

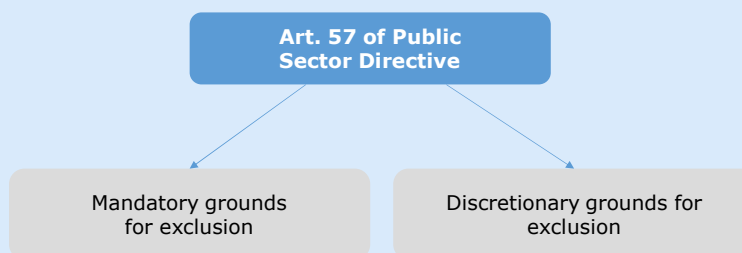
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## World Bank's Virtual Fifth International Debarment Colloquium – Roundtable 1 – Handout on EU Exclusions and Debarments

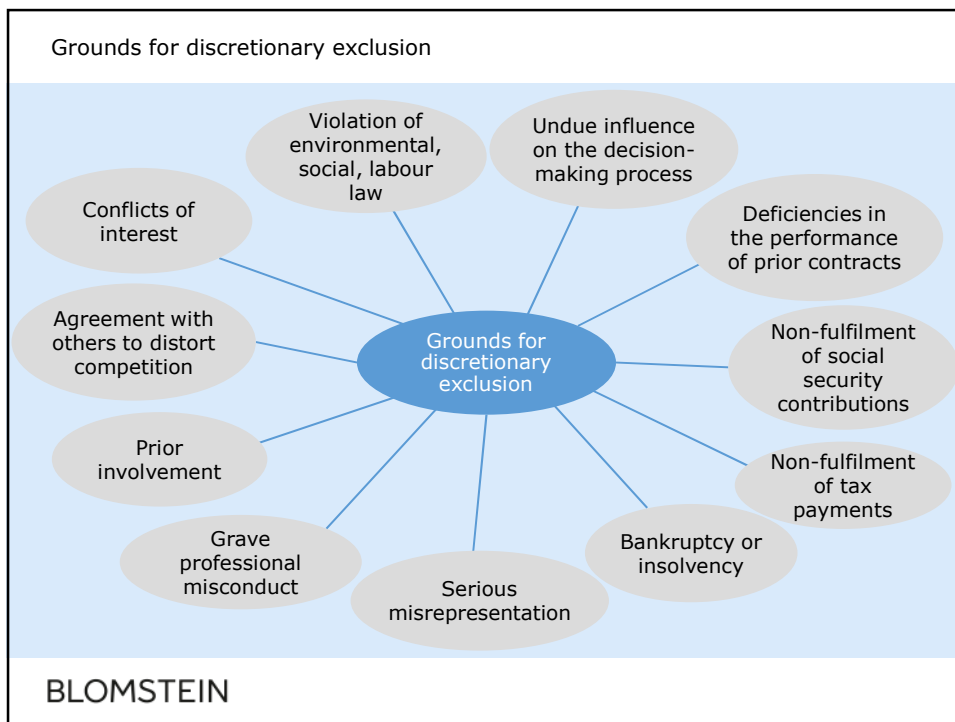
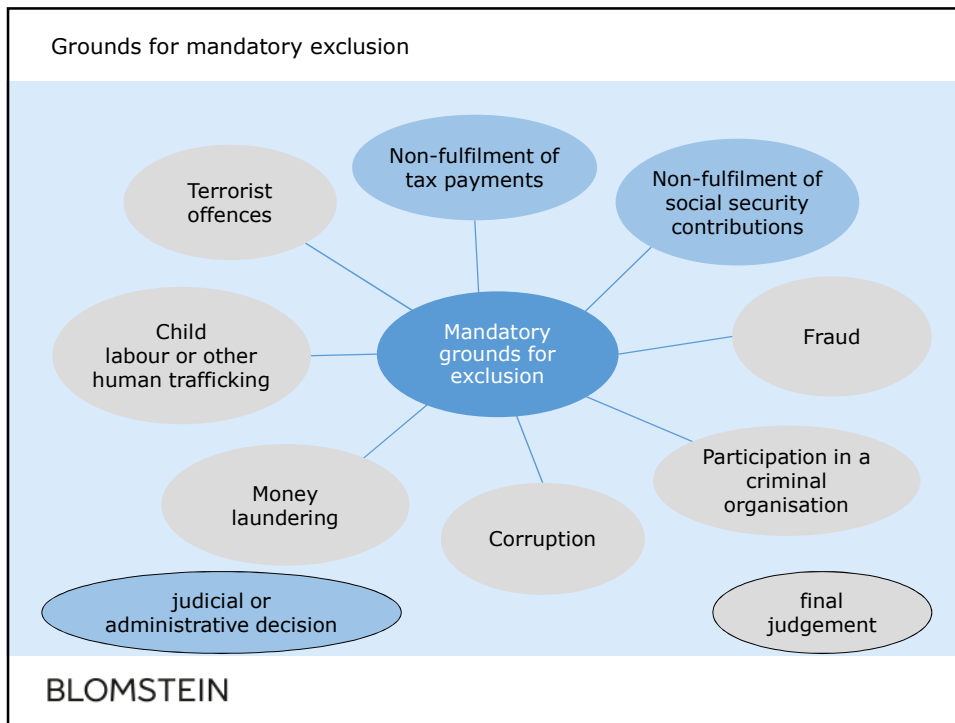
Dr. Roland M. Stein, LL.M. Eur.

