Practical Guides and Tools

EUROPEAN UNION AGENCY FOR ASYLUM

Practical Guide on Exclusion from International Protection

September 2026

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About the guide

Why was this guide created? The mission of the European Union Agency for Asylum (EUAA) is to facilitate and support the activities of Member States of the European Union (EU) and the Schengen associated countries ([1]) in the implementation of the Common European Asylum System (CEAS). In accordance with its overall aim of promoting the correct and effective implementation of the CEAS and of enabling convergence, the EUAA develops common operational standards and indicators, guidelines and practical tools.

This guide is a second edition that was developed, in particular, to incorporate the necessary updates to align the text with the relevant provisions of the Pact on Migration and Asylum and jurisprudence of the Court of Justice of the European Union. The purpose of the practical guide on exclusion is to assist in detecting and examining potential exclusion cases.

How was this guide developed? This guide was drafted by a working group of experts from across the EU and the EUAA, with valuable input from the European Commission and the United Nations High Commissioner for Refugees (UNHCR) ([2]). The development was facilitated and coordinated by the EUAA. Before finalisation, a consultation on the guide was carried out with all EU Member States and Schengen associated countries through the EUAA Network on Exclusion and Security in Asylum. The EUAA would like to extend its thanks to the members of the working group who contributed to the development of this guide which included Anne Clouet, Antonio Guerrieri, Charis Panagiotidou and Victoria Dahlberg.

Who should use this guide? This guide is primarily intended for officials of the national determining authorities of the Member States and the Schengen associated countries. It refers to case officers in general. Its main target group are interviewers and decision-makers, but it could also be a useful tool for officials in first-contact situations, along with anyone else who could be involved in the detection and/or handling of an exclusion case.

The practical guide caters to the needs of case officers to whom the topic of exclusion is a new topic: for them the tool will be primarily of awareness-raising value; it also serves the needs of those with years of experience, including specialised exclusion case officers, for whom it could serve as a practical reminder.

Additionally, this tool is useful for quality officers and legal advisers, as well as any other person working or involved in the field of international protection in the EU context.

How to use this guide. The guide facilitates the examination of the applications for international protection as from 12 June 2026, based on Regulation (EU) 2024/1347

([1]) The 27 Member States and Iceland, Liechtenstein, Norway and Switzerland.

([2]) Note that the finalised guide does not necessarily reflect the positions of consulted entities.

(Qualification Regulation, QR) (3), including those lodged prior to that date as long as a decision has not been issued in the administrative procedure. It focuses on Article 12(2)-(5) QR, based on Article 1F of the 1951 Refugee Convention (4) and Article 17 QR, i.e. the provisions regulating exclusion in cases where the applicant is deemed not to 'deserve' international protection (5).

Exclusion under Article 12(1)(a) and (b) QR, based, respectively, on Articles 1D and 1E of the 1951 Refugee Convention, i.e. if the applicant already benefits from protection and therefore is not in need of refugee status protection, is not within the scope of this guide.

A number of concepts addressed in this practical guide are drawn from criminal law, national or international, as well as international humanitarian law. However, it should be underlined that exclusion is an institution of asylum law, which differs in its essence and objectives from the previously mentioned bodies of law, and specific considerations apply in this regard.

The guide supports the user from the detection of a potential exclusion case to the written decision and potential follow-up, including references to relevant resources in the Annex. Resources. It is accompanied by checklists available at https://www.euaa.europa.eu/publications/checklists-exclusion-international-protection. These checklists show what needs to be done to navigate, in a structured manner, the complex process of exclusion from international protection.

In this guide, the term '**decision to exclude**', '**exclusion decision**' or **other similar variants** must be construed, depending on the context, as referring to a decision to reject the application for international protection and/or to withdraw international protection **based on an exclusion ground**.

How does this guide relate to national legislation and practice? This is a soft convergence tool. It is not legally binding and reflects commonly agreed standards as adopted by the EUAA Management Board in July 2026. The manner in which these common standards are applied in practice depends on the national legislation and practice.

(3) Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024), http://data.europa.eu/eli/reg/2024/1347/oj.

(4) UN General Assembly, Convention relating to the status of refugees, Geneva, 28 July 1951, UN Treaty Series, vol. 189, p. 137, https://www.refworld.org/docid/3be01b964.html, and Protocol Relating to the Status of Refugees, 31 January 1967, UN, Treaty Series, vol. 606, p. 267 (referred to in EU asylum legislation and by the Court of Justice of the European Union as 'the Geneva Convention'), https://www.refworld.org/legal/agreements/unga/1967/41400.

