

**Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange'**

COM(2007) 303 final — 2007/0113 (COD)

(2008/C 44/06)

On 28 June 2007 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 October 2007. The rapporteur was **Mr Pegado Liz**.

At its 439th plenary session, held on 24 and 25 October 2007 (meeting of 24 October), the European Economic and Social Committee adopted the following opinion by 129 votes to three, with one abstention.

## 1. Gist of the opinion

1.1 Following up its opinions on the Green Paper on the Community *acquis* <sup>(1)</sup> and on the Commission communication on the implementation of the directive on distance contracts <sup>(2)</sup>, the EESC supports the Commission's initiative to carry out a revision of Directive 94/47/EC <sup>(3)</sup> of 26 October 1994 in the form proposed, taking on board the Committee's comments and recommendations <sup>(4)</sup>.

1.2 The EESC broadly agrees with the thrust of the Commission proposal as regards extending the directive's scope, defining and clarifying the nature of new products, strengthening requirements for pre-contractual and contractual information, standardising the withdrawal period and prohibiting any payment, for any reason whatsoever, during this period.

1.3 The Committee welcomes the light-handed approach of this proposal, giving Member States the option of taking further steps to protect consumers, in line with the principles set out in the Treaty. The EESC considers, however, that according to the Commission's own rationale, as expressed in its Green Paper on the Review of the Community *Acquis*, if any area justifies maximum harmonisation, it is precisely this one, because of the unique nature of the right in question and because of the major discrepancies at national level in the design and specific characteristics of its multifaceted legal nature, which has extremely divergent consequences in the different national legal systems, specifically as regards the minimum and maximum duration and the annulment, invalidation, termination or cancellation of contracts.

<sup>(1)</sup> OJ C 256, 27.10.2007, rapporteur: Mr Adams.

<sup>(2)</sup> OJ C 175, 27.7.2007, rapporteur: Mr Pegado Liz.

<sup>(3)</sup> Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29.10.1994, p. 83) — EESC opinion: OJ C 108, 19.4.1993, p. 1.

<sup>(4)</sup> Proposal for a Directive of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange, COM(2007) 303 final, 7.6.2007.

1.4 The Committee, therefore, regrets that although the Commission acknowledges that most of the problems occurring in this sector are frequently cross-border in nature and consequently cannot be solved properly by Member States on their own, due to the differences in national legislation, it ultimately does no more than address a limited number of aspects relating to these rights. Once again, an entire range of situations is left to the discretion of the Member States and this does almost nothing to remedy the problems listed in the proposal.

1.5 Furthermore, although the EESC agrees with the adoption of a system of 'minimum harmonisation', it considers, in line with other Community institutions <sup>(5)</sup>, that the bar for measures protecting consumers' rights has been set too low. Experience shows that the vast majority of Member States have not made use of this clause and have on the contrary, adopted a literal approach <sup>(6)</sup>. Consequently, an appropriate level of consumer protection has not been achieved and the EESC thus calls on the Commission, with due respect for the principle of subsidiarity, to regulate other, equally important aspects in the proposal, taking as its premise a higher level of consumer protection.

1.6 The Committee therefore suggests that improvements be made to a number of provisions concerning the legal system applying to the rights in question, the content of the main contract and its relationship with complementary contracts, specifically for non-linked credit, in order to enhance and guarantee adequate consumer protection.

<sup>(5)</sup> The 1999 Report on the Application of Directive 94/47/EC of the European Parliament and Council of 26 October 1994, SEC(1999) 1795 final, and the 2002 European Parliament report in RR\470922EN.doc, EP 298.410.

<sup>(6)</sup> Denmark, Finland, the Netherlands, Ireland, Italy, Luxembourg, Sweden, Germany and Austria.

1.7 As in previous opinions <sup>(7)</sup>, the EESC also wishes to highlight the importance of providing contracting parties — particularly less well-informed consumers — with proper information. The EESC thus considers that it would be useful not to exclude the possibility of Member States adopting proportionate and dissuasive criminal sanctions for practices that seriously infringe the rights set out in the directive, the basic features of which would have to be properly detailed.

1.8 The Committee urges the Commission to carry out a detailed analysis of the responses it received to its Consultation Paper <sup>(8)</sup>, in particular as regards the Member States consulted through this document that were not covered in the report <sup>(9)</sup> on the application of the directive, which covered only 15 Member States. The Commission should also scrutinise the Comparative Analysis, which covers 25 Member States <sup>(10)</sup>, focusing on the differences between the Member States.

