PROFESSIONAL PAPER

INTRODUCTION TO THE INSTITUTE TIMESHARE IN FOCUS OF ECONOMIC ANALYSIS OF LAW

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ABSTRACT: Timeshare is now an industry. It is a 50 years old tourism institute. Timeshare has been studying more and more economically over the years as a management and hospitality institute. However, as a kind of legal relationship of contract, it was necessary to regulate it in the area of law also. The aim of this paper is to show the legal framework of the institute through an economic prism i.e. as part of a new legal branch – Economic analysis of law. Some of the fields through timeshare can be compared are contracts, property, a right of future use, theory of a firm and scarcity. In this paper, the author will link this law institute with the economic world and theory.

The author will also show information's about timeshare like definition, history and types of timeshare. When speaking about the legal framework the institute will be defined through the comparative analysis of Croatia, Slovenian, Spain and the EU legal framework. Also, the author will analyse the importance of consumer protection.

Keywords*: timeshare, vacation ownership, economic analysis of law, EU law, consumers*

JEL: K00, K15, K25

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1. INTRODUCTION

This paper aims to become more familiar with the legal institution of 'timeshare'. The paper is divided in six sections: Introduction, The institution of timeshare where the author gives the definition of the institute and a historical overview, Comparative legal frameworks, Problems in timeshare practice and suggested solutions, An economic approach to the institute and finally Conclusion.

Generally speaking, timeshare is a long-term lease of real estate or expensive movables like a yacht. When a consumer enters into timeshare contract it buys a right to use a property in a specifiable time during the year for a couple of next X years. This definition leads us to characteristics which are similar to lease but also a property. When speaking about lease similarity can be seen in the fact that a consumer doesn't have limitlessness of use of the property because it is shared with other people, and there is no registered right in the land register, but on the other hand it has contact points with property because it is a kind of shared ownership and long-term in particular if a consumer enter into contract for ex. 10 years or more. Today, timeshare as an institute is known worldwide. Some countries recognized its potential thought tourist offer, while in other countries there is not a case. In the United States timeshare is very popular, while in Europe most of the countries have just a legal framework, with no use.

In the author's view is that timeshare is a perfect mechanism of improvement and expansion of tourism policy. This service could be an opportunity more for touristic countries in the first line because it helps on a macroeconomic level to have better forecasting and planning referring to the essential characteristic of timeshare – "long-term". In this sense, the policy makers can more precisely predict future services, needs and profits.

This Paper will introduce the reader in the institute of timeshare giving some general observation but also a legal framework of Croatia, Slovenia, Spain and EU and some initial theories of timeshare through a new branch of law Economic analysis of law.

2. THE INSTITUTION OF TIMESHARE

This section of the paper will introduce the institute to the reader. The author will give a definition of the timeshare with the description of the institute, providing also its historical background, discusses comparative legal frameworks in Slovenia, Croatia, Spain and the EU. The end of the section will be focused on problems arising in timeshare practice and propose solutions to these problems.

Timeshare: A definition

'Timeshare', 'timeshare contract', 'vacation ownership' and 'vacation club' are synonymous with the same legal institution.[1] Timeshare is now a worldwide phenomenon; in particular, continental European and Anglo-American law share in the practise of this legal framework.

The term derives from two words, 'time' and 'share', which together imply sharing something during a given time period. People may not only share property or real estate but also movable luxury property like a yacht. The EU Commission defines timeshare as the right to spend time (one week or more) in a holiday property for a specific or specifiable

[1] In this paper the author will use the term 'timeshare' because this term is preferred by European law.

period of the year, and for at least one year. Most definitions are similar, but alter the period of time (e.g. one, two, or three years).[2] Timeshare can also be similar to ownership or a lease. It includes legal right to a property for a certain period. For example, if a person wishing to enjoy a Spanish beach house knows that the property will be suitable for next ten years but cannot afford it or the interest amount to buy it, they can simply enter into a timeshare contract. This means that for next ten years the house will be theirs, but can also be shared with other people on holiday for a different time period. Timeshare is therefore not sole ownership, because other people now have a right to the property for a different time period.