(5) Note that the regulation applies from 12 June 2026 in accordance with the Corrigendum to Article 42 QR (Entry into force and applicability). See Corrigendum to Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024) (OJ L, 2025/90926, 25.11.2025), http://data.europa.eu/eli/reg/2024/1347/corrigendum/2025-11-25/oj.

How does this guide relate to other EUAA tools? The EUAA *Practical Guide on Exclusion from International Protection* 2026, should be used in conjunction with other relevant practical guides and tools [6], country guidance [7] and training materials [8].

Some of the EUAA practical guides, tools and materials to which this practical guide refers will be published and/or progressively updated between 2026 and 2027. The updates will align the publications with the legislative instruments of the Pact on Migration and Asylum. Once published, the publications will also be available online at the EUAA webpages listed in the footnotes above.

Disclaimer

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.

Following an initial period of implementation of the Pact on Migration and Asylum, this document may require updating, as needed.

References to judgments of the Court of Justice of the European Union that interpret provisions of the 2011 Qualification Directive and 2013 Asylum Procedures Directive have been kept in this guide where there is an understanding that the principles referred to remain valid for the application of the provisions of the Qualification Regulation and Asylum Procedure Regulation, in particular where the text of the relevant articles and the context remained (largely) unchanged. This is, however, without prejudice to different interpretations that might be provided by the Court in future case-law on the Qualification Regulation and Asylum Procedure Regulation.

(6) EUAA practical tools are publicly available on the EUAA website: https://euaa.europa.eu/practical-tools-and-guides.

(7) EUAA country guidance documents are available on the EUAA website: https://www.euaa.europa.eu/asylum-knowledge/country-guidance.

(8) For information about the EUAA exclusion training modules see: EUAA, 'Exclusion and end of protection modules' in Training Catalogue, https://euaa.europa.eu/training-catalogue/exclusion-modules.

Contents

List of abbreviations

Abbreviation	Definition
APR	**Asylum Procedure Regulation –** Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
EASO	European Asylum Support Office
EUAA	European Union Agency for Asylum
EU	European Union
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
QR	**Qualification Regulation** – Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council
Rome Statute	Rome Statute of the International Criminal Court
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. What is exclusion?

This practical guide refers only to exclusion under Articles 12(2)-(5) of the Qualification Regulation (QR) (9), based on Article 1F of the 1951 Refugee Convention (10), and Article 17 QR.

Below are a few key messages to introduce the case officer to the topic of exclusion.

Applying the exclusion clauses is mandatory

Important

When there are serious reasons to consider that the requirements of an exclusion clause as provided for in Articles 12(2) and/or 17(1) QR are met, the application of exclusion is mandatory. The application of an exclusion clause is also mandatory for persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein, as laid down in Article 12(3) and Article 17(2) QR.

The only exception to the mandatory character of the exclusion clauses is Article 17(3) QR (exclusion from subsidiary protection based on other crimes that do not qualify under Article 17(1)(a), (b) and (c), if certain conditions are met).

The purpose of exclusion is to safeguard the integrity of the institution of asylum

Exclusion applies to those who would otherwise qualify for international protection due to a well-founded fear of persecution or real risk of serious harm. It constitutes a necessary safeguard for the integrity of the institution of asylum.

(9) Regulation (EU) 2024/1347, see footnote 3.
(10) Convention relating to the status of refugees, see footnote 4.

Figure 1. The main (dual) objectives of exclusion

Those undeserving of international protection

Certain acts are so serious that the persons who can be held responsible for them are deemed to be undeserving of international protection.

Those evading criminal liability

The international protection framework should not allow individuals to escape being held accountable for crimes they have committed.

Important

Given the serious consequences this may have for the individual, the application of the exclusion clauses should always be considered in a restrictive manner and with great caution.

Grounds for exclusion

Exclusion is applicable if there are **serious reasons for considering** that the applicant incurred individual responsibility for excludable acts (or, in the case of subsidiary protection, that the person constitutes a danger to the community or to national security). It would only be justified with regard to the following exclusion grounds ([11]).