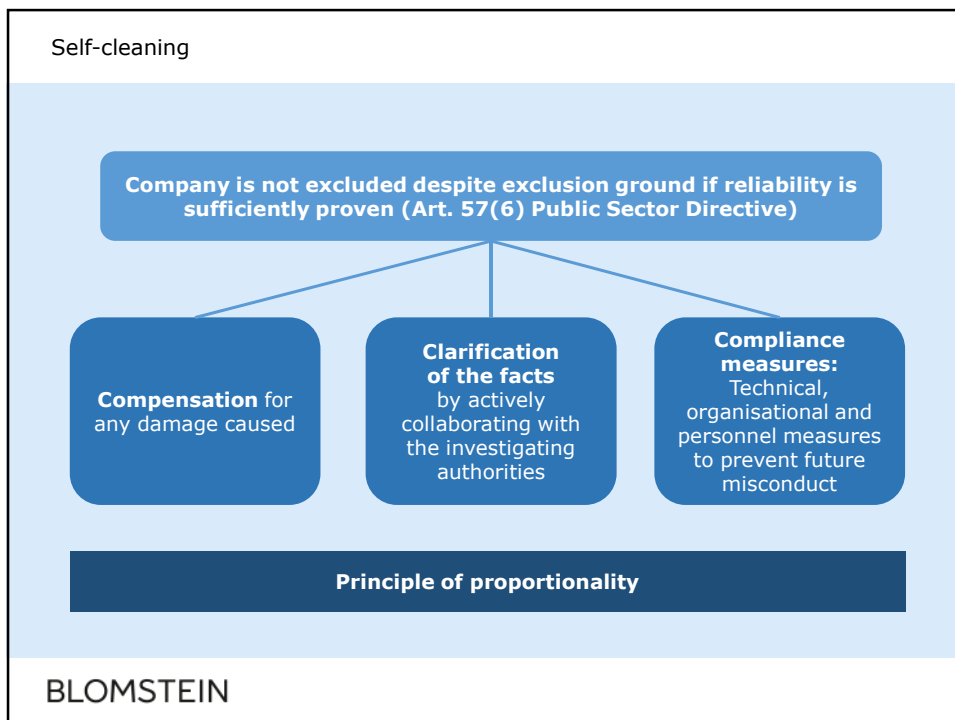
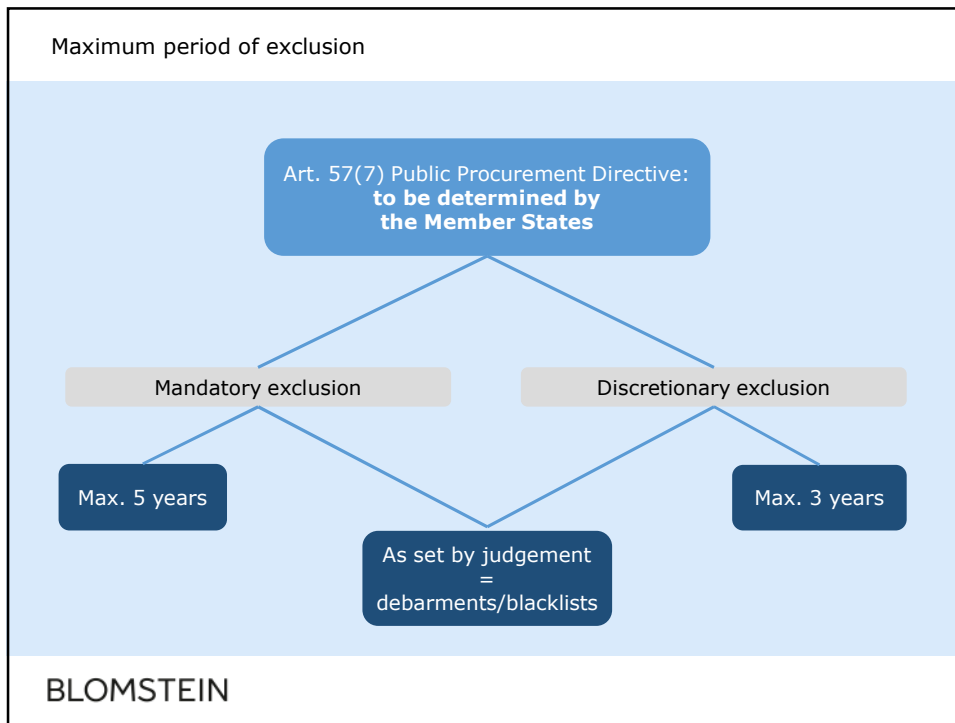
22 September 2020, Washington & Berlin

