

5. Individual responsibility

Exclusion clauses cannot be applied automatically to someone who has been associated with a criminal organisation, armed group or repressive regime. Before an applicant can be excluded from international protection, it must be established that they bear individual responsibility for the excludable acts in question. The requirement that responsibility must be individual rather than collective is one of the most fundamental principles governing the application of the exclusion grounds, and one that has been consistently affirmed by the CJEU and endorsed by the EUAA and UNHCR guidance.

The preceding sections address the material element of the exclusion assessment which considers if the act itself confirms exclusion from international protection. This section addresses the equally important question of whether the individual applicant can be held responsible for that act, which is not straightforward. Individual responsibility may arise in a variety of ways: through the direct commission of the excludable act, inducing or ordering others to commit it, aiding and abetting its commission, participating in a joint criminal enterprise or having command responsibility in a superior-subordinate relationship. Each of these modes of participation carries its own requirements, and the applicable criteria differ depending on which mode is engaged. Establishing the relevant mode of participation is only the first step. It must also be shown that the applicant acted with the requisite knowledge and intent in relation to the excludable acts. National courts have diverged most significantly at this stage of the assessment, producing different outcomes in comparable cases.

Section 5.1 sets out the applicable international legal framework for establishing individual responsibility. Section 5.2 examines the relevant CJEU jurisprudence. Section 5.3 outlines the assessment framework drawn from the EUAA and UNHCR guidance. Finally, Section 5.4 analyses the divergences and challenges that have emerged in national practices, addressing in turn the assessment of what constitutes a ‘substantial contribution’ and the knowledge and intent requirement to establish individual responsibility.

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