Figure 2. Grounds for exclusion

Refugee status

- Crime against peace, war crime and crime against humanity
- Serious non-political crime outside the country of refuge prior to admission as a refugee
- Acts contrary to the purposes and principles of the United Nations

Subsidiary Protection

- Crime against peace, war crime and crime against humanity
- Serious crime prior to arriving on the territory of the Member State or conviction for a serious crime after arrival
- Acts contrary to the purposes and principles of the United Nations
- Danger to the community or to national security
- Other crime(s) (under certain circumstances)

([11]) Articles 12(2)-(3) and 17(1)-(3) QR.

The exclusion grounds for refugee status and subsidiary protection are similar and stemming from the provisions of Article 1F of the 1951 Refugee Convention; however, it should be noted that they are not exactly the same.

Article 17 QR removes some of the requirements for serious crimes and broadens the material scope of exclusion (as compared to Article 12 QR) to include cases where the person has been convicted for a serious crime after arrival on the territory of the Member State (Article 17(1)(b) QR). It also introduces additional exclusion grounds (Article 17(1)(d) and Article 17(3) QR) for subsidiary protection.

Further guidance on the qualification of excludable acts and on determining individual responsibility can be found in the specific sections below.

Individual assessment of the case

Any decision to exclude a person from international protection must be based on an individual analysis of the specific facts of each case, taking into account all the circumstances surrounding the crimes or acts attributed to that person and their situation. The exclusion decision cannot be taken automatically ([12]).

The burden of proof that the exclusion criteria are fulfilled is on the state

The burden of substantiating that the exclusion criteria are fulfilled is on the state whilst the applicant has a duty to cooperate in establishing all the facts and circumstances relevant to their application. Issues regarding defences would usually be brought up by the applicant. However, it is the duty of the case officer to explore all circumstances fully, including defences, whether they are explicitly raised by the applicant or not.

It is important to note that, under specific conditions, the burden of proof may shift to the applicant.

Further guidance on this can be found in the Section [5 Evidence assessment](#).

([12]) In line with Articles 12(4) and 17(4) QR. See also Judgment of the Court of Justice of 30 April 2025, *K. L.* v *Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos*, C-63/24 (*Galte*), ECLI:EU:C:2025:292, paragraphs 40 and 41, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62024CJ0063. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=5009; Judgment of the Court of Justice of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid* v *M.A,* C 402/22, ECLI:EU:C:2023:543, paragraph 30, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0402. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3500; Judgment of the Court of Justice of 13 September 2018, *Shajin Ahmed* v *Bevándorlási és Menekültügyi Hivatal*, C-369/17, ECLI:EU:C:2018:713, paragraph 49, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0369. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=215.

‘Serious reasons for considering’ – standard of proof

It is important to mention that although exclusion relies on a number of criminal law concepts and definitions, the standard of proof applied to exclusion is not as high as the ‘beyond reasonable doubt’ standard applied to establish criminal responsibility. ‘Serious reasons for considering’ requires clear and credible evidence.

Further guidance on this can be found in the Section 5 Evidence assessment.

No proportionality test linked to the fear upon return is required to exclude

Once the determining authority has established, based on an assessment of the seriousness of the crimes or acts committed by the person concerned and of that person’s individual responsibility, taking into account all the circumstances surrounding those crimes or acts and the situation of that person, that one or more of the relevant exclusion grounds apply, it must exclude an applicant from international protection without performing a proportionality assessment linked to the fear of being persecuted or to the fear of serious harm ([13]).

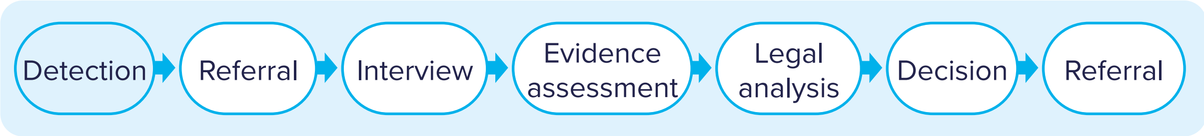
Exclusion does not imply a position on return to the country of origin

In accordance with EU law, the exclusion of a person from international protection does not mean that the question of whether the person can be returned to their country of origin is decided. A separate assessment must be made in this regard, observing the principle of *non-refoulement* ([14]).

([13]) In line with Articles 12(4) and 17(4) QR. See also Judgment of the Court of Justice of 9 November 2010, *Bundesrepublik Deutschland* v *B and D*, joined cases C-57/09 and C-101/09, ECLI:EU:C:2010:661, operative part (Court’s ruling), point 3, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CJ0057. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1234.

