

**RDO RESPONSE TO CSES QUESTIONS ABOUT THE EFFECTS OF THE TIMESHARE DIRECTIVE (2008/122/EC) ON BUSINESSES**

**FEBRUARY 2014**

|  |
| --- |
| **RDO Ltd** |
| Hamilton House, Mabledon Place, London, WC1H 9BB, United Kingdom |
| Tel: +44 (0) 207 554 8634 Fax: +44 (0) 207 554 8501 |
| Registered Address: 3rd Floor, 37 The Esplanade, St Helier, Jersey JE2Registered in Jersey No: 109519 |

**About RDO**

RDO (Resort Development Organisation), formerly known as OTE, is the pan-European trade association representing the timeshare and fractional ownership industries.

Funded by its membership, which includes resort developers, exchange companies, trustees, management companies, resale companies and finance providers, RDO works closely with governments, consumer associations and enforcement bodies to ensure high business and ethical standards within the shared ownership markets.

Representing the kitemark for quality and trust, RDO’s primary objective is for consumers to have positive and memorable holiday experiences and all members sign up to a Code of Conduct, leading the industry in a commitment to strong ethical standards and the delivery of high levels of service.

RDO set up its own enforcement division in 2007 and more recently, created the 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.

**Timeshare Background**

The Timeshare Directive 2008/122/EC replaced Directive 94/47/EC; the first Directive regulated timeshare sales by means of a cooling off period, disclosure requirements and a ban on advance payments. As we will explain later, this ban on advance payments was, however, interpreted differently between Member States.

It was widely acknowledged by the legislators that the first Directive was working well but that there was a need to harmonise some of its requirements, such as the length of the cooling off period and interpretations regarding advance payments. More importantly, however, the rise of products that were not covered by sector specific legislation, namely Long Term Holiday Products, had come to the attention of the Commission as they were attracting significant numbers of complaints. These products were subsequently legislated alongside timeshare through Directive 2008/122/EC, although RDO lobbied against this, arguing that they bore little resemblance to timeshare, being more akin to a holiday bookings service.

As evidenced by the statistics below, timeshare is a significant industry which, despite the recession, has survived relatively unscathed due to a combination of factors, not least of which is an ability to react to the needs of consumers and create products that suit today’s generation of buyers.

Industry Statistics

* There are a total of [[1]](#footnote-1)1345 resorts in Europe, providing 87,832 accommodation units
* Year round occupancy level stand at 73%
* There are 1.5 million European owners
* The UK is the largest market, with 589,000 owners, followed by Germany with 197,000 and Italy with 136,000
* The industry employs 70,688 people
* The economic activity of the industry in Europe is significant, with a total economic output of €5.4 billion[[2]](#footnote-2)
* The total nights rented out is just under 3.3 million per annum
* [[3]](#footnote-3)The were an estimated 78,000 sales across Europe in 2011, with a total value of €750 million
* The average value per sale was more than €9000

Economic Impact

* Timeshare resorts have been developed in areas of the European Union that are typically very dependent on tourism, making a greater economic contribution to local economies that tend not to have year round employment.
* Occupancy levels at timeshare resorts average at 73% year-round, compared with the seasonal peaks and troughs that most hotels experience. This has a consequential benefit for local economies.
* An example of the contributions made by timeshare to one particular rural economy is that of the Hilton Grand Vacations Club at Craigendarroch, operated by Hilton Grand Vacations in the Highland village of Ballater in Scotland. This resort has a 97% year-round occupancy level and prior to its opening in 1985, local shops and restaurants were failing. The timeshare resort now brings up to 600 visitors to the village each week and the resort employs approximately 75 full-time and 45-part-time staff.  The village itself has gone through a regeneration, supported by the resort, with new shops and restaurants offering year round employment.
* The industry’s contribution to national and international tourism and its contribution to Member States’ economies is recognised by the fact that RDO is represented on the national tourism bodies in the UK, Germany and Spain.

