

4.2.3. Genuine, present and sufficiently serious requirement

An important clarification emerging from CJEU jurisprudence concerns the temporal character of the danger required for the exclusion ground under Article 17(1)(d). Although the CJEU has not addressed this question directly in the context of that provision, its ruling in *XXX* v *CGRS* (C-8/22, 6 July 2023), which interprets Article 14(4)(b) of the recast QD, provides relevant guidance, given that both provisions use the same term 'constitutes' in describing the required danger. The CJEU noted that the use of this term in the context of establishing a danger to the community implies that the danger must be genuine and present, thus a potential danger would not be sufficient to satisfy the provision. On the other hand, in *K.A.M*, when interpreting the concept of a danger to national security, the CJEU held that such danger covers not only a genuine and present danger, but also a potential danger.

It follows that an assessment under Article 17(1)(d) must be focused on the danger the applicant represents at the time of the decision, rather than on past misconduct alone. Although the assessment of whether Article 17(1)(d) applies is informed by the past and present conduct of the applicant, it is ultimately an assessment of the present threat. In general, the finding of a genuine, present and sufficiently serious threat implies a propensity in the individual to repeat the conduct, constituting such a threat in the future. National jurisprudence across EU+ countries has consistently adopted this approach.

Past conduct may be a useful indicator to assess future risk, as follows from the ruling of the CJEU in *K.A.M*. In this judgment, the CJEU held that the competent authority cannot be required to exclude considering past conduct, as past acts or conduct may constitute relevant circumstances to ascertain whether the applicant has a tendency to maintain such conduct in the future or to repeat such acts. It ruled that such authorities must take into account the seriousness of the conduct or acts, the time elapsed since the conduct or acts occurred, and any subsequent developments.

National courts have broadly adopted this interpretation, though divergence has been observed concerning the threshold at which a genuine and present danger is considered to be sufficiently serious. In recent jurisprudence, a shift toward a wider interpretation of the concept has been observed. This is particularly evident in German case law. Previously, as evidenced by a ruling from the German Regional Administrative Court in *Applicant* v *Federal Office for Migration and Refugees* (21 January 2022), a demanding standard was applied by the court which held that a danger to the community or state security must involve a concrete threat of serious criminal conduct of significant weight, comparable to offences such as terrorism, homicide or major

trafficking crimes. The court rejected any suggestion that an abstract or generalised danger could suffice and held that the required individualised assessment resembles a risk prognosis of the kind used in expulsion proceedings, which is not rendered unnecessary by a prior conviction or the completion of a sentence.

However, in a landmark ruling pronounced on 8 June 2026 (*Federal Office for Migration and Refugees* v *Applicant*), the Federal Administrative Court in Germany adopted a different stance. It held that the establishment of a danger does not necessarily require the commission of certain criminal offences of particular gravity but may also be justified in the case of an accumulation of significant violations of the law, which as a whole lead to serious concerns about an impairment of fundamental social interests or a significant disturbance of the peace of law.

A similar line of reasoning was adopted by the Supreme Administrative Court (SAC) in Poland, which held that, while Article 17(1)(d) concerns conduct displaying a significant degree of seriousness, an accumulation of acts which individually do not reach the threshold of a serious offence may be relevant when the number and nature of violations affect the assessment of the person's future conduct. The court stated that as a rule this ground should apply to applicants who are highly socially maladjusted, radicalised or systematically engaged in activities the nature of which disrupt the proper functioning of the state and undermine fundamental social order. It elaborated that this includes, for example, objectively and reliably established involvement in serious criminal activity, repeated offending or socially disruptive conduct demonstrating an intentional disregard for the legal order.

In two recent cases, the court examined the application of the exclusion provision to applicants who committed the offence of driving a vehicle while intoxicated. However, the circumstances of the offences differed, ultimately leading the court to reach opposite conclusions. In *A.S.* v *Head of the Office for Foreigners* (29 October 2025), SAC considered that the applicant’s conduct went beyond an isolated offence as he had intentionally breached road safety rules while intoxicated, causing an accident in which another person was injured and had a further traffic-related history. A sentence of 1-year imprisonment suspended for 3 years was imposed, together with a 7-year prohibition on driving, a monetary payment and costs. SAC regarded this conduct as demonstrating disregard for legal order and considered that the circumstances supported a finding that future violations could not be excluded. It highlighted that persistent and deliberate violations of legal provisions, particularly criminal law provisions, threaten public order and security. It therefore found that the required genuine, present and sufficiently serious threat to society was established, despite the applicant’s subsequent period without further offending and the expungement of an earlier offence.

In contrast, in *RS* v *Head of the Office for Foreigners* (16 April 2026) the applicant had no previous criminal record and had committed a single offence of driving while intoxicated, for which he received a fine and the minimum statutory driving prohibition. SAC held that the general social harmfulness of the offence and the applicant’s alleged disregard for the legal order did not establish the nature of a present threat required by Article 17(1)(d). In particular, there was insufficient evidence to support the finding that he posed a future risk of non-compliance with the law. SAC therefore concluded that the single offence did not constitute the type of conduct capable of establishing a danger to the community or a threat to state security

under Article 17(1)(d), and it annulled the exclusion decision. The two cases therefore show that the same type of offence may lead to different outcomes under Article 17(1)(d), depending on the seriousness and pattern of the conduct and the evidence that it indicates a present and future threat to the community or state security.

The Latvian Administrative District Court has also taken a broad approach, as illustrated in *Applicant* v *Office of Citizenship and Migration Affairs of the Republic of Latvia* (26 June 2023). Drawing on Latvian constitutional law, citizenship law and national security legislation, as well as judgments of the Latvian Constitutional Court, the court defined public security as encompassing not only threats to national security and territorial integrity but also conduct that society regards as incompatible with the harmonious functioning of a democratic state. Based on this analysis, the concept extends considerably beyond the threat of a specific and serious violent offence.

As the case law examined in the following section demonstrates, the Latvian court and courts in several other EU+ countries have applied Article 17(1)(d) to patterns of antisocial behaviour and general concerns about public order and security, rather than limiting its application to the concrete risk of an exceptionally serious crime.

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