



Secure and Protect!

GERMANY: PHARMACEUTICAL PRICE MAINTENANCE AND THE ECJ RULING

THE FACTS AS THEY ARE TODAY

- » The free market pricing concept has applied to non-prescription medication sales in Germany since 2004. Prescription only drugs, however, are subject to the Drug Price Ordinance meaning that they must be offered at the same price by all pharmacies throughout Germany. This uniform pricing serves several purposes:
 - › It ensures that patients do not need to compare prices at different pharmacies but, rather, they are sure to find the medication they need at identical conditions everywhere. This principle applies both in doctors' practices as well as in hospitals.
 - › It prevents the destructive practice of predatory (cut-throat) competition, which ultimately leads to a reduction in pharmacy density and a worsening of patients' coverage options.
 - › It is a main reason that the principle of benefits-in-kind is possible within the statutory health insurance (SHI) system. And they are also the foundation for many cost containment and control instruments found in the health care sector: for instance the approximately 21,000 rebate agreements between insurance companies and pharmaceutical manufacturers (at the end of 2015) are based on a

uniform and transparent pricing system. These agreements ensure that insurance providers receive affordable prices for pharmaceuticals and that they receive annual savings of 3.6 billion euros (2015).

- » The price maintenance system was expressly intended by lawmakers to apply as well to overseas mail-order pharmacies and this practice has been upheld by Germany's highest courts. However, the European Court of Justice (ECJ) ruled on October 19, 2016 that mail-order pharmacies based in other European countries but sending prescription drugs to Germany, must no longer abide by these price maintenance regulations. In doing so, the ECJ has deviated from previous health care related rulings and also overturned leading decisions made by the German court system. This has many serious consequences:
 - › German pharmacies are at a distinct disadvantage to foreign suppliers as they must continue to adhere to the price maintenance laws in Germany and are not allowed to discount prices.
 - › Foreign providers receive a competitive advantage although they do not participate in the most important and cost intensive aspects of public service as pertains to pharmaceutical provision – on-site consultations, the keeping of well stocked and comprehensive inventories as well as performance of nighttime and emergency services.
 - › Especially smaller pharmacies in rural and suburban areas will be unable to withstand the competitive pressures applied and many will be forced to close their doors. They will no longer be available to provide local services as needed.
 - › Financially, patients will not truly benefit from the new changes. As part of the SHI, they already receive necessary medication free of charge. They are at most burdened in the form of existing co-payments. In particular, chronically ill patients who require multiple medications are generally exempt from co-payments. As of the end of 2014, 6.7 million people qualified for such exemptions.
 - › Due to the fact that prices for prescription medications are to be negotiated between insurance providers and manufacturers (e. g. rebate agreements) and cost containment instruments within the SHI can only function with a fixed pricing system, the ECJ ruling will also not result in lower health insurance premiums.

AND THE SITUATION IN THE FUTURE?

- » Due to the serious disadvantages that the ECJ ruling and the discontinuation of price maintenance regulation for foreign providers will bring with it, ABDA is working to ensure that parliament and the government use all options at their disposal to safeguard the proven pharmaceutical supply system and, in doing so, protect the patients which it serves. One effective tool in this cause would be a general ban on the mail-order trade of prescription pharmaceuticals. Such a ban
 - › would ensure that a local, point-of-care supply by pharmacies continues to exist.
 - › would be in line with European law. As a matter of fact, mail-order sale of pharmaceutical medication is currently not allowed in the vast majority of EU states.
 - › would work to ensure that German parliament and the German government take back and maintain the decision making authority for the structuring and formation of the health care system in Germany that was guaranteed to member states by the original European contracts.