

THE ROMANIAN LEGAL ARMONISATION WITH THE EUROPEAN UNION STIPULATIONS REGARDING THE TIME-SHARE CONTRACT

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In romanian legislation, the necessity of a proper and concise counseling of consumers regarding the rights they have before and after signing a contract with view to obtain a real right or any other right of temporary usage over one or more imobiliary goods is explicitly reglemented. The contract for obtaining the right of temporary usage „timeshare” of imobiliary goods can come in the form of a standard contract or of a group of contracts made for a duration of 3 years minimum, with the payment of a global price, by means of which the consumer obtains, directly or indirectly, the right of usage over one or more imobiliary goods, in exchange for a global price, for a duration of time, predetermined or not, that can not be shorter than one week.

Key words: *time-share, imobiliary goods, clause, global price.*

1. General considerations

Into a free market economy, it is to have in view the growth of the protection level for the consumers at the moment of the contract`s enclosure aiming to obtain the use right on a temporarily basis of some imobiliary goods, ensuring the right and complete informations offered to the consumers by the economic agents, before and after the contract is signed.

This principle was put into view by the European Council and Parliament also through the endorsement by means of the co-decision procedure of the 94/47/CE Directive of the 26th of October 1994, regarding the protection of the gainers of assets from some aspects of the contracts regarding obtaining the rights of temporary usage of various imobiliary goods¹⁸¹.

The directive establishes several principles to be adopted in various national right systems and be applied in the case in which no minimal consumer protection clauses have been stipulated in the contracts regarding obtaining a real or any other right with view to temporary usage of imobiliary goods, especially in those that contain an element of foreign origin (when the parties come from different member states; exemplary, Spain has received a lot of criticism prior to the endorsement of the Directive for the absence of such reglementations and for abusive practices, sometimes dangerously close to fraud, to which clients with the domicile in other member states, who spent their holidays in this country, fell victims). However, the Directive allows the member states to maintain its own, more consumer-friendly, national reglementations, to the extent to which these already exist in the internal judicial order.

The contract for obtaining the right of temporary usage „timeshare” of imobiliary goods can come in the form of a standard contract or of a group of contracts made for a duration of 3 years minimum, with the payment of a global price, by means of which the consumer obtains, directly or indirectly, the right of usage over one or more imobiliary goods, in exchange for a global price, for a duration of time, predetermined or not, that can not be shorter than one week.

¹⁸¹ The nr.94/47/CE Directive, has been published in the Official European Union Journal(OEUI) nr.L280/29.10.1994.

According to article 2, line 2 of the Directive, the imobiliary good is defined as any building or part of a building, with the functional destination of habitation over which one of the contractees has the rights. However, the nature of the right of temporary usage over such a good remains controversial¹⁸², varying depending on the civil right systems of each member state. For example, responding to a request to pass a preliminary decision on the basis of the former 177th article (currently the 234th article) of the Treaty on which the European Union was formed, the Luxemburg Justice Court has decided that, in the case of a contract that stipulates the supplying of a touristical services package whose value is higher than the value of the actual temporary usage right of the respective imobiliary good in question, the respective right can not fall under the category of real rights.¹⁸³

In romanian legislation, the necessity of a proper and concise counselling of consumers regarding the rights they have before and after signing a contract with view to obtain a real right or any other right of temporary usage over one or more imobiliary goods is explicitly reglemented in the nr. 282/2004 Law.¹⁸⁴

The purpose is to increase the level of consumer protection for the enclosure of such contracts, by assuring that complete and correct information is offered by economical agents before and after the closure of the contract.

The protection of consumers when signing such contracts, by implementing european directives in the field in the romanian legislation, leads to the diversification of the manner in which touristical products are being commercialized, but also to the entrance of Romania in new service and product markets, where the citizens of the European Union have the same rights, on Romanian soil, the same rights as in their states of origin.

The contract for obtaining a right of temporary usage of imobiliary goods is, a contract of group of contracts, closed for a *minimum duration of 3 years*, with the payment of a global price, through which, directly or indirectly, a real right or any other right over the use of one or more imobiliary goods for a determined or undetermined period of the year that *can not be lower than one week*, is comprised of, or is the object of a transfer or of an agreement of transfer of such a right.

The imobiliary good is defined as any building or part of a building, with the functional destination of habitation over which one of the contractees has the rights and which is the object of the contract.

