

THE TIMESHARE INDUSTRY AT ITS FINEST

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Abstract

The coagulation process of timeshare systems, the drafting action of its main peculiarities and the stake of its implementation have ushered the proclivity of U.S.A and of the E.U member states to legally set the aboriginal bricks of the juridical tower overseeing the ownership right in its new gala dress, which was the timeshare cloak that unfurled upon the naked shoulders of the resort service industry. The U.S.A precipitated in establishing the controlling channels of such a large scale operation by making the timeshare ownership concept a part of the South Carolina legislative compound, but nevertheless the E.U did not cave under the grueling weight of the good's market new product figure, adopting instead the Timeshare Directive aimed to protect the consumer's best interests. This paper suggests a bird's eye view over the requirements induced through the 94/47/EC Directive and then later through the new and improved 2008/122/EC Directive (with the Romanian transposition of the two normative acts' provisions) for an individual to become the beneficiary of their protection. The study will be completed with a series of data concerning the economical impact of timeshare development, which will credit the fast-forward actions of the above mentioned continents that proved themselves visionaries in the long run.

Keywords: *timeshare network, temporary usage right, article 2 of the Timeshare Directive, O.G 14/2011, economical input of the timeshare industry in the larger picture of the trade market*

Introduction

Many of the economical agents that offered timeshare goods to the consumers have previously sold only the appearance of property, creating an illusionary image in the minds of purchasers, which in the final picture frame couldn't pinpoint the exact right gained in exchange of the price they paid the other contractual party. Thus, an avalanche of pleads from the citizens of member states were sent to the mail box of all the European organisms, but especially to the European Parliament, the main complaints emerging from them all being the aggressive sales techniques and the contractual elements that imply making use of the international private law prerogatives that create difficulties in the flow of the timeshare sales contract¹. Having in mind that in the majority of the member states this sort of contracts was poorly schematized², the European Community decided to weave a harmonized minimal provision basket that referred to the obligation set in the name of the economical agents to inform the consumers upon the constituent aspects of the contract, the methods through which these data should come into their acknowledgement and also upon the manners of annulment and denouncement of the juridical act that bounds the two parties.

At the origins of the Timeshare Directive sat an European Parliament decision from October 13th 1988 that rang the bell on the aspect that consumers were the victims of delinquent manifests on behalf of the sellers in this type of contracts. Further down the lane, the same institution with the back-up of the European Council strived to adopt the 94/47/EC Directive and did so on the 26th of October 1994. In accordance with the arguments that stood as corner stones for its adoption, the directive was necessary to come into being in order to obtain an uniform legal by-standing for the

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¹ Decision of the Federal Court of Germany from the 19 th of March 1997 explained in *Revue critique de droit international privé*, 87 no. 4/1998, page 610 with notes by professor Paul Lagarde in pages ranging from 619 to 631.

² Only four states had norms to provide for timeshare contracts before the 94/47/CE Directive was adopted: Portugal, France, Greece and Great Britain.

timeshare sales contracts and to withstand the unfair trade practices on one hand and to protect the acquirer's right that rise from signing this sort of convention, on the other.

Although the working staff of the two European organisms has neglected mentioning the juridical nature of the rights that are gained by the consumer, they did not oversee the probability for the parties to become confused on this respect, thus they made the specification that even if the timeshare contract bears resemblances to the rent contract, the two shouldn't be seen as species of the same kind of convention. Therefore, this paper considers that a glance at the material and personal domains of application of the two directives comes in the aid of the large consumer population that may not be in tune with the requirements needed to be checked in the grid for them to benefit from the communitary protection offered by the Timeshare Directive and the 2008/122/EC Directive.

Content

Article 2 first paragraph of the 94/47/EC Directive states that this act applies to all the contracts regarding the direct or indirect securing manners of a periodical usage right of one or more locative spaces. It further establishes that the contract or group of contracts must be signed for a time span of at least three years and must refer to the transfer or promise of transfer of an ownership right or any another right (*usus, fructus*) over the above mentioned object for a minimum of a week in a determined or determinable interval each year in exchange for a global price. This definition is sufficiently vast to include all the juridical embodiments of how the usage right may be loomed, as well as all the real-world manifestation that came into being before the directive was adopted. The ante-adoption literature³ underlined and amended the fact that the initial proposal of the European Commission made talk about the economical agent in the terms of "seller" and only about the potential transfer of an ownership right, hypothesis that is fairly unacceptable in accordance with the multitude of systems in the form of which timeshare may be found in pure state: obligational type, real, associated and trust based. The criticism has been partially taken into consideration, the final definition keeping an open field for all the possibilities.