There are currently three types of timeshare:[3]

1. Fee simple or deeded timeshare, where a deeded interest in real estate is purchased. This is not recorded by the court or other authorities as with actual ownership, but the contractee receives a title giving them the right to use, rent, lend, will and sell their share of the property. Importantly, the person's title is for an unlimited time period.
2. Leasehold or non-deeded timeshare is similar to the first type, but is for a limited time period. There is an expiration date – for example, the end of a given year or for a given number of usages.
3. Right-to-use timeshare is more popular in the United States. This gives the contractee the right to use a particular unit or unit size each year, but without having an actual interest in it.

In addition, there are four other ways to use the timeshare framework:[4]

1. The 'fixed week' system developed in the 1960s, when timeshare was first created. This is the simplest type, which gives the consumer property rights for a specific week of the year, or to a specific room at the property. The advantage here is that the consumer has certainty for the given time period without the need to make a reservation.
2. The 'floating week' system developed after timeshare become more popular and the market for timeshare needed greater flexibility. This gave the consumer the right to use the property for one week during the year as a home or affiliated resort; however, while providing flexibility in use of the property, it required prior reservation by the consumer.
3. The 'points-based' system is where each week of timeshare owned is allocated a specific number of points based on certain criteria. This type does not require a full week's

[2] Directive 1994/47/EC of the European Parliament and the Council of 26 October 1994; Directive 2008/122/EC of the European Parliament and the Council of 14 Jan 2009. The first Directive considered timeshare only if the agreement is settled for at least 3 years; the second newly adopted Directive defines timeshare occurring if the agreement is fulfilled for at least one year.

[3] Schreier, *Timeshare Vacations for Dummies*, p. 20.

[4] Ibid., p. 21.

stay, and is more often only for a few days (e.g. two or four), which is the advantage of this timeshare type.

4. Fractionals or private residence clubs (PRCs) are the newest and youngest type of timeshare. PRCs are more luxurious and the fastest-growing type, but also more costly. The consumer owns the property for a longer period of time – for example, for quarter or half the year. PRCs are managed by companies and have additional fees for maintenance and membership. They also offer extra services like cars, private chefs, and full-time personal assistants.

Another important factor in timeshare is the possibility to exchange properties. Although timeshare on a property is secured for a fixed period, most timeshare traders allow a person's timeshare to be exchanged with another. This facility has made people more willing to purchase a timeshare; however, other factors must be considered when exchanging a timeshare, such as busy or quiet occupancy seasons and various property categories.[5]

Timeshare: A history

Now an industry, timeshare was first introduced about sixty years ago in the United Kingdom. Tourism began to grow especially after the 1960s, and concepts of the vacation and holidaying became very important to Western lifestyles. Home and holiday-home sharing paved the way to the timeshare concept. It is said to have originated with four European families who jointly-owned a vacation cottage. Each family stayed exclusively at the property for a different season each year. This practice soon became a business based on trust, so no property manager was involved. British entrepreneurs realised that sharing of holiday homes could be very profitable. A decade later, they were proved correct. Another early example of European timeshare in the 1960s is the French ski resort Superdevoluy.[6] Subsequently, timeshare in Europe became a most successful business venture. Timeshare later became popular in the United States, and was initially managed in 1974 by the Caribbean International Corporation based in Florida. It owned properties in Florida and the Virgin Islands and offered a '*25 year vacation licence*'.[7]

With time, timeshare needed to respond on consumers' changing needs. At its inception, timeshare was sold as a 'fixed week package' – meaning that the consumer was entitled to use the property every year in the same week period (e.g. in Week 32 each year). More flexibility was needed, and the 'floating week' timeshare structure was born, where the consumer could use the property within any specified range of weeks within a calendar year or as specified in the contract. It offered two options which depended on how the contract was made:

[5] Ibid., p. 22.

[6] Upchurch & Lashley, *Timeshare Resort Operations*, p. 2.

[7] https://en.wikipedia.org/wiki/Timeshare#History visited on 27.5.2018.

Under the week float option, the consumer was given use of a specific unit (also called villa) while the week floated throughout the calendar year or within a given season. Under the unit float option the consumer's interval (i.e., week) remained the same while her choice of unit [similar to one-bedroom, two-bedroom units, etc.] location varied as long as the unit type was the same as the one she had originally purchased.[8]

Both timeshare types still exist today, with the fixed-week system especially popular from 1960 to 1970.

