project on Timeshare – ECC Spain
Spain	Begoña Blázquez	Manager of ECC Joint Project – ECC Spain
Spain	Jose Ignacio Paredes	Legal Adviser, ECC Spain
Spain	María Jesús Rodríguez	RDO
Spain	Alberto García	Mindtimeshare director (and Head of RDO Enforcement)
Spain	Inmaculada Espinosa	INC (National Institute of Consumer Affairs)
Spain	Pablo Blanco de la Gala	General Secretariat of Consumer Affairs, Junta de Andalucía
Spain	Francisco Lizarza	Vice President ROD Spain
Spain	Ovidio Zapico	Regional Director RCI
Spain	Adrián Díaz-Saavedra Morales	Lawyer, Canarian Legal Alliance
Spain	Miguel Ceballos	Lawyer, Ceballos-Navarro
Sweden	Jolanda Girzl	Director, ECC Sweden
Sweden	Erik Mattsson	Legal Adviser, ECC Sweden
Sweden	Magnus Adell	Legal Adviser, ECC Sweden
Sweden	Maja Lindstrand	Swedish Consumer Agency
Sweden (+DK, FI, NO)	Willy (Winterfalk) Johanson	Samordningsforeningen for Time-shareegare i Norden. Member of TCE-Timeshare Consumers Europe
UK	Paul Gardner Bougaard	RDO
UK	Sue McNicol	RDO

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UK	Chris Emmins	RDO Timeshare Task Force (Founder of Kwikchex)
UK	Harry Taylor	TATOC
UK	Geoff Chapman	TATOC
UK	Kevin Davis	BIS
UK	Simon Brandon	BIS
UK	Elisabetta Sciallis	Legal adviser, ECC
UK	Wojtek Szczerba	Legal adviser, ECC
UK	David Hart	CMA (ex-OFT)
UK	Eugene Miskelly	CLC World Resorts and Hotels
UK	Jose Miguel Echenagusia	Lawyer, Interval International
UK	Susan Crook	Lawyer, Diamond Resorts International
UK	Henry Bankes	Wyndham Exchange & Rentals

Survey Analysis Tables

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General consumer survey

Summary of responses		
Useful responses	372	40.5
No problems experienced	311	33.9
Not willing to answer further questions	95	10.3
No experience of timeshare	86	9.4
Want a phone call to complete	54	5.9
Total hits	918	100.0

Have you had any experience of timeshare properties?

Options	Nº	%
Yes	829	90.3
No	89	9.7
No response	0	0.0
Total	918	100.0

What type of timeshare product/service have you purchased?

Options	Nº	%
Timeshare accommodation	351	42.3
Long-term holiday product (e.g. holiday club)	118	14.2
Holiday exchange scheme	198	23.9
Agency to help sell timeshare rights or holiday club membership	37	4.5
Other	28	3.4
No response	97	11.7
Total	829	100.0

Did you have any problems with your timeshare transaction?

Options	Nº	%
Yes	521	62.8
No	308	37.2
No response	0	0.0
Total	829	100.0

Please tell us what problems you experienced: (multi-response possible)

Options	Nº	%
You were misled by the timeshare services on offer	241	46.3
You were pressured into concluding the timeshare transaction	195	37.4
You were required to pay additional fees (hidden fees) after concluding the transaction	77	14.8
You wanted to resell your timeshare but could not, or had difficulty doing so	320	61.4
Other	153	29.4

Are you willing to answer further questions about your experiences with your timeshare transaction?

Options	Nº	%
Yes	426	81.8
No	95	18.2
Total	521	100.0

Survey Analysis Tables

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In which Member State do you reside?

Country	Nº	%	Country	Nº	%
Austria	1	0.3	Lithuania	0	0.0
Belgium	10	2.7	Luxembourg	2	0.5
Bulgaria	0	0.0	Malta	0	0.0
Croatia	0	0.0	Netherlands	32	8.6
Cyprus	0	0.0	Poland	0	0.0
Czech Rep.	0	0.0	Portugal	0	0.0
Denmark	0	0.0	Romania	0	0.0
Estonia	0	0.0	Slovakia	0	0.0
Finland	13	3.5	Slovenia	0	0.0
France	254	68.3	Spain	6	1.6
Germany	5	1.3	Sweden	24	6.5
Greece	1	0.3	UK	2	0.5
Hungary	0	0.0	Other	12	3.2
Ireland	0	0.0	No response	9	2.4
Italy	1	0.3			
Latvia	0	0.0	Total	372	100.0

In which EU Member State did you conclude your contract?

Country	Nº	%	Country	Nº	%
Austria	1	0.3	Latvia	0	0.0
Belgium	1	0.3	Lithuania	0	0.0
Bulgaria	0	0.0	Luxembourg	0	0.0
Croatia	0	0.0	Malta	0	0.0
Cyprus	0	0.0	Netherlands	4	1.1
Czech Rep.	0	0.0	Poland	0	0.0
Denmark	0	0.0	Portugal	9	2.4
Estonia	0	0.0	Romania	0	0.0
Finland	3	0.8	Slovakia	0	0.0
France	135	36.3	Slovenia	0	0.0
Germany	1	0.3	Spain	176	47.3
Greece	9	2.4	Sweden	0	0.0
Hungary	1	0.3	UK	3	0.8
Ireland	0	0.0	No response	29	7.8
Italy	0	0.0	Total	372	100.0

When did you conclude your contract?

Options	Nº	%
<2003	239	64.2
2003	4	1.1
2004	7	1.9
2005	8	2.2
2006	6	1.6
2007	7	1.9
2008	4	1.1
2009	5	1.3
2010	2	0.5
2011	5	1.3
2012	9	2.4

Survey Analysis Tables

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2013	26	7.0
No response	50	13.4
Total	372	100.0

In which Member State is the relevant trader located?

Country	Nº	%	Country	Nº	%
Austria	0	0.0	Latvia	0	0.0
Belgium	2	0.5	Lithuania	0	0.0
Bulgaria	0	0.0	Luxembourg	0	0.0
Croatia	0	0.0	Malta	2	0.5
Cyprus	0	0.0	Netherlands	4	1.1
Czech Rep.	0	0.0	Poland	0	0.0
Denmark	0	0.0	Portugal	5	1.3
Estonia	0	0.0	Romania	0	0.0
Finland	3	0.8	Slovakia	0	0.0
France	137	36.8	Slovenia	0	0.0
Germany	2	0.5	Spain	140	37.6
Greece	6	1.6	Sweden	0	0.0
Hungary	2	0.5	UK	32	8.6
Ireland	0	0.0	No response	37	9.9
Italy	0	0.0	Total	372	100.0

If you bought a timeshare in a specific property (resort), in which country is it located?

Country	Nº	%	Country	Nº	%
Austria	0	0.0	Latvia	0	0.0
Belgium	0	0.0	Lithuania	0	0.0
Bulgaria	0	0.0	Luxembourg	0	0.0
Croatia	0	0.0	Malta	0	0.0
Cyprus	0	0.0	Netherlands	2	0.5
Czech Rep.	0	0.0	Poland	0	0.0
Denmark	0	0.0	Portugal	8	2.2
Estonia	0	0.0	Romania	0	0.0
Finland	3	0.8	Slovakia	0	0.0
France	95	25.5	Slovenia	1	0.3
Germany	0	0.0	Spain	158	42.5
Greece	7	1.9	Sweden	0	0.0
Hungary	1	0.3	UK	3	0.8
Ireland	0	0.0	n.a /no response	94	25.3
Italy	0	0.0	Total	372	100.0

Did you receive your full contract in a language that you understand (i.e. your country of nationality or residence according to your choice)?

Options	Nº	%
Yes	298	80.1
No	34	9.1
Not applicable	18	4.8
No response	22	5.9
Total	372	100.0

To what extent do you believe you were sufficiently informed about the contract's terms and conditions?

Survey Analysis Tables

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Options	Nº	%
Not well-informed at all	152	40.9
Not very well-informed	120	32.3
Neutral	54	14.5
Quite well-informed	21	5.6
Very well-informed	5	1.3
No response	20	5.4
Total	372	100.0

Do you believe that the information regarding the contract terms and conditions was clear enough, as regards:

Options	Yes		No		Don't know/ no response		Total	
	Nº	%	Nº	%	Nº	%	Nº	%
The right of withdrawal (cooling off period)	78	21.0	212	57.0	82	22.0	372	100.0
Ban on advance payments during withdrawal period(s)	43	11.6	194	52.2	135	36.3	372	100.0
Conditions for exchange	102	27.4	180	48.4	90	24.2	372	100.0
Conditions for subsequent selling of your timeshare/ holiday club membership:	41	11.0	269	72.3	62	16.7	372	100.0
Payment procedure for holiday club member ship and the right to terminate it every year	51	13.7	208	55.9	113	30.4	372	100.0
Conditions for terminating timeshare contract	34	9.1	272	73.1	66	17.7	372	100.0
Fees associated with contract termination	35	9.4	258	69.4	79	21.2	372	100.0
Management and maintenance fees	85	22.8	222	59.7	65	17.5	372	100.0
Procedures for lodging a complaint and complaint handling by the trader	32	8.6	235	63.2	105	28.2	372	100.0
Options available to you for seeking out-of court dispute settlement if your complaint cannot be solved	33	8.9	241	64.8	98	26.3	372	100.0
Traders' code(s) of conduct	31	8.3	227	61.0	114	30.6	372	100.0

Please tell us more about the problems you have encountered (multi-response possible)

Options	Nº	%
You could not exercise your right of withdrawal as provided for in the Timeshare Directive	103	27.7
You were asked to make payments or block money on your account before the expiration of the withdrawal period of 14 days from conclusion of the contract (advance payments)	94	25.3
You were unable to take full advantage of the benefits of the exchange scheme as described by the trader	198	53.2
You had to pay more to obtain a service that you thought was included in the price	87	23.4
You were required to pay ever increasing maintenance or service fees for no objective reason specified in the contract	232	62.4
Your payment for holiday club membership was not in equal annual instalments	17	4.6
You were not allowed to terminate your holiday club membership upon receiving request for paying next annual instalment	72	19.4
You were/ are still required to pay fees resulting from ancillary contracts (e.g. credit contract) after withdrawal from the timeshare/ holiday club contract?	48	12.9

Have you ever tried to sell (transfer) your timeshare rights or holiday club membership to another person (resale)?

Options	Nº	%
Yes, (via a resale company)	203	54.6
Yes, (privately)	59	15.9
No/ no response	110	29.6
Total	372	100.0

If you engaged a resale company to sell your timeshare rights or holiday club membership to another person - did the sale actually take place?

Options	Nº	%
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Survey Analysis Tables

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Yes	8	3.9
No	192	94.6
No response	3	1.5
Total	203	100.0

Regarding contracts with resale companies, have you ever been in a situation where: *(multi-response possible)*

Options	Nº	%
You were not duly informed in your contract of all the costs	36	17.7
You were required to pay a resale company an upfront fee before the sale had taken place	136	67.0
You were persuaded to buy another timeshare upon selling your own and the sale of your timeshare never took place	35	17.2

Have you encountered any problems following the conclusion of your timeshare contract? For instance: *(multi-response possible)*

Options	Nº	%
Rising maintenance costs without justification	218	58.6
Unilateral diminishing of the facilities made available to you without extra charge	57	15.3
Prohibition imposed by the timeshare resort for you to privately sell, exchange or rent out your timeshare	34	9.1
Other	81	21.8

Have you ever paid a professional person (e.g. lawyer) for activities, such as: *(multi-response possible)*

Representing you in your dispute with the timeshare company	94	25.3
Reclaiming your payments to the timeshare company	33	8.9
Other	100	26.9

If you have ticked any of the options above, were you satisfied with the service(s) provided by the professional(s)?

Options	Nº	%
Yes	107	59.4
No	52	28.9
No response	21	11.7
Total	180	100.0

Regarding the problem(s) you may have encountered, did you seek to lodge complaints in relation to the following? *(multi-response possible)*

Options	Nº	%
Misleading offer	100	26.9
Denial of your rights as a consumer	59	15.9
Unjustified additional / rising fees	41	11.0
Resale	77	20.7
Professional (legal) services	15	4.0
Did not lodge a complaint/ no response	226	60.8

To whom did you complain? *(multi-responses possible)*

The trader	Nº	%
Misleading offer	56	38.4
Denial of consumer rights	30	20.5
Unjustified additional / rising fees	24	16.4

Survey Analysis Tables

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Resale	36	24.7
Professional (legal) services	7	4.8

An out-of-court dispute resolution body	Nº	%
Misleading offer	9	6.2
Denial of consumer rights	6	4.1
Unjustified additional / rising fees	5	3.4
Resale	3	2.1
Professional (legal) services	2	1.4

Consumer protection authority in my country	Nº	%
Misleading offer	28	19.2
Denial of consumer rights	14	9.6
Unjustified additional / rising fees	8	5.5
Resale	11	7.5
Professional (legal) services	9	6.2

Consumer authority in the country of the trader	Nº	%
Misleading offer	9	6.2
Denial of consumer rights	4	2.7
Unjustified additional / rising fees	3	2.1
Resale	3	2.1
Professional (legal) services	5	3.4

Police in my country	Nº	%
Misleading offer	18	12.3
Denial of consumer rights	7	4.8
Unjustified additional / rising fees	3	2.1
Resale	10	6.8
Professional (legal) services	5	3.4

Police in the country of the trader	Nº	%
Misleading offer	11	7.5
Denial of consumer rights	4	2.7
Unjustified additional / rising fees	2	1.4
Resale	3	2.1
Professional (legal) services	3	2.1

A European Consumer Centre (ECC)	Nº	%
Misleading offer	29	19.9
Denial of consumer rights	19	13.0
Unjustified additional / rising fees	11	7.5
Resale	12	8.2
Professional (legal) services	7	4.8

Was the problem for which you made a complaint solved to your satisfaction?

Options	Nº	%
Yes	16	11.0
No	106	72.6
No response	24	16.4

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Total	146	100.0
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To what extent do you believe that consumers today are well enough informed to make choices when purchasing a timeshare or long-term holiday product, timeshare exchange or resale services offered by traders?

Options	Nº	%
Not well-informed at all	169	45.4
Not very well-informed	101	27.2
Neutral	19	5.1
Quite well-informed	13	3.5
Very well-informed	0	0.0
Don't know/ no response	70	18.8
Total	372	100.0

To what extent do you think that consumers today are aware of commercial malpractices in the timeshare and holiday club industry?

Options	Nº	%
Not aware at all	123	33.1
Not very aware	132	35.5
Neutral	15	4.0
Quite well-aware	31	8.3
Very well-aware	5	1.3
Don't know/ no response	66	17.7
Total	372	100.0

Do you believe that the 2008 Timeshare Directive provides sufficient protection to consumers?

Options	Nº	%
Not enough at all	117	31.5
Rather insufficient	124	33.3
Neutral	22	5.9
Quite sufficient	6	1.6
Fully sufficient	0	0.0
Don't know/ no response	103	27.7
Total	372	100.0

Based on your own experience, would you recommend others to purchase a timeshare or long-term holiday product?

Options	Nº	%
Yes	5	1.3
No	315	84.7
Don't know/ no response	52	14.0
Total	372	100.0

Survey Analysis Tables

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Survey analysis tables by country

In which Member State do you reside?

Country	Nº	%
Finland	13	3.5
France	249	66.9
Netherlands	32	8.6
Sweden	24	6.5
Others	54	14.5
Total	372	100.0

Did you receive your full contract in a language that you understand (i.e. your country of nationality or residence according to your choice)?

	All	Finland	France	Netherlands	Sweden	Others
Yes	80.1	84.6	83.9	84.4	66.7	64.8
No	9.1	7.7	9.2	9.4	4.2	11.1
Not applicable	4.8	7.7	4.4	3.1	12.5	3.7
No response	5.9	0.0	2.4	3.1	16.7	20.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

To what extent do you believe you were sufficiently informed about the contract's terms and conditions?

	All	Finland	France	Netherlands	Sweden	Others
Not well-informed at all	40.9	15.4	44.2	46.9	29.2	33.3
Not very well-informed	32.3	61.5	31.3	37.5	29.2	27.8
Neutral	14.5	15.4	14.5	9.4	20.8	14.8
Quite well-informed	5.6	7.7	6.0	3.1	8.3	3.7
Very well-informed	1.3	0.0	1.2	3.1	4.2	0.0
No response	5.4	0.0	2.8	0.0	8.3	20.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

Do you believe that the information regarding the contract terms and conditions was clear enough, as regards:

	Not clear enough					
	All	Finland	France	Netherlands	Sweden	Others
The right of withdrawal (cooling off period)	57.0	76.9	51.4	81.3	66.7	59.3
Ban on advance payments during withdrawal period(s)	52.2	53.8	49.4	68.8	62.5	50.0
Conditions for exchange	48.4	61.5	50.2	59.4	41.7	33.3
Conditions for subsequent selling of your timeshare/ holiday club membership:	72.3	69.2	76.7	65.6	54.2	64.8
Payment procedure for holiday club member ship and the right to terminate it every year	55.9	69.2	54.6	68.8	66.7	46.3
Conditions for terminating timeshare contract	73.1	69.2	74.7	71.9	70.8	68.5
Fees associated with contract	69.4	61.5	70.7	68.8	62.5	68.5

Survey Analysis Tables

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termination						
Management and maintenance fees	59.7	23.1	67.5	56.3	33.3	46.3
Procedures for lodging a complaint and complaint handling by the trader	63.2	69.2	62.2	68.8	66.7	61.1
Options available to you for seeking out-of court dispute settlement if your complaint cannot be solved	64.8	69.2	64.3	65.6	70.8	63.0
Traders' code(s) of conduct	61.0	53.8	62.2	62.5	66.7	53.7

Please tell us more about the problems you have encountered (*multi-response possible*)

	All	Finland	France	Netherlands	Sweden	Others
You could not exercise your right of withdrawal as provided for in the Timeshare Directive	27.7	46.2	23.7	31.3	45.8	31.5
You were asked to make payments or block money on your account before the expiration of the withdrawal period of 14 days from conclusion of the contract (advance payments)	25.3	46.2	17.7	37.5	58.3	33.3
You were unable to take full advantage of the benefits of the exchange scheme as described by the trader	53.2	38.5	58.2	65.6	29.2	37.0
You had to pay more to obtain a service that you thought was included in the price	23.4	30.8	22.1	34.4	16.7	24.1
You were required to pay ever increasing maintenance or service fees for no objective reason specified in the contract	62.4	30.8	71.5	53.1	16.7	53.7
Your payment for holiday club membership was not in equal annual instalments	4.6	0.0	3.6	6.3	12.5	5.6
You were not allowed to terminate your holiday club membership upon receiving request for paying next annual instalment	19.4	7.7	17.3	46.9	8.3	20.4
You were/ are still required to pay fees resulting from ancillary contracts (e.g. credit contract) after withdrawal from the timeshare/ holiday club contract?	12.9	0.0	10.4	25.0	16.7	18.5

Survey Analysis Tables

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To what extent do you believe that consumers today are well enough informed to make choices when purchasing a timeshare or long-term holiday product, timeshare exchange or resale services offered by traders?

	All	Finland	France	Netherlands	Sweden	Others
Not well-informed at all	45.4	15.4	55.8	18.8	25.0	29.6
Not very well-informed	27.2	76.9	22.5	28.1	54.2	24.1
Neutral	5.1	7.7	3.2	12.5	0.0	11.1
Quite well-informed	3.5	0.0	2.8	15.6	0.0	1.9
Very well-informed	0.0	0.0	0.0	0.0	0.0	0.0
Don't know/ no response	18.8	0.0	15.7	25.0	20.8	33.3
Total	100.0	100.0	100.0	100.0	100.0	100.0

To what extent do you think that consumers today are aware of commercial malpractices in the timeshare and holiday club industry?

