Contribution ID: b77b9d41-88cd-47d1-9252-542f3221d39b
Date: 07/10/2022 18:12:02

# EIOPA Differential Pricing Practices Public Consultation

Fields marked with * are mandatory.

## Introduction

**1. Background and rationale**

The European Insurance and Occupational Pensions Authority is launching a public consultation on a supervisory statement on differential pricing practices in non-life insurance.
This consultation is a response to concerns that some differential pricing practices can be detrimental for consumers and result in unfair treatment.
It aims to ensure that differential pricing practices do not result in unfair treatment of consumers, as well to promote greater supervisory convergence amongst National Competent Authorities.
The supervisory statement sets out the supervisory expectations on this matter following a risk-based approach. Insurance manufacturers would still be able continue to use some differential pricing practices, but other practices are considered to not be compliant with the applicable legislative framework.
Insurance manufacturers wishing to make use of differential pricing practices must demonstrate that they have adequate POG measures in place to ensure the fair treatment of consumers and the mitigation of consumer risks.

**2. Responding to the Consultation Paper**

EIOPA welcomes comments on the Consultation paper on Supervisory statement on differential pricing practices in non-life insurance lines of business.

Comments are most helpful if they:
respond to the question stated,
where applicable; contain a clear rationale;
and describe any alternatives EIOPA should consider.

Please send your comments to EIOPA via this EU Survey, by 7 October 2022.
Contributions not provided via the EU Survey or after the deadline will not be processed.
In case you have any questions please contact differentialpricing@eiopa.europa.eu

**Publication of responses**

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.
Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents.

**Declaration by the contributor**

By sending your contribution to EIOPA you consent to publication of all information in your contribution in whole/in part – as indicated in your responses, including to the publication of your name/the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.
**Data protection**

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/1725. More information on how personal data are treated can be found in the privacy statement at the end of this material.

## About you

* Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ● English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish
- ○ Italian
- ○ Latvian
- ○ Lithuanian
- ○ Maltese
- ○

- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other (selected)

* First name

Anthony

* Surname

O'Riordan

* Email (this won't be published)

apmoriordan@gmail.com

* Organisation name

*255 character(s) maximum*

Insurance and Reinsurance Stakeholder Group

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands

| | | | |
|---|---|---|---|
| Bahamas | French Guiana | Mexico | Somalia |
| Bahrain | French Polynesia | Micronesia | South Africa |
| Bangladesh | French Southern and Antarctic Lands | Moldova | South Georgia and the South Sandwich Islands |
| Barbados | Gabon | Monaco | South Korea |
| Belarus | Georgia | Mongolia | South Sudan |
| Belgium | Germany | Montenegro | Spain |
| Belize | Ghana | Montserrat | Sri Lanka |
| Benin | Gibraltar | Morocco | Sudan |
| Bermuda | Greece | Mozambique | Suriname |
| Bhutan | Greenland | Myanmar/Burma | Svalbard and Jan Mayen |
| Bolivia | Grenada | Namibia | Sweden |
| Bonaire Saint Eustatius and Saba | Guadeloupe | Nauru | Switzerland |
| Bosnia and Herzegovina | Guam | Nepal | Syria |
| Botswana | Guatemala | Netherlands | Taiwan |
| Bouvet Island | Guernsey | New Caledonia | Tajikistan |
| Brazil | Guinea | New Zealand | Tanzania |
| British Indian Ocean Territory | Guinea-Bissau | Nicaragua | Thailand |
| British Virgin Islands | Guyana | Niger | The Gambia |
| Brunei | Haiti | Nigeria | Timor-Leste |
| Bulgaria | Heard Island and McDonald Islands | Niue | Togo |
| Burkina Faso | Honduras | Norfolk Island | Tokelau |
| Burundi | Hong Kong | Northern Mariana Islands | Tonga |
| Cambodia | Hungary | North Korea | Trinidad and Tobago |

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d’Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark

- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia

- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia

- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

EIOPA will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### * Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- (x) **Anonymous**
  Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.
- ( ) **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

[x] I agree with the personal data protection provisions

## Context and objective

**Introduction**

2.1. A trustful and well-functioning insurance market improves consumers' financial health and it is beneficial for society as a whole.