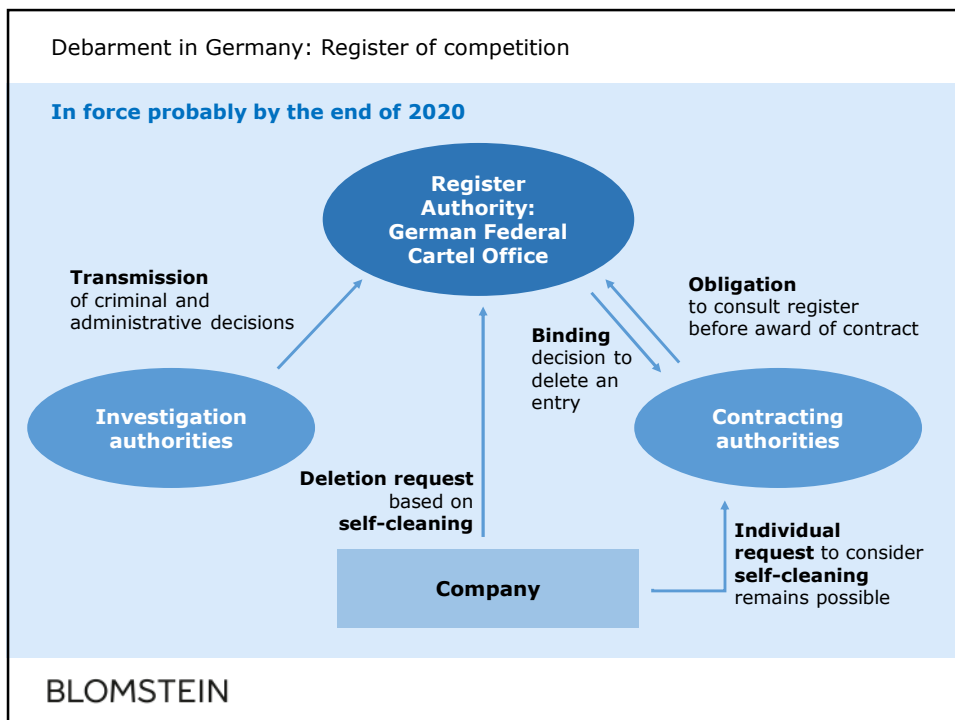
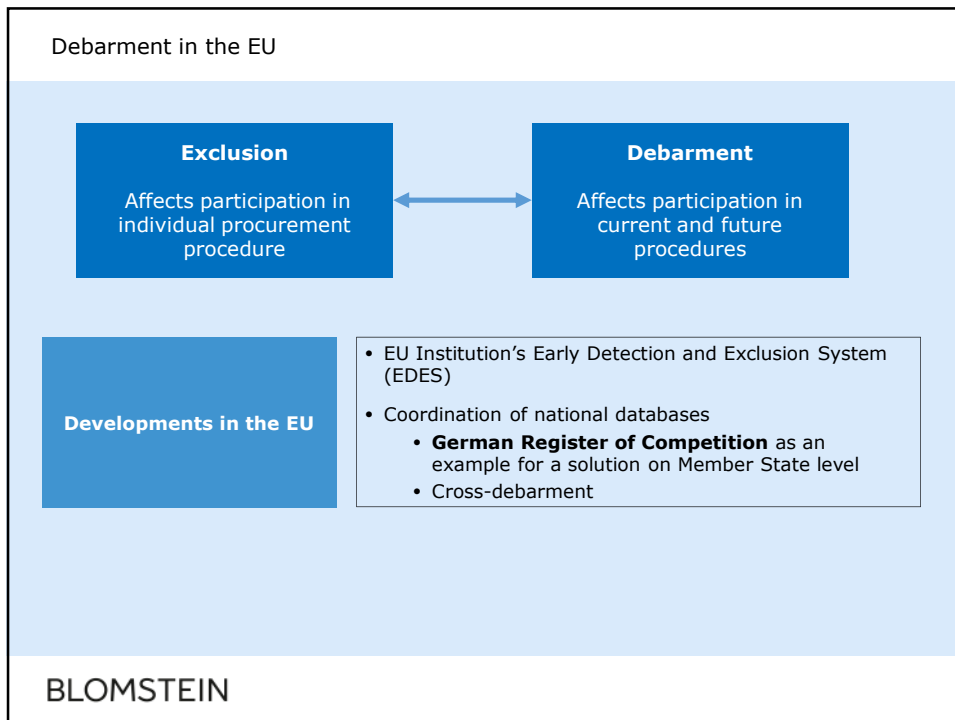
### Grounds for exclusion according to the EU Public Sector Directive