Another format of legal timeshare was instituted by Walt Disney Corporation in 1992 through use of the points system and vacation clubs. Each timeshare product (or property) is registered under this scheme, where the consumer purchases points instead of weekly increments. The points purchased have a predetermined value equivalent to usage rights, which helps the consumer to find the product best meeting their needs. It also offers more flexibility in the range of services offered, for example, golf packages, cruiseline holidays and hotel stays.

Consumer trends and standards changed once more, leading to newer timeshare packages. The next major timeshare change occurred in the 1980s and 1990s, and was based on more upmarket consumer tastes such as for ski and family resorts, and golf packages. Standards of real estate changed from the standard bedroom format to better-designed bedrooms or villas. This was also prompted by the entry of big hotel chains such as the Marriott, Hilton and Hyatt Hotels in 1980s and 1990s. Such changes not only related to properties in timeshare schemes, but also to the services being offered.[9]

At present, timeshare has become known as the 'timeshare industry'. While generally growing in quantity and complexity, its popularity is low in some countries where legal frameworks remain poor and difficult to negotiate.

To address this problem, the next chapter will explore timeshare regulations in three EU states and Directives legislated by the EU.

3. COMPARATIVE LEGAL FRAMEWORKS

To explore the regulation of timeshare law in Europe, the author will compare legal frameworks of Slovenia, Croatia, Spain and the EU. Slovenia, Croatia and Spain are tourist destinations for most of the year, with Spain in particular being one of the most popular timeshare destinations in Europe. Slovenia and Croatia are also independent states with their own frameworks for timeshare. The EU was chosen to provide an overview of timeshare directives in the region as a whole.

[8] Op. cit., p. 5, p. 4.

[9] Ibid., p. 4–13.

Slovenia adopted timesharing in 2002, when it was organising its legal system and preparing to enter the EU. From the very beginning, timeshare was regulated under the rights of consumer protection law, and regulated under Articles 59 to 60(g) of the *Consumer Protection Act* (the Act)[10]. The Slovenian term 'časovni *zakupu stanovanjskih objektov*' was regulated under Part 7 of the Act[11]; this definition was also adopted by the first Directive of the EU regarding timeshare.[12] However, in 2011, the Act was amended to correspond with the adoption of a new EU Directive. The definition of timesharing in Article 59 was omitted, and Articles 60(f) to 60(g) were added after Article 60(e). Importantly, Slovenia revised the definition of timesharing to '*pogodba* o časovnem *zakupu*'. This aligned with other Slovenian legislation regarding timeshare that was since amended, providing a more detailed description of the timeshare contract, and which aimed to prevent unfair contract terms and an unfair marketplace. The timeshare contract had to be written, additional information provided, and the option for termination included – all of which gave the consumer better protection when entering into the timeshare contract.

Timeshare only entered Croatian law in 2014, a year after Croatia entered the EU. Like Slovenia, Croatian law regulates timeshare under its consumer protection laws. However, unlike Slovenia, Croatia had no timeshare legislation prior to entering the EU, but adopted the EU's second Directive on timeshare. There have been no amendments to Croatian timeshare legislation since that time. *The Croatian Consumer Protection Act*[13] (the Act) is also part of the EU's main body of law, the Acquis Communautaire, and the EU's most recent timeshare Directive. Timeshare is regulated under Articles 95 to 104 in Chapter 4 of the Act, which are similar to the Articles in Slovenia's *Consumer Protection Act*. This is a result of integration with EU law. Relevant Article provisions in the Act are:

- The contract must be written on paper or on other hard copy, and must consider the consumer's native language and home state, provide trader details and the property's location. The consumer must be provided with least two copies of the contract (Article 96).
- Strict rules are required on any information provided when advertising the product (Article 97).
- The consumer must receive pre-contractual information (a type of pre-contract) before signing the contract, which must include all relevant information (Article 98).
- Details of what the contract should include, and the possibility of withdrawal from the contract (Article 99).
- Right of withdrawal, which gives the consumer the possibility to withdraw from the contract within 14 days. Other provisions stipulate when the 14-day period begins.