2.2. On top of risk-based actuarial tariffs (expected cost of claims) and premium adjustments to take into account costs of service (e.g. commissions paid to distribution channels and other overheads like taxes, salaries, etc.), some insurance product manufacturers further adjust the premium using a number of different techniques which are unrelated to the risk profile of the consumer and the cost of service. For example, consumers may be charged a different premium based on personal behavioral characteristics such as their price elasticity, propensity to shop around at the renewal stage or the customer's life-time value estimation "score" during the tenure with the manufacturer. It is also a common practice to adjust the premium to the market price offered by competitors.

2.3. Such pricing techniques, here referred to as differential pricing practices, are not new for the insurance sector. However, advances in technologies such as Artificial Intelligence (AI) and the greater availability of new datasets (Big Data), enable insurance firms to increasingly tailor the premium paid by consumers to their personal behaviours and characteristics. Technological advances also make it possible to increasingly automate and implement at scale differential pricing practices, therefore increasingly affecting a larger number of consumers and raising important concerns of possible detrimental outcomes for consumers.

2.4. Market competition is an important driver of differential pricing practices: over the past years the European non-life insurance sector has experienced an increasingly competitive environment, in which insurance firms not only compete on services and cover offered, but also increasingly on price. This is the result of a wide range of factors such as the entry of new competitors or consumers becoming more price sensitive (e.g., use of comparison websites). And, while price competition is welcomed, as it delivers better outcomes for consumers, some types of differential pricing practices can lead to unfair treatment of some consumers.

2.5. Consumers who are more prone to search for a better deal and switch at point of renewal are more likely to benefit from lower insurance premiums. On the other hand, consumers who are less price sensitive, who are unaware of these practices, or who are more likely to renew their insurance products without searching for an alternative, are more likely to lose out due to differential pricing. Insurance firms may identify that they are able to charge these consumers more and target them with premium increases at the renewal stage during their tenure with the company, leading to unfair consumer outcomes.

2.6. This would be particularly concerning when the groups of consumers that suffer most are more vulnerable consumers (e.g., older consumers or consumers with limited access to digital channels which makes it difficult to shop around). There may be other factors affecting consumers' ability to switch, for instance if they do not have time or knowledge to search and switch to a cheaper provider due to a particular life circumstance.

2.7. The increasing use of different types of behavioral data not related to risk or cost of service for differential pricing practices also increases the risks that some of these datasets can be biased (i.e. correlated with protected characteristics) and therefore increases the risks of indirect discrimination. These risks could be amplified when data is processed with complex AI systems, which can find multivariable non-linear combinations between the variables of the model and, therefore, potentially reconstruct protected information.

2.8. A recent study from the Central Bank of Ireland on differential pricing practices in private car and home insurance markets found empirical evidence that younger policyholders tend to have shorter tenures, whereas older policyholders tend to have longer tenures. As older customers tend to have a longer tenure, there is a concern that older, and potentially vulnerable, customers are disproportionately impacted by differential pricing practices. Following the assessment of these practices, the Central Bank of Ireland concluded that price walking practices could result in unfair outcomes for some consumers and introduced a number of measures to strengthen the consumer protection framework, including a ban on price walking practices on policyholders' second or subsequent renewal.

2.9. Another study from the Dutch Authority for the Financial Markets acknowledged the use of differential pricing practices in their jurisdiction, and, noted that, in line with the findings of the Financial Conduct Authority of the UK in a related report, the competitive pressure could override the moral compass: insurers who were morally opposed to the loyalty penalty implemented it, nevertheless, to maintain or bolster their competitive position. The Dutch Authority also noted that in addition to the margin component of the premium covered by differential pricing practices, price differentiation practices also take place on the actuarial component of the premium and, could potentially also be done on the basis of the terms and conditions of an insurance product.

2.10. In Sweden, in February 2022 Finansinspektionen launched a market study to assess the impact on retail consumers of differential pricing practices in motor and home insurance in their jurisdiction. The findings of this study are expected to be published in Q2-Q3 2022. Italy's Istituto per la vigilanza sulle assicurazioni is also expected to publish a report on this matter in Q3-Q4 2022.

2.11. Outside of the European Union, in the United Kingdom the Financial Conduct Authority introduced new rules on general insurance pricing practices, including a ban on price walking practices. In the United States of America (USA) the National Association of Insurance Commissioners (NAIC) published a White Paper on price optimisation in November 2015, concluding that some price optimisation practices could be considered as unfairly discriminatory. Several States from the USA subsequently prohibited or restricted the use of such pricing practices in insurance.