The Timeshare Directive mentions that the usage right is bound to be obtained directly or indirectly, but doesn't go an extra mile to explain and exemplify the situations in which the right is extracted otherwise than by expressing the consent to become party in a timeshare contract, but the doctrine came in hand when it suggested that an indirect obtaining manner covers, in fact, the hypothesis arose in some Germanic law systems in which the transfer of the usage right operates solely after the concrete take in possession of the contractual object. Article 2 regards the directive as applying to immovable objects, meaning a building as a whole or part of it to which the usage right is exerted, therefore the material domain that constrains the timeshare contracts is the spaces with a living destination attached to them. By interpreting these guidelines we must conclude that the Timeshare Directive excludes *de plano* the protection of purchasers of boats, trailers, goods with an industrial or commercial destination, of terrains which hold no constructions upon them, even if they would be destined to act as camping grounds, thus we must observe that the living destination can be fulfilled only by a building and not by a surface of land on which nomadic population dwells. An author⁴ makes a supplementary underlining in the sense that the 94/47/EC Directive is to be applied not only to leisure time destination locative spaces, but also to housing apartments if the buyer exerts each year for an exact period of time any professional actives in the region in which the object of the timeshare contract is situated.

The third and fourth paragraph of article 2 discuss about the seller and depict him as any individual or juridical personal that in its activity domain creates, transfers or is obliged to transfer

³ M. Martinek, *Teizeiteigentum an Immobilien in der Europäischen Union- Kritik des Timesharing-Richtlinienvorschlags der Europäischen Kommission in ZeuP 1994*, pages 470 to 492.

⁴ Maria Constança Dias Urbano de Sousa, *Das Timesharing an Ferienimmobilien in der EU*, Nomos Verlag, Baden-Baden, 1998, pages 22 to 23.

the usage right upon the object of the timeshare contract, meanwhile the purchaser may become anyone who is the recipient of that right or in favor of whom such a right has been born. The proposal⁵ of the Economical and Social Committee for associations or enterprises that do not comply to the activity domain to stand as parties in this type of contract has been rejected by the communitary legislation. Moreover, the directive does not expand its protection to purchasers that don't intend to retain the object for their own needs, but had the explicit motivation of selling the good in order to become beneficiaries of a profit. Similar to the 87/102/EC Directive regarding consumer's credit, the Timeshare Directive makes use of the seller notion in a functional way, not by a strict reference to the qualification that the party embodies, that's the reason why an owner that decides at one moment to share the usage right of his vacation house with a number of other people will not be sheltered by this normative act. This exclusion of private persons from the sphere of protection of the directive has been frantically criticized⁶. As for the purchaser concept, the aspect that raised eyebrows was if the protection applies on an abstract level or it must subdue to a concrete situation, respective if a person that works in the timeshare industry signs such a contract for his own use will be not neglected by the directive. The answer to this dilemma was offered by interpreting the provisions of another directive that is 85/577/EC regarding the protection of consumers in contracts that are negotiated outside the realm of commercial destined spaces⁷. The European Court of Justice decided in the respect of following the spirit of this act that the protection is unbiased and must, therefore, be applied to all the individuals that sign a contract that is covered by the umbrella of the directive, regardless of their occupation⁸.

The 282/2004 Law for the transposition of the Timeshare Directive is a faithful copy of it, the Romanian legislator not bothering making any additional specifications, rendering the material and personal domains of application such as the directive established them in the second article. Although article 3 letters a and b of the law is not very easy to understand because of the multiple juxtapositions and intricate phrases, it's clear that the text isn't meant to limit the domain of protection to the contracts regarding vacation housing, but it stretches to accommodate other buildings or part of them with a living destination as far they are the object of a contract that unfurls for at least three years, which constitutes a periodical right of usage for an unspecified time span, but no less than a week each year in exchange for a global price paid upfront. Because the law doesn't distinguish, the less experimented would consider that the special provisions of the directive apply without distinction also to rent contracts, supposition that must be from the start put aside as unlikely. The 114/1996 Law provides solely for the juridical relationships born between a landlord and a tenant in virtue of satisfying the permanent necessities of residence for a person or a family, the other rented goods complying to the common legal bindings, so vacation housing, defined as temporary dwellings, will not fall under the concept of locative space in the sense of this law, which means a continues living situation from the part of the consumer. Because the 16th article of the 282/2004 Law doesn't pull away from recognizing that it transposes word for word the Timeshare Directive, in order to determine the material domain of application we must glance at point 6 of the exposition of reasons for the adoption of the directive that states the contractual transactions take place on the hotel and residence market. Adding all the information, considering the preponderant commercial juridical nature of the contracts and also the motivation of protecting the consumers, we can conclude that the law's norms are exclusive for commercial contracts who's object are hotel type buildings, the French literature naming them contracts de location saisonniers⁹. The use of the seller notion is plausible for