[10] Zakon o varstvu potrošnikov, Uradni list RS št. 31., 4.5.2018.

[11] Zakon o varstvu potrošnikov, Uradni list RS št. 110., 18.12.2002.

[12] The EU Directive will be detailed in the sub-section on EU timeshare law.

[13] Zakon o zaštiti potrošača, Narodne novine, 41/2014.

The consumer using the right of withdrawal is not obliged to reimburse the trader (Articles 100 and 101).

- The trader is forbidden to ask or claim any kind of cost, expenses, or guarantees during the consumer's withdrawal period (Article 102).
- When the consumer uses the right of withdrawal, other collateral contracts are also terminated. The trader must provide information to other parties if the contract is terminated, but the consumer is not obliged to do so (Article 104).

It can be seen that Croatian timeshare regulation is fairly similar to Slovenia's because of its EU membership. Further, timeshare law in these two states is not heavily regulated, and especially in the case of Croatia, has been merely integrated to accord with EU Directives.

On the other hand, Spain's legal system has long been familiar with timeshare because of its long tradition as one of the most popular timeshare destinations in Europe. However, proper legislation in Spain was only enacted in the late 1990s, and integrated into EU law only after 2010. The lengthy period before law came into effect was because it had to pass through the Supreme Court, which is the final arbiter of all constitutional change in Spain. This delay also gave rise to many timeshare contracts rendered null and void. Contracts signed before 4 January 1999. are harder to take to the Court. Despite its high level of judicial bureaucracy in this instance, Spain remains a very popular timeshare destination, and there are support systems in place to deal with timeshare issues, such as associations, and advice and consumer protection centres. In summary, Spain offers a different approach to the timeshare industry. Its long association with this industry has made it largely independent of European practice; in fact, it has yet to fully integrate timeshare law with the EU. However, in comparison with Slovenia and Croatia, it can be concluded that Spain is the more successful model for the timeshare industry simply because of its well-established practice in this area.[14]

Timesharing was first introduced into EU legislation in 1992, and adopted as EU Directive 1994/47/EC in 1994[15]. At the time, timeshare was not regulated by EU member states, which simply transferred the EU Directive into their own legal systems. Directive 1994/47/EC aimed to introduce a new type of tourism which gave minimum protection to consumers. The Directive aimed to simplify the legal systems in timeshare and to remove barriers to timeshare operation in the market. Mention of consumer protection in first line we think about advertising, selling the product, information and possible fraud caused by nescience of consumers.[16]

[14] https://www.timeshare.lawyer/blog/ visited on 4.6.2018.

[15] Directive 1994/47/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 rights to use immovable properties on a timeshare basis.

[16] Howells & Wilhelmsson, *EC Consumer Law*, pp. 248–250.

The second EU timeshare legislation was Directive 2008/122/EC passed in 2009, and which remains current[17]. While there have been major developments in the EU's tourism and timeshare market since 1994, European consumer centres continue to receive numerous complaints. Most relate to heavy financial commitments for the consumer, including high initial payments, and general disinformation provided to them. This has prompted extending consumer protection and including products similar to timeshare packages like discount holiday clubs, and properties for resale and exchange. There is also a new option known as the 'right of withdrawal period', which gives the consumer the option to terminate the contract and prohibit the trader charging any fee during this period.[18] Directive 2008/122/EC also redefines the timeshare contract as a contract where a consumer for consideration acquires the right to use one or more overnight accommodations for more than one year (Article 2, 1(a). Notably, Directive 1994/47/EC legislated a timeshare contract for at least three years and a withdrawal period of not less than one week (Article 2). The withdrawal period in Directive 2008/122/EC is now 14 days (Articles 6–8) instead of 10 days (Article 5). The 2008 Directive contains more articles relating to contractual activity and contract regulations. It has stronger provisions on the contract's form and language (Article 5), advertising (Article 3), pre-contractual information (Article 4), and procedural provisions (Articles 11–15). All these amendments were made to boost consumer protection and trust in the contract.