2.12. In 2018, the European Supervisory Authorities (ESAs) published a report on the use of Big Data by financial institutions. The report, which was preceded by a public consultation, identified the benefits and risks of Big Data in the securities, banking and insurance sectors. Among other things, the report highlighted the use of differential pricing practices which could result in the unfair treatment of consumers.

2.13. In 2019, EIOPA published a thematic review on the use of Big Data Analytics (BDA) in motor and health insurance, which showed that 59 out of the 222 firms that participated in the survey (i.e. 26%) already used or planned to use in the next 3 years BDA tools in pricing and underwriting. However, only 19 of them made explicit reference to the use of BDA for differential pricing and/or churn models.

2.14. EIOPA's Big Data Analytics thematic review also provided evidence on some of the rating factors used in pricing and underwriting in insurance. While the majority of rating factors used were perceived as having a direct causal link to risk (e.g. type of cars, years of driving experience, age of the driver), other types of rating factors (e.g. distribution channel, tenure with the company, or income) were perceived as having a more indirect causal link, likely more relevant for differential pricing purposes.

2.15. EIOPA encouraged a stakeholder dialogue about ethical practices in insurance; EIOPA's stakeholder group on digital ethics in insurance produced a report on AI governance principles in 2021, which, among other things, encouraged insurance firms to avoid the use of certain types of price optimisation practices such as those aiming to maximise consumers' "willingness to pay".

2.16. In EIOPA's 2021 Consumer Trends Report, 13, out of 24 competent authorities which responded to the questionnaire, reported having observed (in some case it was based on anecdotal evidence) differential pricing practices in their market, especially in motor liability insurance (59% of the cases) and household insurance (29% of the cases). The Consumer Trends Report also incorporated the findings of a consumer research study sponsored by EIOPA, which showed that over 76% of the consumers interviewed experienced a premium increase for at least one of their insurance products after one year, where only 18% of the consumers linked such increases to a change in their personal situation (e.g. change of coverage or having an accident).

2.17. While the present Supervisory Statement focuses on non-risk differential pricing practices, several of the above-mentioned reports and publications also assessed the topic of risk-based pricing practices and data bias. EIOPA is aware that risk-based pricing techniques, when relying on inaccurate data and/or when leading to too granular pricing, can also be a source of consumer detriment and financial exclusion if not accompanied by adequate governance measures; EIOPA will further assess the topic of biased datasets and their impact on financial inclusion and issue supervisory guidance and measures if needed.

2.18. For the purpose of the present Supervisory Statement, differential pricing practices are understood as those pricing techniques where consumers with a similar risk and cost of service are charged for the same insurance product (with the same terms and conditions) different premiums for reasons other than risk or cost of service.

2.19. Due to their high risk of consumer detriment, particular emphasis is put on the so-called “price walking practices”, i.e. when the premium paid by the consumer is increased at the renewal stage based on the analysis of characteristics specific to a particular consumer to predict behaviours not related to risk or cost of services, such as how much of a premium increase an individual consumer will tolerate before shopping for coverage with other product manufacturers.

2.20. The Supervisory Statement covers the activities of insurance undertakings and intermediaries (including managing general agents) that manufacture insurance products that are offered for sale to customers (jointly referred as 'manufacturers'), which are competent for determining the premium paid by a consumer of an insurance product. It also covers the activities of insurance intermediaries that do not have any influence in determining the premium paid by the consumer, but only to the extent they are made aware of such differential pricing practices, since they need to take this information into account when providing information to consumers.

2.21. The focus is placed on the outcomes of differential pricing practices as well as on the process followed by the insurance product manufacturer to determine the price and/or price increase rather than on the price and/or the price increase itself, this is with the aim of ensuring fair treatment without interfering in the pricing of products.

2.22. Following a technology-neutral approach, all differential pricing practices are covered by the Supervisory Statement regardless of whether they are based on AI systems or other technologies. However, when they are based on AI systems, insurance product manufacturers should have in place additional governance and risk management measures to address the specific challenges arising from the use of this technology. In this regard, several of the high-level AI governance principles developed by EIOPA's stakeholder group on digital ethics (e.g. human oversight, record keeping, transparency, fairness, proportionality etc.) are embedded, to a certain extent, in the governance processes of product manufacturers foreseen in the IDD and POG Delegated Regulation.

