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The CJEU's *Vossloh* Case

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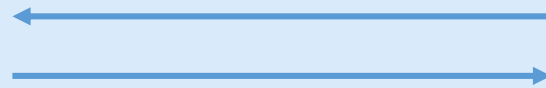
Facts of the Case

Relationships between Vossloh and Stadtwerke München

SW//M

= contracting
authority

Anti-competitive behaviour



Damages claim

vossloh

= tenderer

Facts of the Case



2011: End of
'Rail Cartel'

2015: Claim
for damages

2016: Request
of admission
to qualification
system

06/2016:
Refusal to
forward FCO
decision
imposing a fine

11/2016: Exclusion

Professional
misconduct

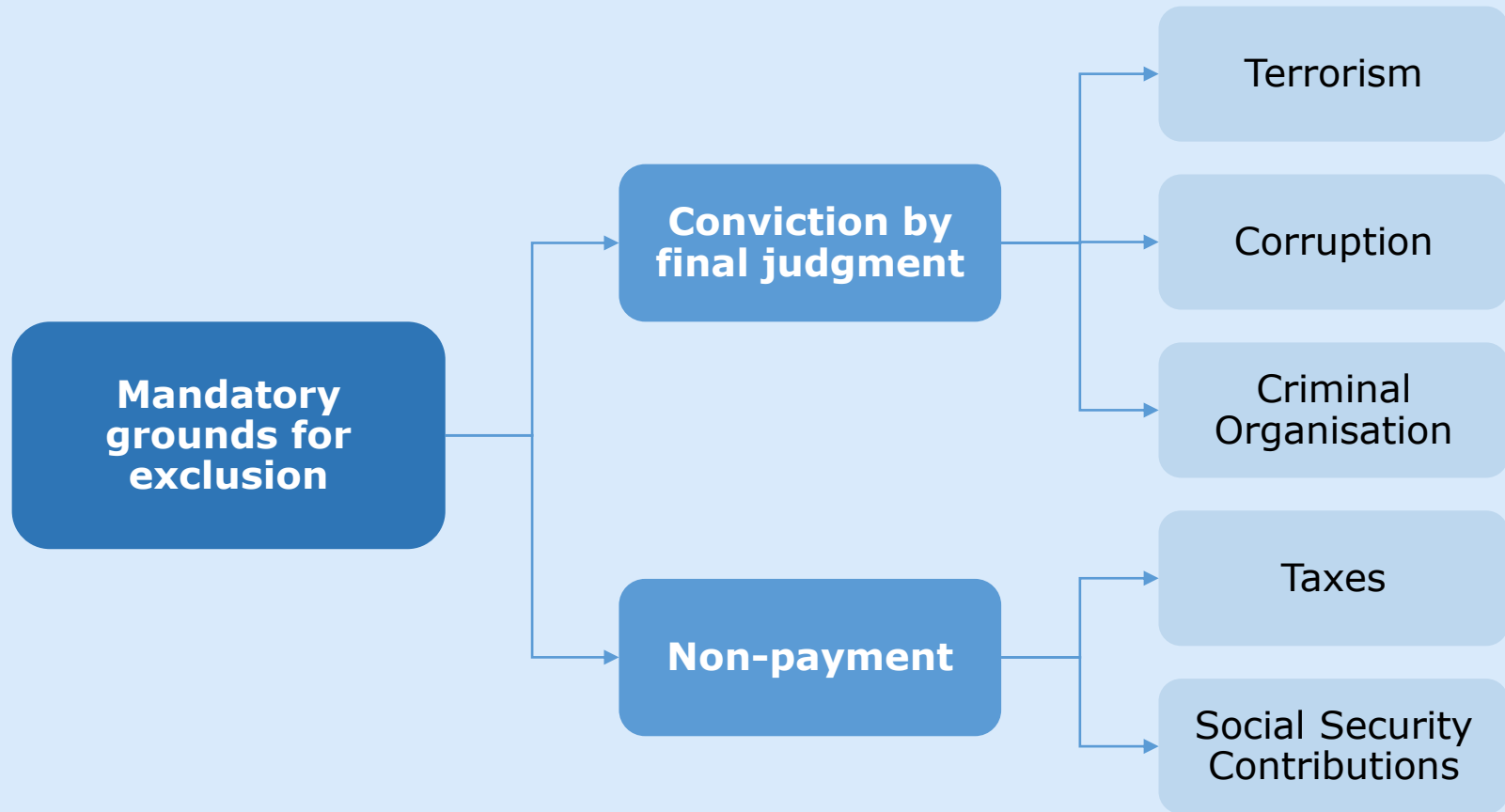
Agreement to
distort
competition



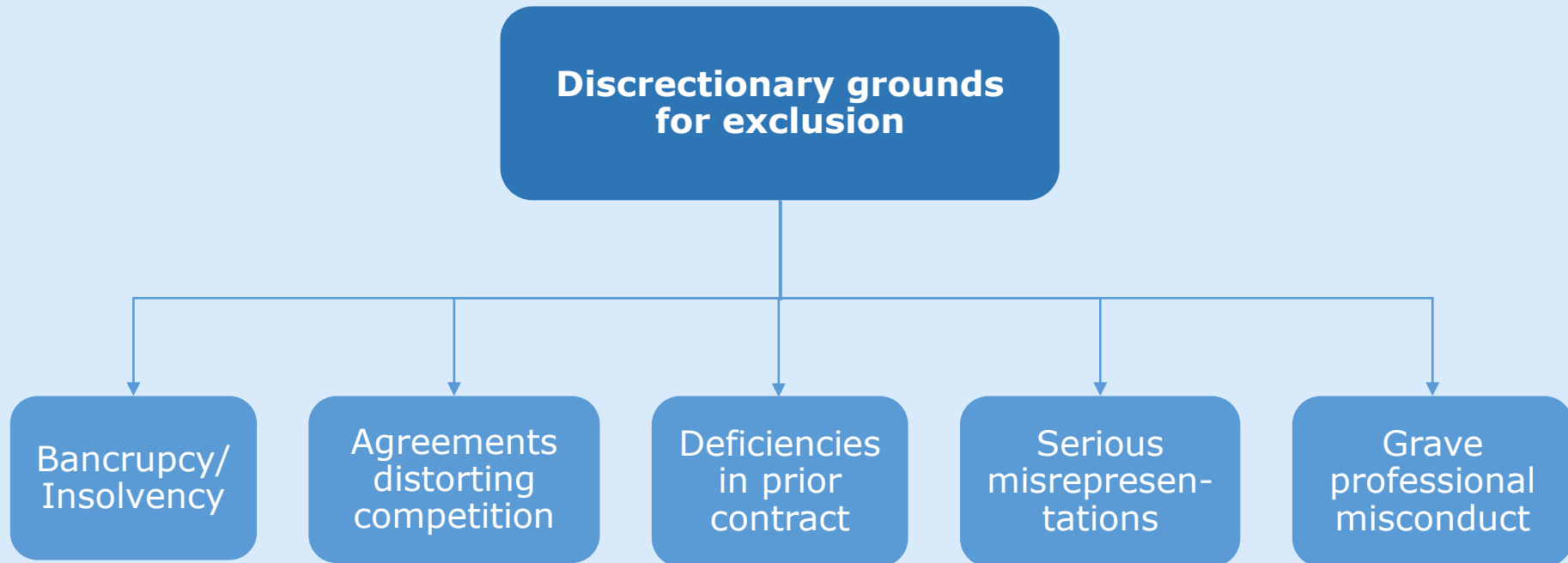
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Grounds for Exclusion

Mandatory grounds for exclusion



Discretionary Grounds for exclusion



Application to the facts of the case



Participation in 'Rail Cartel'