	All	Finland	France	Netherlands	Sweden	Others
Not aware at all	33.1	7.7	39.4	25.0	12.5	24.1
Not very aware	35.5	61.5	35.3	18.8	58.3	29.6
Neutral	4.0	15.4	2.0	15.6	8.3	1.9
Quite well-aware	8.3	0.0	8.4	15.6	0.0	9.3
Very well-aware	1.3	0.0	1.2	3.1	0.0	1.9
Don't know/ no response	17.7	15.4	13.7	21.9	20.8	33.3
Total	100.0	100.0	100.0	100.0	100.0	100.0

Do you believe that the 2008 Timeshare Directive provides sufficient protection to consumers?

	All	Finland	France	Netherlands	Sweden	Others
Not enough at all	31.5	38.5	32.1	28.1	33.3	27.8
Rather insufficient	33.3	30.8	39.8	6.3	29.2	22.2
Neutral	5.9	0.0	5.6	15.6	4.2	3.7
Quite sufficient	1.6	0.0	1.6	0.0	0.0	3.7
Fully sufficient	0.0	0.0	0.0	0.0	0.0	0.0
Don't know/ no response	27.7	30.8	20.9	50.0	33.3	42.6
Total	100.0	100.0	100.0	100.0	100.0	100.0

Based on your own experience, would you recommend others to purchase a timeshare or long-term holiday product?

	All	Finland	France	Netherlands	Sweden	Others
Yes	1.3	0.0	0.8	0.0	8.3	1.9
No	84.7	92.3	88.0	87.5	75.0	70.4
Don't know/ no response	14.0	7.7	11.2	12.5	16.7	27.8
Total	100.0	100.0	100.0	100.0	100.0	100.0

Transposition Table

C

The table below highlights differences in the way EU Member States have transposed the Timeshare Directive (e.g. differences in the interpretation of the Directive's terminology or in terms of the content of the provisions). The information presented below was obtained from the EU consumer law compendium website and the Pilot letters sent by the European Commission to 16 Member State authorities in the course of 2013.

MS	National legislation	Comments on transposition of Directive 2008/122/EC
AT	Timeshare Act 2011	<ul style="list-style-type: none"> • Timeshare Contracts definition: Austrian law does not refer to “overnight accommodation “ but to the usage of immovable property notwithstanding whether this is based on a contractual right or a right in rem and notwithstanding the legal form of the contractual partner • Long-term holiday product definition: difference in terminology: Austrian Act refers to discount schemes • Resale Contracts definition: difference in terminology: Austrian Act refers to brokerage contract • Exchange System Contracts definition: difference in terminology: Austrian Act refers to Exchange Contracts only • Trader definition: difference in terminology: Austrian Act refers to entrepreneur • Durable Medium definition: no specific transposition • Code of Conduct & Code Owner definitions: no specific transposition • Art. 7 on modalities for exercising right of withdrawal: consumer can send note attached to contract making clear that the contract should be withdrawn from • Art. 8 (Termination of contract after right of withdrawal has been exercised) not transposed specifically • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically • Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically • Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically
BE	Timeshare Act of 28 August 2011	<ul style="list-style-type: none"> • Code of Conduct definition: no specific transposition • Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically • Art. 15 (MS to impose effective, proportionate and dissuasive penalties) not transposed specifically
BG	Law on Consumer Protection (Art. 149-161n)	
CY	Timeshare Act 34/2011	
CZ	Civil Code Art. 58, 62, 64	<ul style="list-style-type: none"> • Art. 1.2.1 (scope: B2C transactions) not transposed specifically • Art. 1.2.2 (legal scope) not transposed specifically

Transposition Table

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		<ul style="list-style-type: none"> • Trader definition: no specific transposition • Ancillary contract definition: no specific transposition • Durable Medium definition: no specific transposition • Code of Conduct definition: no specific transposition • Art. 3.2 (informing the consumer of commercial purpose and nature of the event at sales event) not transposed specifically • Art. 3.4 (prohibition to sell timeshares or long-term holiday products as investments) not transposed specifically • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically • Art. 12.1 (Binding nature of the provisions regarding consumer rights) not transposed specifically • Art. 12.2 (Protection of the consumers wherever immovable property or holiday product is within EU) not transposed specifically • Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically • Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically • Art. 15 (MS to impose effective, proportionate and dissuasive penalties) not transposed specifically
DK	Timeshare Act	<ul style="list-style-type: none"> • Trader definition: no specific transposition • Consumer definition: no specific transposition • Code of Conduct & Code Owner definitions: no specific transposition • Art. 4 (sufficient and accurate information to be provided in good time) not specifically transposed • Art. 5.2 (any agreed or unforeseeable changes to the information should be communicated on paper or another durable medium even if all due care had been exercised) not specifically transposed • Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically • Art. 15: Danish law only provides for a partial application of penalties (only in case of gross and repeated infringements)
EE	Law of Obligations Act (§379, 380)	<ul style="list-style-type: none"> • Art. 1.1 (purpose) not transposed specifically • Art. 1.2.2 (legal scope) not transposed specifically • Exchange contract definition different from Directive's. Estonian law does not specify that a consumers can join an exchange scheme in exchange for the granting to other persons temporary access to the benefits or the rights deriving from their timeshare contract • Trader definition: no specific transposition • Durable medium definition: no specific transposition • Ancillary contract definition: no specific transposition • Code of Conduct & Code Owner definitions: no specific transposition • Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically

Transposition Table

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		<ul style="list-style-type: none"> • Art. 15 (MS to impose effective, proportionate and dissuasive penalties) not transposed specifically
FI	Consumer Protection Act 38/1978 (Chapter 10)	<ul style="list-style-type: none"> • Art. 1.1 (purpose) not transposed specifically • Art. 1.2.2 (legal scope) not transposed specifically • Trader and consumer definition: No specific terminology; general terms “trader” and “consumer” apply in Finnish legislation • Code of Conduct definition: no specific transposition • Sanction imposed on a trader failing to comply with information requirements on expiry of the withdrawal period is an injunction • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically
FR	Consumer Code Art. 121	<ul style="list-style-type: none"> • Art. 1.1 (purpose) not transposed specifically • Trader definition: no specific transposition • Ancillary contract definition: no specific transposition • Durable Medium definition: no specific transposition • Code of Conduct definition: no specific transposition • Art. 6.3. Second sentence (Sanctions imposed on traders if they fail to comply with information requirements on expiry of the withdrawal period) not transposed specifically • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically • Art. 12.1 (Binding nature of the provisions regarding consumer rights) not transposed specifically • Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically
DE	Civil Code (§358, 481, 482, 483, 484, 485, 486)	<ul style="list-style-type: none"> • Art. 1.1 (purpose) not transposed specifically • Art. 1.2.1 (scope: B2C transactions) not transposed specifically • Ancillary contract definition: no specific transposition • Durable Medium definition: no specific transposition • Code of Conduct definition: no specific transposition • Art. 5.2 (information referred to in Art 4.1 forms an integral part of the contract and any agreed or unforeseeable changes to the information should be communicated on paper or another durable medium) not transposed specifically • Art. 6.3. Second sentence (Sanctions imposed on traders if they fail to comply with information requirements on expiry of the withdrawal period) not transposed specifically • Art. 7 (Modalities for consumers to exercise the right of withdrawal) not transposed specifically • Art. 8 (Termination of contract after right of withdrawal has been exercised) not transposed specifically • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically • Art. 12.1 (Binding nature of the provisions regarding consumer rights) not transposed specifically

Transposition Table

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		<ul style="list-style-type: none"> Art. 12.2 (Protection of the consumers wherever immovable property or holiday product is within EU) not transposed specifically Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically
EL	Timeshare Act	
HU	Decree 141/2011 (VII 21) of the hotel and timeshare, long-term holiday product contracts and long-term accommodation service user activity	
IE	European Union (Protection of Consumers in respect of Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations 2011	<ul style="list-style-type: none"> Art. 1.2.2 (legal scope) not transposed specifically Difference in interpretation for Art. 10.2 (termination of contract from the second instalment onwards): Irish legislation states that contracts can be terminated after the second instalment has been paid Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically
IT	Consumer Code (Art. 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 81bis)	<ul style="list-style-type: none"> Art. 1.2.2 (legal scope) not transposed specifically
LV	Consumer Rights Protection Law (Art. 2, 11, 32)	<ul style="list-style-type: none"> Art. 1.1 (purpose) not transposed specifically Art. 1.2.2 (legal scope) not transposed specifically Ancillary contract definition: Latvian legislation refers only to a contract between a service provider and a third party

Transposition Table

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	Cabinet Regulation No 136 (lit. 4, 5, 7, 8, 9, 11, 13, 20, 23, 26)	<p>whereas the Directive specifies it is a contract provided to the consumer by a service provider or a third party based on an arrangement between that service provider and that third party</p> <ul style="list-style-type: none"> • Code of Conduct definition: no specific transposition • Art 4.3: Latvian legislation does not refer to the choice of the consumer regarding the language for the pre-contractual information • Art. 5.1.b (obligation for trader to provide a certified translation of a timeshare contract) not transposed specifically • Art. 6.3. Second sentence (Sanctions imposed on traders if they fail to comply with information requirements on expiry of the withdrawal period) not transposed specifically • Art. 12.1 (Binding nature of the provisions regarding consumer rights) not transposed specifically • Art. 12.2 First sentence (Protection of the consumers wherever immovable property is within EU) not transposed specifically • Art. 15 (MS to impose effective, proportionate and dissuasive penalties) not transposed specifically
LT	Civil Code (Art. 6.369, 6.370)	<ul style="list-style-type: none"> • Art. 1.1 (purpose) not transposed specifically • Art. 1.2.2 (legal scope) not transposed specifically • Ancillary contract definition: no specific transposition • Durable Medium definition: no specific transposition • Code of Conduct definition: no specific transposition • Art. 5.1.b (obligation for trader to provide a certified translation of a timeshare contract) not transposed specifically • Art. 5.5 (obligation for trader to provide at least one copy of the contract to the consumer) not transposed specifically • Art. 6.3. Second sentence (Sanctions imposed on traders if they fail to comply with information requirements on expiry of the withdrawal period) not transposed specifically • Art. 6.4 (withdrawal period starting upon receipt by consumer of 'withdrawal form' within one year of contract conclusion and upon receipt of contract information in Art. 4(1) within 3 months of contract conclusion) not transposed specifically • Art. 10.1 (Payment for long-term holiday products to be made according to a staggered payment schedule) not transposed specifically • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically • Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically • Art. 15 (MS to impose effective, proportionate and dissuasive penalties) not transposed specifically • Part 2 in Annex III (Resale contracts): Lithuanian legislation states that advance payments are prohibited during the withdrawal period whilst the Directive specifies that advance payments are prohibited until an actual sale has taken place or a resale contract is terminated.

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LU	Consumer Code Art. L.223	<ul style="list-style-type: none"> Art. 1.1 (purpose) not transposed specifically Art. 12.1 (Binding nature of the provisions regarding consumer rights) not transposed specifically
MT	Protection of Consumers (Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations, 2011	<ul style="list-style-type: none"> Code of Conduct & Code Owner definitions: no specific transposition Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically
NL	Civil Code Book 7 Art. 50 Consumer Protection Enforcement Act (Art. 2.2 Penalties)	<ul style="list-style-type: none"> Art. 1.1 (purpose) not transposed specifically Art. 1.2.2 (legal scope) not transposed specifically Art. 5.1.b (obligation for trader to provide a certified translation of a timeshare contract) not transposed specifically Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically
PL	The Timeshare Act of 16 September 2011	<ul style="list-style-type: none"> In relation to Art. 1.2.2: The Act provides rules on consumer protection, introduces specific obligations of contracted parties -trader and consumer and legal effects of withdrawing a contract. Definition of Long-Term Holiday product: Polish legislation specifies that a contract, in which the main subject is not providing consumers discounts or other benefits on accommodation. Is not considered as a long term holiday product contract. Code Owner definition: no specific transposition Art. 5.1.b (obligation for trader to provide a certified translation of a timeshare contract) not transposed specifically Art. 9.2: Authority can impose penalty fines or restriction of freedom on traders taking advance payments during withdrawal period Art. 13 (MS to ensure judicial and administrative redress) not transposed specifically. However, consumer protection entities in Poland can impose adequate sanctions in case of violation of the law. Art. 15 (MS to impose effective, proportionate and dissuasive penalties): Polish legislation does not specify in detail the applicable penalties
PT	Law Decree 37/2011 of 10	<ul style="list-style-type: none"> Art. 3.3 (Obligation of the trader to make specific information available during commercial events) not specifically transposed

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	March 2011	<ul style="list-style-type: none"> Art. 5.2 (information referred to in Art 4.1 forms an integral part of the contract and any agreed or unforeseeable changes to the information should be communicated on paper or another durable medium) not transposed specifically Art. 6 (right of withdrawal): Directive states that the right of withdrawal is extended to 3 months and 14 days if the trader fails to provide contractual information on the day the contract is concluded. Portuguese legislation extends the right of withdrawal to 94 days in such cases. Art 9.2 (Obligation of the Member States to ensure the prohibition of advance payments for resale contracts): Unlike in the Directive, Portuguese legislation does not specify that advance payments are prohibited until an actual sale has taken place or a resale contract is terminated. Annexes I to IV (standard pre-contract information forms) not transposed specifically
RO	Emergency Government Ordinance no. 14 of 16 February 2011 on the protection of consumers in respect of certain aspects of timeshare, long term holiday product, resale and exchange contracts	<ul style="list-style-type: none"> Art. 7 on modalities for exercising right of withdrawal: Under Romanian legislation, consumers must employ means to ensure that transmission of notification of withdrawal is acknowledged Difference in interpretation for Art. 10.2 (termination of contract from the second instalment onwards): Irish legislation states that contracts can be terminated after the second instalment has been paid
SK	Timeshare Act of 17 May 2011	<ul style="list-style-type: none"> Narrower definition of consumer: under Slovak legislation, it appears that consumers acquiring services for purposes other than personal or household use are excluded (Directive defines consumers as persons acting for purposes which are outside their trade, business, craft or profession) Art. 9.2: Whilst the Directive prohibits advance payments until an actual sale has taken place or a resale contract is terminated, Slovak legislation can be interpreted as prohibiting advance payments until performance of the resale starts, thus without being necessarily completed. Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically Art. 12.1 (Binding nature of the provisions regarding consumer rights) not transposed specifically
SI	Consumer Protection Act	<ul style="list-style-type: none"> Art. 1.1 (purpose) not transposed specifically Art. 1.2.2 (legal scope) not transposed specifically

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	Art. 1(1,16), 60	<ul style="list-style-type: none"> • Definition of Timeshare Contracts and Long-Term Holiday product corresponds to the text of 2008/122/EC with the addition that for the calculation of the contract, any provision regarding prolongation is to be taken into account. • Trader definition: In Slovenian legislation, this includes any person acting on behalf of a business • Code of Conduct definition: no specific transposition • Language requirements: if a consumer is a resident in a Member State other than Slovenia, he is entitled to demand the contract in the official language of that Member State • Fine imposed on traders if they fail to comply with information requirements on expiry of the withdrawal period ranging from €3,000 to €40,000 • Art. 7 on modalities for exercising right of withdrawal: consumer can send separate note for withdrawal without having to explain why • Art. 9.2: Authority ensures the prohibition of advance payments only for long-term holiday products • Difference in interpretation for Art. 10.2 (termination of contract from the second instalment onwards): Irish legislation states that contracts can be terminated after the second instalment has been paid • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically
ES	Act No 8/2012 on Timeshare Contracts	
SE	Timeshare Contracts Act (2011:914)	<ul style="list-style-type: none"> • Art. 1.1 (purpose) not transposed • Ancillary contract definition: no specific transposition • Durable Medium definition: no specific transposition • Code of Conduct definition: no specific transposition • Art. 5.1.b (obligation for trader to provide a certified translation of a timeshare contract) not transposed specifically • No sanctions imposed on traders if they fail to comply with information requirements on expiry of the withdrawal period. However, if no copy of the agreement is provided to the consumer, the withdrawal period remains without limitation • Art. 11.3 (MS to stipulate the details regarding the termination of ancillary contracts) not transposed specifically • Art. 14 (MS to promote consumer information and out-of-court redress mechanisms) not transposed specifically • Annexes I to V (standard pre-contract information and withdrawal forms) not transposed specifically
UK	The Timeshare (Amendment) Regulations 2011	<ul style="list-style-type: none"> • Code of Conduct & Code Owner definitions: no specific transposition • Durable medium definition: no specific transposition. British legislation uses the concepts of 'written notice' and 'in writing'

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The country fiches summarise the information gathered from desk research, interviews and survey responses.

Austria
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> The Directive 2008/122/EC was transposed into Austrian legislation through the Timeshare Act 2011 (Teilzeitnutzungsgesetz 2011) The Timeshare Act however presents a number of specificities in that some of the Directive's definitions have been interpreted differently (e.g. the Act refers to discount schemes instead of LTHP; Brokerage Contracts instead of Resale Contracts; Exchange Contracts instead of Exchange System Contracts; Entrepreneur instead of Trader).
Institutional set-up
<ul style="list-style-type: none"> The institution in charge is the Federal Ministry of Labour, Social Affairs and Consumer Protection
Enforcement issues
<ul style="list-style-type: none"> No enforcement issues have been reported
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> In Austria, the new Directive is regarded as protecting the consumers from dubious offers where advance payments are required before the sale is effectively concluded. Besides these severe cases, the Directive has also lead to more proportionate fees and commissions in relation to the acquisition of timeshares.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> As explained in a document issued by the justice department, the law would not have any financial implications on companies in Austria. http://www.justiz.gv.at/web2013/file/2c94848525f84a63012c5967c70624a5.de.0/tng%202011%20-%20ministerialentwurf%20-%20erläuterungen.pdf
Conclusions
<ul style="list-style-type: none"> The Situation in Austria is similar to the one in Germany since citizens are consumers of Timeshare and related products. In this way the Timeshare Directive is considered to be a positive development to strengthen consumer rights.

Belgium
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> Loi du 28 AOUT 2011 relative à la protection des consommateurs en matière de contrats d'utilisation de biens à temps partagé, de produits de vacances à long terme, de revente et d'échange Loi du 13 AOUT 2011 modifiant la loi du 11 avril 1999 relative à l'action en cessation des infractions à la loi relative aux contrats portant sur l'acquisition d'un droit d'utilisation d'immeubles à temps partagé
Institutional set-up

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<ul style="list-style-type: none"> • The FOD Economy, Algemene Directie controle en Bemiddeling ('economic inspection') is the main enforcement authority. • Investigation lies with the judiciary power (depending on the subject of the infringement, on claim of those with an interest, the 'economic inspection', an (inter)professional association with legal entity, or a consumer defending association under certain conditions, • Civil sanctions for non-applicability of certain contractual clauses infringing the law; action for injunction, classic sanctions such as compensation of damages in case they occur. • Penal sanctions for those traders who do not respect the conclusion of the action for injunction
Enforcement issues
<ul style="list-style-type: none"> • No major enforcement issues have been reported. • Breach of contracts usually happens in old contracts, when the consumer refuses to pay annual maintenance charges and wants out of his timeshare. Stopping payments amounts to a breach of contractual obligations. However to those old contracts; the old legislation is still applicable. And the Directive does not really mention any rules concerning the right to cancel the contract anyway, so how could it have an influence on this kind of breaches?
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> • The Directive responds to the needs of consumers. The major shortcoming however relates to 'old' contracts (i.e. predating the Directive) which consumers are locked into • The Directive has had very little effect on 'old' contracts • On the other hand, we are aware of a circumvention of the directive by offering the
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • The Directive is quite effective in harmonizing commercial practices as far as conventional timeshare is concerned. • There are however a few issues around LTHPs: consumers being offered "4 weeks of holidays in a period of 2 years". The consumers sign a contract where they pay thousands of euros for the two weeks in the first year. They then get two vouchers for the second year. As such, it looks like they pay only for the 2 weeks in the first year and get free vouchers for the 2nd year. In reality, of course, they pay for the 4 weeks. • Another practice circumventing the Directive it is to offer a "discount card, valid for 1 year, giving you discounts in several hotels". • That is not a new type of fraud and exists since several years already. We have not seen new types of fraud, only circumventions of the new law by shortening the time limits. • Resale and reclaim services seem to be less present than a few years ago.
Conclusions
<ul style="list-style-type: none"> • In summary, the strong points of the Directive are the right of withdrawal, the prohibition on advanced payments, the larger scope compared to the 1994 directive, the obligation to provide information on these aspects at pre-contract stage, the fact that if a consumer cancels one agreement, the 'connected' or ancillary agreements are automatically cancelled as well. • The weak points are that the Directive does not mention any rules on the total duration of a timeshare contract, nor does it set out possibilities for contract termination. As such, consumers (and their heirs) are still at risk of being contractually bound 'for eternity'. • The possibility of 'partial payments' provided in Art. 10 should be extended towards all products in the sector, not just LTHP. The same goes for the possibility of the annual

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termination for LTHP. Another weak point is the lack of control and enforcement in the more popular timeshare-countries.