2.23. The Supervisory Statement focuses only on differential pricing practices applied to retail customers, since, due to their personal and behavioural characteristics, retail customers are more likely to experience differential pricing practices than corporate clients. It also covers only non-life insurance lines of business, where the contracts typically need to be renewed on a regular basis, and where there is greater evidence of differential pricing practices taking place. The aim is to address those practices that have a higher possibility of having a detrimental impact on consumers.

2.24. With the Supervisory Statement EIOPA aims to promote a convergent approach amongst competent authorities in the supervision of product oversight and governance (POG), fair treatment of consumers and disclosure requirements covered in the IDD and the POG Delegated Regulation, with the view of ensuring that consumer detriment and unfair practices are prevented. This Supervisory Statement does not aim to interfere with pricing, which manufacturers are free to set, but rather it aims to ensure that the process followed ensures that the differential practices used does not unfairly affect certain categories of consumers – e.g., more loyal customers.

2.25. In particular, the Supervisory Statement highlights key aspects which competent authorities should look at when supervising said requirements in the context of differential pricing practices. The aspects highlighted and included in this Supervisory Statement do not constitute new requirements, and is designed to assist competent authorities in supervising manufacturers and distributors in the implementation of said requirements.

2.26. The Supervisory Statement is also aimed at ensuring the fair treatment of consumers by – in line with Article 6.2 of the POG Delegated Regulation – preventing insurance manufacturers from bringing to the market products for which, as a result of the product testing, there is evidence that, because of differential pricing practices, they result in consumer detriment. Therefore the clarifications provided in the Supervisory Statement do not aim to interfere with business decisions and/or pricing, they are rather intended to assess whether the process followed by insurance product manufacturers in the product design and pricing are sufficiently customer-centric, balancing the interests of the target market with the interests of the manufacturer.

3.1. Article 17(1) of the IDD sets out that insurance distributors shall always act honestly, fairly and professionally in accordance with the best interests of their customers.

3.2 Article 20(1) of the IDD states that insurance distributors shall provide customers with objective information about the product in a comprehensible format allowing them to make informed decisions.

3.3. Article 25 of the IDD and the POG Delegated Regulation set out that the product approval process has to ensure that products are aligned with the needs, objectives and characteristics of the target market and that products do not adversely affect customers, in order to prevent customer detriment.

3.4. National insurance legislations may establish more detailed requirements directly relevant to differential pricing practices (e.g. transparency measures at renewal or limitations on premiums increases at renewals).

3.5. The EU legislative framework currently allows some differential pricing practices to take place. Indeed, product manufacturers have the freedom to give commercial, marketing or underwriting discounts to consumers in order to try to acquire or retain them in the course of a commercial transaction. They can also freely determine their market position vis-à-vis their competitors and adjust the tariff accordingly.

3.6. However, insurance manufacturers using differential pricing practices must demonstrate that they have effective POG measures throughout the entire lifecycle of the product to ensure that differential pricing practices do not unfairly affect consumers within the target market of the insurance product. Indeed, price is a key feature of a product and therefore it must form part of the POG process, whereby insurance product manufacturers should assess whether the pricing technique used ensures an alignment between the target market's characteristics, needs and objectives.

3.7. POG requirements are applicable to insurance products manufactured and or commercialized on or after 1 October 2018. They are also applicable to insurance products which have been significantly adapted on or after 1 October 2018.

3.8. Notwithstanding the above, some types of differential pricing practices, and in particular the so-called “price walking” practices, where the premium paid by consumers is increased at the renewal stage based on the analysis of characteristics specific to a particular consumer to predict behaviours not related to risk or costs of service, will likely result on unfair outcomes for consumers and therefore fail to comply with the applicable legislative framework. Examples of practices that are considered to lead to unfair treatment of consumers, and therefore not compliant with Article 17(1) IDD, include the following:

3.8.1. Increasing the price of the insurance product at renewal stage based on the customer’s low propensity to shop around (low probability of churn);
3.8.2. Increasing the price of the insurance product at renewal stage based on the customer’s low price elasticity (also known as “willingness to pay”);
3.8.3. Advising or nudging consumers to buy one insurance product vs. another one because of very low initial on-boarding price, which then result into sudden, unexpected and significant price increases for consumers at renewal for reasons unrelated to risk or cost of service;

3.9. Differential pricing practices described in the previous subparagraphs would lead to unfair treatment of consumers, since these practices would unfairly penalise loyal customers, also taking into account that vulnerable groups (e.g. older customers, low level of education, low income) are likely to be disproportionately negatively affected by these practices; insurance manufacturers using such practices would struggle to justify that they have undertaken an adequate balancing of interests in order to develop adequate governance processes and procedures to mitigate consumer detriment in situations arising from price walking practices.