* Many owners also like to take advantage of the exchange systems, allowing them to ‘swap’ their timeshare for something similar at another timeshare resort at many other popular tourist destination around the world and experience different destinations, cultures and people.
* Timeshare can be regarded as an alternative to a holiday home without having to worry about maintenance or long periods when the property is empty. Many prefer timeshare because they like the locality, the resort and its amenities and the safe, secure and familiar environment that is created for them. In this respect they can meet friends in a relaxed environment, something that is frequently quoted by owners as one of the great attractions of timeshare.
* A survey carried out in 2008 by the Business School at the University of Nottingham revealed that 87% of timeshare owners were either satisfied or very satisfied with their ownership. This indicates that whilst some may not be happy with the way in which they were sold in the pre legislative days of the 80s and early 90s, they have gone on to be happy owners.

**RESPONSE TO QUESTIONS**

The Timeshare Directive (2008/122/EC) was implemented into national law across the EU in 2011, although some Member States, notably Spain, delayed implementation until 2012. Given this background, businesses have had just one to two years to trade under the new legislation and our feedback may not be as comprehensive as we would have wished, due to the relatively short period of time between implementation and the evaluation of its effectiveness.

We should highlight that the RDO response is written on behalf of traders of timeshare, timeshare exchange and timeshare resale.

1. **To what extent has the harmonisation of cooling off periods (rights to withdraw) information requirements facilitated cross border trade of timeshare?**

The first Directive, which was replaced by the 2008 Directive, went a long way to create a regulatory framework around Europe that brought a level of stability to the timeshare market. It focused primarily on the commercial practices of timeshare companies and as such, a cooling off period was introduced, as well as disclosure requirements and a ban on advance payments.

The diverging cooling off periods under the first Directive created a fragmentation in the market and RDO supported the introduction of a uniform cooling off period for timeshare. It has made it easier for business to apply, better protects consumers and is better understood and operated by all concerned.

1. **To what extent has the harmonisation of rules on advance payments facilitated cross border trade of timeshares?**

Under the first Directive, some 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.

Under the new Directive, timeshare is, today, one of the few sectors that has a full ban on deposits during the cooling off 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 purchases of a consumer durable representing a significant financial outlay are accompanied by the requirement to make a deposit. This could be for package travel, a car purchase etc – all require a down payment and the timeshare industry should be no different.

RDO has always held that the ban on advance payments is disproportionate and unfairly prejudicial to legitimate timeshare businesses. Further, it could be a deterrent to companies that operate in countries such as the US, Mexico and the Caribbean where advance payments are permitted, from operating in the EU. We would support a full ban on deposits to the trader, but allow 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 cooling off period.

**3. What effects have had the Directive's provisions on information and advertising requirements on traders' ability to sell timeshare or long-term holiday products?**

We believe that the provisions on information and advertising requirements are helpful to consumers as these enable perspective purchasers to obtain the full picture before they proceed. Openness and transparency can only improve consumer confidence and reduce the risk of complaints about a lack of upfront information.

**4. Do you believe that the standard information forms facilitate the provision of clear and comprehensible information? Do you have any comments on the requirements under the Directive relating to key information and language of the material?**

The most significant and costly element to traders has proved to be the translation and proofing of documents, including lengthy disclosure information, into upwards of 20 European languages.

Due to the financial outlay involved, the majority of RDO members 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 pan European developers as well as the smaller developers that can, perhaps, only concentrate on certain key nationalities. 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.

If, for example an English speaking Croatian client staying at a resort approaches the developer with a request to purchase or even upgrade, he would have to be turned away if the developer does not have translations in Croatian. This leaves developers frustrated and disappointed that they have to turn business away.

Given this background and the disadvantage that this puts timeshare operators with their competitors outside the scope of the Directive, RDO would favour a relaxation of the rules so that it is permissible for a developer to sell to a consumer in a language of their choice.

1. **What effects have had the rules on the ban on deposits to resale, timeshare exchange and long-term holiday products on businesses? Are there any codes of conduct used by traders in your Member State? What are the impacts of these codes of conduct on business activity? Are they effective in discouraging consumers’ engagement with rogue traders? Do they favour legitimate businesses?**

Please refer to our answers in Question 2 on the effects of the ban on deposits.

RDO introduced its Code of Conduct the year in which it was established, 1998. These were developed out of the policy that RDO represents the kitemark of excellence and that its Codes go beyond legal requirements in place. Over the years, the Codes have been reviewed and updated both to reflect market developments and to reaffirm RDO's commitment to improving ethical standards.