Bulgaria	
Legislation transposing 2008/122/EC	
<ul style="list-style-type: none"> The Directive was transposed in the Law on Consumer Protection (Art. 149-161n) 	
Institutional set-up	
<ul style="list-style-type: none"> The Commission for Protection of Competition and the Commission for Consumer Protection are the main enforcement body in Bulgaria. The ECC in Bulgaria is able to provide assistance in solving predominantly cross-border issues whereby the consequences for consumers are much greater. They provide advice and assistance in solving various individual problems of people who have consumer complaints. In addition to that, Bulgaria has established itself as a country willing to support alternative dispute resolution. The institutional framework consists of two independent bodies- Conciliation Committees and Conciliation Committees for Transaction Disputes to the Commission for Consumer Protection. 	
Enforcement issues	
<ul style="list-style-type: none"> No issues were reported 	
Effects of the Timeshare Directive on consumer protection	
<ul style="list-style-type: none"> While Bulgaria is fully compliant with its obligations in transposing the Directive into domestic law, the practical effect cannot be evaluated, considering the fact that timeshare, timeshare-like products and other long-term holiday product contracts are not widespread in Bulgaria. 	
Effects of the Timeshare Directive on business activity	
<ul style="list-style-type: none"> Same as above 	
Conclusions	
<ul style="list-style-type: none"> The Directive was fully transposed in Bulgaria, however the fact that there is not a market for timeshare in Bulgaria and that there are almost no Bulgarian owners of timeshare abroad means that authorities have very little experience of dealing with timeshare cases. 	

Croatia	
Legislation transposing 2008/122/EC	
<ul style="list-style-type: none"> The Directive 2008/122/EC has been fully transposed into Croatian national legislation, particularly in the Consumer Protection Act. All timeshare contracts must be concluded in written form, on paper or other durable medium, such rule is provided in Article 96 Paragraph 1 of the Consumer Protection Act Registration of timeshare ownership – if the timeshare contract concerns real-estate, title deed is the land registration. If timeshare contract concerns movables which have to be registered, title deed is such registration. Consequences of not having to fulfill the registration formalities – if a third person acting in goodwill purchases the real estate for which the timeshare contract was signed, and the timeshare is not registered in the land registry, the person entitled to timeshare cannot oppose to the right of that third person. The same rule applies in case of 	

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<p>movables which have their own registry. These rules are not set out in the Consumer Protection Act, but derive from general rules for the real estate market.</p> <ul style="list-style-type: none"> Provisions and procedures governing possible unilateral termination of timeshare contract by the consumer – Article 100 and 101 of the Consumer Protection Act (Official Gazette No 41/2014). Management of timeshare properties; in particular fixing maintenance payments – should be regulated within the Timeshare standard information form, according to the Ordinance on the content and form of notification of the timeshare (Official Gazette No 134/2012).
Institutional set-up
<ul style="list-style-type: none"> The institution in charge of enforcing the Directive in Croatia is the Ministry of Economy, as the Ministry in charge for consumer protection. The sanctions provided in the Consumer Protection Act are administrative and applied by the Economic Inspection Directorate. However, they can be also civil sanctions (civil procedure due to the non-compliance with certain contractual obligations) or even criminal (if the plaintiff provides evidence of the fraudulent behaviour of the accused).
Enforcement issues
<ul style="list-style-type: none"> No enforcement issues to report due to the fact that timeshare in Croatia is practically non-existent. No timeshare-related complaints have been recorded in Croatia.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> Croatian consumers have no experience of timeshare. No complaints have been recorded. Croatia only joined the EU in 2013. No such legal dispositions on timeshare were in place prior to 2013.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> Despite a growing tourism industry, there is no market for timeshares in Croatia. This market may develop in future, in which case the Directive would be fully relevant.
Conclusions
<ul style="list-style-type: none"> No timeshare related complaints have been recorded in Croatia. Croatian consumers are not familiar with timeshare holidays and there is no domestic market either. There is no legal practice on timeshare in Croatia. The New Act on Consumer Protection however covers timeshare and this market may develop in the coming years.

Cyprus

Legislation transposing 2008/122/EC

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<ul style="list-style-type: none"> • The Directive was transposed in 2011 (18/3/2011) with the introduction of Law 34 (I)/2011. • There were no issues/difficulties indicated. The law is a direct transposition of the provisions of the Directive without any changes/additions. • The transposition of the legislation with the introduction of law 34 (I)/2011 replaced legislation developed during the period 2001 to 2007 governing timeshare contracts. In addition to Law 34/2011 the Civil law is generally applicable.
Institutional set-up
<ul style="list-style-type: none"> • The Ministry of Energy, Commerce, Industry and Tourism- Competition and Consumer protection Service is responsible for the enforcement of the Directive with a specific body of inspectors responsible for conducting controls of providers of timeshare products and services. <p>Sanctions imposed are only administrative including.</p> <ul style="list-style-type: none"> • Fines of up to €50,000 for a person that does not assist the authorities or obstruct any investigation. • Penalties of up to 5% of the annual turnover of the firm that is found not to comply with the provisions of the law in relation to guilty plus additional €85-1700 for every additional day of non-compliance
Enforcement issues
<ul style="list-style-type: none"> • No issues mentioned in relation to enforcement since there is very limited activity, and there has not been any proper enforcement of the law so far.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> • The number of complaints is still very limited. The European Consumer Centre – as recipient of cross border complaints - reported 7 complaints in total in 2011, 7 in 2012 and 4 in 2013. • However, in total, only less than half of the complaints (9/18) were related to timeshare products, the others concerned discount clubs. • The Ministry organised an initially promotion campaign through the press. However, due to the limited interest, no additional actions have been taken since.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • The enforcement authority made reference to new contracts lasting less than 1 year designed so that they are not covered by the Directive and where no protection is offered. • However, according to the Cypriot European Consumer Centre, no trading activities circumventing the Directive or products not covered by the Directive have emerged. • There is also no evidence of the emergence of new types of fraud, based on the complaints handled so far.
Conclusions
<ul style="list-style-type: none"> • Based on the type/nature and outcome of complaints on timeshare investigated by ECC Cyprus so far, their opinion is that the Directive is well suited to the realities of the market today. • The same views were expressed by the enforcement authority despite highlighting their limited experience due to the very limited use of timeshare products in Cyprus. • Thus, any opinion on the relevance, added value and effectiveness of the Directive is considered premature. • It was also stated that up to 2011 complaints usually concerning marketing practices and pressure for signing of contracts, aspects not addressed by the Directive. • The Cypriot enforcement authority considers that the Timeshare is complementary to other consumer law instruments without any risks of overlaps and intends to try to use them in combination. However it is not possible to identify issues due to limited experience so far.

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Czech Republic
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> The Directive was transposed by the act of Act 28 /2011, which came into force on 28 February 2011 No difficulties with transposition were reported. Some of the Directive's requirements already present in national legislation prior to its full transposition, mainly in the civil code, consumer protection act, act on regulation of advertisement, some governmental regulations. However there was no act which would fully tackle the timeshare issue. There is no other pertinent legislation, in particular regulating the form of timeshare rights; management of timeshare properties in Czech Republic.
Institutional set-up
<ul style="list-style-type: none"> The Czech Trade Inspection Authority is in charge of enforcing the Timeshare Directive. However, in respect to advertising the relevant institution in charge is the Czech Radio Authority. Sanctions in cases of infringement of the legislation transposing the Timeshare Directive are of an administrative nature. The sanction takes a form of a financial fine up to 2 million CZK. The Czech Trade Inspection Authority was a new institution created in order to fulfill the requirements of the Timeshare Directive. There is not much cooperation between different public authorities in Czech Republic as all of the very few cases are fully dealt with within the Czech Trade Inspection Authority. There has been no cross-border cooperation issues as all complains concerned the Czech companies.
Enforcement issues
<ul style="list-style-type: none"> It is difficult to describe the level and trend in consumers complains before and after transposition of the Directive. It is because the Czech Trade Inspectorate is a new institution and do not have any data regarding the timeshare issues before the implementation of the directive. Furthermore, in Czech Republic the timeshare is not a big issue. In three years since the implementation of the Timeshare Directive there were only 14 complains. There have been some awareness-raising efforts have been undertaken to inform consumers of their rights under the EU Timeshare Directive. ECC published detailed information on its website. There is no evidence that are consumers are more aware of the risks associated with buying timeshare or long-term holiday products since the implementation of the Directive.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> There is no evidence on the effect of the Directive on the timeshare, LTHP. And Exchange and Resale business in Czech Republic. Is it because there are neither timeshare companies nor properties in Czech Republic. However, since the implementation of the Timeshare Directive new practices have arisen. There is one company which secretly offers a timeshare. The company looks and acts like a travel company. It organises presentations during which it offers a 'pre-contract'. The company offers customers to go for 'trial' holidays and after that to decide whether they would like to join. There is a payment in advance for the trial, however what is problematic is that the payment is <i>de facto</i> payment for the timeshare. Practices as the one described above are not adequately addressed by the existing EU law

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<p>(UCPD/ UCTD) or existing national (contract) law.</p> <ul style="list-style-type: none"> There is no data on the efficiency of the legislation transposing Timeshare Directive in Czech Republic in preventing rogue traders from doing business and there have been no change in the image of the legitimate timeshare/LTHP/ Exchange/ resale industry.
Conclusions
<ul style="list-style-type: none"> It is difficult to assess to what extent the Directive is relevant to the needs of consumers and businesses in the Czech Republic as consumer awareness of timeshare issues is limited. It is difficult to assess how effective the Directive is in enhancing consumer protection and facilitating cross-border trade as there is no industry in the Czech Republic. The Directive had an effect the efficiency of enforcement activities in Czech Republic by enabling public authorities to enforce the administrative sanctions. The Directive helped regulate the timeshare sector and provide the basis for enforcement of administrative sanctions by The Czech Trade Inspection Authority. Additionally, the Timeshare Directive works well with the country's regulations and fills the gap in legal system by providing coherent regulations regarding the timeshare.

Denmark
<p>Legislation transposing 2008/122/EC</p> <ul style="list-style-type: none"> The Directive was transposed in 2011 by '<i>Lov nr 102 af 15/02/2011 om forbrugeraftaler om brugsret til logi på timesharebasis, længerevarende ferieprodukter m.v.</i>' (Law on Consumer contracts on the use of timeshare accommodation, long-term holiday products etc.). As far as we are aware there were no difficulties with the transposition. It is not clear what the legislative basis was before the previous version of the Timeshare Directive (94/47/EC) was already transposed into Danish legislation by Law no. 234 of 02/04/1997. Were the Directive's requirements already present in national legislation prior to its full transposition? The Unfair Commercial Practices Directive (UCPD) and the Danish Law on Contracts (Aftaleloven) could be relevant in regulating consumer rights in relation to timeshare and other holiday products..
<p>Institutional set-up</p> <ul style="list-style-type: none"> The Office of the Consumer Ombudsman (http://www.consumerombudsman.dk/) is the <u>enforcing authority</u>. So far, however, the Ombudsman has not received any cases relating to the Timeshare Directive. If cases of infringement were to be brought before the Consumer Ombudsman, the sanction could be a fine, unless other relevant legislation would require stricter sanctions. Companies (legal persons) can be sanctioned according to the Criminal Code. Up till now, however, no sanctions have been applied in accordance with the current Danish law, as far as the ECC knows. The ECC was not aware of any particular cooperation between the Consumer Ombudsman, the Courts and the Police to do with timeshare and holiday products. There are no alternative dispute resolution mechanisms for matters regulated by the Timeshare Directive. There have been no cases in recent times, but it would appear that some 20 years ago, before the first EU Directive had been transposed into Danish law, there were a couple of cases to do with taxation and maintenance costs in relation to timeshares,

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Enforcement issues

- The ECC was not aware of any uncertainties deriving from the transposition of the EU Timeshare Directive into the national legislation of your Member State
- As mentioned above, there have not yet been any enforcement cases in Denmark in relation to the current Directive. If the contract has been signed abroad, which is typically the case, the consumer cannot sue in a Danish court unless this has been agreed between the parties or the trader is filing against the consumer.
- The ECC receives complaints and enquiries from Danish consumers about holiday products but they do not have any enforcement powers. Their role is to provide information to consumers, assist them in understanding their rights and how best to proceed with their complaint. The ECC regularly forward complaints to their network partners in other EU countries (especially Spain and Greece) to get the sister offices to intervene on behalf of the consumer. This entails contacting the holiday operators based in their country, but it is rare that anything concrete comes out of this, as the operators are extremely reluctant to collaborate.
- What has been successful in some cases, however, has been to advise consumers who feel that they have been treated unfairly to use their right to withdraw from the contract within the (extended) cooling-off period and to contact their banks who, by using international credit card rules, have been able to help them get their money back. This procedure has worked especially well in cases where the consumer was not informed (in writing) of their right to withdraw, thus extending the cooling-off period, in some cases up to one year and 14 days.

Effects of the Timeshare Directive on consumer protection

- The ECC has recently seen a marked increase in reported cases of unfair or aggressive practices from Danish consumers, especially in relation to long-term holiday products. After the latest Timeshare Directive was adopted things seemed to have calmed down and until about a year ago there were not very many complaints. However, it is believed that after a while holiday operators find ways to counteract the legislation and it is thought that this has now happened. The proportion of resolved cases is relatively low given the reluctance of Spanish holiday operators to enter into a dialogue.
- What have been undertaken in your Member State to inform consumers of their rights under the EU Timeshare Directive and about out-of-court dispute resolution procedures?
- In terms of awareness-raising efforts, a television programme on one of the main Danish channels (DR1 'Kontant'), broadcast in autumn 2013, investigated holiday scams (<http://www.dr.dk/DR1/kontant/2013/11/25122649.htm>) after which the ECC received a lot of complaints.
- The ECC is currently in the process of developing a small film on timeshare and holiday products on their website and they have also covered the issue in their newsletter. There are also plans to try to get the long-standing citizen information TV programme 'OBS' to show the film about the issue. Furthermore, the ECC network is working together at the moment on making a joint awareness-raising campaign with a website portal that would assemble the relevant information to assist consumers.
- It is, nonetheless, difficult to say whether consumers are more aware of the possible risks than before. The various awareness-raising measures do not always reach the right people and even if consumers did see the television programme, they would not necessarily realise beforehand that they themselves could become victims.

Effects of the Timeshare Directive on business activity

- There are no reports of any business activity in the field of timeshare or LTHP in Denmark – the

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ECC has not received any complaints or enquiries about Danish-based holiday businesses.

- It is not known whether any new business practices might have developed in Denmark, but it is probably not likely. However, complaints about foreign-based operators appear to indicate that new practices aiming to counteract the Directive do develop regularly.
- The ECC found it difficult to say whether existing EU consumer law is able to catch any of the new products/ practices that emerge. Steps have certainly been taken to this effect, but it would appear that the operators are continuously a bit ahead of the legislation.

Conclusions

- The Directive is certainly relevant to the needs of consumers but it does not prevent them from being taken in by rogue traders, especially since these continue to adapt their practices to attempt to bypass the provisions of the Directive. It was specifically mentioned, though, that there are also many respectable operators in the industry and that some consumers are very happy with the holiday arrangements they have entered into.
- The Directive does appear to enhance consumer protection, especially at the point of entering into the contract, and there have been a number of examples of Danish consumers who have succeeded in cancelling their contracts within the cooling-off period (see above). Whereas timeshare and other holiday contracts were previously impossible to cancel, the contracts that are seen nowadays among Danish consumers are typically limited in length (somewhere between 1 year to 6 years)
- Given the lack of enforcement cases in Denmark, it is hard to judge the efficiency of the Directive in the enforcement field. However, a positive development has been the effect of banks collaborating with consumers in getting their money back within the cooling-off period.
- It was thought that there is some overlap with the UCP Directive, especially with regard to the aggressive methods used to sell the holiday products.
- In terms of added value, the level of consumer protection has been enhanced, but it is not apparent that there has been any effect on the consolidation of the Single Market in Denmark.

Estonia

Legislation transposing 2008/122/EC

- Directive 2008/122/EC was fully transposed into the Estonian Law of Obligations Act (sections 379-388). The Law of Obligations Act is available in English on the following webpage: <https://www.riigiteataja.ee/en/eli/505122013001/consolide>
- In the Estonian legal system, timeshare and related products are considered purely as a contractual relationship. Section 379, 3791 and 3792 of the Law of Obligations Act
- Since timeshare and related products are considered purely as a contractual relationship, no official state owned registry for timeshare ownership exists.
- The obligation to fix maintenance payments and inform the customer about them arises from points 8, 9, 11, 12 of subsection 1 of section 380 of the Law of Obligations Act, points 4, 6, 10 of subsection 11 of section 380 of the Law of Obligations Act

Institutional set-up

- The Consumer Protection Board of Estonia is a sub-office of Ministry of Economic Affairs and Communications and deals with consumer complaints, evaluation of standard terms, supervision of traders etc.

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<ul style="list-style-type: none"> Both administrative and criminal sanctions may be imposed in case unfair commercial practices are used by the trader. In addition, the Consumer Protection Board may institute court proceedings in case the unfair standard terms are used by the traders.
Enforcement issues
<ul style="list-style-type: none"> The Consumer Protection Board has not encountered any cases requiring cooperation between national consumer authorities. Some consumers have turned to the police in relation to fraud, but in such cases those complaints do not reach to Consumer protection Board. There haven't been any awareness campaigns in relation to timeshare in Estonia, but such campaign is expected since there has been an increase in such complaints. The Consumer Protection Board of Estonia handles consumer's complaints related to timeshare.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> The Timeshare Directive does not respond sufficiently to the protection needs of consumers; its content and characteristics for the regulation of timeshare and similar products are complex and hard to understand. So far all companies have agreed to settle consumer complaints after the complaint has been referred to the Consumer Protection Board for breaches of the law.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> There has not been a sharp increase in the supply of products not covered by the Directive in the Estonian market. However, the emergence of such products is suspected, thus, the Directive's definition may have to be reviewed. Trending practices at the moment: customers who have concluded timeshare contracts years ago are offered by traders the possibility of selling their old timeshare back to them and pay an extra fee for a new 'more valuable' timeshare. In addition, the trader promises to sell the old timeshare and transfer the profits from the sale to the customer. In reality, the new timeshare is valueless and the profits made from reselling the old timeshare are never transferred back to the customer.
Conclusions
<ul style="list-style-type: none"> The weak point of the Directive is that the differentiation of holiday products is complex. The strong point of the Directive is that the customers' rights in relation to pre-contractual information, withdrawal and prepayments are clearer. The Timeshare Directive has not really contributed to reducing the number of complaints according to the practice of Consumer Protection Board. In those cases, the Unfair Commercial Practices Directive and national laws have been more effective. The Timeshare Directive, the UCPD and UCTD work well together; there are no risks of duplication of enforcement efforts. The Directive's definitions should be reviewed to cover other holiday products designed to circumvent its provisions.