1.9 Specifically, the EESC proposes a range of amendments <sup>(11)</sup> and puts forward a number of recommendations aimed at improving legal aspects of the proposal and at consolidating and harmonising ideas, concepts or practices already contained in other directives, specifically in the Unfair Commercial Practices Directive <sup>(12)</sup>. These need to be taken into account in order to promote consumer security and confidence in this type of contract, which is so often underpinned by aggressive marketing and sales campaigns <sup>(13)</sup>.

## 2. Gist of the Proposal for a Directive

2.1 The Commission proposes a revision of Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis. The proposal follows the Council conclusions of 13 April 2000 on its report on the application of the directive <sup>(14)</sup> and the recommendations

<sup>(7)</sup> Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the implementation of Directive 1997/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts (OJ C 175, 27.7.2007).

<sup>(8)</sup> Consultation Paper Review of the Timeshare Directive, in [ec.europa.eu/consumers/cons\\_int/safe\\_shop/timeshare/consultation\\_paper\\_010606\\_en-doc\\_](http://ec.europa.eu/consumers/cons_int/safe_shop/timeshare/consultation_paper_010606_en-doc_).

<sup>(9)</sup> Report on the Application of Directive 94/47/EC of the European Parliament and Council of 26 October 1994, SEC(1999) 1795 final.

<sup>(10)</sup> 'Comparative Analysis D. Timeshare Directive' (94/47) drafted by Hans Schulte-Noke, Andreas Borge and Sandra Fischer in Consumer Law Compendium.

<sup>(11)</sup> In particular, Articles 2(1)(g), 3(2) and (4), 4(1), (2) and (3), 5(1), (5) and (6), 8 and 9, and Annex I(1), Annex III(f) and Annex IV(d).

<sup>(12)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') OJ L 149, 11.6.2005, p. 22. EESC opinion: OJ C 108, 30.4.2004, p. 81.

<sup>(13)</sup> As, in fact, was stated both in the EESC opinion on the proposal for a Council Directive concerning the protection of purchasers in contracts relating to the utilization of immovable property on a timeshare basis, rapporteur: Manuel Atáide Ferreira (OJ C 108, 19.4.1993, p. 1), and in the EESC opinion on the Community Action Plan to assist Tourism, rapporteur: L. Cunha, Co-rapporteur G. Frandi (OJ C 49, 24.2.1992).

<sup>(14)</sup> SEC(1999) 1795 final.

made by the European Parliament in its resolution of 4 July 2002 <sup>(15)</sup>.

2.2 Since the Commission Communication on Consumer Policy Strategy for 2002-2006 <sup>(16)</sup>, a revision of this directive has been planned and forms part of what is known as the 'consumer *acquis communautaire*', set out in the Green Paper on the matter <sup>(17)</sup>.

2.3 Turning to situations causing problems for the directive's application, the Commission considers that market developments in the sector have brought a considerable number of new products which, whilst involving the use of holiday accommodation, do not fall within the directive's scope.

2.4 The report drawn up by the Commission in 1999 on the Application of Directive 94/47/EC of the European Parliament and Council <sup>(18)</sup>, already highlighted countless shortcomings in the directive's transposal, and its conclusions were adopted by the Council in April 2000 <sup>(19)</sup>, setting out a range of factors that should be taken into account in any revision of the directive.

2.5 The 2001 opinion of the European Parliament's Committee on the Environment, Public Health and Consumer Policy <sup>(20)</sup> also highlighted the 'lowest acceptable level of consumer protection measures' set out in the directive.

2.6 In turn, the European Parliament's resolution of 4 July 2002 recommended that the Commission adopt measures to guarantee a high level of consumer protection.

2.7 For these reasons, the Commission considers that revising this directive on its own is an 'urgent matter', and even a 'priority' due to the 'problems faced by consumers, in particular in relation to resale and the new products', which are 'similarly marketed and economically broadly similar to timeshare', such as 'holiday discount clubs and ... resale contracts'.

<sup>(15)</sup> European Parliament resolution on the monitoring of Community policy on the protection of purchasers of the right to use immovable properties on a timeshare basis (Directive 94/47/EC) (doc. P5\_TA(2002)0369, OJ C 271 E, 12.11.2003, p. 578).

