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# EIOPA Differential Pricing Practices Public Consultation

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## **Introduction**

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### **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](mailto: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.

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## About you

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\*Language of my contribution

English

\*I am giving my contribution as

Consumer organisation

\*First name

Christian

\*Surname

Guelich

\*Email (this won't be published)

cguelich@bunddersicherten.de

\*Organisation name

*255 character(s) maximum*

German Association of Insured (BdV)

\*Organisation size

Small (10 to 49 employees)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>). 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.

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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.

**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.

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## 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.

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.

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## **Questions to stakeholders**

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

Yes, we did. In motor liability insurance many "soft factors" for tariff calculation are used like ownership of a garage (instead of public parking "under a lantern"), being a home owner (instead of renting a flat), being a civil servant (instead of being employed by a commercial company), or subscription of public/urban transport or railways tickets (on monthly or yearly basis). Another "hard factor" is, if you live in a big town (more expensive) or on the countryside (less expensive) due to the probability of an accident (though the highest number of deadly accidents are caused on roads or highways between towns).

Home owner and home content insurances largely depend on the exact location where you live: postal code for determining the risk of burglary or of flooding. These are "traditional" factors for tariff calculations and they may be considered as statistically relevant. But we are aware of the possibility that these factors may be used for other non-life insurance classes like private third party liability or judicial expenses as well.

In fact "differential pricing" is an additional method for tariff calculation by insurers which tries to introduce a kind of "customer scoring" which is already used for a long time by banks for credit lending (for houses, cars and other consumer goods). "Scoring" is a mixture of individual factors (like regular or irregular payments of premiums or debts, frequency of claims/indemnisations or credits) and "socio-economic data" (like categories of income, employment or housing). In Germany the major company for this credit lending scoring relies approximately on 680 million data sets linked to 66 million individual customers. The possible impact of these data on the calculation of premiums of payment protection insurances (PPI) is obvious.

Broker website (in German):

<https://www.verivox.de/kredit/themen/scoring/>

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

Recently in one of the most prominent German insurance journals ("Zeitschrift für das Versicherungswesen") a study on "Dynamic Pricing" was published (Heft 13/14, S. 377-378, Juli 2022). Following to this study "Dynamic Pricing" is a new version of "predictive modelling" used by insurers since the 1980s. The latter already tried to combine foreseeable market price developments with adjusted risk calculations. "Big Data" may push premium calculations even more focused on special target markets. By using ever more precise "customer categorizations" the insurers may be enabled to base premium calculations on "probability of contract conclusion, rebate potential and cross-selling-possibilities". In this context "cross" or "up" selling is understood in that way that other products of other insurance classes are sold additionally (or premiums of existing contracts shall increase). These are just three examples how to enlarge to the possible use of "dynamic" or "differential" pricing practices not only at the point of renewal of a contract but at the point of sale and at the pre-contractual phase as well by insurers and intermediaries.

Other examples of "price optimisation practices" (term still used in that publication) can be found in the Report from EIOPA's Consultative Expert Group on Digital Ethics in insurance: "Artificial Intelligence Governance Principles: Towards Ethical and Trustworthy Artificial Intelligence in the European Insurance Sector", published in June 2021, Chap. VI: Fairness and Non-Discrimination, especially Figure 12: Types of price optimisation practices, p. 36.

EIOPA website:

[https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles\\_en](https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles_en)

**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)?**

Yes, we agree (cf. our comments on Q 1 and Q 2). "Dynamic pricing" relies on a kind of "customer scoring" already used by banks for credit lending for a long time. The more granular socio-economic data are available, the more "Big Data" may be used to forthcoming evaluation procedures based on AI. Additionally we stress that from an actuarial point of view differential pricing practices may lead to distorted premium calculations, i.e. if some customers get rather strong premium reductions, at the same time the premiums for other customers have to be increased ever stronger. Only by doing so, the actuarial calculation of the risk pool can be maintained in a balance, in other words: the fundamental "law of the large numbers" will always have to be respected for appropriate insurance tariff calculations, and therefore differential pricing practices must not be overdone.