Finland
Legislation transposing 2008/122/EC and national regulatory regime
<ul style="list-style-type: none"> The Directive was transposed in 2011 by Law of 11.3.2011/227 to chapter 10 of the Consumer Protection Act. The changes came into force on 15.6.2011.

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<ul style="list-style-type: none"> As far as we understand, the transposition of the EU Timeshare Directive into Finnish legislation did not create any legal uncertainties.
Institutional set-up for enforcement and prosecution
<ul style="list-style-type: none"> The enforcing authority is the Finnish Competition and Consumer Authority who is also host to the European Consumer Centre. The authority was created in January 2013 as a merger between the Finnish Competition Authority and the Finnish Consumer Agency. They are also responsible for supervising the Consumer Ombudsman. As in other countries, the ECC in Finland only has an informative and advisory function for consumers but no enforcement powers. The possible sanctions for infringement of the legislation is typically negotiation/mediation and if that fails the issue of an injunction or a fine. Traders can oppose the injunction in the Market Court and get a conditional fine. There are no other possible consequences. The level of sanctions available in the system was said to be less than adequate. So far, the Consumer Ombudsman has not got involved in timeshare related issues, as the area is seen as being of minor importance to consumers. The Ombudsman service have an annual work programme determining what they should focus on depending on the number of consumers affected by a particular problem and on political priorities. There is no cooperation between Finnish consumer authorities and the police in relation to timeshare or other holiday products. Not only would a case need to have a value of at least €50,000, it should also be proved to involve fraud, which is very difficult to prove on the basis of misleading practices and unfair commercial terms. The vehicle for enforcement of cross-border infringement is the pan-European Consumer Protection Cooperation (CPC) network consisting of national authorities in the 28 Member States. The CPC cooperation in this field appears to have limited results and so far there have not been any court cases involving Finnish consumers.
Enforcement issues
<ul style="list-style-type: none"> In Finland, the bulk of enquiries and complaints received by the ECC relate to cross-border cases, mainly in Spain (the Islands) and to some extent in Greece. More recently there have been complaints concerning Thailand as well. Before 2000, problems in this field were mainly to do with national operators, but now all enquiries/complaints are cross-border related. Beforehand consumers were often targeted via marketing material, now they are lured into attending a meeting at a distant venue by young Finnish representatives who tell them they have won a prize they need to pick up. They are then submitted to a 3-4 hour sales pitch by the end of which they rarely know what they have agreed to. The ECC frequently shares cases with their network partners, especially in Spain, to get them to take the issue up with local operators. Over the past years, they have shared some 40 cases, but there are complications in getting Spanish traders to cooperate, and it requires a lot of investment by the Finnish ECC, not least since the documentation tends to be in Finnish. The Directive's requirement for contracts to be drafted in a language that the consumer understands causes its own problems. Not only does it make cross-border cooperation both within the ECC and the CPC networks more difficult, as all documentation has to be translated which is expensive and time consuming. It might also make consumers feel more confident about the trustworthiness of a product that they are being sold and let them think that they ought to understand the contract. If, for instance, they could say at a sales meeting that they needed some time to look at a contract in English before signing, there would be fewer problems.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> Whereas there were a lot of timeshare related cases in the period between 2000 and 2004

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(around 500 cases per year), in recent years Finnish consumers have not been particularly targeted. Since January 2013, there have been 143 cases.

- Consumers in the Nordic countries are used to very strong consumer authorities, so they expect the ECC to be able to help them and tell them what to do (more so than they are actually able to do within their powers).
- In cases where the Directive is directly applicable, it has had positive results in terms of enforcing consumers' right to withdraw and the ban on advance payment. But rogue traders continue to circumvent the rules and the complaints that are received in Finland often relate to situations that are not directly within the scope of the Directive. Contracts are often contained on CDs which are said to be accepted if the seal is broken, meaning that there is no right to withdraw (sellers are often opening the seal for them), or consumers would only have been informed of their rights orally which can then not be enforced.
- Resale does not appear to be a problem in Finland.
- There has been some cases of successful 'chargeback', whereby consumers have involved their banks in trying to claim back any 'unlawful' deposits paid by credit card. However, even in cases where this has worked, consumers have not always managed to withdraw from the contract and have subsequently received invoices for maintenance fees.
- In terms of awareness-raising, the ECC includes information about timeshare and holiday club scams on its website and they are involved with the rest of the ECC network in making a joint awareness-raising campaign with a website portal that would assemble all relevant information to assist consumers.
- In the past, the ECC has tried to work with Finnish holiday agents to get hotels to warn their guests about the potential problem - especially in the Canary Islands, but the information does not seem to reach people.

Effects of the Timeshare Directive on business activity

- There are very few Finnish businesses involved in the market for timeshare or long-term holiday products, so there are no real evidence of the Directive's effect on business activity on the national market.
- However, the Directive has not been very effective in preventing fraudsters from doing business and finding ways of circumventing the rules.
- It is not clear whether other EU consumer law is able to catch the new products and practices that emerge, many of which involve unfair and misleading commercial methods. All in all, the Directive appears to be coherent with other consumer law instruments, although there is some overlap with the UCP Directive.
- Because there is no guiding case law, it is a matter of contractual interpretation and interpretation of the Directive to determine how far the definitions of the Directive extend.
- Since there is no case law to assist in the interpretation of the Directive, it would be extremely useful if the Commission could develop a set of guidelines interpreting the legislation through the use of examples covering different situations and scenarios.

Conclusions

- The Timeshare Directive has improved consumer protection on traditional holiday products, and provided better possibilities for assisting consumers, but there is still plenty of scope for fraudulent business practices to evolve.
- To avoid that the rules are circumvented more active and efficient enforcement is needed and better supervision of the Spanish market in particular. As it stands, it is difficult for the consumer to provide sufficient proof, since a lot of information is given orally and contracts rarely allow to leave the meeting room before they are signed.

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- The efficiency of enforcement would clearly be improved if the consumer was able to sue fraudulent operators in his own country – introduction of specific rules concerning the choice of law would be beneficial.

France
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • In France, the Directive was adopted in 2009 through the Law 2009-888 of 22 July 2009 on the development and modernization of tourism services. The original legislation, law 86-18 of 6 January 1986 on SCIs was amended by the 2009 Law following the implementation of the 2008 EU Timeshare Directive. • The Law of 2009 creation of a right to exit (modifies Article 19-1 of the law of January 6, 1986): This right and the conditions for exercising it must now be clearly stated in the pre-contractual information and contracts • Additional provisions enshrined in the 2009 Law include the right to for all shareholders to obtain information about the identity of other shareholders (art. 13); limitation of the term of office of the Manager to 3 years renewable (Art. 5). • Legislation today states that any timeshare contract is equivalent to a 'contrat de jouissance' or contract of use, as opposed to a 'contrat de propriété' or real estate contract. • The 2009 Law resulted in a number of amendments to the Consumer Code. The provisions under the current Consumer Code (L121-60) cover all the pre-contract information requirements traders have to comply with in accordance with the 2008 Timeshare Directive. In other words, the French Consumer Code regulates all disclosure requirements before contracts are signed. • Further amendments are to come into effect in September 2014 with Law 2014-366 of March 24, 2014 – Alur Act; which will improve opportunities for exit i.e. out by a deed without going to court; people on low incomes will also have a right to exit. This Act allows consumers the right to exit when the resort becomes inaccessible • Under the current regime in France, an owner cannot terminate his or her timeshare contract without the unanimous consent of the owners' committee. This law is integrated into the code of consumption. Owner assemblies are managed by real estate companies in France. • The main problem is related to the termination of contracts. In some countries such as Spain and the United Kingdom, the owners are excluded when they stop paying. In France, in order to terminate a contract, the owner requires the unanimity of the owner assembly. • Up until recently, only civil courts were empowered to terminate a timeshare contract under certain circumstances in France, but this happened very seldom.
Institutional set-up
<ul style="list-style-type: none"> • The DGCCRF is the national enforcement authority and can carry out investigations. The DGCCRF acts as CPC and can impose sanctions on unlawful traders. • The ECC in France is responsible for informing consumers about their rights and helping them to make an initial complaint to the professional through its out-of-court settlement mechanism. • The French enforcement system makes a clear distinction between offences and the appropriate legislation that applies. Consumers that suffer detriment will take action under the Timeshare Directive and use the ADR (such as the one offered by the ECC; for more serious cases, enforcement authorities such as the DGCCRF will sanction the offenders using the most appropriate legislative instrument (e.g. UCPD, UCTD).
Enforcement issues
<ul style="list-style-type: none"> • There is almost no communication between the DGCCRF and the ECC as regards timeshare-

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<p>related complaints.</p> <ul style="list-style-type: none"> On cross-border complaints, ECC France communicates cases to the CPC (DGCCRF) in charge of notifying its counterparts abroad. However, the CPC does not inform ECC France of the outcomes of the investigations in relation to cross-border cases. The enforcement system is in this respect quite fragmented. The CPC network has been formally in place since 2009/2010. However, the Directive does not explicitly mention the CPC as the network in charge of enforcement as it precedes the CPC Regulation. All new SANCO Directives now refer to the CPC. For better enforcement, it might be a good idea to specify in the Timeshare Directive the responsibilities of the CPC as regards enforcement. ECC France is very active in terms of prevention. Every year before the summer break, ECC France issues a press release on malpractices in the timeshare sector. These are sometimes picked up by the press. CPC France has also launched similar awareness-raising campaigns. Furthermore, French timeshare consumer associations are very active in relation to enforcement (e.g. APAF-VTF and ADCSTP). They are in direct contact with French judicial authorities and have already successfully brought fraudulent traders to justice (Dricot case – Strategy Connection resale company)
<p>Effects of the Timeshare Directive on consumer protection</p> <ul style="list-style-type: none"> There are very few complaints against the French professionals. The enforcement and legislative systems in France is rather robust. There are almost no complaints in relation to actual sales. Complaints with respect to the resale have gone down substantially over the last 15 years. Most complaints recorded in France are against traders located in Spain or Greece, but also against traders performing sales outside the EU (traders in Morocco selling Spain-based LTHP, EU-registered companies selling timeshare outside the EU). It is in such circumstances difficult to ascertain whether the EU Directive is applicable. More generally, there is also uncertainty as to which national legislation should apply once contracts are concluded: for example, a company in Spain can have its headquarters in the United Kingdom and, as such, consumers do not know where to turn or what legislation applies. In France, timeshare has a very bad image amongst consumers. French consumers are in general very wary of commercial practices in the timeshare sector and are also very adverse to timeshare. In France in the 1990s, many television investigation programmes exposed scams and commercial malpractices in the timeshare sector. Since then, French consumers have been very suspicious of timeshare.
<p>Effects of the Timeshare Directive on business activity</p> <ul style="list-style-type: none"> Many traders have moved out of the timeshare sector following the implementation of the 2008 Directive. Authorities in France have observed that many of them have set up new businesses in the hotel and catering sector. The Directive has not quite eradicated aggressive sales practices and misleading offers in the timeshare sector. However, it has had a positive effect as the blacklist of fraudulent companies, as far as France is concerned, has decreased in the last few years. This may be due to market concentration or to the fact that traders have moved to the hotel and catering sector. However, there has been a surge in resale fraud. In such cases, fraudulent companies get hold of the contact details of timeshare owners and proceed to cold calling. It has been reported that victims of resale scams receive fake Spanish administration documents requiring them to pay tax associated with resale when there is actually no such tax.
<p>Conclusions</p>

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- The strength of the 2008 Timeshare Directive is its wider scope and, in this respect, its usefulness in informing consumers of their rights. Consumers now have a legal argument to cancel timeshare purchases thanks to the uniform period for withdrawal and the ban on advance payments.
- The harmonisation of consumer protection levels is the other major strength of the Directive. Consumers now can assert their rights through Europe.
- The Directive has undoubtedly led to a cleanup of the sector, but fraud has not been entirely eradicated.
- The weakness of the Directive is that it does not cover the termination of timeshare contracts. Fraud on resale occurs because consumers are locked into timeshare contracts and desperate to get out of them at any cost.
- Contract termination has been a major issue in France due to the fact that timeshare was up until recently regarded as a real-estate contract under French law. The lack of harmonization as regards contract termination is a problem.
- In France, problems linked to termination are linked to the nature of timeshare contracts. The legislation that regulates timeshare contracts in France has however been further amended to offer exit solutions.
- For fraud occurring outside the EU to the detriment of consumers (Morocco), French authorities would like the EU to pass agreements with certain destination countries where timeshare fraud occurs.
- The Timeshare Directive and the UCPD are complementary, but it is more difficult to impose criminal sanctions under the UCPD than administrative sanctions under the Directive.
- If a consumer wishes to cancel a timeshare contract because of unlawful trading practices, it is the Timeshare Directive that applies and disputes are usually settled out of court in such cases. Consumers in France can however take their case to court when unlawful timeshare companies refuse to cooperate.
- It is however important to point out that there are now fewer complaints or cases related to a breach of the UCPD (e.g. people being pressured into buying timeshare at so-called promotional events).

Germany	
Legislation transposing 2008/122/EC	
<ul style="list-style-type: none"> • The Directive 2008/122/EC was transposed into the German Civil Code (§358, 481, 482, 483, 484, 485, 486) in 2011 • It is worth pointing out that Timeshare contracts can be terminated under general German Contract Law in cases where they are passed on to heirs. 	
Institutional set-up	
<ul style="list-style-type: none"> • The institution in charge of implementing the Directive is the <i>Bundesministerium der Justiz</i> (Ministry of Justice) 	
Enforcement issues	
<ul style="list-style-type: none"> • The European Consumer Centre ECC in Germany has referred cross-border cases on behalf of consumers who have approached them for help to the ECCs and foreign enforcement authorities in other countries, mainly in Spain. The ECC in Germany has however complained that little action is taken by enforcement authorities in Spain to resolve cases: the ECC in Spain approaches the traders on behalf of consumers but the companies simply refuse to cooperate 	

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and there is little that can be done apart from taking the case to court. However, there is no follow up by the Spanish enforcement authorities in this regard.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> Only in some cases a small increase in costs could be expected by the Directive's provisions. Nevertheless, a more substantial impact on prices for consumers is not expected. Concerning the improvement of consumer protection, the Timeshare Directive is an important positive step for German consumers. In 2012, the ECC in Germany received numerous complaints about unfair timeshare contracts mostly from companies in Spain and Greece. Thanks to the Timeshare Directive, tricked German consumers can easily make use of their cancellation right. (http://www.eu-verbraucher.de/uploads/media/PM_Timesharing_08082012.pdf)
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> As explained in a parliamentary report, the law would only create marginal additional costs for companies. (http://dip21.bundestag.de/dip21/btd/17/027/1702764.pdf)
Conclusions
<ul style="list-style-type: none"> Germany is primarily a country where citizen are consumers of Timeshare and related products. As such, the Timeshare Directive is considered to be a positive development to strengthen consumer rights.

Greece
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> Directive 2008/122/EC was fully transposed into Greek legislation in 2011 with the Z1-130/22-02-2011 Common Ministerial Decision (Official Gazette B' 295). The Greek authorities did not indicate any problems with the transposition. <p>In addition to the legal provisions of CMD, the main relevant legal provisions in Greek legislation regarding timeshare contracts are found in Law 1652/1986 "On timeshare" which was the first one to cover timeshare in Greece and was amended by Ministerial Decision no 9953/11/15.12.87. The main aspects covered are:</p> <ul style="list-style-type: none"> Legal form of timeshare: In case of timeshare contracts and resale contracts does not suffice that the contract is in writing. The authentication of contracts by a public notary is also required in accordance with the provisions of the Greek Civil Code. Registration of timeshare ownership: Immediately after the conclusion of a timeshare contract the trader is obliged to notify the conclusion of the contract to the Hellenic Tourism Organization which is responsible for controlling and monitoring the execution of the timeshare contracts in Greece.
Institutional set-up
<ul style="list-style-type: none"> The General Secretariat for Consumer Affairs of the Ministry of Development and Competitiveness is the competent authority responsible for the enforcement of the Directive (http://www.efpolis.gr/) According to article 15 (1) of the Z1-130/2011 Common Ministerial Decision in case of infringement law 2251/1994 on "Consumer Protection" (article 13(a) on "Sanctions") applies. More specifically, consumer complaints against a timeshare operator are submitted to the General Secretariat of Consumer Affairs, which communicates them to the operator, with an invitation to respond, in any means available, including delivery by post. The operator must give a written

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response regarding complaints within a deadline set by the General Secretariat of Consumer Affairs, which starts as from the communication of the relevant invitation.

- Subject to the stipulations of the Penal Code, the Market Code and stipulations of other special laws, applicable on operators violating the stipulations of this law, there is a fine imposed, further to a decision by the Minister of Development, amounting to one thousand five hundred (1,500) Euros, minimum, up to one million (1,000,000) Euros.
- If more than three (3) decisions imposing a fine on an operator have been issued, the maximum amount of the fine is doubled and the Minister of Development may order the temporary interruption of the operation of his business or part of it over a period ranging from three (3) months to one (1) year.
- Furthermore, against an operator who does not respond to consumer complaints in accordance with the law, the Minister of Development may take the following steps:

a) recommend compliance, before a specific deadline, and give a warning for a fine in the event of failure to comply,

b) impose a fine ranging from five hundred (500) euro to five thousand (5.000) euro,

c) impose a fine ranging from five thousand (5.000) euro to fifty thousand (50.000) euro in case of recurrence.

- The Hellenic Ombudsman and the Committees for amicable settlement operating in each prefecture are identified as the alternative dispute mechanisms in case of legal disputes.
- On the basis of the feedback from one law firm representing one of the few providers of timeshare products in Greece the alternative dispute mechanisms are effective.
- So far, from the 14,000 members of the specific provider no single case has reached the courts.

Enforcement issues

- No legal uncertainties were indicated from any of the stakeholders in relation to the transposition of the EU Timeshare Directive.
- In the case of Greece there is no risk of duplication of efforts in terms of enforcement resulting from the legislative setup in question due to the fact that the General Secretariat of Consumer Affairs is the competent authority of the enforcement of all EU Consumer Legislation transposed into Greek legislation.
- The Greek authorities did not indicate any specific effects of the transposition of the legislation in terms of administrative costs, possibly given the pre-existence of a relevant legal framework.

Effects of the Timeshare Directive on consumer protection

- According to the ECC the transposition of the Directive 2008/122/EC has helped reducing the number of complaints concerning timeshare and timeshare-like products.
- Before the transposition of the Directive 2008/122 into Greek legislation the most significant problem concerned timeshare-like products, travel discount clubs, resale and exchange contracts that were not specifically regulated.
- However, it should be noted that due to the financial crisis, the use of timeshare products from people living in Greece has been very limited and the same applies to the number of companies active in offering such products.
- One of major consumer organisations also commented that no consumers' complaints about timeshare have been submitted to it since 2011.