As the sole trade body representing the timeshare industry, the Codes apply to the majority of timeshare businesses that are actively selling in the EU. The only other Codes in place in Europe are those established by the timeshare owners’ association, TATOC, which is predominantly UK focussed, and a small number of our members conform to both sets of Codes.

The RDO Codes have been universally embraced by the membership and have not been a deterrent to legitimate businesses to joining the Organisation. Companies promote the fact that they are members of RDO at the point of sale and feature the logo on their websites and printed materials, reinforcing the message of quality, security and high service standards. RDO takes every opportunity to promote the importance of membership in its dealings with consumers and the media and highlights this on its B2C website, GoTimeshare.org, as evidenced in the following article on how to buy timeshare safely: http://www.gotimeshare.org/timeshare-buying-tips-2/

However, without better cross-border enforcement on the part of the authorities, RDO cannot effectively control fraudulent companies from targeting owners and this will be dealt with in more detail in our answers to question 6.

RDO’s consumer policy also allows for members of the public to address complaints about its members. This service is free of charge and RDO works to resolve any valid complaints against members to the satisfaction of both the owner and the RDO member company. If the complaint is not resolved, the consumer has the option to take the case to an independently administered low-cost mediation and ADR service (adopted 2005, updated 2013).

Over the last two years, RDO has made an increased commitment to raising standards and has introduced a number of new requirements that members are bound to. Since 2012, this includes:

RDO Mission, Vision and Values

This encapsulates the primary objectives of the organisation and reaffirms RDO’s commitment to acting as the kitemark of trust and assurance for consumers through the delivery of the highest quality holiday experiences.

Exit routes

All members are required to have some form of an exit programme in place so that consumers whose need to dispose of their timeshare - for example the elderly, owners declared bankrupt, people with a serious medical condition, beneficiaries of a will - is great are treated sympathetically by their developer and given and option to exit. This might include the following:

* Sale of the timeshare back to the developer
* Surrender the timeshare back to the developer at no cost to either party
* Surrender the timeshare back to the developer by paying one or two years advance management fees
* Exchange of the timeshare for a shorter term product
* In the event of the death of an owner, RDO members will give the beneficiaries of the deceased member, including spouse/partner and children, the option entirely at their choice either to take on the timeshare ownership or to surrender it without any form of penalty.
* In the event of bankruptcy, RDO members will, on the submission of appropriate written evidence on the part of the owner, permit the owner to relinquish their ownership certificate.

Ethical practices

RDO members may not deal with companies that do not adhere to ethical standards or that breach applicable laws.

Trade-ins

If an RDO member sells timeshare to a consumer who owns at another RDO member resort and that inventory is taken as a trade-in, then unless a written agreement exists between the two developers, the developer selling to that member must either take the week on or make it clear to the member that he will still be liable for the maintenance fee payments on his week.

**6. To what extent is enforcement in the Member States proportionate, dissuasive and effective encountering illegal practices?**

The vast majority of timeshare companies in the EU comply with the requirements of the Directive and complaints about timeshare operators have now decreased to an extremely low level. In the case of RDO members, 39 complaints were registered in 2011, 34 in 2012 and 43 in 2013. All of these complaints were or are being resolved within the RDO complaints scheme.

RDO understands from consumer organisations such as MindTimeshare, TATOC and the ECCs that the majority of problems reported by consumers relate to companies or individuals that have nothing to do with the industry; these are just fraudsters who prey on timeshare owners. Many of these cases are, unfortunately, incorrectly reported and logged as timeshare, an issue that we have taken up with the ECCs in the past.

We believe that the majority of problems could be dealt with by the proper application of existing consumer legislation (including the timeshare laws as they currently stand) but we have found that the authorities do not always have the resources or the ability to enforce the laws and as a result, fraudulent companies continue to operate with impunity. Even when enforcement action is taken, many of the perpetrators are back in business after a short period of time. In the case of Club Class, which had seven companies based in the UK, Gibraltar and the Seychelles closed down by the High Court in 2012, the Club Class group of companies rapidly regrouped and to this day, continues to target consumers. Furthermore, none of the company directors were disqualified.

Many of the victims of fraud are British nationals but Trading Standards tend not to have the mechanisms to cope with modern day cross-border fraud and cases that are brought can take up to two years to come to court, by which point significant consumer detriment has been caused.

