

6. Grounds negating individual responsibility

The assessment of factors capable of negating individual responsibility forms an essential next step in the exclusion analysis. In *Lounani,* the CJEU confirmed the relevance of such factors, noting that when assessing an applicant's share of responsibility for an excludable act, regard must be paid to “any pressure to which he was exposed or other factors likely to have influenced his conduct”. Under Articles 12(2)(5) and 17(5), the QR adds additional safeguards for minors in this regard, as it references the need for the determining authority to assess a minor’s capacity to be considered responsible under criminal law had the minor committed the crime on the territory of the Member State, in light of the national law on the age of criminal responsibility. It therefore codifies minority as one ground which may negate individual responsibility.

In practice, courts generally conduct this assessment by reference to Articles 31-33 of the Rome Statute, which recognise the following grounds for excluding criminal responsibility: mental disease or defect, intoxication, self-defence, duress, mistake of fact or law, superior orders and prescription of law.

The EUAA Practical Guide on Exclusion from International Protection (September 2026) aligns closely with this international legal framework. It groups mental disease or defect, involuntary intoxication and immaturity under justifications relating to capacity to act, and treats duress, self-defence and superior orders as defence-based justifications.

The following subsections analyse how national courts have interpreted and applied each of these grounds in practice. The jurisprudence reviewed reveals a consistently cautious judicial approach to negating individual responsibility on these grounds, particularly when the crimes in question are serious. Only a small number of courts routinely assess for negating factors even if none are invoked by the applicants.

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