

3.2. CJEU jurisprudence

The CJEU has issued two key judgments which interpret Article 12(2)(c) of the recast QD, both arising in the context of terrorism-related conduct. These rulings are standard-setting because they ground the interpretation of Article 12(2)(c) in international counter-terrorism instruments, broaden the scope of relevant terrorism-related conduct that may be covered by this ground, while simultaneously establishing that exclusion cannot be applied automatically but requires an individualised assessment of the applicant's personal responsibility.

The CJEU's judgment in *B and D* (referred to in Section 2.2) constitutes the court's first engagement with the exclusion clauses under EU asylum law and therefore laid the foundations for subsequent jurisprudence. A central contribution of the ruling is that it links Article 12(2)(c) to the international legal framework on terrorism referenced in Recital 31 of the recast QD. In particular, it identifies the relevant UN Security Council resolutions related to terrorism, namely Resolutions 1373 (2001) and 1377 (2001).

On that basis, the CJEU held that Article 12(2)(c) may apply to individuals involved in terrorist acts with an international dimension during their membership of an organisation listed in the Annex to Common Position 2001/931.[6] However, the CJEU simultaneously rejected an approach based on automatic exclusion. Notably, it established that exclusion requires an individual assessment and cannot be inferred solely from membership or association with a listed organisation. This requirement reflects the broader principle that exclusion is exceptional in nature and must be grounded in individual responsibility rather than collective attribution.

In developing this reasoning, the CJEU drew an important distinction between the aims of Common Position 2001/931 and those of the recast QD, and held that while the listing mechanism can support the identification of the terrorist character of an organisation, it does not itself satisfy the requirements of Article 12(2)(c). The list may therefore function as an evidentiary indicator, but it cannot replace the asylum authority's assessment of the applicant's personal conduct. The CJEU reinforced this point by referring to the Council Framework Decision 2002/475 on combatting terrorism,[7] holding that participation in the activities of a terrorist group, within the meaning of Article 2(2)(b) of the Framework Decision, does not automatically fall within the scope of exclusion grounds. Instead, the decision-maker must establish individual responsibility on the basis of the specific facts.

Nevertheless, *B and D* left unresolved the precise threshold of conduct required for terrorism-related behaviour to qualify as acts contrary to the purposes and principles of the UN. In particular, the judgment did not comprehensively clarify whether indirect contributions to terrorism (such as logistical assistance or facilitation) fall within the scope of Article 12(2)(c).

The CJEU addressed these ambiguities in *CGRS* v *Mostafa Lounani* *[Lounani]* (C-573/14, 31 January 2017). This case marked a significant expansion of the material scope of Article 12(2)(c). The judgment is particularly important because it confirmed that exclusion is not limited to the direct commission of terrorist acts but may also extend to conduct that supports, facilitates or enables terrorist activity.

The CJEU reinforced the international law basis of Article 12(2)(c) by referring not only to the resolutions cited in *B and D* but also to additional Security Council resolutions, notably Resolution 1624 (2005) and Resolution 2178 (2014). These instruments explicitly call on states to combat not only terrorist attacks themselves but also preparatory and facilitative conduct, including recruitment, organisation of travel and logistical support. By relying on these resolutions, the CJEU interpreted the concept of acts contrary to the purposes and principles of the UN as encompassing a broader range of terrorist-related conduct rather than a narrow category of the direct commission of an attack.

A second major clarification in *Lounani* concerns the relationship between exclusion and criminal law. The CJEU rejected the argument that Article 12(2)(c) is contingent upon a prior criminal conviction for a terrorist offence, as defined in Article 1(1) of Framework Decision 2002/475. This is significant because it confirms the autonomy of EU asylum law from EU criminal law definitions. The CJEU emphasised that neither the wording nor the purpose of the recast QD supports making exclusion dependent on a conviction, and it noted that EU legislature deliberately refrained from cross-referencing the Framework Decision in the drafting of Article 12(2)(c).

The CJEU applied this reasoning to the facts of the case, which concerned a Moroccan national, Mr Lounani, who was convicted in Belgium for his participation in the activities of a terrorist group, namely the Belgian cell of the Moroccan Islamic Combatant Group (MICG). The CJEU held that participation in the activities of a terrorist group, as criminalised under Article 2 of Framework Decision 2002/475 and transposed into Belgian law, may fall within the scope of Article 12(2)(c) even when a terrorist act has not been committed, instigated or threatened by the applicant personally. The CJEU gave particular weight to the international dimension of the applicant's conduct, including his role as a member of the leadership of a UN-listed terrorist organisation, his involvement in the forgery and transfer of passports, and his active participation in organising a network which facilitated the travel of volunteers to Iraq. The CJEU held that such conduct may justify exclusion from refugee status.

Furthermore, the CJEU clarified that exclusion may apply irrespective of whether the terrorist organisation ultimately perpetrated terrorist acts or whether the individuals who were assisted went on to commit such acts. This confirms that Article 12(2)(c) is capable of capturing preparatory conduct, aligning the directive's exclusion mechanism with the preventive obligations emphasised in the Security Council resolutions.

At the same time, the CJEU reiterated the requirement of an individual assessment. While the existence of a criminal conviction and a finding of a leadership position were described as particularly important factors in evaluating personal responsibility, the judgment does not suggest that either constitute necessary conditions. This interpretation is consistent with the EUAA Practical Guide on Exclusion from International Protection (September 2026), which notes

that although Article 12(2)(c) uses the term ‘guilty’, the applicable standard of proof remains “serious reasons for considering” rather than proof beyond reasonable doubt. The CJEU’s approach therefore confirms that decisions on exclusion from international protection may rely on a lower evidentiary threshold than criminal proceedings, provided that the decision-maker establishes individual responsibility through a fact-specific assessment.

- 6

  Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism applies to persons, groups and entities involved in acts of terrorism, provides a definition of what is meant by “persons, groups and entities involved in acts of terrorism” (Article 2) and “acts of terrorism” (Article 3). The position also includes an annex with a list of persons, groups and entities to which the position applies.

- 7

  This has since been replaced by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism

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