

Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (Text with EEA relevance)

Article 1

Amendment to Directive 93/13/EEC

In Directive 93/13/EEC, the following article is inserted:

Article 8b

1 Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2 Member States may restrict such penalties to situations where the contractual terms are expressly defined as unfair in all circumstances in national law or where a seller or supplier continues to use contractual terms that have been found to be unfair in a final decision taken in accordance with Article 7(2).

3 Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:

- a the nature, gravity, scale and duration of the infringement;
- b any action taken by the seller or supplier to mitigate or remedy the damage suffered by consumers;
- c any previous infringements by the seller or supplier;
- d the financial benefits gained or losses avoided by the seller or supplier due to the infringement, if the relevant data are available;
- e penalties imposed on the seller or supplier for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council⁽¹⁾;
- f any other aggravating or mitigating factors applicable to the circumstances of the case.

4 Without prejudice to paragraph 2 of this Article, Member States shall ensure that, when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394, they include the possibility either to impose fines through administrative procedures or to initiate legal proceedings for the imposition of fines, or both, the maximum amount of such fines being at least 4 % of the seller's or supplier's annual turnover in the Member State or Member States concerned.

5 For cases where a fine is to be imposed in accordance with paragraph 4, but information on the seller's or supplier's annual turnover is not available, Member States shall introduce the possibility to impose fines, the maximum amount of which shall be at least EUR 2 million.

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6 Member States shall, by 28 November 2021, notify the Commission of the rules and measures referred to in paragraph 1 and shall notify it, without delay, of any subsequent amendment affecting them..

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- (1) Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).'