- Fined by FCO
- Partially conceded by Vossloh



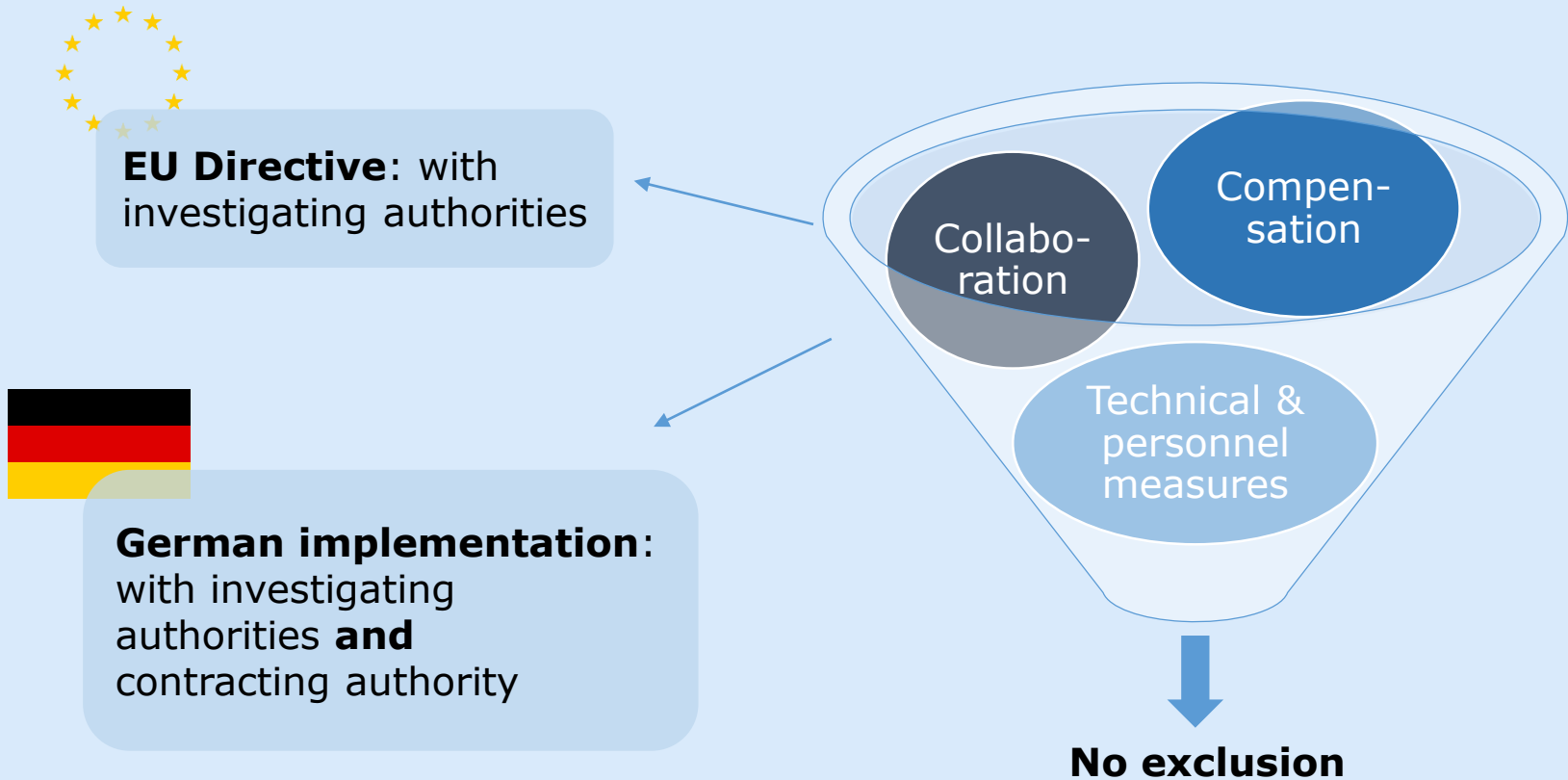
Exclusion grounds applicable:

- Agreements distorting competition
- Grave professional misconduct

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Self-cleaning

Exception from exclusion: self-cleaning



Duty to cooperate with investigating authority

Investigating authority



Determination of responsibility of actors

Contracting authority

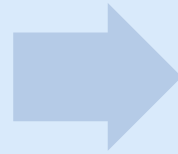


- Assessment of risks of awarding contract to unreliable tenderer
- Must rely on outcome of investigating authority
- Application to public procurement procedure: cooperation with contracting authority