4. PROBLEMS IN TIMESHARE PRACTICE AND SUGGESTED SOLUTIONS

One of the biggest problems facing timeshare is the trader's often unfair treatment of the consumer. Although the timeshare industry is now about sixty years old, its legal framework has only been in place for twenty-four years, and in some European countries such as Croatia, only for four years. Unregulated gap periods have led to problems and unfair situations for consumers, who did not have adequate protection. EU regulations initially tried to manage this problem, but in fact only provided minimum protection and a plan for future legal frameworks. Arguably, EU Directive 2008/122/EC's attempt to improve consumer protection was only partially successful.

Consumer protection also involves trader ethics: proper treatment of traders towards consumers is important for company success. Because timeshare is a long-term contractual relationship, consumers must be satisfied with the service for the duration of the

[17] Directive 2008/122/EC of the European Parliament and the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange.

[18] Commission of the European Communities, Commission staff working document. Accompanying document to 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, Impact assessment.

contract. Consumer protection in the timeshare industry was mostly violated by false promises in marketing, sales pressure and ambiguity of contract clauses. In the late 1990s, television, radio and the internet, especially in Spain and the United Kingdom, advertised timeshare heavily and tried to promote the 'ideal type of holiday'. Although timeshare was first developed by traders following consumer trends, this led to traders making promises they could not deliver. Traders were selling more than they could deliver. It must be noted that aggressive marketing and sales pressure in general were and still are part of advertising, bombarding people with slogans like 'buy now or regret later', and compelling them to purchase. In timeshare, this might force the consumer to enter into a costly and possibly lengthy contract, and where the prospect of withdrawal later could also be costly and complex. Further, a contract may contain fraudulent clauses which can be rendered null and void, making the entire contract worthless. Timeshare traders may try to market their products with such words as 'excellent opportunity', 'low prices – perfect holiday', or 'dropping prices' to speed consumer contracting. Another method timeshare traders use is the short standard contract.[19]

Consumers also face hidden costs which traders charge during or at the end of the contract period. The EU's Directive 2008/122/EC has tried to remedy this situation, particularly by the requirement to write the contract in the language(s) of the parties, the inclusion of pre-contractual information and the right of withdrawal. The author believes that a good legal framework for pre-contractual information is crucial, which should provide a clear description of the final contract. With this information, a consumer can be more comfortable reading the rest of the contract. The right of withdrawal is also most important as a tool of consumer protection, with its 'grace period' of 14 days to allow the consumer to check the contract and if necessary, withdraw from it and avoid any party costs.

It is the author's opinion that despite the EU's legal framework for consumer protection in its latest 20-Article Directive, an annexure containing the standard necessary information is sufficient. Most EU member states have since introduced consumer protection into their legal system in only about ten Articles. Further regulation and protection by the EU could be counterproductive because it could actually unsettle the market and tourism generally. Timeshare is not only a legal institution, but also an economic product for tourism, and there should be scope to allow advertising and market competition. Another possibility to boost consumer protection could be the addition of specialist consultants in this field. In Spain, there are consultants such as lawyers and other professionals who assist people interested in purchasing timeshare, and who will guide them during the whole process.

[19] Patton, *Fifteen Secrets to Successful Timeshare Management*, pp. 26–28.

5. AN ECONOMIC APPROACH TO TIMESHARE

The economic analysis of law is a new branch in the legal field. The professions of law and economics were once separate but are merging today. Essentially, legal frameworks establish order in everyday life, and regulate human dealings into legislation. Economics deals with numbers and theories, and end results show mathematical calculations that relate to profitability. However, economists' theories assume that people are rational in behaviour, and conform to economic models of rational choice. Correspondingly, the branch of law concerning 'utility' indicates that a person is a rational utility maximiser in all areas of life, not just in economic affairs.[20] It attempts to describe law and human behaviour through economic theories – an approach which can help legislators anticipate the effects of new or existing law principles, and also help people to find the best solutions to conflicting problems they may have.

This paper concerns timeshare and its effect on the personal choices people make about their holidays; it also addresses timeshare at the macroeconomic level with regard to tourism and tax policy.