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<ul style="list-style-type: none"> • The General Secretariat for Consumer Affairs runs an information campaign to encourage consumers to learn more about their rights and to exercise them (informative leaflets). • Furthermore, the web page of the General Secretariat for Consumer Affairs provides the consumer with all the necessary information and forms concerning timeshare products. • No indications were provided of increased awareness but, as indicated, the demand of such products in Greece has plummeted as a result of the financial crisis.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • There has been no discernible effect – positive or negative – of the Directive at this stage due to the very small level of demand and general activity linked to the financial crisis. Thus, stakeholders find it difficult to express an opinion as to the impact of the Directive and its effectiveness. • Nonetheless, according to the Hellenic Consumer Ombudsman report the most significant problem is that, in case of long term holiday products, traders prefer to sign contracts with duration shorter than 1 year that do not fall under the provisions of the Directive. In this case the definition of the long term holiday products is circumvented, because actually these contracts are automatically renewed by the end of the one year period and constitute in practice long term holiday products. In such cases the UCPD Directive or the Distance Selling Directive applies. • Industry representatives made also reference to other products (reclaim, holiday clubs) that are not covered by the Directive and are considered as a possible problem.
Conclusions
<ul style="list-style-type: none"> • According to stakeholders in Greece, the Directive has addressed issues related to the timeshare products and corresponds to a large extent to the needs of the target groups in Greece. • The view from both the authorities and practitioners representing the industry is positive and is, potentially, contributing to greater consumer confidence. • However, not all issues related to holiday products are covered. In this case, other law instruments - such as UCPD or the Distance Selling Directive – are seen, at least according to the national authority, as working complementary on issues not covered such as misleading sales claims, aggressive practices or in case of distance selling of timeshare products ensuring the high level of consumer protection in Greece. • There are no overlaps or conflicts between the Timeshare and these consumer law instruments.

Hungary
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • The EU Timeshare Directive has been fully transposed into Hungarian legislation. • Options for termination: Under Hungarian civil law, if there is a breach of contract by the trader then the contract can be terminated. Otherwise, termination is difficult. • The system for the management of timeshare contracts is similar to the French one. Owners cannot terminate contracts unilaterally. Even if they fail to pay their fees, they remain party to the contract.
Institutional set-up
<ul style="list-style-type: none"> • The Hungarian Authority for Consumer Protection acts as the main enforcement authority and monitors compliance with the legislation as regards pre-contract information requirements. More generally the authority also monitors compliance with the UCPD and the UCTD. • Timeshare companies are regulated by the Hungarian Licencing office. The Hungarian Licencing office monitors the registered companies and their compliance with the timeshare legislation. The

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<p>registry is accessible to the public.</p> <ul style="list-style-type: none"> • In terms of sanctions, the Hungarian competition authority can impose financial sanctions to unlawful timeshare businesses. • Hungarian civil courts deal with contractual dispute. ECC Hungary provides an out-of-court resolution option for contractual disputes. • Only ECC Hungary deals with cross-border cases in Hungary but it has no powers to prosecute the offenders. ECC Hungary handles between 10 and 20 cross-border cases per year, many relate to pressure selling. ECC Hungary does not deal with domestic cases.
Enforcement issues
<ul style="list-style-type: none"> • Consumers can turn to the ECC's ADR in the case of a domestic complaint. However, timeshare companies are not always very cooperative on the ADR. • The Hungarian police lead investigations into timeshare fraud, but only at domestic level. Hungary is more efficient in dealing with domestic cases than with cross-border cases. • In any case, the number of cross-border complaints in Hungary is smaller than the number of domestic complaints. • Raising consumer awareness is important and in Hungary it is something ECCs, public enforcers, and even NGOs are committed to doing. • The Directive, the UCPD and the UCTD all work well side by side. However, there are certain difficulties linked to enforcement. For instance, enforcement authorities cannot monitor what goes on during promotional events held by timeshare companies. There are many instances where companies are in breach of the UCPD during promotional events.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> • Please describe the level of/trend in consumer complaints before and after transposition of the Timeshare Directive in your Member State. Do you have data on the percentage of cases resolved? • What awareness-raising efforts have been undertaken in your Member State to inform consumers of their rights under the EU Timeshare Directive and about out-of-court dispute resolution procedures? • Is there any evidence that consumers are more aware of the risks associated with buying timeshare or long-term holiday products since the implementation of the Directive? If yes, please provide details. • From a consumer point of view, the extension of the scope of the timeshare Directive is positive as more issues get covered. However, the provisions of the Directive do not prevent timeshare companies to make misleading statements orally before contracts are concluded. • Misleading statements which diverge from the actual content of the pre-contract information forms can result in consumer detriment. • Misleading statements are often made in cases of pressure selling. It is important to raise consumers' awareness in relation to misleading oral statements. • Hungarian consumers are mainly affected by domestic complaints. Theoretically, consumers have the same rights across the EU in relation to timeshare. However, in practice, they don't know about their rights and the fact they are harmonised across the EU. • The Directive's objectives have however been met and they are definitely favourable to consumers.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • Fraudulent companies still exist. They will always exist regardless of legislation. • As regards new types of fraud, it is quite common for certain companies to try to sell another property to consumers looking to resell their timeshare. • The worst case scenario is when consumers sign a second contract for the new property they have

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just been sold without managing to resell their timeshare as they had first set out to do. ECC Hungary has already been notified of such problems.

- The Directive is adapted to the realities of the sector today.
- However, there should be laws regulating company takeovers. Companies taking over other companies in the timeshare sector can result in confusion for consumers looking to resell their timeshare, or looking to make a complaint.

Conclusions

- The main added value of the Directive is that it is very favourable to consumers: the same minimum level of consumer protection applies throughout the EU. It would be unworkable if all Member States had their own legislation. It would be bad for businesses too.
- There is no duplication between the Directive, the UCPD, and the UCTD. The timeshare Directive specifically regulates the sector whilst the UCPD and UCTD provide a robust backdrop.
- There is still room for improvement. Enforcement and monitoring would be facilitated if timeshare companies were obliged by law to notify public authorities about promotional events. This would effectively prevent situations in which consumers are pressured into signing timeshare contracts.

Ireland
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • The Directive 2008/122/EC has been transposed into Irish national legislation through Statutory Instrument (S.I.) No. 73 of 2011 • There is however a difference in interpretation of Art. 10.2 (termination of contract from the second instalment onwards): Irish legislation states that contracts can be terminated after the second instalment has been paid
Institutional set-up
<ul style="list-style-type: none"> • The institution in charge of enforcing the Directive in Ireland is the National Consumer Agency. • The sanctions provided in the Consumer Protection Act are administrative and applied by the National Consumer Agency.
Enforcement issues
<ul style="list-style-type: none"> • No enforcement issues to report due to the fact that the timeshare sector in Ireland is very small.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> • Timeshare is not a popular holiday choice in Ireland, therefore it is not possible to analyse the impact the Directive has had on Irish consumers.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • The timeshare market in Ireland is very small. The Directive has had no noticeable impact on business activity in the timeshare sector.
Conclusions
<ul style="list-style-type: none"> • The Directive is a positive development although it is of little relevance as far as Ireland is concerned given the small size of its timeshare sector.

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- Similarly, timeshare has never been a popular choice amongst Irish consumers.
- There is no legal practice on timeshare in Ireland.

Italy
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • Legislative Decree no 79 of 23 May 2011 transposed the Directive – before that, timeshare was regulated by the Consumer Code (Legislative Decree no 206/2005). • There were no difficulties as regards transposition and the Directive was very welcome. Without it, the Italian legislator would not have bothered doing anything. • Timeshare in Italy, as any contractual agreement through which rights in rem are transferred, should be concluded in the form of a public act and therefore requires the presence of a notary in order to be valid. • Even to get out of a timeshare agreement, one must go through and a notary (e.g. to pass on contract or inheritance).
Institutional set-up
<ul style="list-style-type: none"> • Enforcement is dealt with by the Ministero dello Sviluppo Economico (Gazette no 185 – 23 June 2012) • The Italian Competition Authority applies administrative sanctions in case of breaches of the legislation, only if they give rise to cases of unfair trade practices, such as Articles 20 et seq. of the Consumer Code. • Consumer protection organisations can also become active and can ask either for an injunction to stop trader from selling time share or launch a class action
Enforcement issues
<ul style="list-style-type: none"> • No major problems have been reported.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> • Italy's experience relates to timeshare bought in the 1990s with consumers looking to get out of their contracts. • Contract termination is now the biggest problem in Italy. There are very few new timeshare transactions. • In 8 years, 2 cases relating to new timeshares were brought forward (including one case of an Italian national purchasing a timeshare in Mexico for \$10,000). • Condominium – even if timeshare, there is a need to pay maintenance fees – if condominio has approved fees – easy for manager to get legal document.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • The Directive has considerably improved the situation on the Italian timeshare market. • Prior to the adoption of the 2008 Directive, Italian traders did not respect the cooling-off period • Reselling is now covered by law – which was not the case before in Italy – in particular with reference to the cooling off period
Conclusions
<ul style="list-style-type: none"> • Italy has received very few complaints on timeshare since the implementation of the Directive: 2 requests for information and 4 complaints in 2013 • The Directive is appropriate and fits into the wider EU consumer protection framework (UCPD,

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UCTD) but implementation is the main problem.

- Tourism is a key part of the economy in Italy, and timeshare-related issues should be looked at more closely

Latvia

Legislation transposing 2008/122/EC

- Directive 2008/122/EC has been transposed into Latvian legislation through (1) the Consumer Rights Protection Law and (2) the Regulations Regarding Contracts on the Right of Long-term Use of Holiday Accommodations, Long-term Contracts on Holiday Products, Contracts on the Resale of the Right of Long-term Use of Holiday Accommodations or Holiday Products and Contracts for Exchange of Long-term Right to Holiday Accommodations (hereinafter – “the Regulation”).
- The Regulation came into force on 23rd February 2011.
- As regards the effectiveness of the transposition process, some problems were identified by the European Commission through an analysis of national transposition measures regarding Directive 2008/122/EC (EU Pilot Case 5408/13/JUST) which took place in 201.
- In particular, issues were identified as regards Articles 2, 4, 6, 11, 15 of the Directive and Annexes of the Directive in the Regulation that stemmed from the national transposition process.
- The Ministry of Economy is currently preparing amendments to the Regulation and in other laws to ensure full and effective transposition.
- As regards the other detailed relevant legal provisions applicable to existing timeshare contracts:
 - **Legal form of timeshare** – is regulated by Section 11 of the Consumer Rights Protection Law. A contract is drawn up in writing, on paper or on another durable medium, and drawn up in language or one of the languages of the Member State in which the consumer is resident or a national, at the choice of the consumer, provided that it is an official language of the European Union. “A contract on the right of use of accommodation, a contract on holiday services, a resale contract and an exchange contract shall be entered into writing (on paper or on another durable medium) and one copy of such contract shall be issued to the consumer at the time of entering into the contract”; “A contract on the right of use of accommodation, a contract on holiday services, a resale contract and an exchange contract shall be entered into in the language of the EU Member State in which the consumer is resident or a national, at the choice of the consumer, provided that it is an official EU language.
 - **Registration of timeshare ownership; instrument of ownership (title deed) and consequences of not having fulfilled the registration formalities** – the registration of timeshare ownership is not specially regulated in Latvia. There is no special register for timeshare ownership in Latvia.
 - **Provisions and procedures governing possible unilateral termination of timeshare contract by the consumer** – rights of withdrawal and modalities for exercising the rights of withdrawal are regulated by the Regulation.
 - Under the Regulation consumer is given a period of 14 calendar days to withdraw from the timeshare, long-term holiday product, resale or exchange contract, without giving any reason: “The consumer may exercise the right of withdrawal and unilaterally withdraw, within 14 days, from the timeshare contract, holiday product contract, resale contract or exchange contract, without giving any reason” (Paragraph 12 of Regulation). “The time

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period for exercising the right of withdrawal shall be calculated from the day of the conclusion of the contract, including a preliminary contract, or from the day when the consumer receives the contract or preliminary contract if it is later than the date of conclusion of such contract or preliminary contract” (Paragraph 13 of Regulation).

- **Management of timeshare properties;** in particular fixing maintenance payments – There is no special regulation in our law regarding to management of timeshare properties. Both contracting parties are responsible about management of timeshare properties (including fixing maintenance payments). According to the Regulation before the consumer is bound by any contract offer, the trader shall provide the consumer clear and sufficient information about a summary of key services which are available to the consumer (for instance, maintenance) and indications of the amount to be paid by the consumer for such services.

Institutional set-up

- The Ministry of Economy in Latvia has responsibility at national level for the transposition of the Directive into national legislation.
- The ECC-Net Latvia investigates complaints from consumers and businesses as regards Timeshares.
- The Consumer Rights Protection Centre in Latvia serves as the enforcement authority. The CRPC is governmental authority and it is financed from national budget. The purpose of the Consumer Rights Protection Centre is to ensure the effective protection of consumer rights and interests.

Enforcement issues

- No major enforcement problems have been reported in Latvia.
- As regards legal aspects of enforcement and administrative sanctions, there are administrative sanctions in cases where the laws deriving from the Directive have been breached. The administrative sanctions are provided by the Latvian Administrative Violations Code.
- According to the *Latvian Administrative Violations Code* there are administrative sanctions (e.g. fine) in the following cases:
 - in the case of the provision or distribution of an advertisement not conforming to the requirements of regulatory enactments (*a fine shall be imposed on natural persons in an amount from EUR 35 up to EUR 700, but for legal persons – from EUR 70 up to EUR 14000*);
 - in the case of violation of the specific procedures in the provision or distribution of an advertisement (*a fine shall be imposed on natural persons in an amount from EUR 35 up to EUR 140, but for legal persons – from EUR 70 up to EUR 7100*);
 - in the case of unfair commercial practices (*a fine shall be imposed on natural persons in an amount from EUR 35 up to EUR 700, but for legal persons – from EUR 70 up to EUR 14000*);
 - in the case of a failure to provide writing information regarding timeshare, long-term holiday product, resale and exchange contracts (*a fine shall be imposed on natural persons in an amount from EUR 35 up to EUR 350, but for legal persons – from EUR 70 up to EUR 1400*);
 - in the case of a failure to provide requirements of consumer legal rights of withdrawal (*a fine shall be imposed on natural persons in an amount from EUR 35 up to EUR 350, but for legal persons – from EUR 70 up to EUR 1400*)

Effects of the Timeshare Directive on consumer protection

- The Directive has improved consumer protection in theory since the Directive has been transposed into national legislation in Latvia. However, The CRPC as the national enforcement authority has not organized any information campaign to raise consumers’ awareness regarding risks associated with timeshare and long-term holiday products and the available dispute resolution procedures.

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<p>However, this reflects the low priority of the issue.</p> <ul style="list-style-type: none"> • The CPRC authority has not received any complaints from consumers regarding to timeshare and long-term holiday products, nor any cases relating to breach of contract. • Nevertheless, the Directive was viewed as potentially having positive effects by extending the scope of consumer protection with fewer possibilities for circumvention.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • There has been little effect of the Timeshare Directive in Latvia because there are relatively low levels of awareness of Timeshare products and only very small number of Latvians own Timeshares in other EU countries. • More broadly, longer-term holiday products such as timeshares, resale and exchange contracts are not so popular and marketable in Latvia compared with other Member States. • New types of fraud (for instance, fake promises of representation in foreign courts to solve disputes with timeshare sellers) have not been found so far in Latvia.
Conclusions
<ul style="list-style-type: none"> • The EU legislative setup is effective and comprehensive in the field of consumer protection and ensures adequate consumer protection. However, some clarification is needed in relation to the interpretation of the UCPD and the UCTD. • The European Commission is already doing a lot of work to develop supporting guidance on the implementation of the legislation and in facilitating cooperation and exchanges of experience among Member States. • The Directive ensures requirements relating to pre-contractual information, contracts and advertisements. That is very important, because the contracts have cross-border nature and contracts for timeshare (or related products) are legally complex with division of responsibilities between parties not always entirely clear to consumers. This can potentially further impede consumer understanding of what they are signing up to. • Member States should ensure that consumers are effectively informed about their legal rights and risks associated with timeshare, long-term holiday product, resale and exchange contracts. Guidelines would be very useful.

Lithuania
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • The Directive was fully transposed into Lithuanian legislation. • The national law on consumer protection, which is contained within the Lithuanian Civil Code. The Directive has been transposed into the following legislation: <ul style="list-style-type: none"> • The Civil Code of the Republic of Lithuania articles 6.369 - 6.370; • The Law on Consumer Protection (chapter 9) that provides sanctions for infringements and procedure of dispute resolution https://www.etar.lt/portal/forms/legalAct.html?documentId=TAR.C71CEA97A80D. • Order 1R-276 of the Minister of Justice of the Republic of Lithuania of 30/11/2011 approved the Standard information forms on Timeshare contracts, Long-term holiday products contracts, Resale contracts and Exchange contracts, and the Standard withdrawal form https://www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.4AF3CCA425A9. • One minor incorrect transposition issues was identified through an EU pilot project to check transposition and implementation. The standard information forms developed for resale

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<p>contracts. Since this was secondary legislation, minor amendments were made directly.</p> <ul style="list-style-type: none"> The detailed relevant articles are provided at the end of this fiche.
<p>Institutional set-up</p> <ul style="list-style-type: none"> The Ministry of Justice was responsible for the transposition and implementation of the Timeshare Directive in Lithuania. The institution in charge of enforcing the Directive is the State Consumer Rights Protection Authority (www.vvtat.lt). The Authority was established under the Ministry of Justice so as to ensure protection of consumer rights. VVTAT coordinates the activities of consumer rights protection institutions, responsible for the regulation of a certain area of consumption, in the area of the protection of consumer rights; adopts and harmonises legal acts relating to the protection of consumer rights; investigates consumer complaints in accordance with the procedure of the settlement of consumer disputes out of court; controls standard terms and conditions of contracts; applies sanctions provided for by law; defends public interest of consumers, in conjunction with the Commission and other national authorities of other member states of the European Union implements Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws; carries out other functions prescribed by other laws and other legal acts. If cross-border disputes between consumers and traders arise regarding the possible breach of the Directive, consumers can turn to the European Consumer Centre (ECC-Net) in Lithuania.
<p>Enforcement issues</p> <ul style="list-style-type: none"> No major enforcement problems have been reported in Lithuania, but there is generally not an issues, since Timeshares are not popular in Lithuania, and those that do own timeshares do so with traders in other Member States, mainly Spain. Administrative sanctions are provided for in Chapter 9 of the Law on Consumer Protection. The size of sanctions depends on aggravating and extenuating circumstances provided in the law. There may be a warning issued in case the infringement is minor. Sanctions for infringements and procedure of dispute resolution https://www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.C71CEA97A80D Order 1R-276 of the Minister of Justice of the Republic of Lithuania of 30/11/2011 approved the Standard information forms on Timeshare contracts, Long-term holiday products contracts, Resale contracts and Exchange contracts, and the Standard withdrawal form https://www.e-tar.lt/portal/forms/legalAct.html?documentId=TAR.4AF3CCA425A9.
<p>Effects of the Timeshare Directive on consumer protection</p> <ul style="list-style-type: none"> The Directive has been effectively implemented, but the impact has been minimal since Timeshares are a generally unknown product in Lithuania. There are low levels of awareness among consumers about timeshares as a product in LT. The product and concept is not known and there are no timeshares in the country itself. The preference is usually to buy a holiday property or to stay in a hotel. The State Consumer Rights Protection Authority regularly provides information to consumers on relevant consumer issues (website, media, etc.). There have been very few complaints from consumers as regards timeshares by Lithuanian consumers. However, a small number of complaints (8) have been made since 2009 as regards the terms and conditions of timeshares, in particular the fact that charges were not always made clear in advance. These cases were referred to the ECC in Spain.

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<ul style="list-style-type: none"> Six cases have been resolved and a further two cases remain outstanding. However, no cases have been resolved in favour of consumers. Another issue was that traders have failed to respond to enquiries.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> There has been little change, since Timeshare remains widely unknown among Lithuanian consumers The effect on misleading terms and conditions has been minimal, since of the 8 cases brought to the attention of the ECC-Net in Lithuania, which were in Spain, 6 cases found in favour of the trader, whilst 2 remain unresolved.
Conclusions
<ul style="list-style-type: none"> The Directive fits into the wider EU consumer protection framework. The UCPD and UCTD are strong instruments that help to further strengthen consumer protection. Notwithstanding the lack of specific experience in dealing with complaints, the State Consumer Rights Protection Authority believes that "Directive 2008/122/EC contributes to a better consumer protection in the area of Timeshare products across the EU, especially taking into account that Timeshare products are usually offered for sale in Southern Europe countries".

