

Supervisory statement on differential pricing
practices in non-life insurance lines of business

Consumer Protection Department
EIOPA REGULAR USE –
EIOPA-BoS-23/076
22 February 2023



eioipa

European Insurance and
Occupational Pensions Authority

1. LEGAL BASIS

- 1.1. The European Insurance and Occupational Pensions Authority (EIOPA) provides this Supervisory Statement on the basis of Article 29(2) of Regulation (EU) No 1094/2010¹. This Article mandates EIOPA to play an active role in building a common supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.
- 1.2. EIOPA delivers this Supervisory Statement on the basis of Articles 17, 20 and 25 of Directive (EU) 2016/97² (IDD) and Commission Delegated Regulation (EU) 2017/2358³ (POG Delegated Regulation), as amended by Commission Delegated Regulation (EU) 2021/1257⁴, in particular Articles 4, 5, 6, and 7 thereof.
- 1.3. This Supervisory Statement is addressed to the competent authorities⁵, as defined in Article 4(2) of Regulation (EU) No 1094/2010.

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

² Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

³ Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).

⁴ Commission Delegated Regulation (EU) 2021/1257 of 21 April 2021 amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products (OJ L 277, 2.8.2021, p. 18).

⁵ Notwithstanding the fact that specific points of this Supervisory Statement describe supervisory expectations for insurance and reinsurance undertakings, they are required to comply with the regulatory and supervisory framework applied by their competent authority based on Union or national law.

2. CONTEXT AND OBJECTIVE

INTRODUCTION

- 2.1. A trusted and well-functioning insurance market improves customer's financial health⁶ and it is beneficial for society as a whole.
- 2.2. In private insurance, the premium paid by customers is typically linked to individual underwriting risk. Customers with higher underwriting risks typically pay higher premiums. There are also typically cross-subsidies / mutualisation of underwriting risks within the pool of insured customers, where the premiums of customers who do not make claims (lower underwriting risk) are to contribute paying for the claims of customers with higher underwriting risk, when it is necessary to manage the underwriting risks within the pool (the so-called law of large numbers).
- 2.3. On top of underwriting risk-based actuarial tariffs (expected cost of claims) and other premium adjustments to take into account costs of service (e.g. commissions paid to distribution channels and other overheads like taxes, salaries, cost of capital, etc.), some insurance manufacturers further adjust the premium using a number of different practices which are unrelated to the underwriting risk profile of customers and the cost of service. For example, customers may be charged a different premium based on personal characteristics such as their price elasticity, propensity to shop around at the renewal stage or based on an estimation of the value that can be generated by up-selling and cross-selling other products to the customer (also known as customer's life-time value estimation "score").
- 2.4. Such pricing practices, here referred to as 'differential pricing practices'⁷, are not new. However, the increasing sophistication of analytical tools and the automation of processes,

⁶ According to the Principles of Responsible Banking developed by the United Nations Environment Program (UNEP) finance initiative, financial health is defined as a state in which a person or organization can smoothly manage their current financial obligations and have confidence in their financial future. The concept of financial health includes the notion of financial inclusion, which refers to democratizing financial services and "leaving no-one behind." <https://www.unepfi.org/wordpress/wp-content/uploads/2021/05/PRB-Guidance-Financial-Inclusion.pdf>

⁷ In previous publications EIOPA has generally referred to "differential pricing practices" as "price optimisation practices". However, this term could be misleading since optimisation of processes is generally a positive development whereas this Supervisory Statement seeks to address risks for customers arising from pricing practices. Therefore, for the purpose of this Supervisory Statement it was considered more suitable to use the more neutral notion of differential pricing practices.

together with the deployment of new technologies such as Artificial Intelligence (AI)⁸ and the greater availability of new datasets (Big Data), enable to increasingly tailor the premiums to personal behaviours and characteristics, even if not related to underwriting risks. These developments make it possible to increasingly implement at scale differential pricing practices, therefore affecting a growing number of customers and raising important concerns of possible detrimental outcomes.

- 2.5. 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, where insurance manufacturers not only compete on services and cover offered, but also on price, leading to the increasing recurrence to new types of pricing practices.
- 2.6. The increasing use of differential pricing practices in the insurance sector has triggered supervisory and regulatory activities or studies in a number of EU Member States, including in Germany⁹, Ireland¹⁰, Italy,¹¹ the Netherlands,¹² and Sweden.¹³ Outside the European Union, other jurisdictions such as the USA¹⁴ or the United Kingdom¹⁵ have also adopted relevant supervisory actions in this area. EIOPA has been monitoring the topic of differential pricing practices through a number of workstreams during the past years.¹⁶

⁸ AI systems can be defined as software that is developed with one or more of the techniques and approaches listed in Annex I of the AI Act legislative proposal (COM 2021)206) and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with.