<sup>(16)</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — Consumer Policy Strategy 2002-2006 [COM(2002) 0208 final], (OJ C 137, 8.6.2002, p. 2). EESC opinion: OJ C 95, 23.4.2003, p. 1.

<sup>(17)</sup> COM(2006) 744 final. EESC opinion: OJ C 256, 27.10.2007.

<sup>(18)</sup> SEC(1999) 1795 final.

<sup>(19)</sup> Consumers Affairs Council, Luxembourg, 13 April 2000.

<sup>(20)</sup> EP 298.410 RR|470922EN.doc.

2.8 Amongst the main justifications for this, the Commission highlights the need to update the requirements for pre-contractual and contractual information, to standardise arrangements for banning deposits or advance payments during the withdrawal period, to harmonise the withdrawal period and to consider the possibility of introducing criminal sanctions.

2.9 The main parties concerned were consulted at meetings held between 2004 and 2006.

2.10 Having received a number of timeshare-related complaints, in particular concerning new products such as holiday clubs, discount tourist contracts and exchange and resale contracts, the Commission then published a consultation paper <sup>(21)</sup>. These issues were also discussed at the meeting of the standing working group of Member States' experts on the Review of the *Acquis*, in March 2006.

2.11 The proposed revision is included in the Commission programme for modernising and simplifying the Community *acquis* <sup>(22)</sup>.

2.12 The Commission considers that the legal basis for this proposal should remain confined to Article 95 of the Treaty (completion of the internal market) and that, in line with the principle of subsidiarity, it should not comment on the legal nature of timeshare rights, respecting the Member States' different views on the matter.

2.13 The Commission emphasises the cross-border aspects of the problem, and in fact considers that 'The [...] majority of consumer complaints are of a cross-border nature'. However, it only targets those aspects it considers to be 'most problematic, and hence necessitating Community action', leaving all other aspects to national legislation. Indeed, it has removed any reference to the rights to cancel or terminate a contract (which were covered by Directive 94/47/EC), even when these are linked to the right of withdrawal.

### 3. Main comments on the proposal

#### 3.1 General

3.1.1 The EESC welcomes the Commission initiative but notes its tardiness, given that the problems were detected as long ago as 1999 and thus solutions to them could have been found some considerable time ago.

<sup>(21)</sup> Consultation Paper Review of the Timeshare Directive, in [ec.europa.eu/consumers/cons\\_int/safe\\_shop/timeshare/consultation\\_paper\\_010606\\_en.doc](http://ec.europa.eu/consumers/cons_int/safe_shop/timeshare/consultation_paper_010606_en.doc).

<sup>(22)</sup> COM(2006) 629 final.

3.1.2 The EESC also wishes to point out that some of the issues referred to in this document were already raised in its opinion of 24 February 1993 <sup>(23)</sup> when the directive was being drawn up.

3.1.3 The Committee considers that the legal basis should be Article 153 of the Treaty rather than Article 95, because this is not a matter that concerns the single market alone; it is also an issue of consumer protection.

3.1.4 The EESC agrees with extending the scope of the proposal to cover certain movable properties, in order to address the constant new developments in the market effectively.

3.1.5 The Committee endorses the proposal's amendments to existing definitions <sup>(24)</sup>, because they are more appropriate to the new products now being marketed in this sector.

3.1.6 The EESC supports the retention of the ban on any payment or type of deposit, because this ban is an effective means of enabling consumers to exercise their right to withdraw from a contract, without any economic pressure being exerted on them. It also considers that extending the provisions to third parties will satisfactorily cover exchange and resale contracts.

3.1.7 The Committee welcomes extension of the cooling-off period to 14 days, thus standardising deadlines for this process, although it would prefer this deadline to be counted in working days rather than calendar days, as it has stated in earlier opinions <sup>(25)</sup>. It is worth pointing out that when the Council adopted Directive 97/7/EC, it issued a statement calling on the Commission to look into the possibility of harmonising the methods for calculating the cooling-off period contained in the consumer protection directives.

3.1.8 As stated in earlier opinions <sup>(26)</sup>, and without prejudice to the third paragraph of Article 1 of the proposal, the EESC considers it crucial that the Commission provide a more detailed definition of the nature, limitations and effects of the rights of withdrawal, termination and cancellation. Otherwise, the sought-after approximation of legislation will not be achieved because each Member State will adopt its own regulations, with inevitable detrimental consequences for developing cross-border relations.

