

4.2.2. Individualised and independent assessment

The only CJEU judgment directly providing guidance for the interpretation of Article 17(1)(d) of the recast QD is *GM v Országos Idegenrendeszeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ [GM]* (C-159/21, 22 September 2022). While the case also concerned access to classified information (a question that falls outside the scope of this report), it provides important clarification on the evidentiary requirements and procedural obligations applicable to exclusion decisions under this provision, and in particular on the weight that may be given to opinions from national security bodies.

National case law demonstrates that generally asylum authorities afford substantial weight to assessments made by national security bodies. A case which demonstrated this is *A v Ministry of the Interior* (26 November 2020), in which the Portuguese Central Administrative Court upheld the exclusion of an applicant who had allegedly been identified by the Portuguese Security Intelligence Service (SIS) as having links to the Islamic State (ISIL/Daesh), including alleged membership of the organisation, possible involvement in activities linked to terrorism and possible links to a planned terrorist attack in Germany. SIS assessed that, if the information was confirmed, the applicant could constitute a risk to European and Portuguese internal security. Criminal investigations concerning possible terrorist-related activities had also been opened. The court acknowledged that the information available did not establish the applicant's involvement in terrorist activities with certainty and referred repeatedly to the existence of suspicions, probabilities and risk assessments rather than proven facts. Nevertheless, the court attached significant weight to the assessment carried out by SIS, whose statutory mission includes the prevention of terrorism and the protection of national security. The court also relied on the existence of a judicial decision ordering the applicant's placement in a temporary detention facility on national security grounds.

In *GM*, the CJEU provided important clarifications on how national authorities should take opinions by national security bodies into account. The CJEU noted that in accordance with the recast Asylum Procedures Directive (recast APD), the determining authority bears the sole responsibility for examining applications for international protection and for deciding on the withdrawal of such protection. Referring to Recital 16 of the directive, it emphasised that decisions on applications for international protection must be based on facts and taken by authorities whose staff have the appropriate knowledge and training in the field. While Article 4(2) of the recast APD permits certain tasks to be delegated to other authorities, this does not extend to examining an application for international protection or withdrawing a decision, which must be undertaken solely by the determining authority.

On this basis, the CJEU held that the application of Article 17(1)(d) requires an individualised assessment of the specific facts of each case, which is carried out by the determining authority. It ruled that the determining authority cannot confine itself to relying solely on a decision or opinion adopted by another body, including a national security authority, when deciding to exclude an applicant or withdraw international protection. The determining authority must form its own reasoned opinion on the basis of all relevant information available to it, which may include information provided by specialist security bodies, provided that it assesses that information independently and states reasons in fact and in law for its decision.

The practical implications of this ruling for judicial reviews have been interpreted differently at the national level. The Latvian Administrative District Court in *Applicant* v *Office of Citizenship and Migration Affairs of the Republic of Latvia* (26 June 2023), referencing *GM*, acknowledged that authorities have the right to collect and assess information about individuals who may pose security risks, but it held that the role of the court is not to reassess the threats established by national security authorities on their merits but rather to verify that those authorities have not acted arbitrarily.

A wider approach was adopted by the Court of Appeal in Cyprus in *Republic of Cyprus through the Asylum Service* v *B.A.M.* (25 September 2025), where the court found that the first instance court had failed to conduct a detailed analysis of the classified police and intelligence material relied upon by the Asylum Service and failed to adequately reason its decision. The Court of Appeal held that the lower court was obliged to assess and weigh each element relied upon by the asylum authority, including alleged links to terrorist organisations and contacts found on the applicant's telephone, and to explain why, taken individually or cumulatively, they did not justify exclusion from international protection.

The divergence between the Latvian and Cypriot approaches illustrates a broader uncertainty about the depth of the judicial scrutiny which is required following *GM,* including whether courts are limited to a review of arbitrariness or are required to conduct a full merits assessment of the security findings on which the exclusion decision rests.

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