

# New competition register enters into force

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Tomorrow the Act Introducing a Register for Competition (Wettbewerbsregistergesetz – WregG, “Competition Register Act”) will enter into force. Companies violating competition or other rules must or can be excluded from public procurement procedures. The register for competition will make it easier for contracting authorities to review such reasons for exclusion in public procurement procedures. For this purpose the Federal Cartel Office will maintain a central electronic data bank in the future.

## Registrations

The Competition Register Act contains a list of all exclusion reasons that must be registered, such as final criminal judgments, summary punishment orders and non-appealable administrative and regulatory fine decisions. This includes

- the offenses set forth in § 123 (1) and (4) of the Act Against Restraints of Competition, in particular corruptive offenses such as granting and accepting bribes, human trafficking, forming a criminal organization, financing terrorism, money laundering, fraud affecting the European Union, non-payment of social security contributions and tax evasion;
- fraud and subsidy fraud affecting public budgets and submission fraud, i.e. illegal anti-competitive agreements in bidding processes;
- certain serious violations of the Act to Combat Illegal Work, the Employee Leasing Act and the Minimum Wage Act listed in § 124 of the Act Against Restraints of Competition as well as certain cartel violations if a fine of at least EUR 50,000 has been imposed.

## Consulting the register and effects of registrations

Public contracting authorities are obligated to consult the register in procedures with an estimated contract value of EUR 30,0000 (net) or more before awarding the contract or before requesting a potential bidder to make a bid. Information can now be obtained by consulting the register, while self-declarations as to potential reasons for exclusion can also be obtained as before. A consultation of the register must be made by sectoral contracting entities and grantors of a concession only with respect to tenders above the EU-thresholds; if the defined values are not reached, the contracting authority or entity can consult the register voluntarily.

Only public contracting authorities, sectoral contracting entities and grantors of a concession are entitled and obligated to consult the register in connection with specific award procedures. Information may only be provided to officials who are entrusted with accepting the information or with handling the award procedure. In addition, companies or individuals can also request information concerning any registrations about them contained in the register for competition.

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The contracting authority or entity decides “in its own responsibility in accordance with public procurement legislation” whether a company should be excluded from the award procedure. While a registration that is based on a compulsory ground for exclusion will as a rule result in an exclusion, in cases where the violation only constitutes an optional reason for exclusion the contracting authority or entity will decide at its discretion whether a bidder should be excluded.

## Deletion, self-cleaning and remedies

Before a registration is made in the register for competition, the company concerned must be given an opportunity to provide comments within a period of two weeks in order to prevent erroneous registrations. If the company concerned is able to evidence to the registration authority that the data provided to it is erroneous, no registration will be made or the erroneous data will be corrected.

Registrations in the register for competition will automatically be deleted after three years (for regulatory fines) or five years (for criminal offenses). It is possible for a company with a registration to request its deletion before expiration of the relevant time period only if evidence of self-cleaning (remedial action) can be provided and a justifiable interest in deletion of the registration can be shown. The fee payable for making a request for an early deletion based on successful self-cleaning would as a rule be not more than EUR 25,000 and may reach EUR 50,000 in exceptional cases (under certain circumstances the higher amount can be reduced). If a registration in the register for competition has been deleted, the criminal or regulatory offense which resulted in the registration may no longer be used to the detriment of the company concerned in any public procurement procedures. If a request for deletion is rejected, the company can file an appeal before the competent Higher Regional Court.

A rejection of a request for an early deletion by the Federal Cartel Office as registration authority is not binding for contracting authorities or entities; they can in such a case decide at their own discretion if in their view the self-cleaning was sufficient or not. In accordance with § 8 (5) of the Competition Register Act, the Federal Cartel Office has to issue guidelines on how self-cleaning measures taken by companies with a view to an early deletion of registrations will be assessed by it.

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