⁵ Published in JOCE no. C 108 from the 19th of Aprilie 1993, page 3.

⁶ M. Martinek in *Das Recht der Europäischen Union-Kommentar*, by E. Grabitz and M. Hilf, no. 106.

⁷ C. Toader, *Considerații asupra ordonanței privind contractele încheiate în afara spațiilor comerciale* in RDC nr. 12/1999.

⁸ CJEC decision from the 14th of March 1991, C-361/89, di Pinto.

⁹ J. Huet, *Traité de droit civil. Les principaux contrats spéciaux*, LGDJ, Paris, 2001, page 689.

criticism since the part who transfers an usage right shouldn't be qualified as such, but nevertheless the term is sustained by the fact that the location contract is also known as the sale of usage, the fact that the contracts are broadly commercial and by the fact that the obligation of the economical agent may consist of transferring a real right. One more argument in favor of the commercial nature of the timeshare contracts resides in the necessity for the purchaser to sign juridical acts in his professional activity domain.

The new Directive 2008/122/EC for the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange was passed by the European Parliament in Strasbourg on the 22nd of October 2008. There was an overwhelming majority in favor of the Directive with 674 votes for it, 11 against and 10 abstentions. The new Directive has received widespread support from industry bodies, consumer representatives and government agencies. It gave consumers better protection and confidence when investing in timeshare, other long-term holiday products and related services. The Directive is dated 14/01/2009, came into effect on 23/02/2009 and established that it must be transposed into national laws by Member States by 23/02/2011. The new Directive clarifies, improves on, extends and harmonizes the protection given to consumers buying timeshare throughout the EU. The new Directive extends the scope of timeshare to include canal boats, caravans, cruise ships, etc. excluded by definition in the old Directive. In the spirit of the directive, the timeshare contracts mustn't be interpreted as having objects that include multiple unit reservations unless they imply rights and obligations that exceed the ones that arise from the separate reservations. On the same basis, the long term holiday product contracts shouldn't be set on the platform with regular fidelity programs that confer the purchaser clearances for future holiday plans in a chain of hotels. As far as all the other specifications I made when analyzing the Timeshare Directive and the 282/2004 Law of transposition, they translate to the 2008/122/EC Directive and its Romanian transposition law (O.G. 14/2011) that is in fact an approximate copy of the directive.

Timeshare is a relatively complex and high-value product when compared to a traditional package holiday. As consumers want to buy a holiday experience, and not a complicated product, the marketing challenge for the timeshare industry is to persuade consumers to take the time to understand timeshare and the high-quality holiday experience that it offers. For the developer, this challenge is compounded by the volume of sales needed at each development: every apartment needs to be sold roughly fifty times – once for every week that it can be used. Here are some economic information that paints a picture of the timeshare market.

General characteristics of the timeshare industry in Europe

- In 2007 1.5 million European households owned timeshare.
- The UK and Ireland form the largest market having 589,653 timeshare owners, followed by Germany and Italy.
- Most resorts are concentrated in Spain, with 26.3% of the total, 14.94% in Italy and 11.05% in the UK & Ireland
- There were a total of 1,312 resorts in Europe.
- The total number of units in European resorts is 73,540, resulting in 67,590 million bed nights.
- Average occupancy levels across completed European resorts was 71.7%.

Economic impacts of the timeshare industry in Europe

- € 3.2 billion of expenditure was generated by the European timeshare industry in 2007.
- European timeshare owners spent € 1.6 billion during their timeshare vacation, plus
- € 957 million on timeshare purchases and € 618 million on timeshare maintenance fees.