Public Procurement Boards' Application of *Vossloh*

Vossloh: duty to cooperate with contracting authority

- Cooperation must be comprehensive



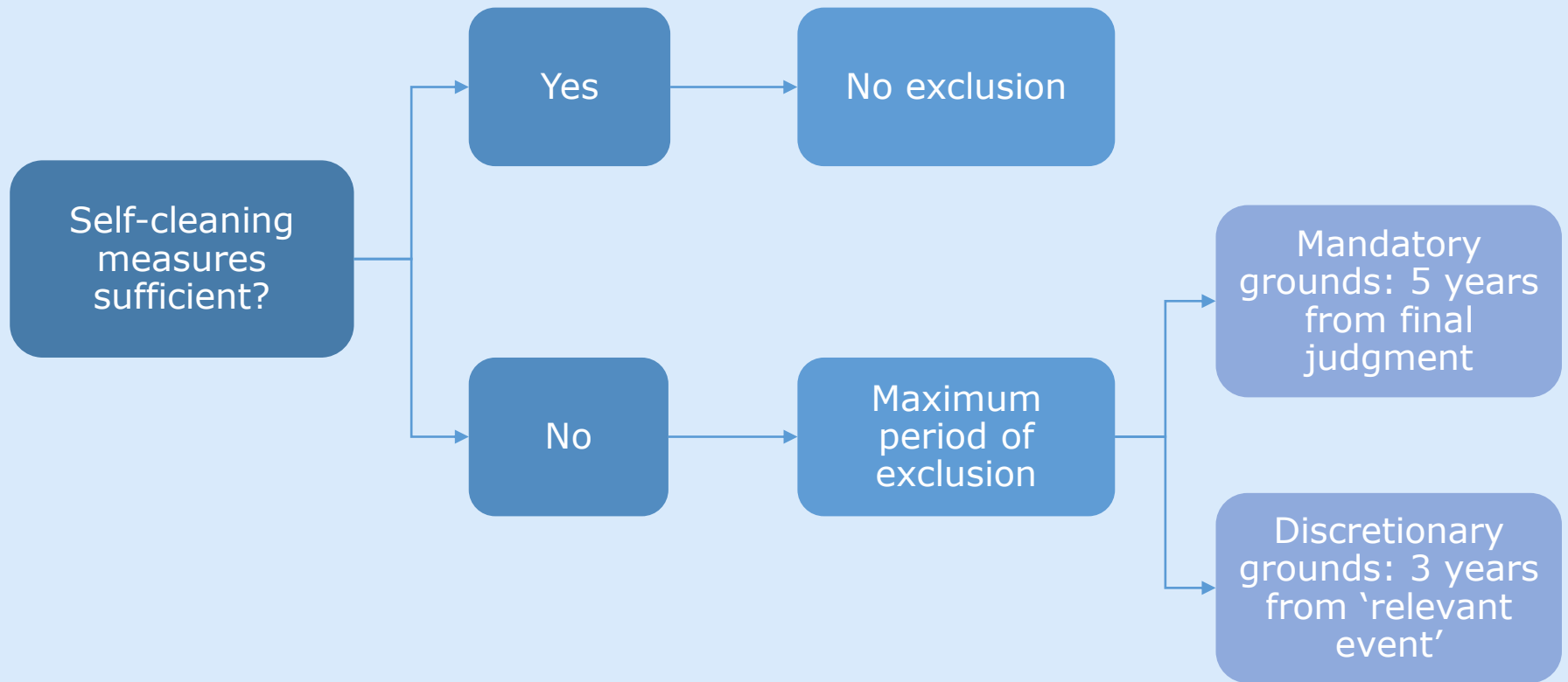
Duty to submit not only the public decision imposing a fine but also the confidential version

- Public version contains less information
- Risk of successful damages claim as an accepted collateral damage
- Data can be anonymised

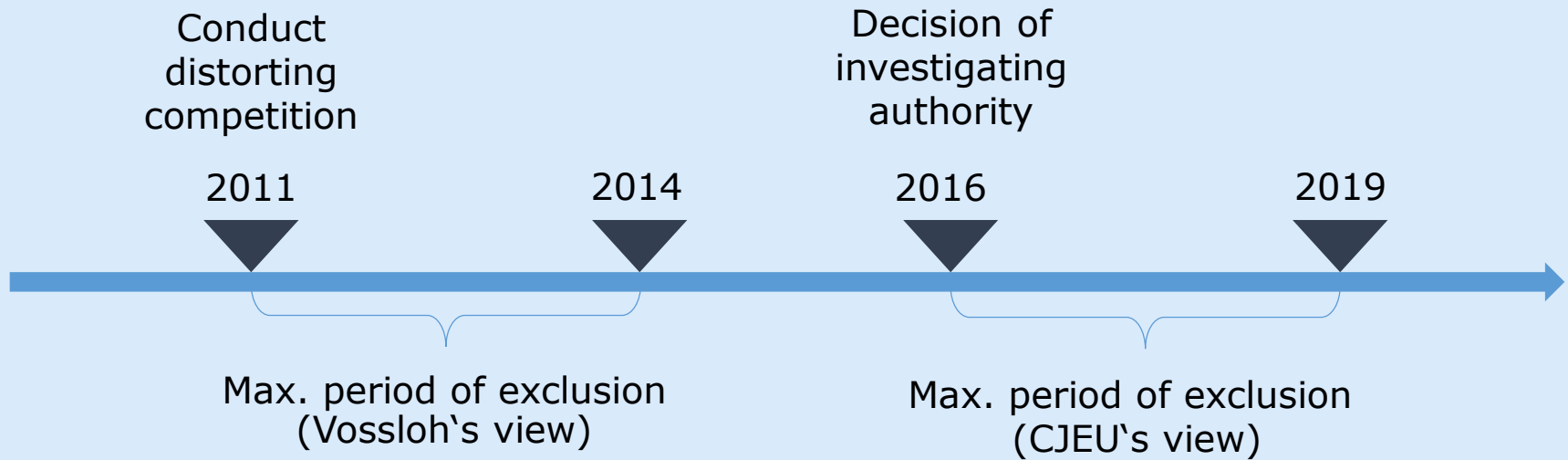
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Maximum Period of Exclusion

Maximum period of exclusion



'Relevant event' to calculate maximum period of exclusion



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