If the good is located in Romania or in a member-state of the European Union, and the law that is applicable on the contract is not in accord with Union reglementations regarding the protection of the purchaser in the case of contracts with view to real rights or any other rights regarding the temporary use of imobiliary goods, the purchaser necessarily benefits from the protection conferred by the 282/2004 Law.

2.The time-share contract's content and enclosure

The directive establishes the contractual frame of the right of temporary use of some real estates. Therefore, the timeshare contract is enclosed between a professional (in the directive's terminology „the saleclerk” that usually encloses such contracts during his professional activity) and the consumer, whose state is defined in a sufficiently wide manner so as to include all of the juridical formes used. The main purpose of the Directive is to protect the economical interests of the consumer and to offer him in advance, in the moment of the offer, o detailed information and a reflection period necessary for him to express his consent.

3. Conditions regarding the time-share contract's enclosure

The directive establishes the rule according to which the contract is mandatory enclosed in writing, therefore this condition is *ad validitatem*¹⁸⁵ and will contain a series of mandatory elements, determined by

¹⁸² The 5-th considerent of the Directive stipulates that in the EU member states practice the obtaining of a temporary usage different from the way in which the usage right is obtained based on a rental contract, especially in the payment method, because under the Directive`s stipulations, the price payment for the right of temporary usage for the imobiliary goods, can be through a line of credit offered by the salesman (art.7 from the Directive).

¹⁸³ The Decision from 22 april 1999 cause C-423/97, Travel Vac SL.c. Manual Jose Antelm Sanchis, published in Rec.1999.p.I-2195.

¹⁸⁴ The Directive was transposed into the romanian intern law by the Law nb. nr.282/2004 regarding the protection of the contractees obtaining the right of temporary usage of imobiliary goods, published in the M.Of.nr.580/30.06.2004.

the correct informing of the consumer regarding the characteristics of the estate in question and the rights and obligations that he will assume. In this purpose, the Directive states that any mean of publicity regarding the estate and the right to use it on limited duration must indicate the possibility of the future beneficiary to come into possession of a document that contains the mandatory information that will be included in the contract, if this contract is to be enclosed, as well as the place where this document can be obtained (usually, the saleclerk's agency) (art.3, par. 3).

The contract, as well as the document that includes the mandatory information must be edited in the language or the languages of the member state where the beneficiary has his domain or residence or, by choice, in the language of the state that he is a citizen of, on the condition that this (these) is a part of the official languages of the Community. Moreover, preoccupied to offer protection to the beneficiary, the Directive says, in a blurry way, that the member state where the beneficiary lives or is a resident of, can solicit that the editing of the contract be made, in all situations, in his language and, moreover, that the saleclerk must translate the contract to the beneficiary in the official language or languages of the state where the real estate is located.

Modifying the information included in the document without the consent of both parties involved, is allowed only if the cause of this modification is independent of the saleclerk's will.

Any modification of the information will be brought to the beneficiary's knowledge before the enclosure of the contract.

Any modification of the information will be mentioned in the contract.

The publicity regarding the real estate will indicate the possibility of obtaining the document that includes the information, as well as the place where this can be obtained.

Violating these disposals is an infringement¹⁸⁶, the sanction can be applied both to physical persons and juridical ones.

The contract is enclosed in written, under the sanction of absolute nullity and will include at least the mandatory elements.

According to the provisions of art.5 from law nb.282/2004, the contract and the document that envelops the information must be written in Romanian. In case that the beneficiary is a foreign citizen or has his residence abroad, the contract will be written in one of the official languages of the state in question, by the citizen's choice, in case that the language is an official language of the European Community. On the contrary, the saleclerk must give the beneficiary an authorized translation of the contract in the official language of that state, in which case that is an official language of the European Community.

Regarding the reimbursement of the expenses that have already been made before the exertion, by the beneficiary, of the right of unilateral denunciation, the directive regulates two hypotheses as follows:

- a) if the beneficiary denounces the contract with no reason after the expiry of the term of reflection that has not begun after the saleclerk delivers the final information of the ones solicited, the beneficiary must only reimburse the expenses which, according to common right, result as a consequence of the enclosure and the unilateral denunciation of the contract and that match the legal formalities that must be finalized before the end of that term, these must be mentioned in the contract. In any case, the directive expressly forbids the payment, by the beneficiary, of any sum with the title of advance before the term of reflection is over (art.6).(5)
- b) if the price of the contract is fully or partially covered by a credit given to the beneficiary by the saleclerk or by a third person, based on a contract enclosed between the third and the saleclerk, the credit contract will be annulled with no penalty and/or interest from the beneficiary.

