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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

1. Whereas the disparities between national legislations on contracts relating to the purchase of the right to use one or more immovable properties on a timeshare basis are likely to create barriers to the proper operation of the internal market and distortions of competition and lead to the compartmentalization of national markets;

2. Whereas the aim of this Directive is to establish a minimum basis of common rules on such matters which will make it possible to ensure that the internal market operates properly and will thereby protect purchasers; whereas it is sufficient for those rules to cover contractual transactions only with regard to those aspects that relate to information on the constituent parts of contracts, the arrangements for communicating such information and the procedures and arrangements for cancellation and withdrawal; whereas the appropriate instrument to achieve that aim is a Directive; whereas this Directive is therefore consistent with the principle of subsidiarity;

3. Whereas the legal nature of the rights which are the subject of the contracts covered by this Directive varies considerably from one Member State to another; whereas reference should therefore be made in summary form to those variations, giving a sufficiently broad definition of such contracts, without thereby implying harmonization within the Community of the legal nature of the rights in question;

4. Whereas this Directive is not designed to regulate the extent to which contracts for the use of one or more immovable properties on a timeshare basis may be concluded in Member States or the legal basis for such contracts;

5. Whereas, in practice, contracts relating to the purchase of the right to use one or more immovable properties on a timeshare basis differ from tenancy agreements; whereas that difference can be seen from, *inter alia,* the means of payment;

6. Whereas it may be seen from the market that hotels, residential hotels and other similar residential tourist premises are involved in contractual transactions similar to those which have made this Directive necessary;

7. Whereas it is necessary to avoid any misleading or incomplete details in information concerned specifically with the sale of the rights to use one or more immovable properties on a timeshare basis; whereas such information should be supplemented by a document which must be made available to anyone who requests it; whereas the information therein must constitute part of the contract for the purchase of the right to use one or more immovable properties on a timeshare basis;

8. Whereas, in order to give purchasers a high level of protection and in view of the specific characteristics of systems for using immovable properties on a timeshare basis, contracts for the purchase of the right to use one or more immovable properties on a timeshare basis must include certain minimal items;

9. Whereas, with a view to establishing effective protection for purchasers in this field, it is necessary to stipulate minimum obligations with which vendors must comply *vis-à-vis* purchasers;

10. Whereas the contract for the purchase of the right to use one or more immovable properties on a timeshare basis must be drawn up in the official language or one of the official languages of the Member State in which the purchaser is resident or in the official language or one of the official languages of the Member State of which he is a national which must be one of the official languages of the Community; whereas, however, the Member State in which the purchaser is resident may require that the contract be drawn up in its language or its languages which must be an official language or official languages of the Community; whereas provision should be made for a certified translation of each contract for the purposes of the formalities to be completed in the Member State in which the relevant property is situated;

[1] OJ No C 299, 5. 11. 1993, p. 8.
[2] OJ No C 108, 19. 4. 1993, p. 1.
[3] Opinion of the European Parliament of 26 May 1993 (OJ No C 176, 28. 6. 1993, p. 95 and OJ No C 225, 20. 9. 1993, p. 70) confirmed on 2 December 1993 (OJ No C 342, 20. 12. 1993, p. 3); Council common position of 4 March 1994 (OJ No C 137, 19. 5. 1994, p. 42) and decision of the European Parliament of 4 May 1994 (OJ No C 205, 25. 7. 1994). Join text of the Conciliation Committee of 22. 9. 1994.

11. Whereas to give the purchaser the chance to realize more fully what his obligations and rights under the contract are he should be allowed a period during which he may withdraw from the contract without giving reasons since the property in question is often situated in a State and subject to legislation which are different from his own;

12. Whereas the requirement on the vendor's part that advance payments be made before the end of the period during which the purchaser may withdraw without giving reasons may reduce the purchaser's protection; whereas, therefore, advance payments before the end of that period should be prohibited;

13. Whereas in the event of cancellation of or withdrawal from a contract for the purchase of the right to use one or more immovable properties on a timeshare basis the price of which is entirely or partly covered by credit granted to the purchaser by the vendor or by a third party on the basis of an agreement concluded between that third party and the vendor, it should be provided that the credit agreement should be cancelled without penalty;

14. Whereas there is a risk, in certain cases, that the consumer may be deprived of the protection provided for in this Directive if the law of a non-Member State is specified as the law applicable to the contract; whereas this Directive should therefore include provisions intended to obviate that risk;

15. Whereas it is for the Member States to adopt measures to ensure that the vendor fulfils his obligations,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive shall be to approximate the laws, regulations and administrative provisions of the Member States on the protection of purchasers in respect of certain aspects of contracts relating directly or indirectly to the purchase of the right to use one or more immovable properties on a timeshare basis.

This Directive shall cover only those aspects of the above provisions concerning contractual transactions that relate to:

— information on the constituent parts of a contract and the arrangements for the communication of that information,

— the procedures and arrangements for cancellation and withdrawal.

With due regard to the general rules of the Treaty, the Member States shall remain competent for other matters, *inter alia* determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.

Article 2

For the purposes of this Directive:

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

— 'immovable property' shall mean any building or part of a building for use as accommodation to which the right which is the subject of the contract relates,

— 'vendor' shall mean any natural or legal person who, acting in transactions covered by this Directive and in his professional capacity, establishes, transfers or undertakes to transfer the right which is the subject of the contract,

— 'purchaser' shall mean any natural person who, acting in transactions covered by this Directive, for purposes which may be regarded as being outwith his professional capacity, has the right which is the subject of the contract transferred to him or for whom the right which is the subject of the contract is established.

Article 3

1. The Member States shall make provision in their legislation for measures to ensure that the vendor is required to provide any person requesting information on the immovable property or properties with a document which, in addition to a general description of the property or properties, shall provide at least brief and accurate information on the particulars referred to in points (a) to (g), (i) and (l) of the Annex and on how further information may be obtained.

2. The Member States shall make provision in their legislation to ensure that all the information referred to in paragraph 1 which must be provided in the document referred to in paragraph 1 forms an integral part of the contract.

Unless the parties expressly agree otherwise, only changes resulting from circumstances beyond the vendor's control may be made to the information provided in the document referred to in paragraph 1.

Any changes to that information shall be communicated to the purchaser before the contract is concluded. The contract shall expressly mention any such changes.

3. Any advertising referring to the immovable property concerned shall indicate the possibility of obtaining the document referred to in paragraph 1 and where it may be obtained.