⁹

https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2021/fa_bj_2101_KfZVErs_Altersdiskriminierung_en.html

¹⁰ <https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp143/differential-pricing-review--final-report-and-public-consultation.pdf?sfvrsn=5>

¹¹ https://www.ivass.it/pubblicazioni-e-statistiche/pubblicazioni/att-sem-conv/2022/16-12-workshop-rcauto/Cosconati_intervento_workshop_IVASS_16_12_2022.pdf

¹² <https://www.afm.nl/en/nieuws/2021/juni/aandachtspunten-gepersonaliseerde-beprijzing>

¹³ https://www.fi.se/contentassets/cb09f3ae4d964572be187b9726371ea4/report_loyal_policyholder.pdf

¹⁴ [committees_c_catf_related_price_optimization_white_paper.pdf \(naic.org\)](#)

¹⁵ [PS21/5: General insurance pricing practices market study: feedback to CP20/19 and final rules \(fca.org.uk\)](#)

¹⁶ This is notably the case of the European Supervisory Authorities (ESAs) joint report on the use of Big Data by financial institutions ([link](#)), EIOPA's second Insurtech Roundtable ([link](#)), EIOPA's thematic review on the use of Big Data Analytics (BDA) in motor and health insurance ([link](#)), EIOPA's annual Consumer Trends report ([link](#)), EIOPA's thematic review on credit protection insurance (CPI) sold via banks ([link](#)), and the AI governance principles report developed by EIOPA's Expert Group on digital ethics in insurance ([link](#))

IMPACT OF DIFFERENTIAL PRICING PRACTICES ON CUSTOMERS

- 2.7. In non-life insurance, and in particular in markets with high competitive pressure, insurance manufacturers often offer premium discounts to retain customers or attract potential ones. This allows customers who are more prone to search for a better deal and switch at point of renewal to benefit from lower insurance premiums.
- 2.8. On the other hand, customers who are less price sensitive, who have limited access to digital tools that could allow them to compare insurance products, who are unaware of the existence of differential pricing practices, or who are more likely to renew their existing insurance contracts without searching for an alternative, may lose out due to differential pricing practices. Insurance manufacturers may identify these customers and target them with non-underwriting risk related premium increases at the renewal stage, leading to unfair outcomes.
- 2.9. Particular concerns emerge when these practices take place repeatedly at the renewal stage during the (long-term) relationship with the company, resulting in the unfair penalisation of “loyal customers”, in particular those belonging to more vulnerable groups. From a supervisory perspective, it is concerning as more vulnerable customers – e.g., elderly people, people with limited access to digital channels or other sources of information – may be affected the most by these practices. Different factors may affect customers’ ability to switch, for instance the lack of knowledge about these practices, or the lack of access to IT tools or the lack of time to search and switch to a cheaper product due to a particular life circumstance.
- 2.10. The increasing use of different types of behavioural data from different sources, not related to underwriting risks or costs of service for differential pricing practices also increases the negative effects of using biased datasets being information correlated with protected characteristics, which increases the risks of unlawful discrimination. These risks may be amplified when data is processed with complex algorithms and technologies such as some AI systems, which can find multivariable non-linear combinations between the variables of the model and potentially cause unfair evaluations with limited scope for human oversight.

SCOPE AND OBJECTIVE

- 2.11. For the purpose of the present Supervisory Statement, differential pricing practices are understood as those pricing practices where customers with a similar underwriting risk and cost of service are charged for the same insurance product – with the same terms and conditions – different premiums. Cost-based and underwriting risk-based pricing practices, including the mutualisation of underwriting risks between high and low underwriting risk customers are therefore out of the scope of this Supervisory Statement.