Luxembourg
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> The Directive 2008/122/EC was transposed into Luxembourg's Consumer Code in 2011 (Book II, Title 3). It is worth noting that Luxembourg's Consumer Code came into force in 2011.
Institutional set-up
<ul style="list-style-type: none"> The institution in charge of enforcing the Directive in Luxembourg is the Ministère de l'Economie et du Commerce extérieur. The sanctions provided in the Consumer Protection Act are administrative and consist in fines ranging from €251 to €25,000.
Enforcement issues
<ul style="list-style-type: none"> No enforcement issues to report due to the fact that the timeshare sector in Ireland is very small.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> ECC Luxembourg recorded 7 complaints and 15 information requests between 2012 and 2013. 2 cases were taken to the enforcement authority in Luxembourg whilst the others could be solved by the ECC alone. This shows to some extent that consumers are more aware of their rights today thanks to the Directive.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> The timeshare market in Luxembourg is almost non-existent. The Directive has had no

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noticeable impact on business activity in the timeshare sector.
Conclusions
<ul style="list-style-type: none"> The Directive is a positive development although it is of little relevance as far as Luxembourg is concerned given the fact that timeshare activity in the country is almost non-existent. For cross-border complaints, ECC Luxembourg and the enforcement authority have been dealing with complaints effectively. This is also thanks to the legal certainty brought about by the Consumer Code in force in Luxembourg since 2011.

Malta
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> The Directive 2008/122/EC has been transposed into national legislation through Subsidiary legislation 409.02 on the Protection of consumers (timeshare, long-term holiday products, resale and exchange contracts) regulations, dated 25 March 2011. Malta is a very popular location for timeshare properties. Around 5-10% of guest overnight stays in Malta are accounted for by timeshare properties. There are 26 main resorts with timeshare apartments on the island, many of them managed by major international hotel chains.
Institutional set-up
<ul style="list-style-type: none"> The institution in charge of enforcing the Directive is Visit Malta which is the government agency responsible for promoting the island as a tourist destination. Visit Malta reports to the Malta Ministry of Economy.
Enforcement issues
<ul style="list-style-type: none"> Enforcement issues mainly relate to rogue traders who are offering products that fall outside the scope of the Directive's provisions.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> The number of complaints which has been falling since the Directive was introduced (although this may also be partly because of the recession and reduced demand for timeshares). The ban on advance payments is seen as unnecessary and a deposit scheme run by third parties would be preferable With regard to the resale of timeshares, contracts in Malta generally have time limits of 30-40 years and larger companies are usually able to resale or rent properties, but all timeshare contracts should include an exit mechanism (as is required by the RDO).
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> A major problem is the amount of paperwork that the Directive requires timeshare businesses to complete, especially with sales to foreigners; Timeshare is the only major sector that cannot take deposits (the system before the 2008 Directive was adopted of deposits being held by third parties worked well in Malta)
Conclusions
<ul style="list-style-type: none"> The Directive is a positive development and there are relatively few problems in Malta in applying its provisions. Self-regulation and requiring all timeshare operators to be licensed of the sector is seen as the best approach to dealing with malpractices that have not been dealt with by the Directive.

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Netherlands	
Legislation transposing 2008/122/EC	
<ul style="list-style-type: none"> The Directive was fully transposed into the Dutch Civil Code, book 7, article 50a – 50i in 2011 No difficulties have been reported; all the provisions of the Directive were adopted and transposed in full. 	
Institutional set-up	
<ul style="list-style-type: none"> The Netherlands Authority for Consumers and Markets (ACM) is the institution in charge of enforcing Directive 2008/122/EC which falls under the scope of the Dutch Act on Enforcement of Consumer Protection (CA). The ACM investigates complaints from consumers and businesses in order to be able to tackle the root cause. Their powers have been laid down in several laws and regulations. ACM officers are authorized to enter premises, ask for information, demand inspection of documents, and take data with them. Furthermore, everyone is required to cooperate with their officers in investigations. If businesses do not observe the rules, they have several instruments at their disposal to make them observe the rules. The ACM can impose on businesses an order subject to periodic penalty payments. The aim of such orders is to end a violation or to prevent the continuation of one. The ACM can also impose a preventive order. This may be an option when a violation is imminent. Alternatively, businesses can make a commitment. Commitments contain conditions businesses promise to comply with in order to prevent future enforcement actions. Ultimately, the ACM can punish violators with fines, if necessary. The final level of a fine depends on the type of violation, and on the specific circumstances of the case in question. Repeated offenses are punished more severely. The ECC Netherlands can resolve cases amicably. 	
Enforcement issues	
<ul style="list-style-type: none"> No major enforcement problems have been reported in the Netherlands. The legislative setup is not the problem; the enforcement of it is, especially in cross-border cases. Unfortunately, most of the businesses do not want to cooperate in resolving complaints from consumers in an amicable way. It has been observed that many businesses also do not respect the ban on advanced payments. Furthermore, it has been observed that businesses do not reimburse the consumer after a legitimate cancellation of the contract (within the cooling off period). Chargeback is a solution, although not all attempts at chargeback are successful. Enforcement is effective 	
Effects of the Timeshare Directive on consumer protection	
<ul style="list-style-type: none"> The Directive has improved consumer protection by giving minimum standards in more areas. However, one-year holiday club contracts have emerged as a growing product since the implementation of the Directive. With high front-loaded costs, these contracts are renewable 	

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<p>on an annual basis (effectively making them a longer product).</p> <ul style="list-style-type: none"> • There is also an increase of complaints about leisure credit schemes which fall outside the Directive. • These on-going practices are not contributing to the important objectives of boosting consumer confidence in the timeshare industry and to eliminate the operations of rogue traders which bring legitimate traders into disrepute and cause considerable problems for consumers.
<p>Effects of the Timeshare Directive on business activity</p> <ul style="list-style-type: none"> • There has been little change as regards the number of rogues operating on the market before and after the transposition of the Directive; the same types of fraud already existed and continued after the Directive. • There are no timeshare (like) businesses situated in the Netherlands; therefore the Directive has limited relevance at domestic level. • However, ECC Netherlands is aware of the fact that there is one company which sells Discount cards for hotel accommodation (which according to the Dutch authority falls under the Directive) and the ACM has contacted this company as they were of the opinion that this enterprise was offering its products in a misleading way. • On this case, the ACM has imposed a fine of EUR 105,000 on Hotel Group International (HGI) and on its owner for the way it sold its HotelGroup Passport product. Consumers were contacted by phone and were told they had won a prize or had been offered a free trip. However, it turned out they had actually taken out a subscription to a hotel discount card, called the HotelGroup Passport. Canceling the subscription proved to be very difficult. The sale of products such as the HotelGroup Passport is subject to the so-called timeshare rules, which had not been observed.
<p>Conclusions</p> <ul style="list-style-type: none"> • The Directive fits into the wider EU consumer protection framework. The UCPD and UCTD are strong instruments acting in the background. The CRD should also improve the overall situation. • However, it would be good to leave out the reference regarding the minimum duration of a timeshare or LTHP contract. • Obligations for credit card companies and banks to reimburse down payments when these are made within the cooling off period should be enshrined in law • More cooperation between enforcement authorities would be welcome, to send out a strong message to fraudulent companies and to 'hurt' them when they break the law.

Poland
<p>Legislation transposing 2008/122/EC</p> <ul style="list-style-type: none"> • The Directive was fully transposed by the <i>Timeshare Act of 16 September 2011</i>, which came into effect on 28 April 2012 • There were no difficulties in relation to transposition. • Some of the Directive's requirements were already present in national legislation prior to its full transposition. The previous act, <i>The Act of 13 June 2000</i>, mentioned some of the timeshare requirements, however it was based on the Directive 1997/46. • The Directive influenced other legislation, in particular: the civil code, mortgage register, the

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code of petty offences and the code of commercial partnerships and companies in Poland. However, the core of the Directive was transposed by the <i>Timeshare Act of 16 September 2011</i> .
Institutional set-up
<ul style="list-style-type: none"> It is not entirely clear which public authorities in Poland are in charge of enforcing the Timeshare Directive. The Act of 16/09/2011 does not indicate a public authority responsible for enforcement of the act. However, a different act, on the customer and competitiveness protection, indicates the Office of Competition and Consumer Protection as the public authority responsible for almost all fields of customer protection (excluding areas of radio and telecommunication, aviation and pharmacology). The Office of Competition and Consumer Protection is also the single liaison office. A second public authority, the ECC Poland, is an informative and assisting body. The role of the ECC is to provide information and to assist consumers in their claims concerning the timeshare. Usually Polish consumers contact ECC to ask for information or when they have certain concern about a contract they have already signed. In a case of consumer harm, ECC Poland can contact ECC in the country of a timeshare company. The ECC Poland does not have ability to assist Polish consumers in their activity regarding foreign courts. The sanctions in cases of infringement of the legislation transposing the Timeshare Directive have a criminal and civil nature in Poland The timeshare Act of 16/09/2011 includes low level of criminal sanctions (fine or incarceration). Additionally, there are several civil sanctions for the timeshare entrepreneurs. For example, the consumer is not responsible for the installments' payment until receiving a notice. It means that the consumer do not have certain responsibilities in a situation when an entrepreneur did not fulfil his/hers duties. There is also a civil sanction for not fulfilling maintenance responsibilities. In a case when the consumer pays for necessary maintenance repairs then the entrepreneur is responsible for the costs. The timeshare market in Poland is asymmetrical and there is no cooperation between different public authorities. Any cases usually concern Polish consumer and foreign entrepreneurs or companies (for example in Spain). There are not many alternative dispute resolution mechanisms available to consumers in Poland for matters regulated by the Timeshare Directive. It is because all timeshare issues in Poland concern the transnational issues hence the only help can be offered by ECC. All other instances like consumer advocates are limited to consumer issues within the boundaries of the country.
Enforcement issues
<ul style="list-style-type: none"> In Poland there are no legal uncertainties which derive from the transposition of the EU Timeshare Directive into Polish legislation The main problem in Poland concerns the lack of knowledge on timeshare among consumers. Polish consumers do not know what timeshare is, what their rights are and how to protect themselves. There are no capacity issues in terms of enforcing the Timeshare Directive in Poland. There are some cross-border cooperation problems in the enforcement of the Timeshare Directive which derive mainly from differences in legislative systems in membership countries and lack of possibilities of finalising the claim in a foreign country. The cross-European system of cooperation is well developed but it is considerably weak within Poland. Consistent data on how many Polish consumers have been affected by the timeshare does not exist. In a case of cross-border timeshare issues, ECC Poland cannot finalise the complaint case. If the

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<p>local ECC was not successful in reaching the timeshare entrepreneur by e-mail or phone, it does not have financial means to go to other country. The problem is connected to the decentralisation of the system. There is a need for establishing cross-European control bodies which could moderate the timeshare market on a local level and, if necessary, be a point of contact and a source of information for national ECCs.</p> <ul style="list-style-type: none"> There is also a problem of membership countries' trial processes. It is almost impossible for a Polish consumer to go to other membership country (the one in which timeshare company is registered) and make a formal claim, due to financial and language barriers. There are no European or Polish institutions which could help a consumer to make such a claim.
<p>Effects of the Timeshare Directive on consumer protection</p> <ul style="list-style-type: none"> The percentage of timeshare claims in Poland is very low. There was not much change after implementation of the Directive. However, the increased responsibilities of timeshare traders as regards transparency of information are an important benefit. ECC Poland organised an information campaign within the mainstream media when the Directive was implemented. However, since then no awareness campaigns have been organised. The problem is lack of money and low independence of ECC Poland. In accordance to ECC Poland lack of knowledge and awareness of timeshare is a serious problem and Polish consumers tend to be quite naïve. There is an urging need for a pan-European campaign raising awareness on timeshare issue. There is no evidence that are consumers are more aware of the risks associated with buying timeshare or long-term holiday products since the implementation of the Directive. Currently, Polish consumers are not aware of the existence of the Directive, nor the act which transposed the Directive into Polish legislation.
<p>Effects of the Timeshare Directive on business activity</p> <ul style="list-style-type: none"> The Directive has had no real effects on the timeshare, LTHP and Exchange and Resale market in Poland as there is no market as such. There are no timeshare properties in Poland. No new products or practices have appeared since the transposition of the EU Directive. It is difficult to assess how effective is the legislation transposing Timeshare Directive was in preventing rogue traders from doing business. If there are any traders of this kind they remain hidden. Additionally, the system of consumer care in Poland is decentralized and there is a possibility that many timeshare cases are received by local consumer associations. Unfortunately, there is no nation-wide registry of such cases.
<p>Conclusions</p> <ul style="list-style-type: none"> The Timeshare Directive is relevant to the needs of consumers and businesses in Poland. It enhanced the situation of Polish customers by providing information requirement and potential sanctions for the timeshare companies. However, it is difficult to assess how effective is the Timeshare Directive in enhancing consumer protection and facilitating cross-border trade. Polish consumers are not aware about the timeshare regulations. The Timeshare Directive did not have much effect on the efficiency of enforcement activities. However the Directive enabled ECC to contact other ECC's and to use the Directive in a negotiation process with the timeshare company. The content of the Timeshare Directive is similar to the Polish Act of the Fraudulent Practices. There might be some clashes between these two regulations.

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- The added value of the Directive is the increased responsibilities and accountability of the timeshare companies to the consumers.

Portugal
Legislation transposing 2008/122/EC <ul style="list-style-type: none"> • The Law Decree 37/2011⁶⁶ of 10 March transposes Directive 2008/122/EC amended the timesharing regime, including on long-term holiday products and resale and exchange contracts. • Following the adoption of this law, the Portuguese government had to decide the structure and content of the pre-contract information forms. This decision came with the “Despacho” nº12878/2013, of 9th of October⁶⁷. • In actual fact, it took the Portuguese a long time to fully implement the new timeshare legislation following the adoption of the Law Decree. As a result, consumers who bought timeshare in 2011-2012 received pre-contract information forms different to those set out under the 'Despacho' (which are identical to those in annexes to Directive 2008/122/EC). • All aspects of timeshare are governed under Law Decree 37/2011 (and its “Despacho”) except in relation to the registration of timeshare ownership which is a competence of the public administration. Registration of timeshare ownership comes under general legislation on real estate registration in Portugal. • The legal form of timeshare is a formal contract that should be formalised in the presence of a notary, but after the registration. • Portugal already had robust legislation in the area of timeshare prior to the implementation of the 2011 Law Decree. The preceding legislation was Decree Law 275/93. In fact, very few modifications were made to the Law of 1993 following the transposition of 2008/122/EC. • The preceding legislation did not include the 14 calendar days to withdraw from the contract, but 10 working days, so this disposition didn't imply a big improvement in the consumer protection. Likewise, most of the information requirements of the Directive were already present in the Portuguese legislation. • As such, the current legislation on timeshare still corresponds to the needs of consumers and legitimate businesses in Portugal.
Institutional set-up <ul style="list-style-type: none"> • There are three institutions in charge of enforcing timeshare legislation: <ul style="list-style-type: none"> -The ASAE (Autoridade de Segurança Alimentar e Económica) is in charge of market surveillance and fiscal matters. It has investigative powers and can impose administrative sanctions against traders in breach of timeshare legislation (cf. Art. 58 of Decree Law 37/2011). -The DGC (Direcção-Geral do Consumidor) enforces provisions relating to the advertising of timeshare offers only and can also impose administrative sanctions. -The TDP (Turismo de Portugal) deals with the registration of timeshare traders and maintains a registry of legitimate traders. • These three authorities work closely together. • Only administrative sanctions are imposable when there are breaches of timeshare legislation. Sanctions correspond to amounts from €5,000 – €10,000. • Decree-Law nº37/2011, of 10th March, in the article nº60º-A, indicate the out-of courts

⁶⁶ <http://dre.pt/pdf1sdip/2011/03/04900/0134601371.pdf>

⁶⁷ <http://dre.pt/pdf2sdip/2013/10/195000000/3066730672.pdf>

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<p>procedures available for the settlement of consumer disputes.</p> <ul style="list-style-type: none"> • In Portugal there is a good system of out-of court dispute resolution. There are arbitration centres (funded by the State and attached to the Ministry of Justice and the Secretary of Consumer and also for the civil society: organisations of commerce and organisations of consumers). • However, as these mechanisms are voluntary, normally consumers have to go to Court to solve the conflict with the company.
<p>Enforcement issues</p> <ul style="list-style-type: none"> • The institutional set-up to enforce timeshare legislation remained unchanged following the transposition of the 2008 Timeshare Directive. • There is no data available on public spending in relation to enforcement (for the moment). Also, the full transposition was only achieved in 2012 so it might be difficult to get accurate estimates. • There is good collaboration between the different public bodies in charge of enforcement with the ASAE and DGC receiving national-level complaints and ECC Portugal receiving cross-border complaints. There are no legal uncertainties. • The administrative sanctions imposable on unlawful companies are not considered as being dissuasive enough • Another issue is the time that takes the law enforcement authorities to prosecute and sanction a company: Once that a malpractice of a timeshare company is denounced to the public authority, it begins its investigations. The public authority tries to contact the company and waits for their answer. When the authority decides to sanction the company, it no longer exists (it has disappeared or has changed its name). Therefore it is difficult to apply sanctions to companies. • In this regard, higher sanctions should be implemented. Also, there should be an alert system and a website which contains a black list of companies that do not comply or do not respect consumer rights. • Cross-border cooperation is still underdeveloped although ECCs are now starting to get together to tackle issues around timeshare.
<p>Effects of the Timeshare Directive on consumer protection</p> <ul style="list-style-type: none"> • The number of complaints received by the Portuguese ECC has reduced marginally, but there is still a lot of work to do to inform consumers of their rights to drastically reduce complaints. • ASAE has received the following number of cases of infringements in the last few years: 7 cases (2011), 20 cases (2012) and 58 cases (2013) that related to: infringements to advertising rules, contracts without the owner having fulfilled the registration formalities, advance payment before the end of the withdrawal period and infringements to the rights of the consumers.. • The bulk of complaints received or problems reported in Portugal relate to cancellations of timeshare contracts and the fact that consumers only realise too late that they are locked in a contract (in-perpetuity contracts) that are no longer profitable (or at least not as profitable as it used to). This is an issue not solved by the Directive. • Consumers should be able to cancel the contract anytime. Portuguese legislation already provides this possibility. In this type of contracts the payment should be fractioned. It is divided in annual fees and from the second payment onwards (i.e. from the second year) the consumer can terminate the contract without any penalty or reason. The consumer only has to inform the trader the termination of the contract within the 14 days before the date for the fractioned payment. This is very positive for protecting consumers and it is not contemplated in the Directive. • In addition, with the economic crisis many companies went into bankruptcy in Portugal and consumers that wanted to cancel their contracts have problems to locate the company because

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<p>some of them have already disappeared.</p> <ul style="list-style-type: none"> • Most of these cases however relate to timeshare bought many years ago, prior to the transposition of the 2008 Timeshare Directive (2005/2006). • Another problem detected in Portugal is aggressive sales techniques such as door to door selling. Most of the contracts are associated with this type of commercial malpractice. Consumers usually sign the contracts but they don't know the conditions of the contract at that time. In fact, in most of the cases, consumers only receive detailed information once the right of withdrawal has expired. • The Directive's information requirements are considered to be clear enough for the consumer but the problem is how to ensure that consumers are being properly informed by the trader. • Whereas Spain has apparently reported new practices and products circumventing the 2008 Timeshare Directive, this is not the case in Portugal. • Consumers are starting to become aware about rogue traders' practices such as aggressive selling techniques since the transposition of the 2008 Timeshare Directive. Still today, most of the complaints received mostly relate to contracts concluded prior to the transposition of the 2008 Timeshare Directive. • Consumers on the whole are not well informed enough about many of the new aspects of the current timeshare legislation such as the 14-day withdrawal period. However ECC Portugal and DECO try to raise awareness about their rights in general.
<p>Effects of the Timeshare Directive on business activity</p> <ul style="list-style-type: none"> • There are fewer timeshare traders in Portugal today than a few years ago. There is market concentration. There has been a drop in practices relating to aggressive selling on the streets. • The Timeshare Directive fits in well with the UCTD and UCPD. The UCTD can be used to deal with abusive contract clauses whilst the UCPD is useful to tackle unlawful advertising. • In this respect, the EU consumer protection framework is working effectively and there are no overlaps and no risk of effort duplication.
<p>Conclusions</p> <ul style="list-style-type: none"> • The matters of article 4 -Pre-contractual information, and article 6 - Right of withdrawal of the 2008 Timeshare Directive are very important, and could not have been achieved by national law. • The added value of the Directive lies in the harmonisation of pre-contract rules and requirements. This is very relevant in Portugal's case as most timeshare contracts are cross-border ones. This is also a positive development for Portuguese consumers buying timeshare abroad. • The weak point relates to its enforcement which is due to the nature of the timeshare market whereby illegal practices are difficult to stop and rogue traders difficult to trace. • The Directive is certainly fit for purpose and a step in the right direction. To improve the situation, more information should be made available to consumers via campaigns targeting them and national enforcement authorities should further cooperate. The major problem lies in enforcement. • Considering the financial crisis and the way Portugal was hit by it, it is at this stage difficult to measure the degree to which the objectives of the 2008 Timeshare Directive have been achieved.