Due to the lack of effective activity on the part of enforcers, RDO has had to allocate a significant proportion of its budget to enforcement and in 2007 appointed a former Spanish police inspector to work with the authorities around Europe, with the primary objective of having fraudsters arrested and their companies closed down. An example occurred in August 2013, which saw the culmination of months of work by the Enforcement Team, MindTimeshare. Over 70 people at the offices and sales decks of Voyager Travel, Lifestyle Holidays, Reclaimgc and Timeshare Refund Network in Gran Canaria were arrested. The investigations are ongoing.

More recently RDO set up the ‘Timeshare Task Force’, an initiative to take more definitive action against individuals or companies that have defrauded timeshare owners.

The Task Force brings together Europe's leading timeshare resorts, industry and consumer organisations, timeshare owners and law enforcement agencies across Europe. One of its first steps has been to set up a website, timesharebusinesscheck.org, designed to provide comprehensive information on businesses that consumers are dealing with and this has already resulted in the clear identification of rogue operators whose details are now being passed to law enforcement agencies. The Task Force has the backing of the National Fraud Office and the ECCs both in the UK and Scandinavia.

A Directive can only be as good as the enforcement in place and in conclusion, we would call for more resources to be applied to better cross-border enforcement to effectively tackle the rogue companies that operate with impunity and target timeshare owners. If as is likely, Member States will continue to struggle to devote sufficient financial resources to enforcement of regulations within their borders, then there is an argument for requiring all organisations selling timeshare within the EU to be members of RDO who can and do regulate the legitimate industry in Europe.

1. **Is there a dispute resolution scheme available to timeshare owners?**

The dispute resolution scheme for the timeshare industry was established by RDO in 2005 and is only available to consumers that have conducted business with an RDO member company. It does not extend to companies that are outside of membership.

1. **Are the outcomes resulting from the various out-of-court or alternative dispute resolution mechanisms generally positive or negative for businesses? Do you have any data on these outcomes?**

The vast majority of complaints about RDO members are resolved to the satisfaction of the consumer but the consumer has the opportunity to take up the low-cost mediation and ADR scheme should he/she be dissatisfied with the outcome.

Just five cases have been escalated to ADR since the 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:

2007:

1. Case ruled in favour of the complainant who was reimbursed the sum of €5598. This amount included the ADR be paid by the claimant
2. Case ruled in favour of the RDO member and each party was ordered to pay their own costs

2009:

1. Case ruled in favour of the complainant who was reimbursed the sum of £3611 plus the £75 registration fee

2011:

1. Case dismissed
2. Case ruled in favour of the complainant, who was reimbursed the sum of £1295 in full and final settlement of her claim as well as the sum of £75 in respect of the ADR registration fee It should be noted however, that there were procedural irregularities in this case on the part of the Arbitrator and this was recognised by the fact that after objections were lodged by RDO, the Arbitration organisation took full responsibility for paying to the complainant all costs and reparations, there was therefore no finding of liability against the RDO member.
3. **Have any new holiday products or related commercial practices emerged that are not covered by the Directive? Please name them and indicate the legal framework in which they operate.**

In the short period of time since the implementation of the Directive, RDO has seen the emergence of so-called "Leisure Credit Schemes" operated by companies that claim not to be governed by the Timeshare Directive. RDO sought legal Opinion about one particular company last year and Counsel concluded that the scheme had been designed to enable consumers to acquire the right to discounts of benefits in respect of accommodation. The scheme is, therefore, a Long Term Holiday Club and had been designed to circumvent the Directive. Under pressure from RDO, the company will, in future trade under the Timeshare Directive and is now addressing consumer complaints, providing refunds where necessary.

To date, the ECCs have not taken enforcement action against companies that offer leisure credit schemes although other applicable laws such as Unfair Commercial Practices, Unfair Contract Terms, the Distance Selling Directive and, from 2014, the Consumer Rights Directive, could of course be applied if consumers complain that they have been defrauded.

While RDO believes that no new laws are needed to tackle the likes of Leisure Credit Schemes nevertheless it would be beneficial for clarity to be provided to enforcement bodies regarding Leisure Credit Schemes to encourage proper enforcement activity –that can be achieved internally and quickly.

