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6.3. Individual responsibility

Please note that this country guidance document has been replaced by a more recent one. The latest versions of country guidance documents are available at https://easo.europa.eu/country-guidance.

COMMON ANALYSIS
Last updated: February 2019

The assessment of individual responsibility is based on the nature and extent of the applicant's involvement in the excludable act(s), as well as his or her state of mind in relation to these act(s). Different forms of conduct may lead to a finding of individual responsibility (for example, direct commission, inducing others, aiding and abetting, command responsibility, etc.), where the relevant intent and knowledge are established.

The applicable standard of proof is 'serious reasons for considering', which requires clear and reliable evidence, but is not as high as the standard for criminal responsibility ('beyond reasonable doubt').

The fact that the applicant was or is associated with a group or regime responsible for excludable acts(s) does not relieve the determining authority from demonstrating his or her individual responsibility.

However, depending on the nature, scale of the group or regime, the voluntary association with it and the position, rank, standing and influence of the applicant within the group, there may be sufficient evidence for both, the 'conduct' and the 'state of mind', requirements to be inferred. It remains necessary, however, that the decision-maker identify the relevant mode of individual responsibility and examine the facts in light of the respective criteria.

Furthermore, the examination should take into account potential grounds negating the individual responsibility, such as lack of mental capacity to comprehend and/or control one's conduct (e.g. due to age, mental disease or defect, involuntary intoxication), duress (for example, in the context of child recruitment by Boko Haram and CJTF), self-defence or defence of others (or property, in the case of war crimes), superior orders in specific circumstances, etc.

Depending on national practice, the analysis may further proceed to take into account whether or not the possible exclusion of the applicant would meet the purposes of the exclusion clauses. Elements, such as the fact that an applicant has already served a sentence for the (otherwise) excludable act, or that the act is subject to an amnesty, could potentially be taken into account. In relation to the militant groups in the Niger Delta, for example, the participation to the ongoing large-scale amnesty programme (DDR), initiated in 2009 and benefitting about 30 000 (former) militia members, could be taken into consideration [*Targeting*, 2.2.1].

The more egregious the excludable acts are, the less relevant such aspects would be when taking the decision.

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