Timeshare under property and tax law

'Property' can be defined as an economic or legal institution. Legal theory defines property as a 'bundle of rights', which describes what people may or may not do with the object of property; for example, possess, use, develop, improve, transform, consume, deplete, destroy, sell, donate, bequeath, transfer, mortgage, lease, loan, or exclude other properties. There are three fundamental facts concerning property: property rights are impersonal, the owner is free to exercise rights over their property, and others are forbidden to interfere with it. It must be emphasised that property is an impersonal right because it follows the object not the person, as is the case with contract rights.[21]

Economic theory defines property as an individual's ability to consume the product directly or indirectly through exchange. Property rights in this sense relates to residual claimancy, where:

The residual claimant to, say, an apartment house is its economic owner in that he is able to gain (here by exchange) from an increase in the value of the building, whereas he loses from a reduction in that value. Being its owner, he is motivated to take any action that will, net of its cost, increase the value of the property. The residual claimancy from an asset or an operation is often shared by several individuals (...) in order to maximize the value of rights, a person's share in the residual should increase as his contribution to the mean output increases, and it should fall as his contribution decreases.[22]

[20] Posner, *Economic Analysis of Law*, pp. 3–4.

[21] Cooter & Ulen, *Law and Economics*, p. 73.

[22] Barzel, *Economic Analysis of Property Rights* p. 3.

For the original owner, the best solution to increase property net gains is to exchange only subsets of commodities while retaining the rest. This is common in both rental agreements and in timeshare. The final result of this is that the exchange results in divided property for single commodities.[23]

Timeshare contracts can be compared and analysed in accordance with the theory of Grossman and Hart concerning a firm. Their theory is based on a firm that possesses assets and questions its ownership regarding residual rights. 'Residual rights' can be described as the right to decide how assets are to be used except in situations detailed in the contract.[24] In parallel with timeshare, a timeshare property can be owned by an 'original' owner who by an agency or itself enters into a number of timeshare contracts with other people. In other words, the property here is effectively a firm. This however contrasts with timeshare contracts that divide the property into assets 'owned' by people entering a contract, which form a divided ownership. The Grossman-Hart theory concerns residual control rights, which are described as the possibility of an owner to exclude others from the use of that asset.[25]

In a timeshare contract, the owner decides who will enter into a contract, which means the owner decides who will have the 'asset' or the time to spend the subsequent number of years in their holiday home. It can be said that timeshare is very similar to property because it concerns divided ownership. Every single consumer with a timeshare contract on a property has the right to enter the property during their period of ownership, and the right to do whatever they wish with the property, but only during that period of time. The consumer may also sell or exchange the property, but only during the timeshare period. This could also be a joint arrangement, because other consumers sharing the timeshare contract can do the same thing but in another period of time during their timeshare period.

Property of rights in economics distinguishes between static and dynamic analysis. Timeshare can be closely linked to static analysis. For example, there may be some consumers who own a holiday house with others; in this case, none can exclude the other owners, and hence none can charge the other for use of the holiday home. Each pays just the initial amount for the home, and no consumer would be willing to pay any extra for it.[26]

Timeshare can also be analysed in correlation with scarcity.[27] Land and its availability for construction are generally limited, and tourist destinations in particular. Another factor specific to tourism is periodicity, for example, if a property is only available for a few days in a month. This implies scarcity. If one family owns a beach house as a holiday

[23] Ibid., p. 6.

[24] Hart & Moore, *Property Rights and the Nature of the Firm*, p. 1120.

[25] Ibid., p. 1121.

[26] Ibid., p. 40.

[27] Ibid., p. 44.

home, they will probably only use it for a few weeks during summer, with the home vacant for the rest of the year. This would increase the property's value, because of its single owner and no one else having access to it. However, the owner would also bear costs to maintain the property for the rest of the year. The question can now be posed whether this option is economical for the family and more broadly, for tourism in the region. Would the holiday home be better utilised by a trader or travel chain that would enter into a timeshare contract with other families interested in the home? This solution would reduce the effects of scarcity and periodicity in reducing the home's value and maintenance costs by increasing the number of overnight stays in the home. But this would also increase other costs associated with holidays, such as food, leisure activities, and car rental. Timeshare is by its very nature a long-term contract; arguably then, this method would stabilise the family's costs and profits for subsequent years.