<sup>(23)</sup> OJ C 108, 19.4.1993, p. 1.

<sup>(24)</sup> Amending 'purchaser' to 'consumer'.

<sup>(25)</sup> OJ C 175, 27.7.2007, rapporteur: Mr Pegado Liz, on the Protection of Consumers in respect of Distance Contracts.

<sup>(26)</sup> See previous footnote.

3.1.9 As the aim of this directive is to approximate national legislation on this type of right, the EESC considers that, in contrast with recital 4 of the proposal and despite the differences that exist between the different countries, the Commission should go further, by determining the legal nature <sup>(27)</sup> of these rights, in other words, whether they are real rights (*in rem*) or credit-related rights. Otherwise, this proposal will not help to solve the problems detected. It should thus set down the basic requirements for complying with the right and, in particular, if it takes the form of a real right (*in rem*), the inevitable consequences for registration.

3.1.9.1 The EESC therefore calls on the Commission to establish a definition of the legal nature of timeshare rights, whether these take the form of a real right (*in rem*) or a right relating to a personal obligation (the right to a service), with the inevitable consequences for the applicable principles of the Brussels Regulation and the Rome I Regulation. Unless this is done, the much-desired harmonisation and the confidence of consumers and traders will not be attained. In fact, in its opinion referred to above <sup>(28)</sup>, the EESC has already contributed to this definition by stating that the timeshare contract 'is a real right (*in rem*) or a personal right (*in personam*). It is not a tenancy right, since tenancy rights do not entail a transfer. The transferred right applies to an undivided item — an undivided apartment — and takes on (or can take on) the nature of a real property right'.

3.1.10 Without prejudice to the legal form taken by this right, which could be 'sui generis' — or indeed, for this very reason — the EESC agrees with the proposal's identification of some of its key aspects: the coverage of both movable and immovable property, together with the right to use accommodation (implying an overnight stay), against payment of a 'consideration', for a minimum duration of one year.

3.1.11 In addition to the products already listed in Article 2, the Committee calls on the Commission to lay down a clause (containing a definition of key aspects) to facilitate adaptation to any product that might in future <sup>(29)</sup> be placed on the market after the entry into force of the directive and which cannot meet the requirements set out in these definitions of new products.

3.1.12 The EESC considers that the possibility of consumers having to reimburse or pay any sum for having exercised the right of withdrawal in due time clearly undermines this right,

<sup>(27)</sup> Ruling of Portugal's Supreme Court of Justice, 4.3.2004.

<sup>(28)</sup> EESC opinion on Directive 94/47/EC, rapporteur: Mr Ataíde Ferreira (OJ C 108, 19.4.1993, p. 1).

<sup>(29)</sup> As in the case of Portuguese law, for example (Art. 45(3) of Decree-Law 180/99 of 22/05) which states that: 'the tourist accommodation rights referred to in the previous article specifically include the rights of obligation set out in contracts for holiday discount cards and clubs and tourist or other similar cards'.

which is based on the idea that the consumer does not have to give any reason or pay any amount whatsoever. Articles 5(5) and 5(6) of the proposal should thus be deleted.

3.1.13 The Committee draws the Commission's attention to the reference made to the recently adopted Unfair Commercial Practices Directive <sup>(30)</sup>, with which it agrees. The Committee points out, however, that Articles 14 and 15 of that directive make no reference to the directive currently in force and nor is any such reference provided for in the proposal now under consideration.

3.1.14 Although it agrees with the principle of minimum harmonisation, the EESC considers that the proposed directive is more restrictive than the one currently in force, in that whilst providing for the possibility that Member States can adopt measures affording greater protection to consumers' rights, it only does so for the right of withdrawal (concerning the starting point, modalities and effect of exercising this right). Article 11 of the directive in force <sup>(31)</sup>, however, enables this option to be used more widely. The EESC thus calls on the Commission to retain a similar provision.

3.1.15 The Committee considers that the Commission should provide for an effective system of sanctions, aimed not only at deterring practices that infringe the obligations set out in the directive, but also for reasons of legal certainty and security <sup>(32)</sup>. The Committee supports the possibility that, within the framework previously defined by the Commission <sup>(33)</sup>, the Member States and not the Commission might introduce criminal sanctions that are proportionate but sufficient to deter particularly serious abusive practices.

3.1.16 The EESC agrees with the inclusion of a regular review clause — absent from the current directive — to prevent it from rapidly becoming obsolete.

