

Conclusions

Exclusion clauses under EU asylum law are a complex and evolving area of jurisprudence in which the interplay between international criminal law, EU asylum law and national court interpretations continues to generate both convergence and divergence across EU+ jurisdictions. While the CJEU has played an indispensable standard-setting role, most notably through its judgments in *Germany* v *B and D*, *Shajin Ahmed*, *Lounani*, *GM* and, most recently, *Galte*, the analysis of national case law reveals that significant gaps in harmonisation persist, with potentially serious consequences for the coherence and fairness of exclusion decisions across the CEAS.

Several unresolved legal questions and challenges of significant practical importance have been identified. With regards to the ground of a serious (non-political) crime, a uniform definition of a serious crime does not exist across jurisdictions. The *Ahmed* criteria have not been given any hierarchical weighting, leaving courts to weigh them differently. There is also no consensus on what length of sentence is indicative of seriousness, nor on whether the actual sentence or the maximum available is the more relevant reference point.

Concerning acts contrary to the purposes and principles of the UN, the CJEU in *Lounani* confirmed that facilitation of terrorism or a terrorist act can fall within Article 12(2)(c) but left unresolved how remote or minor the conduct may be before it falls outside of the provision, with national courts subsequently applying different thresholds. Courts have also reached opposite conclusions on whether specific groups qualify as terrorist organisations. As the terrorist character of a group is a threshold question for the application of *Lounani*, this divergence may produce entirely different outcomes for identical conduct.

Beyond the context of terrorism, there is divergence on whether findings under this ground require an explicit UN Security Council resolution or whether a broader range of international instruments can suffice. Courts which have relied on a broader scope of instruments have applied this ground to acts which would not have been covered through a more restrictive approach, such as human smuggling.

Finally, the concept of ‘serious and sustained violations of human rights’ as a distinct basis for exclusion on this ground has generated very little jurisprudence. The French CNDA’s ruling which designated human trafficking by the state as a serious and sustained violation of human rights provides one interpretive model, but the threshold remains undefined on how systematic the violations must be, whether a state nexus is required and which rights qualify.

Regarding Article 17(1)(d) (Danger to the community or security of a Member State), the CJEU confirmed that a danger to the community must be genuine and present, but it has not specified

how serious the threatened conduct must be. While German courts previously required a concrete threat comparable to terrorism, homicide or major trafficking, the German Federal Administrative Court has recently shifted this stance to encompass the accumulation of less serious violations. Similarly, courts in France and Latvia have applied this ground in the case of applicants who demonstrate a pattern of antisocial behaviour and institutional non-compliance. Additionally, following the CJEU's ruling in *GM*, the depth of a judicial review of national security assessments remains unresolved and courts have interpreted this differently.

The assessment of individual responsibility, and in particular the modes of participation and the applicable requirements, emerges as the area of greatest divergence at the national level. Most national courts do not identify the specific mode of participation before conducting the assessment, meaning that different evidentiary criteria, which vary by mode, are applied inconsistently. What constitutes a 'substantial contribution' is interpreted in fundamentally different ways, while the requirements for knowledge and intent also raises several points of divergence, including on whether aiding and abetting requires purpose-based intent or knowledge that one's conduct would facilitate the crime, and to which extent can individual knowledge about abusive practices within an institution be inferred from COI documenting its widespread nature.

The CJEU's 2025 ruling in *Galte* marks a significant step forward in the evolution of the exclusion framework, confirming that post-offence factors – such as serving a sentence, the passage of time, subsequent conduct and the expression of remorse – must form part of the assessment of the seriousness of a crime. This ruling, which aligns CJEU jurisprudence with the longstanding position of the EUAA and UNHCR, offers national authorities a clearer basis for conducting a more holistic and temporally-sensitive assessment. The early incorporation of the *Galte* reasoning into Belgian case law suggests that this judgment has the potential to introduce a meaningful corrective to the previously rigid approach of some national courts. However, the full impact of this ruling across EU+ jurisdictions remains to be seen, and its implementation will require sustained attention and guidance.

Looking forward, the direct applicability of the QR from 12 June 2026 is expected to reduce some of the interpretive variation that previously arose from the non-uniform transposition of the recast QD. The QR confirms that no proportionality assessment is required for any exclusion ground, clarifies the temporal scope of exclusion from subsidiary protection, codifies the requirements for an assessment of the individual responsibility of the applicant, and adds additional safeguards for minors.

These developments are welcome, but the QR does not resolve the deeper substantive questions identified in this report. The challenges of securing a consistent and fair application of the exclusion clauses across EU+ countries will continue to require judicial engagement and authoritative guidance from the CJEU. The harmonisation of outcomes will largely depend on the consistent application of this framework by national decision-makers and courts.

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