An important characteristic in purchasing timeshare is the right of future use.[28] This right can be used speculatively, where one buys a holiday home knowing that although it might not be needed in the future, it would nevertheless appreciate in value. This could be a reasonable decision when thinking about investing in real estate, but might not be a viable option, with the prospect of maintenance costs and uncertainty as to whether the property would increase in value or when it would increase. The fact that the home would remain empty is detrimental to profits and tourism in the region generally. In this instance, timeshare would be beneficial for the original owner by the provision to 'sell' or exchange the timeshare period for another property or period. In this case, the owner would not earn money but could profit elsewhere by acquiring some other period or home of the same or different value with extra money. In the end, costs for the consumer would be less than in the first example, while profits for the home and state would steadily rise. Purchase for future use can also be a way of asset hedging, and not necessarily speculative. A consumer may buy a property or enter into a timeshare contract on a holiday home because the current price is low, or because the property would be required in the future, or for other personal reasons.

Clearly, timeshare can be analysed as a contract. The 'bargain theory of contracts' developed by Anglo-American law helps to answer two fundamental questions: 'What promises should be enforceable at law?', and 'What should the remedy be for breach of enforceable promises?'[29] The answer to the first question is called the 'bargain principle', which states that a promise is legally enforceable if it is given as part of a bargain. This theory distinguishes two types of promises, namely bargains and non-bargains, where:

Bargaining is a dialogue on value to agree on a price. The bargain theorists distinguished three elements in the dialogue: offer, acceptance, consideration.[30]

[28] Ibid., p. 48.

[29] Op. cit., p. 24, p. 277.

[30] Ibid., p. 278.

In timeshare contracts, one party is a promisor (a trader) and the other a promisee (a consumer). The consumer has the obligation to give a consideration to the promisor, which is money. The most important part of the contract is a consideration because it makes the promise enforceable. Another important factor is 'fairness'. This means that either the promise or the consideration must be proportional in value. The concept of fairness was useful in fraud cases linked to unfair business practice by traders. As previously stated, this was one of the aims of Directive 1994/47/EC. In continental Europe, consideration is similar to 'cause' as involving both promisor and promisee.[31]

Concerning the second question on the remedy for breach of contract, the bargain theory measures this damage and calls it 'expectation damages':

An expectation damages are those damages which a plaintiff sustains not based on the injury but because of the loss of some future, possibly speculative, stream of income.[32]

Expectation damages comprise incidental and consequential damages. In timeshare, this could be measured as annual vacation costs for the subsequent number of years. This is the value that the promisor (trader) should reimburse the promise for.[33]

Finally, it should be emphasised that most legal systems prohibit the advertisement of timeshare as an investment.[34]

6. CONCLUSION

This paper asserts that timeshare is a fast-growing industry. From its beginnings of ad hoc legal arrangements, there is now adequate regulation to avoid major market volatility, and better protection of consumers in particular. The aim of this paper is to show that regulated timeshare is beneficial for state tourism and also a safer choice for tourist consumers. While most EU member states with established tourism traditions have timeshare laws in place, it is the author's opinion that timeshare has not yet reached its full potential. The institute is less a dead letter in most tourism countries ex. Croatia or Slovenia, while Spain in early '90s started to consume the institute and derive benefits and profit.

It is also the author's aim to raise awareness of both individuals and creators of tourism policy about the timeshare framework. The theoretical foundations given in this Paper show that timeshare should be the preferred option over ownership or lease of holiday homes in terms of its cost, utility and consumer satisfaction.

[31] Ibid., p. 279.

[32] https://definitions.uslegal.com/e/expectation-damages/ visited on 5.6.2018.

[33] Op. cit. p. 26., p. 281.

[34] Directive 2008/122/EC, Article 3, p. 4, where 'A timeshare or a long-term holiday product shall not be marketed or sold as an investment'.

Currently, timeshare continues to follow tourist trends and needs, and so has become more flexible. Accordingly, legal frameworks have also changed. The numerous timeshare associations existing today help and promote vacation ownership and the resort-development industry to a large extent. Leading associations in this field are the American Resort Development Association (ARDA)[35], the Resort Development Organisation (RDO) in Europe[36], and the global timeshare property-search company, Resort Condominiums International (RCI)[37].

[35] http://www.arda.org/arda/home.aspx visited on 7.6.2018.

[36] https://rdo.org visited on 7.6.2018.

[37] https://www.rci.com/pre-rci-en_GB/index.page visited on 7.6.2018.

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