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## Consumer protection in the light of Directive 2008/122

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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**Consumer protection in the light of Directive  
2008/122/EC of 14<sup>th</sup> January 2009  
on the protection of consumers in respect  
of certain aspects of timeshare, long-term  
holiday product, resale and exchange contracts**

**Introductory issues**

European Union consumer policy, initiated in the Mid 70's, led to the establishment of legislation, which aims at the broadly understood consumer protection. It has been formed and determined by means of legal instruments, known as directives. Directives create and determine the basis of consumer policy legal standards. Community law is superior to Member States regulations, since Member States are obliged to implement this legislation, therefore Member States adjust their own regulations to the European Union legislation. The harmonization of Member States law ensues basing on policies embedded in directives. The evaluation of the European Union consumer protection laws in force must be conducted both in the light of regulations of certain directives as well as by the prism of national implementation means.

One of the fields regulated by the Member States law in terms of consumer protection are tourist services. Particular group of services, namely timeshare, is functionally associated with the branch of tourism. Timeshare relates to the right of acquiring the right to use things, most frequently an immovable property (for instance, holiday resort, hotel, guesthouse, suite, bungalow) for consideration for tourist purposes over a defined period during a year or over a defined number of years.

Consumer right to spending particular time (one or a few weeks) of a year in a holiday facility is also referred to as holiday property right.

The concept of timeshare was already covered by the Directive 94/47 of the European Parliament and the Council of 26<sup>th</sup> 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<sup>1</sup>. However, the normative definition timeshare was first introduced by Directive 2008/122 of the European Parliament and the Council of 14<sup>th</sup> February 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts<sup>2</sup>. Until the Directive 2008/122 came into effect, the term timeshare was doctrinal in nature. Since the Directive 94/47 of 1994 came into effect, timeshare has evolved. New holiday products, which were not covered by the provisions concerning the use of immovable properties on a timeshare basis, appeared on the market. The most common forms of such an activity on the market are long-term holiday product, resale and exchange contracts as well as other ancillary to timeshare contracts. These products are sold similarly to timeshare services. Since they were not covered by the Directive 94/47, it enabled the unfair traders to circumvent the laws. As the consequence, the phenomenon was the source of considerable problem for both the consumers and the traders offering timeshare services basing on the provision of Directive 94/47. Taking into account the growing interest of consumers in a new type of services regarding entering into timeshare contracts, the European Parliament decided to create regulations which would protect the consumers, who purchase such services. The European Parliament and the Council by enacting the Directive 2008/122 aimed at updating the provisions of Directive 94/47 and introducing new regulations concerning new similar holiday products and transactions involving timeshare contracts, such as resale and exchange contacts, whose lack of restricted proper consumer protection. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive 2008/122 by 23<sup>rd</sup> February 2011.

### **The purpose and scope of Directive**

The purpose of the Directive, besides increasing the protection of consumers was to create fundamentals of the proper functioning of the internal market and to achieve a high level of consumer protection, by approximating

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<sup>1</sup> The Official Journal of the European Communities L 280 of 29.10.1994, p. 83; hereinafter referred to as Directive 94/47.

<sup>2</sup> The Official Journal of the European Communities L 33 of 3.02.2009, p. 10, hereinafter referred to as Directive 2008/122.

the laws, regulations and administrative provisions of the Member States in respect of certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as exchange contracts.

The Directive applies to trader-to-consumer transactions. According to the definition of Directive 2008/122, a “trader” is a natural or legal person who is acting pro purposes relating to that person’s trade, business, craft or profession and anyone acting in the name of or on behalf of a trader, whereas a “consumer” means a natural person who is acting for purposes which are outside that person’s trade, business, craft or profession.

