Response to EIOPA consultation paper on differential pricing

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Although pricing and other commercial decisions are very sensitive areas, the potential concerns raised by the European Insurance and Occupational Pensions Authority (EIOPA) are significant and, if pricing practices resulting in unfair outcomes for consumers were identified in the market, these concerns would need to be addressed. Access to insurance and fair treatment are both vital.

As a European federation, Insurance Europe is not able to comment on the specific questions raised. Insurance Europe does not have a pan-European picture of the prevalence of differential pricing practices, and it is beyond its remit to delve into the individual commercial decisions of insurance companies. Neither Insurance Europe or its member organisations conduct market surveillance in this area.

The decision to publish measures targeting pricing and commercial decision-making is unprecedented and must be treated sensitively to avoid calling on national supervisors to overstep their specified mandates. Insurance Europe would like to highlight the following, which must be taken into account:

There are existing national and EU rules that should be considered in assessing whether further action is necessary. Article 17(1) of the Insurance Distribution Directive (IDD) requires that in its sales activities vis-à-vis policyholders, the insurer must always act honestly, fairly and professionally in their best interests. This is supplemented by various national provisions in industry-specific regulations, and broader contract law. The application of this law is monitored by the national courts, national supervisors or consumer protection bodies.

EIOPA and national competent authorities (NCAs) have an extremely limited role in taking action that directly impacts individual insurers' ability to set prices and commercial terms. EIOPA indicates that the legal basis for its activity is Article 29(2) of the EIOPA Regulation, on the formation of a common supervisory culture. However, in exercising these powers, it is vital that EIOPA respects the principles of subsidiarity and proportionality.

In order for EIOPA to take action, there must be a clear need for EU-level action that cannot be achieved at member state level. Article 21 of Solvency II stresses that cost management is primarily the responsibility of the product provider and the supervisor only insofar as the tariff must not jeopardise the financial situation of the insurer.

The IDD product oversight and governance (POG) rules are unlikely to be a sound basis for any action on this issue. POG relates to the oversight of the product design and review, and relies heavily on the impact on the product's target market. POG requirements aim to ensure the interests of customers are central to product design and throughout the lifecycle of a product.

POG measures should be applied in a proportionate manner, depending on product complexity, the nature of the insurance product and the risk of consumer detriment related to it, the characteristics of the target market and the nature of the manufacturer or distributor. According to recital 2 of the POG Regulation, this means POG measures should be relatively simple for straightforward and non-complex products that are compatible with the needs and characteristics of the mass retail market.

The POG rules do not require insurers to specify the methodology used to determine individual prices. Recital 8 of the POG Delegated Regulation specifically clarifies that "The 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."

Freedom to set prices is a key element of free and fair competition. Pricing policies are defined by technical features and commercial policy, management fees and reinsurance charges, fixed by each insurance company. Each company is free to develop its own business strategy (including setting prices). This diversity creates strong and efficient competition in insurance that leads to a diversity of approaches in customer acquisition and loyalty policies.

The best competition is achieved when there are numerous business models in a market, as long as there is transparency towards the individual consumer. The customer is informed about the cost of the product, both in new sales and in renewals, and can call or visit different providers in a competitive market.

There is no evidence that the use of AI to set premium levels is damaging. The 2021 report from EIOPA's digital ethics expert group pointed to a divergence in opinion as to whether regulatory intervention in this area would have a positive impact. It identified several reasons why prices may legitimately be altered, such as commercial, marketing or underwriting discounts to try to attract or retain consumers in the course of a commercial transaction, noting the importance of portfolio size and high customer retention from an economic perspective.