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### Hot topic 1: Competition law infringements as grounds for exclusions

- Current practice: anticompetitive agreements as a discretionary exclusion ground
- EU Commission ([COM\(2020\) 253 final](#)) now aims at levelling playing field as regards companies receiving unfair subsidies from their home companies
  - Not yet provided for in EU procurement Directive 2014/24/EU (but partly in Utilities Directive)
- Recent case-law in Germany upheld a contracting authority's decision to do exclude a major Chinese SOE
- Parallel development: EU Commission also aims at opening foreign procurement markets for EU companies by denying those company access to EU procurements that come from a country that does not grant reciprocal access (Proposal for an International Procurement Instrument, [COM\(2016\) 34 final](#))

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### Hot topic 2: Increased influence of criminal law

- Increase of criminal investigations for failure to tender a contract, e.g.:
  - A mayor commissions a detective agency to investigate irregularities concerning municipal employees without prior proceedings (**budgetary fraud**, held in last instance by German Federal Supreme Court – 5 StR 366/19)
  - Collusion between bidders in the form of price fixing (**fraud**, held in last instance by German Federal Supreme Court – 2 StR 102/91)
  - Collusion between bidder and employee of a contracting authority to award contracts to bidder (**agreements restricting competition in tender, ongoing procedure**)
- Criminal investigations into anticompetitive agreements concerning procurement procedures

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