It must be noticed that, unlike these two hypotheses, in the situation in which the beneficiary exerts his right to annul the contract of timeshare, he will not be obliged to refund any expense made by the formalities of enclosing the contract.(art.5, par.4)

¹⁸⁵ The Law nb.282/2004 concludes that the sanction for breaking ad validitatem condition at the contract's enclosure is nullity.

¹⁸⁶ O.G. nb.2/2001 regarding the juridical regime of infringements, published in M.Of.nb.410/25.07.2001, approved by Law nb.180/2002 published in M.Of.nr.268/22.04.2002;

The directive stipulates that it is of the competence of the laws of the member states to foresee any clause in which the benefitor gives up the rights given or in which the saleclerk is exonerated from the responsibilities that emerge from this cannot have any side effect on the debtor.

4. The nullity, denunciation and annulment of the timeshare contract in Romanian legislation

The contract is enclosed in written, under the sanction of absolute nullity, and will include at least the mandatory elements.

The action in ascertaining the nullity can be introduced by any interested person and is solved by the competent civil instance.

Complementary to the benefitor's options according to common right, regarding the nullity or the annulment of the contracts, the benefitor is entitled to:

- a) to denounce the contract unilateral, without having to state a reason, in 10 calendar days- the term is calculated according to common right – from the date of the signing by both parties or from the date when the parties signed a precontract.
- b) In case that the contract or precontract does not contain the information from the annexe of the law during the signing by both parties, to solicit the annulment of the contract or the precontract in 3 months from that moment. If in 3 months the information have been supplied, the 10 day term in which the benefitor can denounce the contract start from the date he received the last piece of information.

If at the end of the 3 month term, the benefitor has not exerted his right to solicit the annulment of the contract and the enclosed contract cannot include the information stated in the annex, the term of unilateral denouncement of the contract will star from the day after the day in which the last term expired.

In case that the benefitor wishes to exert the right stipulated by the law to denounce the contract unilateral, he must, before the end of the terms, notify in written the person whose identification data are stated in the contract, according to common right and the procedures specified in the contract. The final term will be considered respected if the written notification is sent before its end.

In case the price of the contract is partially or fully covered by a credit given to the benefitor by the saleclerk or a third, based on a contract between the third and the saleclerk, the credit contract will be annulled without penalties and interest, in case that he is exerting his right to unilateral denounce the contract.

According to the provisions of art. 7, law nb. 282/2004, the contractual clauses through which the advance payment is solicited from the benefitor, before the end of the term in which he can exert his right to unilateral denouncement of the contract, are nule.

The benefitor's right to unilateral denouncement of the contract cannot be limited by any contractual clause or settlement between the parties, these being considered nule.

Any clause through which the benefitor gives up the rights that the law gives him or through which the saleclerk is exonerated of his responsibilities is nule.

According to art.13, law nb.282/2004, violating the law, is followed by civil response, contraventional or capital.

The rights and obligations that emerge from the enclosed contract can be carried of by the thirds. A novelty in the romania juridical system, the sale of a real right or any other usage right on a limited amount of time, is the permission that the rights and obligations that emerge from the contracts enclosed through this regulation, can be carried off by the thirds.

In case the consumers feel more protected from unpleasant situations that can appear during such contract, their faith in sales' systems of an utilisation right on a limited period of time of real estates situated both in the country, as well as abroad, but also in saleclerks will grow, developing a relationship with benefic effects on the market evolution.

The directive creates the necessary backround increase the protection of the benefitor's temporary utilisation rights over the real estates, both on communitary level, as well, mainly, on national level, so as to avoid and/or to solve unpleasant situations that can appear during the succeeding of the contract, because

of the existence of the premises to increase disbelief in these juridical constructions enclosed with entertainment purposes and not only. Therefore, the beneficiaries will use the real estate both in the country, as well as the states that are members of the Community, with the purpose to facilitate free circulation and the right to establish these inside the Community, in concordance with the fundamental principles of the communitary law.

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