- 2.12. Due to the high risk of detriment, particular emphasis is placed on so-called “price walking practices” – i.e. when the premium paid by the customer is repeatedly increased at the renewal stage based on factors not related to underwriting risk or cost of services, such as analysing characteristics specific to a particular customer to predict behaviours not related to underwriting risk or cost of services, such as the amount of a premium increase an individual customer will tolerate before shopping around.
- 2.13. This Supervisory Statement covers the activities of insurance undertakings and insurance intermediaries that manufacture non-life insurance products that are offered for sale (jointly referred as 'manufacturers')¹⁷. It also covers the activities of insurance intermediaries that do not manufacture products, but only to the extent they are made aware of the differential pricing practices.
- 2.14. This Supervisory Statement covers all differential pricing practices regardless of whether they are based on AI systems or other practices and technologies. However, the increase in complexity of practices and technologies used for pricing needs to be balanced by increasing sophistication of governance and risk management processes, including by monitoring the outcomes of those practices and technologies.¹⁸
- 2.15. This Supervisory Statement addresses all differential pricing practices regardless of the type of customers. However, competent authorities, in view of proportionality and following a risk-based approach, should focus primarily on those practices applied to retail customers (including SMEs) as they are more exposed to the risks arising from differential pricing practices.
- 2.16. This Supervisory Statement covers only non-life insurance lines of business¹⁹, as these policies typically need to be renewed on a regular basis and there is greater evidence of differential pricing practices being applied at the renewal stage. The focus is therefore placed on those practices that have a greater potential of having a detrimental impact.
- 2.17. With this Supervisory Statement EIOPA aims to clarify supervisory expectations with regards to the existing requirements in the IDD legislative framework and promote a convergent approach amongst competent authorities in the supervision of POG, fair treatment of customers and disclosure requirements, with a view to preventing unfair differential pricing practices that lead to customer detriment, whilst not interfering directly with business decisions and/or pricing.

¹⁷ As defined in Articles 2 and 3 of the POG Delegated Regulation.

¹⁸ 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.), while not compulsory, provide guidance on relevant governance aspects for insurance manufacturers in light of IDD and POG Delegated Regulation governance requirements.

¹⁹ By non-life insurance it should be understood the non-life insurance classes covered under Annex I of the Solvency II Directive (2009/138/EC).

3. SUPERVISORY EXPECTATIONS

INSURANCE LEGISLATIVE FRAMEWORK APPLICABLE TO DIFFERENTIAL PRICING PRACTICES

- 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 must ensure that products are aligned with the needs, objectives and characteristics of the target market and that products do not adversely affect customers, to prevent customer detriment. The product approval process also needs to be proportional vis-à-vis the products sold and the nature, scale and complexity of the business model of the insurance manufacturer.
- 3.4. All products whose manufacturing happened and/or selling begun after 1 October 2018 are within scope of POG supervision. Insurance products which have been significantly adapted after 1 October 2018 are also within the scope of POG supervision.
- 3.5. 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). This Supervisory Statement does not affect those requirements.

DIFFERENTIAL PRICING PRACTICES MUST NOT RESULT IN UNFAIR TREATMENT

- 3.6. Insurance manufacturers using differential pricing practices should demonstrate that they have proportionate and effective POG measures throughout the entire lifecycle of the product to ensure that those practices do not unfairly affect customers within the identified target market. Price is a product characteristic and therefore it should form part of the POG process, whereby insurance manufacturers should assess whether the pricing practice used ensures an alignment with the target market's characteristics, needs and objectives.

- 3.7. Certain types of differential pricing practices, and in particular the so-called “price walking” practices, where the premium paid by customers is repeatedly increased at renewal stage based on reasons not related to underwriting risk or costs of service, have a high risk of resulting in unfair outcomes and therefore fail to comply with the applicable IDD legislative framework. In particular, these practices given their detrimental nature are not aligned with the needs, objectives and characteristics of any target market.
- 3.8. Examples of “price walking” practices that are considered to lead to unfair treatment, and therefore not compliant with Article 17(1) IDD, and that are considered not to be aligned with the needs, objectives and characteristics of any target market, and therefore if applied not compliant with Article 6.2 of the POG Delegated Regulation, include the following:
- 3.8.1. Repeatedly increasing for the same customer the price of the insurance product at renewal stage based on his/her low propensity to shop around (low probability of churn);
 - 3.8.2. Repeatedly increasing for the same customer the price of the insurance product at renewal stage based on his/her low-price elasticity (also known as “willingness to pay”);
 - 3.8.3. Advising or nudging a potential customer to buy one insurance product (in some cases included in a bundle of financial and non-financial products) vs. another one because of very low initial price, and then applying sudden, unexpected, significant, and repeated price increases for customers at renewal based on reasons unrelated to underwriting risk or cost of service.
- 3.9. While not being an exhaustive list, the price walking practices described in the previous subparagraphs are considered to lead to unfair treatment, since they would unfairly penalise specific customers categories. In particular, more vulnerable groups (e.g. older customers, customers with low level of education or low income) are at high risk of being disproportionately negatively affected by these practices.
- 3.10. It is worth noting that the IDD requirement to ensure that customers are treated honestly, fairly and professionally in accordance with their best interest are aligned with other efforts at EU level to promote fair treatment of customers. This is notably the case in Directive 2005/29/EC²⁰ concerning unfair business-to-customer commercial practices in the internal market.

²⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance) (OJ L 149, 11.6.2005, p. 22–39)

PRODUCT OVERSIGHT AND GOVERNANCE MEASURES AND PROCEDURES SHOULD ENSURE THAT DIFFERENTIAL PRICING PRACTICES DO NOT RESULT IN DETRIMENT

Product approval process

- 3.11. In line with the POG requirements, insurance manufacturers should put in place an approval process which ensures that customers' interests are considered – including by involving all relevant functions and taking into account fairness and ethical considerations²¹ – in the product design and approval process, proportional to the complexity of the product design.
- 3.12. The final approval of the product design relying on differential pricing practices should be at a sufficiently high hierarchical level in order to take accountability for an appropriate pricing.
- 3.13. Adequate measures – including sufficient systems and controls – 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 could emerge from differential pricing practices. Those measures should be defined by insurance manufacturers as part of their product development and product testing process. Examples of those measures include:
- defining clear processes and procedures which involve all relevant functions and staff members;
 - defining appropriate thresholds / guardrails for differences in premium for customers with a similar underwriting risk profile and cost of service;
 - ensuring that information provided to customers, including marketing communications, are transparent (e.g., about the existence of a premium discount only in the first term of the contract), clear, simple and not misleading so as to enable customers to make informed decisions;
 - in case of use of complex algorithms and technologies, insurance manufacturers should be able to provide appropriate explanations on the impact thereof on pricing, adapted to the needs of different stakeholders (e.g. customers, insurance distributors, supervisors, etc.), and set up other relevant governance measures such as adequate levels of staff oversight and documentation throughout the life cycle of the model;
 - clearly specifying the target market to ensure products recurring to these practices are sold only to customers for whom such practices do not have a detrimental impact;

²¹ See for example the AI governance principles for an Ethical and Trustworthy AI in Europe developed by EIOPA's Consultative expert group on digital ethics in insurance: https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles_en.

- closely monitoring and mitigating the impact of differential pricing practices on customers within the target market, particularly in relation to vulnerable groups (e.g. older customers, low level of education, low income) as well as different customers' groups belonging to the same target market;
- making reasonable efforts to ensure that the datasets used for differential pricing practices and the outcomes of complex algorithms and technologies are free of bias.

Target market

- 3.14. Processes and procedures should ensure that 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. Moreover, they should ensure that premium increases not linked to the underwriting risk profile or the cost of service of the customer are taken into account when defining the target market.
- 3.15. The product design process should be proportional to the product related risks, business model of the insurance manufacturer and the customers targeted. It should further ensure that the relevant objectives, interests and characteristics of the target market are taken into account when assessing whether differential pricing practices for a certain product are compatible with the target market. This assessment should take into account that customers might not be generally aware of the existence of differential pricing practices, and that the capacity of insurance manufacturers to determine the propensity to switch and price elasticity of individual level will likely confer them a disproportionate information advantage vis-à-vis customers.
- 3.16. The staff involved in identifying and defining the target market should have sufficient and adequate professional and educational skills to perform their function and to understand pricing practices and customers' characteristics which may lead to detriment when these practices are applied. Adequate levels of human oversight are particularly important when differential pricing practices rely on complex algorithms and technologies, taking into account aspects such as the level of sophistication of the algorithms and technology used, as well as the existence of governance and risk mitigating measures, including the staff knowledge about models.

Product testing

- 3.17. The product testing process should ensure that pricing measures and procedures are sufficiently customer centric and that the impact of pricing measures and practices on the target market needs, objectives and characteristics is duly monitored.
- 3.18. For non-life insurance products, which are likely to be renewed on a periodic 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 term but also at renewal. Moreover, insurance manufacturers should also test whether by providing information in a clear and concise manner on how the prices are defined, the target market clearly understands discounts and reasons for price increases at renewal.