3.1.17 Although cases have been brought against some Member States <sup>(34)</sup> for having transposed some of the directive's provisions incorrectly, the EESC is surprised to note the Commission's failure to act, in particular as regards non-compliance with the deadline for transposing the directive (30 April 1997). Only two Member States <sup>(35)</sup> met this deadline. The Committee thus calls on the Commission, where the new directive is concerned, to be less easy-going on such flagrant breaches in the implementation of Community law.

<sup>(30)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (OJ L 149, 11.6.2005, p. 22. EESC opinion: OJ C 108, 30.4.2004, p. 81).

<sup>(31)</sup> Article 11 of Directive 94/47/EC — 'This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable as regards the protection of purchasers in the field in question, without prejudice to their obligations under the Treaty.'

<sup>(32)</sup> The 1999 report on the application of Directive 94/47/EC observed an extremely varied range of sanctions in the different Member States for breaching the same obligation, including financial penalties, the contract being rendered null and void, extension of the cooling-off period, suspension of activity and attendant publicity, etc.

<sup>(33)</sup> OJ C 256, 27.10.2007 and Draft Opinion CESE 867/2007 fin, the rapporteur for both of which is Mr Retureau, on criminal measures in the field of intellectual property and the environment.

<sup>(34)</sup> Spain, Sweden, Luxembourg and Ireland.

<sup>(35)</sup> The United Kingdom and the Federal Republic of Germany.

### 3.2 *Specific comments*

3.2.1 The EESC considers that the definition given in Article 2(1)(g), tying in with the provisions of Article 7, is too restrictive, because what characterises the ancillary nature of contracts is the complementarity between them. It is therefore complementarity rather than subordination that should be considered, because most contracts with linked credit in particular are extrinsic combinations of contracts which, due to their legal nature, are legally separate and as such do not fit the definition now being proposed.

3.2.2 The Committee disagrees with the wording of Article 3(2), in particular as regards written information, which will only be given to a consumer 'requesting' it and 'where applicable'. As this article concerns pre-contractual information, on the basis of which a consumer will form his or her decision to sign the contract, the EESC considers that the provision of such written information should be compulsory, and urges the Commission to include this stipulation.

3.2.3 The Committee calls on the Commission to replace Articles 3(4) and 4(1) and paragraphs (l) of Annex I, (f) of Annex III and d) of Annex IV with provisions similar to those contained in Article 4 of the current directive<sup>(36)</sup>, which affords greater protection to consumers. Not only does it make the provision of information in the language of the consumer's Member State compulsory; it also requires a certified translation into the language of the Member State in which the property is located, specifically for issues relating to any registration requirements.

3.2.3.1 In fact, the EESC can foresee the widespread adoption by traders of standard contracts in which consumers are restricted to confirming the language selected, without any freedom to assert their choice or to negotiate; this could seriously harm their economic interests.

3.2.4 The Committee calls on the Commission to amend the wording of Article 4(2), specifically by deleting the phrase 'unless the parties expressly agree otherwise', given that this is significant information that should not be left to the discretion of the parties concerned. Past experience has shown that the inclusion of this phrase will cause traders unilaterally to propose standard contracts which the consumer has no choice but to accept.

3.2.4.1 For reasons of legal certainty and security, the EESC also considers that the Commission should clarify/standardise

<sup>(36)</sup> Which states that:

'The Member States shall make provision in their legislation to ensure that:

— [...] the contract and the document referred to in Article 3(1) are drawn up in the language or one of the languages of the Member State in which the purchaser is resident or in the language or one of the languages of the Member State of which he is national, [...] at the purchaser's option. The Member State in which the purchaser is resident may, however, require that the contract be drawn up in all cases in at least its language or language [...]

— and — the vendor provides the purchaser with a certified translation of the contract in the language or one of the languages of the Member State in which the immovable property is situated.'

the type of 'circumstances beyond the trader's control' that will form an integral part of the contract under the terms of Article 4(2).

3.2.4.2 Also concerning this article, the Committee urges the Commission to lay down the method of communicating this information, which should be provided in an appropriate, objective and clear manner<sup>(37)</sup>, and should also be printed in letters of a size that makes the text easy to read<sup>(38)</sup>.

3.2.5 The Committee suggests that the Commission clarify the phrase 'the trader shall explicitly draw the consumer's attention' in Article 4(3), because its specific legal meaning is unclear.