### **The objective scope of Directive**

Directive 2008/122 introduces a number of new definitions describing its objective scope. Timeshare contract means a contract, entered into by a consumer and a trader, of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation. Thus, timeshare contract should not be understood as covering multiple reservations of accommodation, including hotel rooms, in so far as multiple reservations do not imply rights and obligations beyond those arising from separate reservations. Nor should timeshare contracts be understood as covering ordinary lease contracts since the latter refer to one single continuous period of occupation and not to multiple periods. The definition of a timeshare contract does not limit to the right to use overnight accommodation only in immovable properties, therefore it also includes the accommodation on pleasure boats or in caravans. However, this regulation does not cover contracts in which a consumer is not guaranteed accommodation, for instance renting a parking sport for a caravan.

Long-term holiday product contract means a contract of a duration of more than one year under which a consumer, for consideration, acquires primarily the right to obtain discounts or other benefits in respect of accommodation, in isolation or together with travel or other services. By definition, long-term holiday product contract should not be understood as covering ordinary loyalty schemes which provide discounts on future stays in the hotels of a hotel chain. Similarly it should not be understood as contracts under which a consumer, for a consideration, obtains cards granting discounts in hotels, and contracts of a duration of less than one year. Other contracts whose main aim is not to provide a consumer with discounts or other benefits in respect of accommodation should also not be understood as a long-term holiday product contract, as providing discounts is not the main purpose of such agreements.

Resale contract means a contract under which a trader, for consideration, assists a consumer to sell or buy a timeshare or a long-term holiday product. The introduction of this contract into the Directive aims at the legal regulation of contracts involving mediation between a consumer, who wants to sell or buy timeshare or long-term holiday products, and a trader.

Exchange contract means a contract under which a consumer, for consideration, joins an exchange system which allows that consumer access to overnight accommodation or other services in exchange for granting to other persons temporary access to the benefits of the rights deriving from that consumer's timeshare contract.

Ancillary contract means a contract under which the consumer acquires services which are related to a timeshare contract or long-term holiday product contract and which are provided by the trader or a third party on the basis of an arrangement between that third party and the trader. The objective of ancillary contracts are services involving the exploitation of the accommodation, for instance contracts with regard to providing electricity, water, refuse collection services, maintenance, as well as contract involving administering various types of common facilities.

It should also be noticed that the Directive 2008/122 with reference to timeshare and long-term holiday products contracts states that in order to define the actual duration of the contracts, any provision in the contract allowing for tacit renewal or prolongation shall be taken into account. The aim of such an action is to preclude traders from circumventing provisions concerning the duration of timeshare and long-term holiday product contracts. The actual duration of the contract, taking into account the extension or renewal of a contract, contributes to the factor being considered as valid and fulfilling the provisions embedded in the Directive. This indicates that, for instance, entering into a contract, which in its characteristics is similar to a timeshare contract, however, the duration period is shorter than the minimum period (over a year) and the extension of the duration time is performed by the application of an annex, according to the Directive means entering into a timeshare contract.

Advertising concerning timeshare, long-term holiday products, resale and ancillary contracts

The Directive 2008/122 imposes an obligation that where a timeshare, long-term holiday product, resale or exchange contract is to be offered to a consumer in person at a promotion or sales event, the trader shall clearly indicate in the invitation the commercial purpose and the nature of the event. In addition, the trader in an advertisement shall not offer a timeshare or a long-term holiday as an investment.

## **Pre-contractual information**

Directive 2008/122 states that 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. This obligation concerns both timeshare, long-term holiday product, resale and exchange contract. A trader shall provide the consumer with information on separate forms, designed for particular type of contract.