Romania
<p>Legislation transposing 2008/122/EC</p> <ul style="list-style-type: none"> • Directive 2008/122/EC was fully transposed into national legislation by <i>Government Emergency Ordinance no. 14/2011 on the protection of consumers when concluding and during execution of</i>

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<p><i>timeshare, long-term holiday product, resale and exchange contracts</i>, published in the Romanian Official Gazette, Part I, no 134 from 22 February 2011.</p> <ul style="list-style-type: none"> There are not any other relevant legal provisions applicable to timeshare contracts besides <i>Government Emergency Ordinance no. 14/2011</i>.
Institutional set-up
<ul style="list-style-type: none"> The institution in charge of enforcing Directive 2008/122/EC is National Authority for Consumers' Protection (ANPC). At the same time, the National Authority of Tourism is responsible with supervising that conditions regarding the license of traders that carry out tourism activities are respected. <p>In case of breach of legislation, ANPC applies the following administrative sanctions:</p> <ul style="list-style-type: none"> pecuniary sanctions of 4000 lei to 40000 lei (approx. 888 euro - 8888 euro) or 8000 lei to 80000 lei (approx. 1777 euro – 17777 euro) depending on the breached provisions; when applying the pecuniary sanctions, additional sanctions may be applied: <ol style="list-style-type: none"> immediate compliance with the legislation of the contract terms that were breached; reimbursement of payments collected without legal basis, within maximum 15 days; bringing the contract in accordance with the law, within a maximum of 15 days; repair the deficiencies identified in the fact-finding statement, within a maximum 15 days; failure to carry out the imposed measures, within the periods and in the conditions set in the fact-finding statement, or committing repeated breaches within 6 months from the first noticed infringement is punishable with a fine from 80000 lei to 100000 lei (approx. 17777 euro – 22222 euro).
Enforcement issues
<ul style="list-style-type: none"> No enforcement issues were reported.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> Timeshare, long-term holiday product, resale and exchange contracts have not been developed in Romania and therefore there have not been registered problems in this field.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> Same as above
Conclusions
<ul style="list-style-type: none"> The Directive is undoubtedly a positive development for consumer protection at EU level with respect to timeshare and related products As far as Romania is concerned, there is no domestic market and authorities have not had to deal with cases concerning Romanian owners of timeshare located abroad.

Slovakia
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> The Directive 2008/122/EC was implemented into the legal system of the Slovak Republic through Act no. 161/2011 on consumer protection in the area of certain travel services and with the amendments to the Act (the "Act. no.161/2011 "), effective on the July 1, 2011. Timeshare contracts in cases submitted by Slovak consumers against traders from EU (mainly Spain, Cyprus) have been covered by previous regulations. There is no pertinent legislation, in particular regulating the form of timeshare rights;

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management of timeshare properties in Slovakia. However some of the consumer claims have been subjected to the fraud claims.
Institutional set-up
<ul style="list-style-type: none"> The Slovak Trade Inspection is in charge of enforcing the Timeshare Directive. However, The Slovak Trade Inspection, as the supervisory authority, does not have an opportunity to carry out any checks on the fulfillment of the obligations of the seller under the provisions of Act no. 161/2011. The sanctions in cases of infringement of the legislation transposing the Timeshare Directive are of an administrative nature.
Enforcement issues
<ul style="list-style-type: none"> It is difficult to assess the level of cooperation between different public authorities within Slovakia. ECC-Net helps to consumers reach an out-of-the court solution. In cases in which ECC could not reach an amicable solution, some consumers contacted Police. Unfortunately the results remain unknown.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> The Directive has had no major effects on levels of consumer protection in Slovakia given that there is almost no timeshare market in Slovakia and almost no Slovak owners of timeshare located elsewhere in the EU.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> The Directive has had no effects on the timeshare, LTHP, Exchange and Resale sectors. It is because there are no registered companies in Slovakia providing timeshare or related products Since the transposition of the EU Directive new practices has arisen. More precisely, it is a fraud concerning the selling of an old timeshare to another consumer. This type involves a fake buyer usually from another EU country and intermediary for example from Spain who is communicating with the consumer in his native language (Slovak/ Czech). The following few paragraphs describes the most common case of this new type of fraud. The consumer C has bought timeshare from Slovak Broker Company in 2003. C has withdrawn from the contract and paid cancellation penalty 2.282 EUR in 2004. However, on 20th March 2012 he was contacted by person T. T offered selling C's share to another person from UK. C informed T that he was contacted several times by different traders to sell his share but he was not able to do it as he hasn't been share owner since 2004. T presented certificate from Central Register of Timesharing in Madrid, according to which C was still owner of the timeshare property. T additionally offered 9850 EUR and provided relevant information. T said that the transaction will be via transference way hence it will be necessary to pay deposit. After that C was in touch with T's partners: lawyer with T's guarantees, notary as the guarantee for the deposit of the purchase contract and trustee. C sent deposit of 1620 EUR and waited for money from T. He was also informed that according EU Legislation there is a withdrawal period of 14 days. When 14 days expired C was informed by lawyer, that there are some problems with Spanish tax office and whole transaction has to be taxed (additional 1498 EUR + 248 for tax advisory). C was concerned because he didn't understand why he should pay tax in advance. T told him, that he hadn't got tax ID number, therefore he couldn't pay tax fee on his own. From this reason the tax had to be paid by authorized person which cost C additional 248 EUR for tax advisory. T told C that this sum has to be paid in advance but the Spanish tax office will refund 35% – 45% of the payment. As a result, C covered the additional costs.

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<ul style="list-style-type: none"> • C was informed by lawyer that everything was paid on 31st May 2012 and money for C's shares was released from the deposit and he should receive it within 3-5 days. After 5 days C contacted T and she provided him the same information as lawyer. C tried to contact lawyer again but he was unsuccessful. • This new kind of fraud is not adequately addressed by the existing EU law (UCPD/ UCTD) nor existing national (contract) law.
Conclusions
<ul style="list-style-type: none"> • The timeshare Directive has filled in a number of regulatory gaps and prevented consumers from encountering serious problems. However, in Slovakia Timeshare represents an almost non-existent part in tourism. • The possibility of enforcing administrative sanctions by the Slovak Trade Inspection is the main added value of the 2008 EU Timeshare Directive in Slovakia.

Slovenia
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • The directive was fully transposed into Slovenian legislation, i.e. in the Consumer protection act (Official journal RS, no. 98/04, 126/07, 86/09 and 78/11). • The basic rules on status, establishment, registration and operation of companies, are laid down in the Companies act.
Institutional set-up
<ul style="list-style-type: none"> • Under the Slovenian Companies Act, each business activity must be registered. • In case of any violation the supervisory authority (Market Inspectorate) may impose a fine and issue a decision prohibiting the company's activity and temporarily seize the company's goods and assets (provisions on the undeclared, illegal work). • The contractual relationships, which are not covered within the Consumer protection act, are regulated in the Code of obligations. • There are no rules regulating the management of timeshare properties in Slovenian legislation. • As regards sanctions, there are monetary fines for violations of consumer rights. • Presently, no alternative dispute resolution procedures exist in Slovenia as regards timeshare.
Enforcement issues
<ul style="list-style-type: none"> • Slovenian authorities are very rarely involved in the active enforcement of the timeshare Directive or in the protection of Slovenian consumers suffering prejudice abroad in relation to timeshare. • However cross-border cooperation appears to be working quite effectively. • There was one case where the Slovenian Market Inspectorate gave the initiative to the national Court regarding the recognition of its decision on financial penalty and its execution in other MS. No feedback from the executive body of the relevant MS was recorded. • A case has also been reported to the police for the purposes of pre-trial proceedings because of suspicion of serious business fraud • At the national level there could be a faster respond to the fraudulent and harmful practices.
Effects of the Timeshare Directive on consumer protection
<ul style="list-style-type: none"> • The Directive meets the needs of Slovenian market by default • Timeshare as a business model has little or none potential in the Slovenian territory – there is

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no interest on the “demand” side.
Effects of the Timeshare Directive on business activity
<ul style="list-style-type: none"> • Timeshare as a business model has currently little or none potential in the Slovenian territory. • There is no interest in this product on the “supply” side. • The Directive meets the needs of Slovenian market. No emerging practices circumventing the Directive have been reported.
Conclusions
<ul style="list-style-type: none"> • The Timeshare Directive theoretically complements the UCPD and UCTD and these instruments work together effectively. • Slovenian authorities do not have data on the complementary use of various EU consumer protection instruments in the relevant areas or markets. • Slovenian authorities have too little experience to indicate whether there is a risk of duplication between the Directive and the different EU consumer protection instruments. • With the exception of the Timeshare Directive (due to a lack of evidence), all the mentioned directives contribute significantly to the awareness of consumer rights in the particular situation and to the level of consumer protection. • Slovenia has no experience of enforcing timeshare legislation due to the absence of a market at national level and the fact that timeshare is not well-known amongst Slovenian consumers. The number of Slovenian timeshare owners is most probably negligible.

Spain
Legislation transposing 2008/122/EC
<ul style="list-style-type: none"> • The transposition of the 2008 Timeshare Directive into Spanish law came into force on 17 March 2012. As the transposition was delayed, the Government decided to use the figure of the Decree-Law to shorten the period for its adoption (Royal Decree-Law 8/2012 of 16 March contracts for timeshare on property for tourist use, procurement of long-term holiday products, resale and exchange⁶⁸) and was subsequently endorsed by the Law 4/2012 of 6 July (Law 4/2012, of 6th July, regulating timeshare contracts on property for tourist use, long-term holiday product, resale and exchange and tax rules⁶⁹). • Decree-Law of 8/2012 and Law 4/2012 of 6 July are virtually identical. • Prior to the transposition of the 2008 Timeshare Directive it was regulated by Law 42/1998 of 15 December on the rights of timeshare real estate and tourist use tax regulations which transposed Directive 1994 into the Spanish legal system. Therefore, the new Directive’s requirements were not present in the Spanish legislation. • Law 4/2012 of 6 July includes both the transposition of Directive 2008/122/EC, Title I, and the incorporation of the Law 42/1998, in Titles II and III, adapted as required by that Directive. It follows the same criteria of the Law 42/1998 which had incorporated in his text, not just the rules transposing Directive 1994, but Spanish law themselves. The solution is to avoid a multiplicity of standards and possible contradictions. • The timeshare contract creates a property right and therefore there are huge precautions in the law when a professional wants to act in this sector. Article 25 of the Law establishes the requirements to be met by a professional who will start the activity. The registration of the

⁶⁸ <http://www.boe.es/boe/dias/2012/03/17/pdfs/BOE-A-2012-3811.pdf>

⁶⁹ <http://www.boe.es/buscar/pdf/2012/BOE-A-2012-9111-consolidado.pdf>

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<p>property is required, and must be endorsed by the competent authority (the regions). This article also includes other requirements to be met by the professional as the conclusion of insurance, guarantees, etc.</p> <ul style="list-style-type: none"> • Furthermore, the timeshare property must be formalized in deed, and also be registered in the Property Registry. The minimum requirements that must contain the deed set out in Article 26 of the Law. • The acquisition and transfer of rights of timeshare may be registered in the Property Registry, provided that the contract was concluded or executed by public deed.
Institutional set-up <ul style="list-style-type: none"> • The Consumer authority is in charge of enforcing the Timeshare Directive in Spain. • As Consumer affairs are decentralized to the autonomous regions the powers of sanction and inspection rely on the consumer authorities of the autonomous regions. • Although there are some regions such as the Canary Islands, Andalusia and the Balearic Islands which have their own tourism law that cover some specific issues, there is no evidence that there are significant differences between the regional legislations in this matter. • The breaches of the Directive is not a criminal offence, but civil. The sanctions for infringements of the timeshare legislation are administrative and are governed by the rules governing the consumption of each autonomous region. • The types and amounts of penalties are often similar. In fact, the revised text of the General Law for the Protection of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, of November 16 is applied in a supplementary way in the absence of the provisions of the regional legislation. • Consumers can access the Spanish Consumer Arbitration system if there are breaches of the timeshare legislation. • The ECC Spain also provides an out-of-court dispute resolution mechanism and tries to mediate conflicts, but does not have law enforcement powers. • Likewise, the RDO has an out-of-court system available to consumers who have a conflict with any of the members of this professional organisation. • The problem is that illegitimate companies do not undergo to arbitration systems. In these cases, consumers have to go to Court and it is a long and a very expensive process.
Enforcement issues <ul style="list-style-type: none"> • There are no legal uncertainties identified with derive from the transposition of the 2008 Timeshare Directive into the national legislation. • Regional consumer authorities cooperate with other consumer authorities at a European level through the CPC network; however, it seems that this system is still underused. • ECC Spain is acting as leader of a Joint Project that involves a number of ECCs with the aim of developing awareness-raising campaigns to advice consumers before they travel to holiday destinations. They launched a questionnaire to obtain feedback from other ECCs on how to provide assistance to timeshare consumers and they are also working on a ECC website dedicated to timeshare to be launched by the end of 2014. • Nationally, both the consumer authorities and the ECC Spain notify to the police those cases that are considered to be fraud. • The enforcement is the element that has to be improved in Spain. Although there is appropriate legislation in place, there is not an adequate control established. • All legitimate businesses have introduced the necessary changes to comply with the legislation. However, rogue businesses do not bother to comply with the law as it rarely has consequences. These companies are difficult to pursue. There are not enough resources or deterrent

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measures.

- There is a Spanish Registered Association representing the interest of timeshare owners (Mindtimeshare⁷⁰) that have been victims of fraudulent practices carried out by fraudulent companies (fraudulent Discount Travel Membership Clubs (holiday clubs), Resale firms, Class Action Law firms, Cash Back schemes, etc.).
- Mindtimeshare investigates possible fraudulent companies based on consumer complaints (it is funded by RDO), and subsequently produces a report delivered to the police. These cases were not taken to court unless a particular consumer denounced them. However, since 2013 the Association decided to denounce these fraudulent companies and take these cases to court together with the prosecution.

Effects of the Timeshare Directive on consumer protection

- The number of complaints has dropped since the transposition of the Directive into Spanish law (prior to 2012) regarding discount holiday clubs as there was no regulation about it. On the one hand, legitimate businesses were adapted to the law and many of the fraudulent ones paralyzed their activity. In addition, consumers are increasingly aware of their rights through entities such as ECC.
- Currently, consumer problems related to Timeshare licit companies are residual and are related to:
 - Perpetuity contracts signed in the 80s (prior to the European Directives).
 - The indiscriminate increase in the annual maintenance fees to their customers.
 - Inheritance of timeshare weeks (e.g. what happen when the owner of a timeshare week dies and his heirs do not want to continue with the product.).
- The industry is well aware of these problems and is working to offer a solution.
- However, the allegedly fraudulent companies continue being a problem. Mindtimeshare received more than 9,700 consumer complaints in 2013 (most owners of timeshare weeks) on susceptible fraudulent companies. Last year, there were recorded more than 490 active companies, allegedly fraudulent.
- In addition to the initiatives undertaken by the ECC Spain mentioned above (Joint Project and website about Timeshare), the consumer authorities (national and regional) also try to inform consumers through their websites about the legislation on timeshare as well as their rights and the risks associated.
- Similarly, consumer associations also provide information on such schemes to consumers through their websites, press releases or summer campaigns.

Effects of the Timeshare Directive on business activity

- Overall the Directive has had a positive effect. The harmonisation of cooling-off periods and information requirements has been very positive and has facilitated cross-border trade of these products and services.
- However, the harmonisation of rules prohibiting advance payments during the withdrawal period has been extremely negative to legitimate timeshare businesses in the sector according to RDO. The importance of this advance payment is essential for the industry because it has a big psychological component. It represents a compromise; without it there is no link between the company and the consumer and there is much uncertainty for the company. RDO pointed out that this should be done in a different way, for example, by permitting to take deposits through a third-party.

⁷⁰ <http://www.mindtimeshare.com/>

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- While the information and publicity requirements are very positive and also represent a backing for the industry, the obligation to provide contracts in the language of the consumer is very burdensome for companies.
- In general, codes of conducts/code of ethics are very positive for the industry and have increased the consumer confidence and improved the image of the legitimate timeshare companies.
- Although the Directive has been very effective in preventing the discount holiday clubs, new products have emerged to circumvent it: e.g. leisure credits. Basically the product is the same, but with another name.
- Leisure credit companies assure they sell credits that allow consumers to go on vacation anywhere in the world. They introduce additional services such as ticket to sport events, concerts, to show that they do not only sell vacation products, and therefore they are not included in the Directive. Thus, they avoid fulfilling with the restrictions of the Directive, such as taking deposits before the cooling-off period. It is considered that schemes like the leisure credits show how traders will always find ways to circumvent the legislation.

Conclusions

- Overall, the Directive has greatly improved consumer protection, and is now much more transparent market.
- The information and harmonization at European level are very positive aspects and strong points of the Directive, since these products have by nature a cross-border basis.
- However, the ban on accepting deposits during the cooling off period and the high costs that involved translations of contracts are the most negative aspects and weak points of the Directive from the point of view of the industry.
- While the legislation in place is appropriate, the enforcement has to be improved in Spain. Legitimate businesses have adapted to comply with the legislation, but rogue traders always find ways to circumvent it.
- It is necessary to establish appropriate measures to pursue rogue companies, which are difficult to identify and trace. There are not enough resources allocated for control or deterring actions. In addition to allocating more resources, more efficient mechanisms for cross border cooperation should be established, as the ones that exist for more serious offences.
- Likewise, appropriate procedural mechanisms should be established to improve consumer protection, as access to the judicial system is costly and slow in Spain, as in other countries, and it is even more difficult when there is a cross-border dimension.
- The EU has established a comprehensive legislative setup in the field of consumer protection and the 2008 Timeshare Directive works well with the UCPD and the UCTD.
- The transposition of the Directive into Spanish law is relatively new, so it is early to estimate its actual impact or added value.