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

Yes, we agree (cf. no. 2.5 to 2.7, p. 6, of CP), but we stress the possible use of differential pricing practices not only at the point of renewal, but at point of sale in general, too (cf. our comment on Q 2).

Additionally we stress the importance of and fully agree with the "risks to consumers" already analysed by the "Joint ESA response" of 31 January 2022 to the "European Commission's February 2021 Call for Advice on digital finance and related issues" (part of Chapter 2.2, p. 35-43), especially:

- No. 107, 110 and 111: Risks linked to cross-mis-selling;
- No. 117: Risks of financial exclusion and risks of lack of digital financial literacy;
- No. 122: Risks in relation to the access and use of customer data.

Conclusion: Additional vulnerabilities may be exacerbated by digitalisation, if more granular consumer data combined with AI will increase the ability of undertakings to charge differential amounts to groups of consumers that are similar in terms of risk and cost to serve.

ESMA website:

<https://www.esma.europa.eu/document/joint-esa-response-eu-commission-digital-finance>

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

Yes, we agree upon the definition of differential price practices (cf. no. 2.18 and 2.19, p. 9, of CP) and the technology-neutral approach (cf. no. 2.22, p. 10, of CP). But the Supervisory Statement should already include a hint on possible future enlargements of the use of differential pricing practices at the point of sale (rebates for new customers, cross and up selling practices, etc.).

We think that by publishing this Supervisory Statement the judicial supervisory framework with regard to differential pricing practices should be enough - at least for the moment. The IDD itself, being completed by the POG Delegated Regulation EU (2017/1258) and the forthcoming Supervisory Statement, must lead to effective "enhanced supervision" by EIOPA and the NCAs. In consequence what is mostly needed now, is supervisory action (like the use of product intervention powers). Additional judicial supervisory requirements should nevertheless be envisaged, if this "enhanced" supervisory activities clarifies that there are conduct of business patterns severely detrimental to customers, which cannot be stopped the existing judicial framework.

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

Yes, we agree that focus shall be laid on insurers ("product manufacturers") and on intermediaries as well (cf. no. 2.20 of CP), on the outcomes as well as on the process itself of differential pricing (cf. no. 2.21 of CP), and on the necessary EU-wide supervisory convergence (cf. no. 2.24 of CP).

We support that by this statement EIOPA does not intend to directly interfere into the pricing of the products, but to stress the necessity that processes are "sufficiently customer-centric, balancing the interests of the target market with the interests of the manufacturer" (cf. no. 2.21 and 2.26. of CP).

#### 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, we agree. Cf. our comment on Q 2 for other types of differential pricing at the point of sale in general.

**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, we agree (cf. no. 3.1 to 3.7 and 3.10, p. 12/13, of CP).

**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, we agree (cf. no. 3.8 and 3.9, p. 12/13, of CP). Insurers must ensure that all governance requirements of the product approval process are fulfilled following to article 4 of EU/2017/2358 (POG DelReg).

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

Yes, we agree (cf. no. 3.13, p. 14, of CP).

**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?**

Insurers must ensure adequate governance measures that the "GOVERNANCE PRINCIPLES FOR AN ETHICAL AND TRUSTWORTHY AI IN THE EUROPEAN INSURANCE SECTOR" are fully implemented (with the particular focus on the principles of fairness and non-discrimination, of transparency and explainability and of human oversight; cf. A report from EIOPA's Consultative Expert Group on Digital Ethics in insurance, June 2021, p. 8).

EIOPA website:

[https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles\\_en](https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles_en)

Additionally we stress that from an actuarial point of view differential pricing practices may lead to distorted premium calculations, i.e. if some customers get rather strong premium reductions, at the same time the premiums for other customers have to be increased ever stronger. Only by doing so, the actuarial calculation of the risk pool can be maintained in a balance, in other words: the fundamental "law of the large numbers" will always have to be respected for appropriate insurance tariff calculations, and therefore differential pricing practices must not be overdone (cf. our comment to Q 3).