In case of timeshare agreements a consumer will receive information in the form of a standard information form set out in Annex I as well as information required in the third part of this form. The forms were introduced in the form of Annexes to the Directive. Standard information form for timeshare contracts in the first part includes:

- identity, place of residence and legal status of the trader(s) which will be party to the contract,
- short description of the product (e.g. description of the immovable property),
- exact nature and content of the right(s),
- exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration,
- date on which the consumer may start to exercise the contractual right, if the contract concerns a specific property under construction, date when the accommodation and services/facilities will be completed/available,
- price to be paid by the consumer for acquiring the right(s),
- outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual fees, other recurrent fees, special levies, local taxes),
- a summary of key services available to the consumer (e.g. electricity, water, maintenance, refuse collection) and an indication of the amount to be paid by the consumer for such services,
- a summary of facilities available to the consumer (e.g. swimming pool or sauna): are these facilities included in the costs indicated above and, if not, specify what is included and what has to be paid for,
- is it possible to join an exchange scheme and, if yes, specify the name of the exchange scheme,
- indication of costs for membership/exchange,
- has the trader signed a code/codes of conduct and, if yes, where can it/they be found.

The second part of the standard information form for timeshare contracts includes general information, namely:

- the consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later,

- during this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties,
- the consumer shall not bear any costs or obligations other than those specified in the contract,
- in accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled,
- signature of the consumer.

The third part of the standard information form for timeshare contract includes additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure):

1. Information about the rights acquired:

- conditions governing the exercise of the right which is the subject of the contract within the territory of the Member States(s) in which the property or properties concerned are situated and information on whether those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled,
- where the contract provides rights to occupy accommodation to be selected from a pool of accommodation, information on restrictions on the consumer's ability to use any accommodation in the pool at any time.

2. Information on the properties:

- where the contract concerns a specific immovable property, an accurate and detailed description of that property and its location; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities,
- the services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions,
- where applicable, the common facilities, such as swimming pool, sauna, etc., to which the consumer has or may have access and under what conditions.

3. Additional requirements for accommodation under construction (where applicable):

- the state of completion of the accommodation and of the services rendering the accommodation fully operational (gas, electricity, water and tele-

phone connections) and any facilities to which the consumer will have access,

- the deadline for completion of the accommodation and of the services rendering it fully operational (gas, electricity, water and telephone connections) and a reasonable estimate of the deadline for the completion of any facilities to which the consumer will have access,
- the number of the building permit and the name(s) and full address(es) of the competent authority or authorities,
- a guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

4. Information on the costs:

- an accurate and appropriate description of all costs associated with the timeshare contract; how these costs will be allocated to the consumer and how and when such costs may be increased; the method for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs),
- where applicable, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation.

5. Information on termination of the contract:

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

6. Additional information:

- information on how maintenance and repairs of the property and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues,
- information on whether or not it is possible to join a system for the resale of the contractual rights, information about the relevant system and an indication of costs related to resale through this system,
- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to management decisions, increase of costs and the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution,
- signature of the consumer.



In case of long-term holiday product contracts the consumer will obtain the information concerning the entrance into the contract in the form of a standard information form set out in Annex II as well as information required in the third part of this form. The first part of the standard information form for long-term holiday product contract includes:

- identity, place of residence and legal status of the trader(s) which will be party to the contract,
- short description of the product,
- exact nature and content of the right(s),
- exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration,
- date on which the consumer may start to exercise the contractual right,
- price to be paid by the consumer for acquiring the right(s), including any recurring costs the consumer can expect to incur resulting from the right to obtain access to the accommodation, travel and any related products or services as specified,
- the staggered payment schedule setting out equal amounts of installments of this price for each year of the length of the contract and the dates on which they are due to be paid. After year 1, subsequent amounts may be adjusted to ensure that the real value of those installments is maintained, for instance to take account of inflation,
- outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual membership fees),
- a summary of key services available to the consumer (e.g. discounted hotel stays and flights): Are they included in the costs indicated above? If not, specify what is included and what has to be paid for (e.g. three-night stay included in annual membership fee, all other accommodation must be paid for separately),
- has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

The second part of the standard information form for long-term holiday product contract includes general information, namely:

- the consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later,
- during this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties,

- the consumer has the right to terminate the contract without incurring any penalty by giving notice to the trader within 14 calendar days of receiving the request for payment for each annual installment,
- the consumer shall not bear any costs or obligations other than those specified in the contract,
- in accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled,
- signature of the consumer.

