

Personalised Pricing

The [original full study](#)¹ discusses conceptual, empirical and legal aspects of personalised pricing. It first conceptualises personal pricing, distinguishing different forms including different degrees of price personalisation, and summarises empirical insights on the occurrence of personal pricing in practice and related consumer attitudes. In its legal part, it analyses whether and how current EU law deals with this phenomenon and identifies regulatory gaps and legal uncertainty, on the basis of which recommendations for future regulation of personalised pricing are presented.

Background

Personalised pricing can be described as price differentiation for identical products or services at the same time based on information a trader holds about a potential customer. It has become possible because traders have, lawfully or unlawfully, acquired personal data which they, or rather algorithms they use, may process to understand personal preferences and purchasing habits of individuals. Personalised pricing allows traders to exploit the (inferred) customers' willingness to pay better, and therefore to increase their profits.

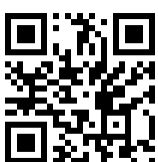
Price personalisation can take different forms, namely first-degree personalisation (based on personal characteristics of individual consumers), second-degree personalisation (based on the quantity of products, e.g. when several bottles are sold in one package) and third-degree personalisation (based on membership in a market segment or consumer group, e.g. student rebate), and can be presented as a different price or a personalised discount. First-degree price personalisation is the most problematic of the three forms. It bases on the consumers' willingness to pay, that can be inferred from different types of personal data processed on individual or aggregated level. Subsequently, a price matched to the willingness to pay is offered either automatically through algorithmic processing or non-automatically through human intervention.

First-degree price personalisation is technically possible, but its frequency of occurrence in practice is contested. While several studies failed to identify price personalisation in online offers, other studies, and press reports, including the recent case of the online platform Wish, show that this type of price personalisation has been occurring in some instances.



For traders, price personalisation allows profit maximisation while expanding their client base through the possibility of offering lower prices to consumers with lower willingness to pay. At the same time, it requires advanced data collection and processing practices and may potentially lead to consumer backlash. From a consumer perspective, it may allow certain groups to purchase products that they could otherwise not afford. On the other hand, price personalisation may lead to an increase of the regular price, and hamper consumers' ability to compare offers.

Check out the
[original full study](#)
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Key findings

Consumers tend to have a negative attitude towards price personalisation. While they are used to and accept second- and third-degree personalisation, they perceive individually personalised prices as unfair. This attitude is partially driven by the lack of transparency of personalisation practices.

Personalised pricing is, in principle, allowed under current EU law, as long as traders do not use personal characteristics in breach of anti-discrimination laws. Exceptions apply only to certain universal service obligations.



Consent requirements may stem from Article 22(1) of the General Data Protection Regulation (GDPR), but the interpretation of this provision is highly controversial. Case law is not available. The GDPR also requires traders to inform consumers about automated decision-making, but not at the time of purchase.

New Article 6(1)(ea) of the Consumer Rights Directive (CRD) requires traders to inform consumers if they apply personalised pricing based on automated decision-making, but the scope of application of this provision is limited to distance selling, and the information obligation is not sufficiently effective as it only requires to disclose that, and not how, the price was personalised.

As price personalisation is expected to become more widespread in the near future, there is a need for regulating this phenomenon further. Given the general rejection by consumers of personalised pricing, regardless of potentially being offered lower or higher prices, and the likelihood of overall consumer detriment of such practices, one could consider prohibiting personalised prices in the form of first degree price discrimination that lead to a higher than the regular price.

While anti-discrimination laws prohibit the inclusion of certain criteria in the personalisation process (e.g., sex, race, colour, ethnic or social origin, etc.) certain other 'sensitive' criteria are currently not covered. These could be prohibited to be used for the personalisation of prices, including health conditions, and vulnerabilities such as anxieties that should not be exploited.

Otherwise, information obligations regarding personalised pricing could be extended to all goods and services and to offline or hybrid situations, and information provided should be 'meaningful', a notion well-known from data protection law. Thus, traders would have to disclose how prices are personalised and what criteria are used to do so. Moreover, traders should be required to place information on personalised pricing next to the price in such a way that it cannot be overlooked.

Enforcement should be facilitated through the reversal of the burden of proof once there is an indication of price personalisation. Competent authorities could be granted access to the algorithm that is used.

¹ Rott, P., Strycharz, J. and Alleweldt, F., 2022, *Personalised Pricing*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU\(2022\)734008_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU(2022)734008_EN.pdf).

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