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



Yes, we agree (cf. no. 3.14 and 3.15, p. 15, of CP). Insurers must ensure that all governance requirements with regard to target markets are fulfilled following to article 5 of EU/2017/2358 (POG DelReg).

**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?**

Additional focus should be laid on possibly enhanced cross and up selling practices (cf. our comment on Q 2). It must be ensured by the insurers that the intermediaries fully respect and implement the test of demands and needs of the customers and the comprehensive documentation of any personalized recommendations following to article 20 (1) to (4) of IDD (cf. Report from EIOPA's Consultative Expert Group on Digital Ethics in insurance: "Artificial Intelligence Governance Principles: Towards Ethical and Trustworthy Artificial Intelligence in the European Insurance Sector", published in June 2021, Chap. VI: Fairness and Non-Discrimination, p. 21).

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

Yes, we agree (cf. no. 3.17 to 3.19, p. 16, of CP). ). Insurers must ensure that all governance requirements with regard to product testings are fulfilled following to article 6 of EU/2017/2358 (POG DelReg).

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

We think that the measures outlined in no. 3.20 (cf. p. 16, of CP) are sufficient.

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

Yes, we agree (cf. no. 3.21 and 3.22, p. 16/17, of CP). Insurers must ensure that all governance requirements with regard to product monitoring and review are fulfilled following to article 7 of EU/2017/2358 (POG DelReg).

**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?**

Cf. our comment on Q 13 on cross and up selling practices.

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

Yes, we agree (cf. no. 3.23 and 3.24, p. 17, of CP).

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

Insurers must ensure that all governance requirements of documentation are fulfilled following to article 9 of EU/2017/2358 (POG DelReg).

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

Yes, we agree (cf. no. 3.25 and 3.26, p. 17/18, of CP). Insurers and distributors must ensure that all governance requirements of distribution channels (sales arrangements, reciprocal information and obligatory documentation) are fulfilled following to articles 10 to 12 of EU/2017/2358 (POG DelReg).

**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?**

The Supervisory Statement shall explicitly stress that intermediaries "manufacturing insurance products" (following to article 3 of EU/2017/2358 POG DelReg) will have to fulfill all governance requirements related to differential pricing practices as manufacturers and as distributors.

**Questions from the Impact Assessment:****Q1 -Do you agree with the analysis of costs and benefits?**

Yes, we generally agree. But we do not agree with EIOPA's conclusions on possible costs for consumers in options 3 and 5. We do not believe that - due to a Supervisory Statement or even a ban on differential pricing practices - consumers will have less or significantly less opportunities to "shop around" with regard to insurances. Strong competition will always be enhanced by tariffs comparisons websites, and general strong market competition like in motor insurances continues to put pressure on premiums anyway.

Moreover the phenomenon of "shopping around" should not be considered per se as something positive for the consumers, because it focusses too strongly on the amount of the premium. Instead of this the "small print" is more important than the amount of premium, and consumers should be made aware of this linkage. "Best" consumer protection does not entail the offer neither of the cheapest product nor of the one with the largest risk coverage possible and therefore the most expensive product, but the offer which combines individually basic and necessary risk coverage and the appropriate amount of premiums. There should be neither any protection gaps nor any redundancy of risk coverage. The core requirement of a "balanced and consumer centric product review" should be the appropriate balance of risk coverage and of the amount of the premium.

Additionally we stress that from an actuarial point of view differential pricing practices may lead to distorted premium calculations, i.e. if some customers get rather strong premium reductions, at the same time the premiums for other customers have to be increased ever stronger. Only by doing so, the actuarial calculation of the risk pool can be maintained in a balance, in other words: the fundamental "law of the large numbers" will always have to be respected for appropriate insurance tariff calculations, and therefore differential pricing practices must not be overdone.

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

Yes, we agree - with the exception of possible costs for consumers in option 3, as pointed in our comment above on Q 1 of the impact assessment.

## Contact

Contact Form (/eusurvey/runner/contactform/EIOPADifferentialPricingPractices\_PublicConsultation)

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