The third part of the standard information form for long-term holiday product contract includes additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure):

1. Information about the rights acquired:

- an appropriate and correct description of discounts available for future bookings, illustrated by a set of examples of recent offers,
- information on the restrictions on the consumer's ability to use the rights, such as limited availability or offers provided on a first-come-first-served basis, time limits on particular promotions and special discounts.

2. Information on the termination of the contract:

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

3. Additional information:

- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution,
- signature of the consumer.

In case of resale contracts, the consumer shall obtain the information concerning the entrance into the contract in the form of a standard information form set out in Annex 3 of this form. The first part of the standard information form for resale contract includes:

- identity, place of residence and legal status of the trader(s) which will be party to the contract,
- short description of the services (e.g. marketing),
- price to be paid by the consumer for acquiring the services,

- outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. local taxes, notary fees, cost of advertising),
- has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

The second part of the standard information form for resale contract includes general information, namely:

- the consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later,
- any advance payment by the consumer is prohibited until the actual sale has taken place or the resale contract otherwise is terminated. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties,
- the consumer shall not bear any costs or obligations other than those specified in the contract.,
- in accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled,
- signature of the consumer.

The third part of the standard information form for resale contract includes additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure):

- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination,
- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution,
- signature of the consumer.

In case of exchange contracts, 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 in the form of standard information form set out in Annex 3 and information set out in the third part of this form. The first part of the standard information form for exchange contracts includes:

- identity, place of residence and legal status of the trader(s) which will be party to the contract,
- short description of the product,
- exact nature and content of the right(s),
- exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration,
- date on which the consumer may start to exercise the contractual right,
- price to be paid by the consumer for the exchange membership fees,
- outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. renewal fees, other recurrent fees, special levies, local taxes),
- a summary of key services available to the consumer. Are they included in the costs indicated above? If not, specify what is included and what has to be paid for (type of costs and indication of amounts; e.g. an estimate of the price to be paid for individual exchange transactions, including any additional charges),
- has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

The second part of the standard information form for exchange contract includes general information, namely:

- the consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later. In cases where the exchange contract is offered together with and at the same time as the timeshare contract, only a single withdrawal period shall apply to both contracts,
- during this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties,
- the consumer shall not bear any costs or obligations other than those specified in the contract,
- in accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled,
- signature of the consumer.

The third part of the standard information form for exchange contract includes additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure):

1. Information about the rights acquired:

- explanation of how the exchange system works; the possibilities and modalities for exchange; an indication of the value allotted to the consumer's timeshare in the exchange system and a set of examples of concrete exchange possibilities,
- an indication of the number of resorts available and the number of members in the exchange system, including any limitations on the availability of particular accommodation selected by the consumer, for example, as the result of peak periods of demand, the potential need to book a long time in advance, and indications of any restrictions on the choice resulting from the timeshare rights deposited into the exchange system by the consumer.

2. Information on the properties:

- a brief and appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities; description of where the consumer can obtain further information.

3. Information on the costs:

- information on the obligation on the trader to provide details before an exchange is arranged, in respect of each proposed exchange, of any additional charges for which the consumer is liable in respect of the exchange.

4. Information on the termination of the contract:

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

5. Additional information:

- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution,
- signature of the consumer.