- The top spending market is the UK generating almost € 1.4 billion (about half the total expenditure) in timeshare.
- The average expenditure in 2007 per trip (or vacation) was € 1,588 per family, which was mainly spent on restaurants, car rental, parking and petrol, groceries, accommodation and gifts, souvenirs and clothes.
- In terms of employment, a total of 69,836 jobs are directly sustained by the timeshare industry.
- The overall employment costs for the timeshare developers sector across all resorts is € 1.28 billion (€ 1.06 billion if considering only resorts on the twelve European countries of this study).

European Timeshare Owners

- 86.6% of the owners reported that they were satisfied with their timeshare holiday and, 55.6% of them stated that they were very satisfied.
- 73% of the owners felt that their timeshare accommodation was better than other self-catering holidays they had taken, whilst 50.9% of all owners stated that their timeshare was much better than other self catering holidays.
- 32.2% of European timeshare owners own timeshare in their own country of residence, whilst two thirds of owners own timeshare abroad.
- Quality of accommodation, exchange opportunities and the credibility of the company are the three most important attributes and features in the owner's purchase decision.
- The average age of timeshare owners in Europe is 55 years.
- The average level of pre-tax household income of the European timeshare owners is € 60,475.

European Timeshare Developers

- 60% of developers described their resorts as 'built and marketing'.
- 21% of developers described their resorts as 'built and sold out', and a further 19% as 'under construction and marketing'.
- The average number of completed resort projects between 2002 and 2007 is 4.1 projects per developer.
- Almost half of the timeshare developers plan to sell out the completed resorts by 2015.
- 84% of timeshare developers do not have plans to build more units or new resorts.
- In 2007 in-house/hotel marketing programs accounted for 32% of developers' marketing expenditure, while direct marketing represented 23%.
- 98.3% of all developers state that their organization handles both the sales and marketing process of their timeshare development.

Conclusions

During 2011 the travel industry as whole saw a dramatic increase as families began feeling more comfortable spending their money on leisure activities. Over the past few years many people have felt the pinch of the downturn in the economy and therefore decided to skip their vacation timeshare plans or travel somewhere closer to home, families began traveling with more frequency across the country. Business travel has also seen a dramatic increase in frequency as companies began augmenting revenue from consumer spending and feel more comfortable sending their employees around the country to conduct business. Secondly, the increased travel demand led to a rise in timeshare rentals. Timeshare owners who tried to rent their timeshare found their units drawing more interest than over the past few years. Due to the expanding demand for rental units owners also realized they were able to increase their asking price, before many owners were trying to simply cover their maintenance fees when renting, there may be a little room for profit in the year

that have past. Finally the timeshare resales remained in the same position they have been for the last couple of years. While travelers were willing to travel more often they didn't feel comfortable enough to commit to purchasing a timeshare and they rather rented a timeshare to make sure the economy continues to stabilize during the next few years. While owners found timeshare rentals increasing in both frequency and price timeshare, resales did not follow the same trend these years, however resales should be set to take a boost during the following years if the economy continues to grow and people continue to gain a sense of security and confidence in it.

They have always been seen as innovators within the industry but now Worldwide Timeshare Hypermarket have embraced the world of the new digital media with their own Facebook pages, Twitter account and even a Youtube channel. These have been set up so that Worldwide Timeshare Hypermarket will be able to reach out to both its existing customers and to give them coverage to reach a whole new range of people who may not have access to their normal means of advertising. These should not simply be viewed, however, as additional advertising streams. Paramount importance to Worldwide Timeshare Hypermarket is the role that these media avenues can play in expanding their program of educating the public to the benefits of timeshare ownership.

The educational process took a major step forward in July 2009 with the airing on satellite television's Travel Channel and Travel Deals Direct of a 30 minute program all about the ownership system which can now be viewed on their Youtube channel in bite size pieces. Phil Watson, Managing Director of Worldwide Timeshare Hypermarket was quoted as saying "we have made major steps towards educating the public about timeshare and what it has to offer. We are very excited, therefore, with the way we can expand that education program to an ever wider audience."

A large part of the success of the program has been down to Harry Taylor, Chief Executive Officer of the Timeshare Association (Timeshare Owners and Committees) TATOC who features heavily in the television program and explains all there is to know about timeshare, exchanges, management fees and re-sales. Harry Taylor has affirmed: "Worldwide Timeshare Hypermarket have been long term industry leaders and are taking timeshare and timeshare resale's to a new level and new audiences and I am sure that these initiatives will be very successful and prove to be popular with existing and prospective timeshare owners".

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