- 3.19. In particular, processes and procedures should ensure that insurance manufacturers test whether such products are aligned with the needs, objectives and characteristics of the target market – i.e., offer value – for a reasonable time, taking into account for how long the target market is likely to hold such product.
- 3.20. If, based on the product testing, it becomes evident that in the expected lifecycle of the product certain features may adversely impact some customers belonging to the target market because of their characteristics, processes and procedures should ensure the product is either not brought to the market, in line with Article 6(2) of the POG Delegated Regulation, or that the target market is sufficiently reviewed to exclude those customer categories that could be adversely impacted.

Product monitoring and review

- 3.21. Insurance manufacturers' processes and procedures should ensure that products relying on differential pricing practices continue to be monitored, including with the use of relevant metrics to assess their outcomes and by involving all relevant functions, to identify any adverse impact they may have on customers.
- 3.22. In particular, insurance manufacturers should identify and monitor whether the target market is adversely impacted by differential pricing practices over the years and take appropriate remedial measures to cease the detriment.
- 3.23. Examples of metrics to be monitored include differentials premiums paid at renewal by long standing customers in comparison with new customers with the same underwriting risk and cost of service, or the differences in the ratio of the actual premium paid by the customer and the technical premium (the premium that would correspond to a customer based on his underwriting risk and cost of service) between customers with the same underwriting risk and cost of service .²²

Documentation

- 3.24. Processes and procedures put in place by insurance manufacturers to ensure that the products do not adversely affect customers should be clearly structured and documented through adequate records. Documentation should be proportional to the product related

²² the actual premium / technical premium ratio shows the differences between the actual premium charged and the cost of providing the policy (technical premium).

risks, the business model of the insurance manufacturer and the characteristics of the customers within the target market.

- 3.25. Documentation and records, including when differential pricing practices rely on complex mathematical models and technologies, should be sufficiently detailed to ensure accountability of insurance manufacturers with regards to differential pricing practices.
- 3.26. Relevant documents and records relating to differential pricing practices should be made available upon request to the competent authority.

Distribution channels

- 3.27. As part of the POG documentation, insurance manufacturers should provide insurance distributors with sufficient information about the product, including a high-level explanation on how the pricing of a product may develop at renewal and on the existence of differential pricing practices, if used for the relevant products and if in line with the principles highlighted in this statement. This information would allow insurance distributors to act in the best interest of potential customers when assessing their demands and needs and to provide all relevant information to make informed decisions. Information given to customers should be meaningful and easy to understand in order to help potential customers make informed decisions.
- 3.28. If insurance distributors are aware that the product relies on differential pricing practices, they should also apply an adequate distribution strategy, which is compliant with the one defined by the insurance manufacturer and equally applied to the target market.

SUPERVISING THE OBLIGATION TO ENSURE DIFFERENTIAL PRICING PRACTICES DO NOT LEAD TO UNFAIR TREATMENT

- 3.29. Following a risk-based approach, including by taking into account relevant regulatory requirements in national legislation, competent authorities should supervise that differential pricing practices do not lead to unfair treatment. To this end, following their risk-based approach they should carry out relevant market monitoring activities to identify insurance products for which differential pricing practices are used with the highest risks for customers.
- 3.30. Competent authorities should engage with relevant insurance manufacturers and review the POG measures and procedures, the sales process and the marketing and communication materials of those identified products.
- 3.31. If competent authorities assess that an insurance manufacturer's POG procedures are not adequate and/or that products developed through these procedures have been marketed

despite not being aligned with the target market’s needs, objectives and characteristics, they should take appropriate actions, according to national regulations.

- 3.32. If competent authorities assess that the sales process and/or the marketing material do not ensure that fair and clear information are provided, enabling customers to make informed decisions, they should take appropriate actions, according to national regulations.
- 3.33. Competent authorities are encouraged to cooperate with other relevant authorities including competition and data protection authorities in their respective jurisdictions given that differential pricing practices and customer protection issues arising therein are closely connected to competition and data protection.

This Supervisory Statement will be published on EIOPA’s website.

Done at Frankfurt am Main, on DayMonthYear.

[signed]

For the Board of Supervisors

[name]

Chairperson

EIOPA

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt – Germany

Tel. + 49 69-951119-20

info@eiopa.europa.eu

<https://www.eiopa.europa.eu>