The trader shall provide the consumer, in a clear and comprehensible manner, with all the pre-contractual information which is free of charge, on paper or on another durable medium which is easily accessible to the consumer. According to the Directive 2008/122 a durable medium is a material or device enabling storing information in a way that precludes any changes or enables to reproduce the it in the version and form in which it was first prepared or transferred for a necessary time, resulting from the character of the information and the aim of its preparation or transfer. Additionally, the consumer shall be provided with the pre-contractual information in good time before the consumer is bound by any contract or offer, so that he or she

has the opportunity of getting acquainted with its content. The information shall be drawn up in the language or one of the languages of the Member State in which the consumer is resident or a national. If there is more than one national language, the information should be drawn up in one of these languages, chosen by the consumer. Pre-contractual information shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise or the changes result from unusual and unforeseeable circumstances beyond the trader's control, the consequences of which could not have been avoided even if all due care had been exercised. These changes shall be communicated to the consumer on paper or on another durable medium easily accessible to him, before the contract is concluded.

### **The content of timeshare, long-term holiday product, resale and exchange contracts.**

#### **General comments**

It should be emphasized that Directive 2008/122 introduces almost uniform legal policies concerning the content of four types of contract embedded in the directive, namely timeshare, long-term holiday product, resale and exchange contracts. The only exception is the long-term holiday product contract. Here, the Member State legislator applied specific solutions.

#### **Form and language requirement of the contract**

The contract shall be drawn up in writing, on paper or other durable medium, and drawn up in the 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 it is an official language of the Community. Additionally, the Directive 2008/122 allows for the possibility of imposing by a Member State in which a consumer is resided, a language requirement, with which the contract shall comply with. In such a case a consumer shall be provided with a contract that is drawn up in a language or one of the languages of the Member State, provided it is an official language of the Community. In the case of a timeshare contract concerning one specific immovable property, the trader provide the consumer with a certified translation of the contract in the language or one of the languages of the Member State in which the property is situated, provided it is an official language of the Community. Additionally, a Member State on whose territory a sale is conducted may require that the consumer shall be provided with a contract

that is written in a language or one of the languages of this Member State, provided it is an official language of the Community.

### **The content of a contract**

Apart from the required pre-contractual information and all the changes in the pre-contractual information, in accordance with the Directive 2008/122 a contract shall include:

- a) the identity, place of residence and signature of each of the parties; and
- b) the date and place of the conclusion of the contract.

Before the conclusion of the contract a trader shall explicitly draw the consumer's attention to the existence of the right of withdrawal, the length of the withdrawal period and the ban on advance payments during the withdrawal period. The corresponding contractual clauses shall be signed separately by the consumer.

The contract includes a separate standard withdrawal form, set out in Annex V, intended to facilitate the exercise of the right of withdrawal in accordance with Article 6. The consumer shall receive a copy or copies of the contract at the time of its conclusion.

The form which facilitates the exercise of the right of withdrawal includes the following content:

#### Right of withdrawal

The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason. Konsument ma prawo odstąpić od niniejszej umowy bez podania przyczyny w terminie czternastu

The right of withdrawal starts from ... (to be filled in by the trader before providing the form to the consumer).

Where the consumer has not received this form, the withdrawal period starts when the consumer has received this form, but expires in any case after one year and 14 calendar days.

Where the consumer has not received all the required information, the withdrawal period starts when the consumer has received that information, but expires in any case after three months and 14 calendar days.

To exercise the right of withdrawal, the consumer shall notify the trader using the name and address indicated below by using a durable medium (e.g. written letter sent by post, e-mail). The consumer may use this form, but it is not obligatory.

Where the consumer exercises the right of withdrawal, the consumer shall not be liable for any costs.

In addition to the right of withdrawal, national contract law rules may provide for consumer rights, e.g. to terminate the contract in case of omission of information.

#### Ban on advance payment

During the withdrawal period any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc. It includes not only payment to the trader, but also to third parties.

#### Notice of withdrawal

- To (Name and address of the trader) (\*)
- I/We (\*\*) hereby give notice that I/We (\*\*) withdraw from the contract,
- Date of conclusion of contract (\*):
- Name(s) of consumer(s) (\*\*):
- Address(es) of consumer(s) (\*\*):
- Signature(s) of consumer(s) (only if this form is notified on paper) (\*\*):
- Date (\*\*):

(\*) To be filled in by the trader before providing the form to the consumer.