Sweden

Legislation transposing 2008/122/EC and national regulatory regime

- The Directive was transposed in 2011 by '*Lag (2011:914) om konsumentskydd vid avtal om tidsdelat boende eller långfristig semesterprodukt*' (Law on consumer protection in contracts about timeshare accommodation and long-term holiday products).
- There is also a Regulation on the subject: '*Förordning (2011:917) om konsumentskydd vid avtal om tidsdelat boende eller långfristig semesterprodukt*'.
- Swedish legislation did not contain any of the new requirements that were introduced by the

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Directive before the transposition of the 2008 Directive.
Institutional set-up <ul style="list-style-type: none"> The Swedish Consumer Agency (<i>Konsumentverket</i>) is the enforcing authority. http://www.konsumentverket.se/otherlanguages/English/ The enforcement responsibility of the Consumer Agency is specified in chapter 6 §1 of the above-mentioned Law (2011:914). The ECC (<i>Konsument Europa</i>) works in close cooperation with the Agency, who is also their host organisation, and with the CPC. The sanction for infringement of the legislation would be a fine for operators who refuse to exchange information or to cooperate. Otherwise, it could be paying a market disruption fee (<i>marknadsstörningsavgift</i>). Cases of cross-border infringement have to go through the pan-European Consumer Protection Cooperation (CPC) network which uses a joint IT-tool/database for the national authorities to exchange information. The network can cooperate in 3 different ways: 1) Information requests, 2) Requests for enforcement measures and 3) Alerts (warnings). In practice, the real results of the cooperation are limited and possible sanctions are hardly ever used, since it is difficult to get the CPCs in the destination countries to cooperate. There does not appear to be any particular cooperation on this issue between the relevant public authorities in Sweden (consumer authority, judicial authorities and police) – mainly because there are very few Swedish companies involved in this type of holiday business⁷¹ and so far there have not been any examples of prosecutions against them. The collaboration at cross-border level between relevant authorities does not seem to have improved as a result of the Directive or the work in the CPC. The problem is mainly limited to Spain, but the authorities there do not seem to provide any effective supervision of holiday operators. Consumers in Sweden have one alternative dispute resolution mechanisms, in the form of the Swedish Board of Consumer Disputes which can be used to try disputes regarding timeshare issues. There are a number of past cases in the field, mainly from before the first EU Directive was transposed into Swedish legislation (Case numbers: 2000-6503, 2001-2425, 2002-6218).
Enforcement issues <ul style="list-style-type: none"> The transposition of the EU Timeshare Directive into Swedish legislation did not create any legal uncertainties, as far as we can understand. Enforcement powers lie with the Swedish Consumer Agency - the ECC's host. The ECC cannot enforce. As most timeshare contracts have been signed abroad, the consumers cannot sue in a Swedish court. The ECC mainly receives complaints in connection with cross-border cases. They would typically discuss these complaints with their ECC network partners in the relevant countries (especially Spain and Greece) to get them to take the issue up with operators based there, but it is rare that anything concrete comes out of these discussions. There does not appear to be any

⁷¹ The Holiday Club in Åre organizes a product similar to timeshare (<http://www.holidayclub.se/ownership/sa>) which seems to work well. The Consumer Agency has never received any consumer complaints against them - they reviewed their terms & conditions some year ago and everything looked fine then. There is another company on www.blocket.se called 'New Home in Turkey' that sells timeshare-like accommodation and works with resale. They also have their own website: <http://www.newhomeinturkey.se/visning-resa-40.html>. There have been complaints to the Consumer Agency about their viewing trip, which is only free of charge if you buy a condo or a home.

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effective supervision on the part of Spanish authorities with this type of activity.

- According to administrators within the Swedish enforcement authority, the Directive has not led to any improvement in the collaboration with authorities across borders.
- A particularly successful development has been the increase in 'chargeback', whereby Swedish banks have been able to help consumers claim their advance payment or deposit back from the holiday operator, if the consumers have used their right to withdraw from the contract within the cooling-off period. It should be pointed out that this procedure only works when payment has been made with an international bank card. In most cases using the right to withdraw and obtaining chargeback has been enough to avoid further problems.

Effects of the Timeshare Directive on consumer protection

- As a result of the Directive many timeshare contracts do now contain information on the right to withdraw and respect the ban on advance payment. As mentioned above consumers have also, to a wider extent, been able to cancel their contracts in the cooling-off period, or at least get their advance payments back through the collaboration with banks. However, the direct effect of the Directive on consumers has not been as marked as might have been hoped for.
- As the table below shows, the number of inquiries concerning timeshare and holiday products has gradually gone down since the Directive was adopted in 2008 and transposed in 2011. There was a marked reduction in 2013 which apparently coincided with the Spanish police taking action against rogue traders. The figures for 2014, so far, appear to indicate a new increase in complaints, a trend which seems to correspond with comments suggesting that holiday operators have now managed to find ways to avoid that their products are covered by the legislation.

ECC inquiries	2014*	2013	2012	2011	2010	2009	2008	2007
Timeshare related	59	157 (3.7%)	238 (5.4%)	254 (6.2%)	225 (5.5%)	261 (8.8%)	262 (8.1%)	297 (9.1%)
All inquiries	-	4,275	4,373	4,109	4,076	2,976	3,241	3,262
Spain % of all	87%	89%	74%	57%	69%	70%	59%	64%
Greece % of all	-	0.5%	14%	23%	23%	13%	18%	12%

* 2014 – to 11 March

- In terms of the proportion of resolved cases, the success rate is very high for cases within the scope of the Directive, where the consumer only wants to recover any advance payment made by card. However, the rate is a lot lower in cases where advance payment has been made by cash or bank transfer or cases that are not clearly within the scope of the Directive and which require a higher level of legal argumentation, even if advance payment has been made by card.
- In terms of awareness-raising efforts, the ECC and the Swedish Consumer Agency have included a lot of information about timeshare and holiday clubs on their websites, including a well-developed FAQ page. The ECC's site is the first that appears, if consumers google 'timeshare'. The ECC network is also working together at the moment on making a joint awareness-raising campaign with a website portal that would assemble all relevant information to assist consumers
- The problems surrounding timeshare and long-term holiday products are regularly discussed on radio and in newspapers in Sweden. Some years ago there was an interesting television programme on the issue. The ECC is currently in discussions with a journalist about making a follow-up television programme to address some of the latest problems that occur.
- Previously, the ECC has also tried to pre-warn Swedish travellers by sending out 20,000

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<p>information leaflets for travel agents and hotels to circulate to tourist, especially those travelling to the Canaries. But apparently the distribution has never been done effectively.</p> <ul style="list-style-type: none"> • In general, consumers are probably more aware of the risks associated with buying timeshare or long-term holiday products as a result of the Directive, but there has nonetheless been an increase in complaints recently.
<p>Effects of the Timeshare Directive on business activity</p> <ul style="list-style-type: none"> • As far as we understand, there are only two Swedish businesses⁷² involved in the timeshare or long-term holiday products market (and none in Exchange and Resale), so it is difficult to talk about the Directive's effect on the market in Sweden. • One of these businesses, the Holiday Club, appears to function without any problems, but with regard to the second business, complaints have been filed with the Swedish Consumer Agency about their practices. • New practices aiming to counteract the Directive appear to develop regularly among traders in typical timeshare destinations (Spain in particular – with the Canaries being the most prevalent). Typical problems include: <ul style="list-style-type: none"> • the involvement of a large number of contract partners making it very difficult to work out who is responsible, and no proper contact details; • the contract consisting of different components where the company claims that the contracts are separate, or part of the product is called a "gift" to try to circumvent the legislation; • the right to withdrawal is only given orally or the company often claims that the consumer does not have the right of withdrawal at all; • stating a maximum contract duration of 1 year, although this is clearly not the case in practice. • It is not clear whether existing EU consumer law is able to catch all of the new products and practices that emerge. Because there is no guiding case law, it is a matter of contractual interpretation and interpretation of Directive to determine how far the definitions of the Directive extend. • In terms of the effectiveness of the Directive in preventing rogue traders from doing business, the Swedes do not believe that regulation can put a stop to fraudulent practices, such as reclaim services, legal representation or resale. It is this indefinite nature of the contracts that makes it such an attractive prospect to fraudsters and there are very few examples of consumers who have managed to get released from their timeshare contracts. • There do not appear to be any signs that the Directive has improved the image of the legitimate timeshare/LTHP/ Exchange/ resale industry.
<p>Conclusions</p> <ul style="list-style-type: none"> • The Timeshare Directive corresponds relatively well to the needs of consumers and it does enhance consumer protection, especially at the point of entering into the contract, in spite of rogue traders who keep trying to find ways to bypass the legislation. • The main effects of the Directive have been better possibilities of assisting consumers and a reduction of the administrative costs involved, as the Directive provides additional potential for solving problems. Beforehand, the only option was mediation which is time consuming and not

⁷² Holiday Club Sweden AB; <http://www.holidayclubresorts.com/sv/ownership/> and <http://www.newhomeinturkey.se/visning-resa-40.html>.

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usually very successful. Thus a better use of tax payers' money has been achieved. However, there is doubt as to whether the Directive makes a difference with regard to solving problems more quickly.

- However, there are still no cases of Swedish consumers managing to sell their timeshare or to cancel a contract, when they get old and no longer have the means to travel or pay the annual fees.
- More active and efficient enforcement is still needed to avoid that rules are circumvented and better supervision of the Spanish market, in particular the Canaries. As it stands, it is difficult for the consumer to provide proof subsequently, since a lot of information is given orally and the sales representatives rarely allow contracts to leave the meeting room before they are signed. The rights of consumers should therefore be more clearly defined in the Directive/national legislation.
- 'Chargeback' has become a very important solution, but the more complex the required legal argumentation is, the more difficult it is for the bank to organise it.
- The efficiency of enforcement would clearly be improved if the consumer was able to sue fraudulent operators in his own country – introduction of specific rules concerning the choice of law would be very beneficial. Currently, the difficulties for a Swedish consumer to sue in Spain are limitless, with one problem being language difficulties (contract in Swedish, consumer not speaking Spanish etc.).
- The Directive is largely coherent with other consumer law instruments, but there is some overlap with the UCP Directive.
- In terms of added value, the Directive is absolutely essential, however a Regulation would be better in that it would avoid having to wait for implementation. A regulation, if clearly written, could be used with direct effect, for instance in connection with bank card complaints.

Proposals for the future:

- Resale fraud and related problems only exist because a large number of consumers are caught in long term timeshare contracts that they are not able to relinquish, which unscrupulous traders are then able to take advantage of. Compliance and enforcement action is not a cost effective remedy for this situation. Enormous amounts of money can be wasted in this way without noticeable positive effect for consumers.
- According to the Swedes, the best way to deal with the current problems would be to give consumers a **statutory exit right**, letting any owner of a contract covered by the timeshare regulation relinquish the contract after 5 years has passed from contract signing. Such a rule should of course not give consumers retroactive rights to reimbursement of previous maintenance fees but it must be applicable to older contracts, i.e. a consumer with a 10 year old timeshare contract should have the right to relinquish the contract as soon as the new regulation had come into effect.
- Any **new timeshare rules should be in the form of an EU regulation** with direct effect so the consumer does not have to wait several more years for a directive to be implemented.
- The **minimum contract length of one year should also be removed** since rogue traders are trying to circumvent this in many ways. In principle, it should be possible to deal with these attempts through legal court procedures, but this is not happening. Compliance and enforcement of the current rules by authorities would be very costly and not have noticeable, positive effect. The requirement of at least **two separate accommodation periods could be kept**, this way the regulation will not get an unacceptably wide application.
- The **article stating that side-contracts** should be cancelled along with the main contract **should**

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be re-worded so that it is clear that many contracts signed at the same time or in connection with each other should be viewed as one contract in the eyes of the regulation and that all parties on the trader side should be jointly liable for returning any advance payment or other payment that has been given in conflict with the timeshare regulation.

United Kingdom

Legislation transposing 2008/122/EC

- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 came into force on 23 February 2011.
- In the 2010 Regulations implementing the Directive, there is a provision which makes information requirements part and parcel of timeshare contracts. Part of that information is on contract termination, i.e. conditions for termination and liability for termination. Such information must now be included in timeshare contracts under the new timeshare regulations.
- Information relating to the management of timeshare properties (e.g. maintenance fees) must now be provided to consumers. These pre-contract information requirements are integrated into the concluded contracts. Consumers have thus clear information about how timeshare resorts are operated.
- The legal form of a timeshare contract amounts to a right of occupation and not ownership. Consumers have a contractual right to occupation.
- There is no formal registration of timeshare contract owners in the UK. Trusts are set up and are in charge of the timeshare properties. Trusts are thus responsible for the day-to-day running of the property. This can be organised in a number of ways: timeshare contract owners may form a committee to run the timeshare, the timeshare owner (or trustee) might run the timeshare or subcontract a private company to run the timeshare.
- Different systems exist. There is nothing in UK law which applies to the management of timeshare properties.

Institutional set-up

- The institutions in charge of enforcement are the TSI and the CMA (ex-OFT). In Northern Ireland, it is the Department of Enterprise, Trade and Investment (employed by the Assembly) that is in charge of enforcement.
- The regulations contain criminal sanctions. In the UK, enforcement authorities can engage criminal proceedings (summary conviction) against unlawful timeshare companies. In most cases, unlawful companies are required to pay a £5,000 fine.
- For more serious offences, cases can be taken to the Crown Court where fines are unlimited.
- The TSI can take injunctive action against unlawful companies to stop and prevent any wrongdoing. Consumers themselves can take their case to the civil courts in accordance with Section 35 of the 2010 Timeshare Regulations.

Enforcement issues

- Enforcement authorities in the UK are taking action: police website identifying timeshare fraud (<http://www.actionfraud.police.uk/fraud-protection/timeshare-fraud>). A special police task force (Action Fraud) is responsible for informing consumers on scams and for investigating roguery.
- The CMA and citizens advice bureaus are also active in raising consumers' awareness and in handling complaints. A few years ago, the OFT ran campaigns at airports in the UK to warn consumers of the risks associated with purchasing timeshare abroad.
- In term of enforcement, however, court action has been pretty minimal. There has not been a

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need for heightened enforcement as timeshare sales have generally dropped. As such, enforcement costs should be declining.

- In terms of cross-border cooperation, cooperation via the CPC is a major improvement. The UK is an active participant within the CPC network but there are concerns other Member States may not be as active as they should be. It is in this context that the Commission is looking to review the effectiveness of the CPC network (review of the CPC regulation).
- The RDO has been quite successful in engaging Spanish enforcement authorities in tackling timeshare fraud. However the willingness on the part of the Spanish authorities to deal with these issues has been compounded by the fact that Spain is facing budgetary constraints.
- It is difficult to know whether the Directive has helped reduce the number of cases relating to a breach of contract as the enforcement authorities do not keep track of what goes on in the small claims courts (whereby consumers take their cases to court).
- In summary, examples of best practices to fight rogue businesses include: Action Fraud (Police), RDO task force on enforcement, TATOC providing valuable information and advice to consumers and identifying rogue companies and publishing their names on their website (list of cold callers).

Effects of the Timeshare Directive on consumer protection

- In the UK, complaints in relation to new 'timeshare' purchases have declined substantially in the last few years.
- It seems that the Directive has actually put an end to the long-term holiday product market thanks to its provisions on annual instalments as regards payments. However, new products such as leisure credit schemes have emerged.
- There are uncertainties as to whether the Timeshare Directive is applicable to leisure credit schemes. Indeed, the Directive applies to long-term holiday products lasting minimum 365 days, however most leisure credit schemes last just under 365 days.
- Similarly, whilst it is assumed that the definition of LTHP centres on the provision of accommodation, leisure credit schemes offer a range of various services with accommodation being only one of them. In this context, some guidance from the Commission would be welcome as regards the definition of LTHP.
- In terms of the number of consumer complaints, they have been steady if not rising in relation to issues around legacy. The RDO, however, has said that complaints against its members have decreased considerably. In relation to resale, very few complaints about bona fide companies have been recorded.
- However, complaints in relation to bogus companies have risen substantially. Bogus resale companies often obtain illegally the contact details of timeshare owners.
- Measures should be taken at EU level to prevent this kind of practice. For instance, an EU network of data protection commissioners could be created to tackle the illegal cross-border exchange of personal data between fraudulent timeshare businesses and resale businesses.
- No particular complaints about exchange contracts have been recorded in the UK. Exchange has never been a pressing issue. Complaints in relation to exchange are more linked to information transparency and consumer expectations.

Effects of the Timeshare Directive on business activity

- In terms of the functioning of the market, although the RDO has highlighted a few issues (particularly in relation to deposits), the Directive has had a positive effect.
- The Directive has improved the image of the legitimate timeshare industry, and as such has improved consumer confidence.
- The Directive has led to improvements in the functioning of the timeshare market proper whilst

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putting an end to the LTHP market. The market is now much more transparent as a result.

- The Directive seems to have had an impact on the offer of LTHP. The business model is not as profitable today under the new Timeshare regulation as it used to be. This is because the new regulations allow consumers to withdraw from the LTHP after a year and every year after the first year prior to paying their yearly instalment.
- Leisure credit schemes fall within the scope of LTHP as they last for more than a year. Guidance or clarification on the scope of the Directive from the Commission would be appreciated to ensure that such products are covered.
- The Directive's objectives have been successfully met and many timeshare businesses have responded positively. Legitimate resale businesses have been mostly successful and information in relation to exchange schemes has become clearer and more transparent.
- In relation to genuine resale companies, some have attempted to circumvent the ban on deposits by offering a separate marketing service, but it is not entirely clear whether this is actually causing problems to consumers. No complaints have been received in this respect.
- The creation of a separate marketing contract may not be a problem but it is a way for resale companies to get money upfront. However, it would be interesting to find out whether resale would take place without that extra marketing service which requires an upfront payment from consumers.
- As regards new types of fraud, bogus resale companies ignoring the Directive have emerged. It is actually uncertain whether these companies existed before the implementation of the new legislation or not.
- It is often the same entities that scam consumers once on a product or service and then provide a bogus legal service to the scammed consumers.
- Companies that proceed to cold calling asking consumers if they want to resell their timeshare all ask for upfront fees.

Conclusions

- The Timeshare Directive corresponds to the needs of the target groups to a high extent. The number of complaints about new timeshare purchases has gone down substantially in the UK. Similarly, complaints about Long-term holiday products have declined considerably. This is a direct effect of the Directive.
- Scammers exist because of issues around exiting and legacy. It is an area that needs to be regulated. Many people who want to get rid of their timeshare are already in a vulnerable position because of the difficulties associated with resale.
- The Directive, the UCPD and the UCTD work well together. The UCPD sets the overall trading environment across different sectors. The UCPD does not give any contractual rights to consumers, but it regulates sellers' behaviours. The Timeshare and Package Travel Directives enhance the marketing elements and provide consumer rights. UCPD applies to aggressive selling practices.
- There is no risk of duplication of efforts in the enforcement of legislation. The Timeshare and Package Travel Directives for instance are excluded from the Consumer Rights Directive. In the UK, there is no risk of duplication in the application of these various instruments. Enforcement authorities will pick out the most appropriate instruments depending on the problem in question.
- The whole EU legislative set up is very comprehensive and contains the kind of consumer protection requirements which achieve a balance between what consumers need and should be entitled to and what businesses should be doing.
- The bona fide industry finds the Timeshare Directive useful as it sets clear rules which they have to follow. In this context, legitimate businesses do not need to seek legal advice.

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- The main added value of the Directive from UK consumers' perspective is the harmonisation of consumer protection levels across the EU. Consumers can expect the same marketing rules and have the same rights across the EU.
- The Directive both improves consumer confidence and creates a level playing field on the market. It fosters fair competition on the market. The situation could be further improved, however, with better enforcement means.
- The Directive is clear and easy to understand, but there are areas which might need to be regulated, such as exit rules.
- The absence of provisions on exiting leads to potential breaches of contract. Rules on exiting are also a way of dealing with issues around fraud.
- In the case of contracts being passed on (legacy), there is a lack of transparency in the way maintenance fees are calculated.
- The CMA will soon publish a report recommending that exit rules be integrated into the legislation and be applied retrospectively.