

Highlights

- The CJEU has consistently identified two purposes that underpin the exclusion clauses: to exclude from international protection persons who are deemed undeserving of the protection and to prevent international protection from enabling those who have committed serious crimes to escape criminal liability.

- These purposes, combined with the serious consequences of exclusion, underline the CJEU's insistence on the exceptional nature of exclusion and the rejection of automatic exclusion based on group membership or association. Accordingly, national courts have consistently emphasised the need for a restrictive application of the exclusion provisions, with the standard of proof lower than that of criminal law.

- In its first ruling interpreting the grounds for exclusion from international protection in 2010, the CJEU established in *B and D* that exclusion under Articles 12(2)(b) and (c) of the Qualification Directive cannot be applied automatically based on mere membership or participation in an organisation listed as terrorist. An individualised assessment of the specific facts is required, and a share of responsibility for the acts must be attributable to the applicant based on objective and subjective criteria, including their role, position within the organisation, knowledge of its activities and any pressure to which they were exposed. The CJEU also confirmed that exclusion is not conditional on the applicant representing a present danger and a proportionality assessment is not required.

- The most commonly applied exclusion grounds are Article 12(2)(b) and 17(1)(b) which concern persons who have committed a serious (non-political) crime. Neither the EU asylum *acquis* nor the CJEU has defined 'serious crime', while the *Galte* ruling of 2025 held that the concept must be understood in line with its everyday meaning. This absence of a uniform definition, combined with the continuing influence of national criminal law classifications on how courts approach the assessment in practice, remains a key obstacle to the uniform application of this exclusion ground across EU+ jurisdictions.

- Nevertheless, the CJEU was instrumental in establishing a multi-factor seriousness assessment framework that is broadly accepted in principle. In *Ahmed*, the CJEU ruled that 'serious crime' is an autonomous concept of EU law requiring uniform interpretation across Member States. The penalty provided under national criminal law, while of particular importance, cannot be the sole determinant of seriousness; a fully individualised

assessment of the specific facts is required, taking into account the nature of the act, its consequences, the form of procedure used, the nature of the penalty and whether other jurisdictions also classify the act as serious.

- While in *B and D*, the CJEU confirmed that acts of international terrorism may be considered to be acts which are contrary to the purposes and principles of the UN within the scope of Article 12(2)(c), in *Lounani* the CJEU expanded the material scope of this ground considerably. It confirmed that exclusion is not limited to the direct commission of terrorist acts but extends to conduct that supports, facilitates or enables terrorist activity, including recruitment, organisation of travel and logistical support. It clarified that exclusion is not contingent on a prior criminal conviction for a terrorist offence and may apply irrespective of whether the terrorist organisation ultimately perpetrated terrorist acts. An individualised assessment of personal responsibility is required, with a prominent position within the organisation or a prior conviction serving as important but non-essential indicators.

- In the context of cases linked to terrorism, the most consequential divergence in national case law concerns whether a given group qualifies as a terrorist organisation, as illustrated by contrasting approaches to the Kurdistan Workers Party (PKK) and jihadist groups. Courts have given different weight to the EU Council Common Position 2001/931/CFSP, drawn different inferences from shared open-source databases and applied different thresholds for how remote from the actual terrorist act individual conduct can be before falling outside of Article 12(2)(c). The result is that identical conduct, such as fundraising or promotional activities for a terrorist organisation, can produce opposite outcomes depending on the jurisdiction.

- Beyond terrorism, courts have increasingly applied this ground to conduct such as state-facilitated exploitation, interference with international criminal justice, and human trafficking and smuggling. A central divergence concerns which international legal instruments can support a finding under Article 12(2)(c). Courts which require an explicit Security Council Resolution apply a more constrained scope, while courts drawing on the broader corpus of international law extend the ground more widely. This divergence has emerged most clearly in human smuggling cases.

- Article 17(1)(d) (danger to the community and security of a Member State) is exclusive to subsidiary protection and focuses on the present and future danger posed by the applicant. In *GM*, the CJEU confirmed that the determining authority bears the responsibility for the exclusion assessment and cannot rely solely on opinions or decisions of national security or other specialist bodies. It must form its own reasoned view on the basis of all relevant information, assessed independently, and state reasons in fact and in law.

- A foundational principle is that exclusion must rest on individual and not collective responsibility. This has recently been codified in the Qualification Regulation and national courts have drawn on Article 25 of the Rome Statute and guidance by the EUAA and UNHCR, which identify five modes of participation: direct commission, inducement, aiding and abetting, joint criminal enterprise, and command responsibility. Each carries its own requirements as regards the nature of the applicant's contribution and their knowledge and intent.

- Despite this framework, national courts diverge significantly in how they assess individual responsibility in practice. Most courts do not identify the relevant mode of participation before conducting the assessment, which leads to the inconsistent application of different evidentiary criteria. Divergence is particularly pronounced on what constitutes a 'substantial contribution' to an excludable act. Courts have also diverged on whether aiding and abetting requires purpose-based intent or whether knowledge that one's conduct would facilitate the crime suffices, and on the extent to which knowledge and contribution can be inferred from country of origin information which documents the systemic context, rather than established through specific evidence of the applicant's conduct and awareness. These divergences produce different outcomes for applicants in comparable situations.

- The assessment of mitigating factors which negate individual responsibility forms an essential next step in the exclusion analysis, as confirmed by the CJEU in *Lounani*. National courts have generally drawn on Articles 31-33 of the Rome Statute, covering grounds such as duress, superior orders, self-defence and capacity to act. Courts have adopted a consistently cautious approach, with mitigating grounds rarely succeeding in negating individual responsibility, particularly when the crimes are serious.

- In the landmark ruling of *Galte* (C-63/24, 30 April 2025), the CJEU confirmed for the first time that post-offence considerations must form part of the exclusion assessment under Article 12(2)(b). While the factual element of the ‘crime' is fixed at the moment it was committed, the qualifying element of ‘seriousness' is an assessment that may evolve over time. Authorities must therefore consider the type of act, the sentence provided and imposed, the period elapsed since the conduct, the applicant's conduct during that period, and any remorse expressed. The CJEU gave particular weight to whether the applicant had served their sentence, while clarifying that this does not automatically preclude the application of the exclusion clauses. This ruling has already prompted shifts in national practices, most clearly in Belgium, where courts have begun annulling exclusion decisions for less grave offences in light of post-offence rehabilitation. The full impact of *Galte* across EU jurisdictions remains to be seen.

- The Qualification Regulation, directly applicable as of 12 June 2026 under the EU Pact on Migration and Asylum, codifies and extends existing CJEU jurisprudence on several points, including: the confirmation that a proportionality assessment is not required for any

exclusion ground, the clarification that exclusion from subsidiary protection may apply to convictions occurring after arrival, the requirement for an assessment of the individual responsibility of the applicant, and additional safeguards for minors. The Qualification Regulation is expected to reduce interpretive variation that previously arose from a non-uniform transposition of the recast Qualification Directive.

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