(\*\*) Delete as appropriate. (\*\*) To be filled in by the consumer(s) where this form is used to withdraw from the contract.

Acknowledgement of receipt of information.

Signature of the consumer.

### **The right of withdrawal**

In accordance with the Directive 2008/122 a 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. Granting the right of withdrawal without providing any specific reason constitutes an indication of protecting the consumer from pledging his credit precipitously. The withdrawal period shall be calculated.

- from the day of the conclusion of the contract or of any binding preliminary contract; or
- from the day when the consumer receives the contract or any binding preliminary contract if it is later than the date of the conclusion of the contract or any binding preliminary contract.



Where the consumer intends to exercise the right of withdrawal the consumer shall, before the expiry of the withdrawal period, notify the trader on paper or on another durable medium of the decision to withdraw. The consumer may use the standard withdrawal form set out in Annex V and provided by the trader. The deadline is met if the notification is sent before the withdrawal period has expired.

The exercise of the right of withdrawal by the consumer terminates the obligation of the parties to perform the contract. the consumer shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed before withdrawal.

The Directive 2008/122 prohibits any advance payment to the trader by the consumer before the end of the withdrawal period in relation to timeshare, long-term holiday product and exchange contracts. The prohibition concerns also all the other considerations to the trader or to any third party by the consumer, including provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt. In relation to exchange contract the ban is in force until the actual sale takes place or the resale contract is otherwise terminated. Where the consumer exercises the right to withdraw from the timeshare or long-term holiday product contract, any exchange contract ancillary to it or any other ancillary contract is automatically terminated, at no cost to the consumer. Where the price is fully or partly covered by a credit granted to the consumer by the trader, or by a third party on the basis of an arrangement between the third party and the trader, the credit agreement shall be terminated, at no cost to the consumer.

### **Specific provisions relating to long- term holiday product contracts**

For long-term holiday product contracts, the Directive 2008/122 states that the payment shall be made according to a staggered payment schedule. Any payment of the price specified in the contract otherwise than in accordance with the staggered payment schedule shall be prohibited. The payments, including any membership fee, shall be divided into yearly installments, each of which shall be of equal value. The trader shall send a written request for payment, on paper or on another durable medium, at least fourteen calendar days in advance of each due date.

From the second installment payment onwards, the consumer may terminate the contract without incurring any penalty by giving notice to the trader within fourteen calendar days of receiving the request for payment of each installment.

Imperative nature of the Directive and application in international cases  
Directive 2008/122 ensures that, where the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by the Directive. Where the applicable law is that of a third country, consumers shall not be deprived of the protection granted by this Directive, as implemented in the Member State of the forum if:

- any of the immovable properties concerned is situated within the territory of a Member State, or
- in the case of a contract not directly related to immovable property, the trader pursues commercial or professional activities in a Member State or, by any means, directs such activities to a Member State and the contract falls within the scope of such activities.

## **Conclusions**

I hope that this article will clarify the concept of the Directive for timeshare contracts and that it will also contribute to the development of ideas regarding the proper and effective consumer protection in the subject matter discussed.

## **Streszczenie**

***Ochrona konsumenta w świetle Dyrektywy 2008/122/EC z 14 stycznia 2009 r. w sprawie ochrony konsumentów w odniesieniu do niektórych aspektów umów timeshare, umów o długoterminowy produkt wakacyjny, umów odsprzedaży oraz wymiany***

Słowa kluczowe: ochrona konsumentów, *timesharing*.

Dyrektywa 2008/122/EC ma na celu zwiększenie zaufania konsumentów w branży nieruchomości oraz wyeliminowanie działań nieuczciwych przedsiębiorców. Dyrektywa ta wprowadza także nowe definicje wskazujące na jej zakres przedmiotowy: umowy o długoterminowy produkt wakacyjny, umowy odsprzedaży, umowy wymiany oraz umowy pomocnicze.