3.2.6 If Article 5(1) is to be understood as providing for two periods for exercising the right of withdrawal, then the EESC calls on the Commission to lay down only one provision giving the consumer the right to withdraw up to 14 days after signing the final contract, if this has been preceded by an earlier binding contract, provided that the property has not been used in the meantime.

3.2.7 As it has in previous opinions, the Committee urges the Commission to define the nature of the communication informing of the right of withdrawal, so as to ensure that both parties have proof that the information has been conveyed. In fact, the wording used in the current directive is more appropriate<sup>(39)</sup>.

3.2.8 The EESC considers that the heading of Article 8 should be replaced by the phrase 'mandatory nature of the rights' given that the purpose of this article is not to establish the imperative nature of the directive but to ensure that those rights are not excluded or restricted, irrespective of which legislation applies.

3.2.9 As regards judicial and administrative redress, the Committee considers the provisions contained in Articles 11 and 12 of the Unfair Commercial Practices Directive<sup>(40)</sup> to be more appropriate, because they are more wide-ranging and comprehensive. The Committee therefore calls on the Commission to replace Article 9 of its proposal with rules similar to those.

<sup>(37)</sup> As stated, for example, in Article 8 of the Portuguese Law on Consumer Protection.

<sup>(38)</sup> As stated, for example, in the Ruling of the Lisbon Court of Appeal, 3.5.2001.

<sup>(39)</sup> 'by a means which can be proved'.

<sup>(40)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 (OJ L 149, 11.6.2005, p. 22. EESC opinion, OJ C 108, 30.4.2004, p. 81).

3.2.10 The EESC wishes to draw the Commission's attention to the wording of the various language versions of its proposal because there are matters that require more careful translation <sup>(41)</sup>.

#### 4. Issues not covered by the proposal

4.1 The EESC considers that, in addition to the omissions already referred to above, the proposal overlooks other issues that might warrant consideration in a revision of the directive.

This applies specifically to:

- a) the system of burden of proof;
- b) preventing the risk of non-compliance or limited compliance with the contract;
- c) establishing a restriction on the use of timeshare (accommodation) contracts to buildings and parts of buildings used for tourist or leisure activities <sup>(42)</sup>, thus contributing to higher quality and avoiding the misuse of such contracts in the property sector;
- d) establishing rules on licensing and authorisation to operate in this sector, with applicants having to prove their technical and financial capacity;

- e) establishing a system of financial guarantees to safeguard against potential insolvency or bankruptcy, as in other Community instruments <sup>(43)</sup>, and not only in relation to immovable property under construction;
- f) establishing a system of prior registration in the country in which the business is marketed and/or in the Member State in which the company's head office is located <sup>(44)</sup>;
- g) establishing a European-level system of certification for traders in this field and at the same time ensuring the existence of an early-warning system between Member States, aimed at reporting infringements that could result in loss of certification and at informing consumers <sup>(45)</sup>;
- h) establishing in the Annexes the requirement to provide information on any charges and obligations, to prevent consumers from losing their right, for example, in the event of foreclosure of a mortgage <sup>(46)</sup>;
- i) establishing in Annex II consumers' right to inspect a property, should this be an immovable property, in order to ensure that it complies with the building plans;
- j) establishing the protection of personal data when the rights are transferred to third parties.

Brussels, 24 October 2007.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

<sup>(41)</sup> In the Portuguese version, this applies to Article 2(b), which is meaningless, to Annex I(j), which says exactly the opposite of what it should say and to Article 7(1), in which the word 'dissolvido' should be replaced by 'resolvido', for obvious reasons, both in the interests of legal accuracy and to be consistent with the heading.

<sup>(42)</sup> See the EESC opinion on Directive 94/47/EC, OJ C 108, 19.4.1993, p. 1.

<sup>(43)</sup> Directive 90/314/EEC of the Council, of 13 June 1990, on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59). EESC opinion: OJ C 102, 24.4.1989, p. 27.

<sup>(44)</sup> EESC opinion on Directive 94/47/EC, OJ C 108, 19.4.1993, p. 1.

<sup>(45)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006, on services in the internal market (OJ L 376, 27.12.2006, p. 36). EESC opinion: OJ C 221, 8.9.2005, p. 113.

<sup>(46)</sup> EESC opinion on Directive 94/47/EC, OJ C 108, 19.4.1993, p. 1.