1. **What impact has Directive 2008/122/EC had on the overall level of timeshare, long-term holiday product and exchange and resale business activity? Has it effectively contributed to rooting out rogue traders from the market? Has it facilitated cross-border trade?**

Whilst it is clear that the Directive has achieved its objectives in terms of widening the scope of consumer protection and harmonisation of laws, it has had a negative impact on businesses primarily due to the ban on deposits – just as we argued at the time of the first Directive, this measure is disproportionate.

RDO has argued in this report that it is in favour of rules that allow for the taking of upfront payments provided that those payments are held securely. RDO advocates the adoption of a scheme similar to that in place in the US whereby payments are protected by a third party independent from the seller, which guarantees a full reimbursement to the consumer in the event that the consumer withdraws from the contract during the cooling-off period. There are several mechanisms that will provide the adequate protection necessary to ensure that funds are reimbursed in the event of withdrawal by the consumer. These include escrow accounts, trustee arrangements, third party guarantees and other arrangements providing security. This will encourage rather than stymie growth in the EU.

RDO supported the harmonisation of some of the requirements of the first Directive, and this has been a benefit to members, having facilitated cross-border trade. Of course it should be borne in mind that timeshare is by nature a cross-border product and companies have been successfully carrying out cross border transactions for many years.

Although the requirements in the Directive for Long Term Holiday Products are more onerous than those for Timeshare, such as the obligation to split the cost of the contract into equal annual instalments and provide an annual cooling off period, RDO is concerned that some of the Long Term Holiday operators, not part of the timeshare industry, continue to disregard the legislation and that there is little or no enforcement to tackle this issue.

1. **Overall, to what extent has the Directive contributed to improving the functioning of relevant markets, especially in cross-border situations. To what extent has it contributed to improving the image of the industry? What are the strong and weak points?**

We acknowledge that the harmonisation of elements of the first Directive has been beneficial and has helped to reinforce consumer confidence in the legitimate timeshare industry, creating a better trading environment and clearer rules, particularly in terms of the length of the cooling off period, for the consumer to understand.

We do not believe there is a requirement for further regulation but rather proper enforcement of existing laws. Any proposals to legislate pre-existing contracts to address the issues of timeshare exits, as has been mooted by the media, would not be advisable; there are a variety of legal structures in place, each Constitution or Rules of Occupation may differ from resort to resort and it would simply not be possible to have a "one size fits all" policy. Furthermore, the industry is addressing the problem that some owners, particularly those who bought 20 or 30 years ago, are experiencing in disposing of their timeshares and RDO itself has adopted a requirement that all members must have some form of an exit programme in place. As outlined above, RDO has also introduced a requirement that the beneficiary of a will is not obligated to take on the timeshare if he or she does not wish to do so and we are not aware of any developers taking legal action in cases such as these.

We have argued in this paper that there are three primary weak areas of the Directive, namely:

- The ban on advance payments has put the industry at a disadvantage compared with other tourism sectors and has deterred worldwide hospitality brands from operating in Europe. The regulatory environment for timeshare is much harsher than for other industries that sell consumer durables, for example cars, which require a down payment. RDO has long argued that this rule is disproportionate; that it has damaged the industry and that alternative provisions would provide appropriate protection and allow legitimate companies to conduct business.

- The translation requirements carry a high cost and have resulted in certain nationalities being excluded by operators. RDO would favour a relaxation of the rules so that it is permissible for a developer to sell to a consumer in a language of the country where they are resident.

* The lack of effective enforcement, which has resulted in disreputable companies acting with impunity and defrauding owners. RDO and individual member companies have spent significant sums of money on enforcement, as we have outlined previously. Without proper enforcement, it is impossible to assess whether a Directive has been effective as the two go hand-in-hand.

The companies that have caused considerable consumer detriment are, as we have noted above, not part of the timeshare industry but their activities have been covered extensively by the media. Despite our efforts to educate journalists about the difference between the legitimate timeshare industry and these fraudsters, we have found that we are nevertheless tarred with the same brush and this has had a negative impact on the industry.

|  |
| --- |
|  |

1. The European Timeshare Industry 2008, a report conducted by The University of Nottingham Business School [↑](#footnote-ref-1)
2. Worldwide Shared Vacation Ownership Report 2010, a report conducted by the ARDA International Foundation [↑](#footnote-ref-2)
3. RDO Key Performance Indicators, 2011 [↑](#footnote-ref-3)