3.10. The requirements included in the Insurance Distribution Directive to ensure that consumers are treated honestly, fairly and professionally in accordance with their best interest are aligned with other efforts of the European Union legislation to promote a fair treatment of consumers. This is notably the case of the Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market...

**Product approval process**

3.11. In line with the POG requirements, manufacturers should put in place an approval process which ensures that consumers' interests are taken account in the product design and approval process and that it is also proportional to the complexity of the product design.

3.12. The final approval of product design relying on differential pricing practices should be at a hierarchical level which is sufficiently high to assume the risks and responsibilities, avoiding risks relating to unfair treatment, which could result from differential pricing practices.

3.13. Adequate measures should be in place to ensure the identification, prevention and mitigation – throughout all the stages of the product lifecycle – of the main drivers of conduct risk, actual or prospective, which can emerge from differential pricing practices. Such measures should be defined by manufacturers as part of their product development and product testing process; some examples of measures include:

- defining appropriate thresholds / guardrails for differences in premium for consumers with a similar risk profile and cost of service;
- ensuring that information provided to consumers, including marketing communications, are transparent (e.g. about the existence of a premium discount only on the first year(s) or month(s) of the contract), clear, simple and not misleading so as to enable consumers to make informed decisions;
- in case of the use of AI systems, insurance manufacturers should be able to provide appropriate explanations on the impact of AI on pricing, adapted to the

needs of different stakeholders (e.g. consumers, distributors, supervisors, etc.), and set up other relevant governance measures such as adequate levels of staff oversight throughout the life cycle of an AI system;

- closely monitoring and mitigating the impact of differential pricing practices on consumers, particularly in relation to vulnerable groups as well as different consumers groups belonging to the same target market;
- making reasonable efforts to ensure that the datasets used for differential pricing practices and the outcomes of AI systems are free of bias.

**Target market**

3.14. Processes and procedures should ensure the level of granularity of the target market takes into account the target market's characteristics which are relevant to all the products' features – including pricing discounts and increases not linked to the risk profile or the cost of service of the customer.

3.15. The product design process should ensure that the objectives, interests, and characteristics of the target market, including vulnerable consumers (e.g. older customers, low level of education, low income), are taken into account when assessing whether differential pricing practices for a certain product are compatible with the target market. Importantly, this assessment should take into account that consumers might not be aware of the existence of differential pricing practices, and that the capacity of insurance manufacturers to determine their propensity to switch and price elasticity of consumers at individual level will likely confer them a disproportionate information advantage via- à-vis consumers.

3.16. The staff involved in designing and manufacturing insurance products should have sufficient and adequate professional and educational skills to perform their function and to understand pricing techniques. Adequate levels of human oversight are particularly important when differential pricing practices rely on AI systems.

3.17. The product testing process should ensure that pricing processes and procedures are sufficiently customer centric and entails a balancing of interests between consumers within the same target market and also between the interests of the target market and of the insurance product manufacturer.

3.18. For non-life insurance products, which are likely to be renewed on a yearly basis and/or for which the manufacturer bases the pricing process on the fact that a certain portion of the target market would likely renew, processes and procedures should ensure the product testing methods fully consider how they are aligned with the needs, objectives and characteristics of the target market not only for the first year/term but also at renewal.

3.19. In particular, processes and procedures should ensure that manufacturers test whether such products are aligned with the characteristics, objectives and needs of the target market – i.e., offer value – for a reasonable time, whereby reasonableness should take into account for how long the target market is likely to hold such product and the specific characteristic of the product.

3.20. If, based on the product testing, it becomes evident that certain features may adversely impact some consumers' belonging to the target market because of their characteristics, processes and procedures should ensure the product should either not be brought to the market, in line with Article 6.2 of the POG Delegated Regulation or the target market should be sufficiently reviewed to exclude those consumers' categories within the target market which could be adversely impacted.

**Product monitoring and review**

3.21. Insurance product manufacturers' processes and procedures should ensure that products relying on differential pricing techniques continue to be monitored, including with the use of relevant metrics, to identify any adverse impact they may have on consumers.

3.22. In particular, they should identify and monitor whether some consumers within the target market, including vulnerable groups, are adversely impacted by these pricing techniques over the years and take appropriate remedial measures to cease the detriment.

**Documentation**

3.23. Processes and procedures put in place by insurance product manufacturers to ensure that the products do not adversely affect consumers should be clearly structured and documented through adequate records.

3.24. Documentation and records, including when differential pricing practices rely on AI systems, should be sufficiently detailed so as to ensure accountability of insurance manufacturers with regards to differential pricing practices.

**Distribution channels**

3.25. As part of the POG documentation, manufacturers should provide to insurance distributors with sufficient information about the product, including, in general terms, on how the pricing of a product may work at renewal and the existence of differential pricing practices. This information would allow distributors to act in the best interest of consumers when assessing their demands and needs and to provide consumers with all relevant information to make informed decisions.

3.26. When providing advice and/or selling products which rely on differential pricing practices, insurance distributors should provide fair and transparent information on renewals and price increases. Explanations should be meaningful and easy to understand in order to help consumers make informed decisions.

3.27. Following a risk-based approach, competent authorities are expected to supervise that differential pricing practices do not lead to consumers' unfair treatment. For this, competent authorities should carry out market monitoring activities to identify those products for which differential pricing practices are used and for which they believe the highest risks for consumers exist.

3.28. Competent authorities should engage with relevant insurance product manufacturers and review the POG processes as well as the sales process and marketing material of those products for which differential pricing practices techniques are used and that were detected as part of their risk-based supervision. For this purpose they may use different tools, including:

- off-site supervision;
- on-site inspections;
- thematic reviews.

3.29. In their supervisory activity, competent authorities' should ensure to cover the following aspects in their assessment:

- evaluation of the POG documentation and governance aspects, including the systems and controls of differential pricing tools and techniques used and the process followed for products which rely on differential pricing practices;
- the sales process as well as relevant marketing and communication material relating to products for which differential pricing practices are used.

3.30. If a competent authority establishes that a manufacturer's POG process is not adequate and/or that products relying on these practices have been marketed despite them not being aligned with the target market's needs, objectives and characteristics, they should action as they deem appropriate.

3.31. If a competent authority establishes that the sales process and / or the marketing material do not ensure that fair and clear information are provided, enabling consumers to make informed decisions, they should assess the case and take actions, as appropriate.

3.31. Competent authorities are encouraged to cooperate with market competition authorities in their respective jurisdictions given that differential pricing practices and consumer protection issues arising therein are closely connected to market competition.

## Questions to stakeholders

Q1 –Have you observed the use of differential pricing practices in the EU insurance market?

Differential pricing has been observed in personal lines segments of a number of European markets.

As the Supervisory Statement is focused on practices applied to retail consumers, we have not addressed commercial lines business in detail, but have made some relevant observations in Q5.

Q2 – What types of differential pricing practices are you aware of?

Personal lines
- differential pricing between new and renewal premium rates
- differential pricing based on length of tenure

Q3 – Do you agree that the use of differential pricing practices is expected to increase as a result of competition in the markets, greater availability of data (Big Data) and/or technological advances (e.g. AI systems)?

Potentially, though we believe that undertakings are making progress in their Product Oversight and Governance (POG) activities in developing appropriate frameworks for assessing the “fairness” of products. Continued developments in this area are likely to act as a brake on the expansion of differential pricing practices.

Q4 - Do you agree with the risks identified from differential pricing practices?

Yes.

In a system where differential pricing based on tenure exists, those who shop around are advantaged while those who do not, which may include vulnerable customers, tend to pay more.

In more general terms, we welcome EIOPA's emphasis on risk-based pricing which is at the heart of insurance. A prerequisite for any risk-based pricing is data and insurance-specific regulation, here in particular the Solvency II Directive (Articles 82 and 84) and the Delegated Regulation (EU) 2015/35 (Article 19), requires insurers to have complete, accurate and appropriate data to assess risks. We observe, however, that some recently published legislative proposals – that are not insurance-specific but horizontally applicable among various sectors – suggest that insurers should not be allowed to use necessary data, in particular for setting premiums. This is particularly true for the right to be forgotten (RTBF) discussed in the context of the review of the Consumer Credit Directive and the proposal of the European Commission on the European Health Data Space. Article 35(b) of the latter suggests that insurers are not allowed to process electronic health data for secondary use in relation to premium setting. This prohibition would, therefore, impede insurers to use newly available health data which can be used to underwrite and assess risks more accurately and therefore is contradictory to existing legal acts like the Solvency II Directive and the Delegated Regulation (EU) 2015/35.

## Q5 - Do you agree with the scope of the Supervisory Statement?

Yes, though we believe that consideration should also be given to commercial lines business (which can also contain elements of personal lines business) with all due respect for the principle of subsidiarity and proportionality.

In particular, any follow-up action to this Supervisory Statement taken by EIOPA and National Competent Authorities (NCAs) should be careful to avoid any unforeseen consequences on the commercial lines (i.e. outside of retail), where there are likely to be different attitudes surrounding differential pricing practices in the non-life business.

We welcome EIOPA's clear commitment not to aim at interfering with pricing which manufacturers are free to set in particular according to Article 21 of the Solvency II Directive.

There is however a risk that the suggested approach will unintentionally interfere with pricing. Alternative measures to address the issue should therefore be thoroughly assessed (see below).

## Q6 - Do you agree with the objectives of the Supervisory Statement?

In general yes.  We are supportive of measures aimed at ensuring the fair treatment of consumers, and particularly those consumers who are vulnerable.

We note that there are indications that a significant proportion of customers are not aware of the operation of differential pricing against their best interests, believing that they will be favourably treated as their tenure as customers increases.  It is questionable whether this perception can be changed, but information provided to customers is a key part of the issue.

We would caution against the introduction of measures which would act to reduce competition, or to standardise product offerings, either of which would not be in the interest of the consumer and would go against EU competition law as well as insurance specific regulation like the Solvency II Directive (Article 21) and the POG delegated Regulation (recital 8).  We believe that the free market tends to be a good regulator of economic activity, and suggest that a demonstrably effective POG process together with suitable consumer communications are the best way to achieve fairness for consumers.

The financial inclusion of vulnerable customers is of vital importance. If EIOPA identify specific practices which are resulting in unfair treatment of vulnerable customers, for instance by restricting their access to insurance products by making them unaffordable, this should be addressed.

## Q7 – Do you agree that the following practices would result on unfair treatment of consumers:
## - Increasing the price of the insurance product at renewal stage based on the customer's low propensity to shop around (low probability of churn);
## - Increasing the price of the insurance product at renewal stage based on the customer's low price elasticity (also known as "willingness to pay");
## - Advising or nudging consumers to buy one insurance product vs. another one because of very low initial on-boarding price, which then result into sudden, unexpected and significant price increases for consumers at renewal for reasons unrelated to risk or cost of service
## - Other types of differential pricing practices? Please explain.

Yes, on the basis that they discriminate against those who are less inclined to shop around, and particularly are likely to disproportionately impact on vulnerable customers. Propensity to shop around should not of itself confer an advantage. Customer loyalty should not bring with it penalties linked to the passive nature of the customers.

We do not consider that the application of price discounts (as opposed to the practice of differential pricing or price walking) necessarily results in unfair treatment of consumers. New business discounts can encourage consumers to try new products or providers, promoting new business growth and competition. The ability to request price discounts is also valuable for those who are most price sensitive and potentially financially vulnerable.

## Q8 - Do you agree that the IDD's Product Oversight and Governance requirements are an adequate tool for addressing the use of differential pricing practices?

Yes, if supported by the use of measurements which are specific to the types of business in question, such as:

- actual premium/technical premium (APTP)
- premium differential between new business and the equivalent first renewal price
- price being charged to any customer with tenure longer than one year relative to first renewal price

In addition, where intermediaries or other parties are also responsible for the price setting process, the responsibilities should also encompass their activities.

However, due consideration should be taken to the POG Delegated Regulation that clarifies that "[t]he requirement to assess the product performance should […] not be understood as an interference with the manufacturers' freedom to set premiums or as price control in any form." (recital 8). Furthermore, any measurements should be respectful of the principle of subsidiarity and proportionality.

It will be important to assess the adequacy, transparency and appropriateness of information provided to consumers in identifying where the real problem lies. A priority should therefore be to supervise if distributors obligation to provide the costumer with information including any discounts (Art. 20.1 IDD) prior to contract is correctly applied.

There are already different national and EU laws which cover this topic, notably provisions in national contract law and IDD requirements to act in the best interest of the client. Consideration should be given to how the different requirements will fit together.

Q9 - Do you agree that adequate governance measures should be put in place for the product approval process in order to ensure that differential pricing practices do not have a detrimental impact for consumers?

Yes, but see Q7 above re discounts, and note Q8 re the use of appropriate measurements.

Q10 - Do you agree with the governance measures described above for the product approval process?

Yes.

Q11 - Which other governance measures could be established for the approval process to ensure that differential pricing practices do not have a detrimental impact for consumers?

See Q8 above.

Q12 - Do you agree with the governance measures described above for the target market?

Yes.

Q13 - Which other governance measures could be established for the target market to ensure that differential pricing practices do not have a detrimental impact for consumers?

See Q8 above.

Q14 - Do you agree with the governance measures described above for product testing?

Yes.

Q15 - Which other product testing governance measures could be established to ensure that differential pricing practices do not have a detrimental impact for consumers?

See Q8 above.

Q16 - Do you agree with the governance measures described above for product monitoring and review?

Yes.

Q17 - Which other governance measures could be established for product monitoring and review to ensure that differential pricing practices do not have a detrimental impact for consumers?

We suggest that adequate governance measures should include clear ongoing review of measures such as APTP, differentials between new business and first renewal price, and renewal price relative to first renewal price. This information should be available to (NCAs)) and, to the extent that it indicates ongoing unfair treatment of consumers, an alternative regulatory approach should be considered, respecting the principle of proportionality and subsidiarity.

Review requirements should also require undertakings to identify other pricing differentials beyond tenure and to demonstrate how their approach is delivering fair value to different cohorts of customers. This is an important step to address the possibility of undertakings taking advantage of consumers' behavioural biases, using advanced data analysis and AI techniques.

A key area for NCAs to monitor in their use of information provided by undertakings is inconsistencies between undertakings in their definitions of fairness and the way in which they would implement change. This possibility may lead to a need for guidance in relation to specific aspects of fairness to reduce scope for inconsistencies in product monitoring and review.

The Head of Actuarial Function in relevant undertakings could be required to have a specific role in their underwriting opinion to provide an opinion on fairness of pricing as between different cohorts of customers.

Q18 - Do you agree with the documentation governance measures described above?

Yes.

Q19 - Which other documentation governance measures should be established to ensure that differential pricing practices do not have a detrimental impact for consumers?

N/A

## Q20 - Do you agree with the governance measures described above for the distribution channels?

Yes.

## Q21 - Which other governance measures could be established for the distribution channels to ensure that differential pricing practices do not have a detrimental impact for consumers?

N/A

**Questions from the Impact Assessment:**

## Q1 -Do you agree with the analysis of costs and benefits?

N/A

## Q2 - Do you agree with the policy option chosen by EIOPA?

Yes, for the following reasons:

- We are supportive of measures aimed at ensuring the fair treatment of consumers, and particularly those consumers who are vulnerable.
- We would caution against the introduction of measures which would act to reduce competition, or to standardise product offerings, either of which would not be in the interest of the consumer and would go against EU competition law as well as insurance specific regulation like the Solvency II Directive (Article 21) and the POG delegated Regulation (recital 8). We believe that the free market tends to be a good regulator of economic activity, and suggest that a demonstrably effective POG process together with suitable consumer communications are the best way to achieve fairness for consumers.
- We also note that differential pricing is evident for product lines which may be commercially marginal but are socially important such as motor and home. A ban on differential pricing practices may cause insurers to exit these lines and reduce competition which would not be in the interest of consumers.
- New business prices may be set at a level which is loss making (or at a minimum at a lower margin than the overall portfolio). This cost is recouped at renewal, potentially over several years. Explicit bans on differential pricing may limit an undertaking's ability to recoup the loss at renewal and would likely result in a redistribution of premium between new business and renewing customers. This may mean that premiums become less affordable for those most financially vulnerable.

We suggest that adequate governance measures as part of product reviews should include clear ongoing review of measures such as APTP, premium differential between new business and equivalent first renewal price, and renewal price relative to first renewal price. This information should be available to NCAs and, to the extent that it indicates ongoing unfair treatment of consumers, an alternative and more prescriptive regulatory approach should be considered.

### Contact

Contact Form