([14]) See Article 37 APR. See also *B and D*, see footnote 13, paragraph 110. Summary available in the EUAA Case Law Database; Judgment of the Court of Justice of 6 July 2023, *Bundesamt für Fremdenwesen und Asyl v AA, C-663/21*, ECLI:EU:C:2023:540, paragraphs 42 and 43 and ruling point 1 *mutatis mutandis,* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0663. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3499.

2. Detection of potential exclusion cases



Detection of a potential exclusion case can take place at any stage of the asylum procedure. It could be possible at the very beginning of the asylum procedure based on the information provided in the application and/or based on other available information. In some cases, indication of potential excludable acts would not appear before the actual personal interview or even after a person has been granted international protection.

In order to detect exclusion cases as early as possible, all staff involved in the asylum procedure should be aware of potential indications, in particular in relation to certain countries of origin.

It is important to gather as much information as possible on the person, their background, residence and employment history, family members, military service (if applicable), political affiliations, group membership, travel routes, and other relevant information. It should be noted that considerations relevant to the inclusion and exclusion aspects of an individual application are often closely linked. The case officer should remain open to all possibilities while being attentive to possible exclusion indications.

Use available detection resources

Further guidance may be available regarding potential indications when it comes to exclusion and/or issues concerning a danger to the community or to national security. Lists of indications related to specific countries of origin which highlight some of the most relevant potential profiles, while not exhaustive, may be a useful aide to case officers in order to detect whether an in-depth exclusion examination is required ([15]).

Such documents could be used in conjunction with this guide.

Consider the available information

The potential sources of information which would be relevant to exclusion are the same as those that would be considered in relation to inclusion.

Below is a **non-exhaustive** list of potential pieces of evidence that can contain possible indications and further information relevant to exclusion:

- identity and travel documents;
- country of origin information;

([15]) See also the available country guidance documents that can be consulted on the EUAA website: https://www.euaa.europa.eu/asylum-knowledge/country-guidance#section160-1.

- extradition requests, judgements, crime records and arrest warrants;
- screening form ([16]);
- information from official databases (e.g. alerts, notices, security flags ([17]));
- information shared by competent authorities in the Member State (e.g. security-relevant information);
- information shared by other Member States (e.g. in the context of take back notifications or during the procedure before relocation ([18]));
- statements made by the applicant including in the initial application and in interviews;
- evidence submitted by the applicant at any stage of the procedure;
- open sources and social media information (gathered according to national practice);
- statements made by others (family members, third parties).

The above could provide information with regard to the potential exclusion grounds, as well as the individual circumstances of the applicant, helping the case officer to prepare for the interview. Such information may result in an exclusion examination without prejudice to the requirement of an individual assessment of the case.

Related EUAA publication

More information on different pieces of evidence and their consideration can be found in the EUAA, *Practical Guide on Evidence and Risk Assessment,* January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment (update forthcoming).

Potential profiles

Awareness about exclusion, being prepared and reviewing the relevant country of origin information as well as checking the file for key elements, are a must.

([16]) See Article 17 of Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, https://eur-lex.europa.eu/eli/reg/2024/1356/oj.

([17]) See Article 17(2)(i) of Regulation 2024/1358/EU of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) no 603/2013 of the European Parliament and of the Council (OJ L, 2024/1358, 22.5.2024), https://eur-lex.europa.eu/eli/reg/2024/1358/oj/eng.

([18]) See Articles 49 and 67 of Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, 2024/1351, 22.5.2024), http://data.europa.eu/eli/reg/2024/1351/oj.

It should be underlined that it is not possible to present an exhaustive list of what circumstances may potentially indicate that exclusion could be considered.

The following list of profile examples is **non-exhaustive.**

The potential relevance of these indications would largely depend on the country of origin:	
▪ **soldier** ▪ **rebel group** ▪ **militia** ▪ **police (or particular branches of the police)** ▪ **intelligence services**	Where country of origin information indicates that serious violations of international humanitarian law (in the case of an armed conflict) or grave human rights abuses have been committed by such actors, if the applicant falls under the particular profile this would be an indication which needs to be explored further. Additional information should be collected regarding time, place, stations, commanders and/or subordinates, duties, etc. to establish whether grounds for exclusion might arise.
▪ **member of government** ▪ **public official**	If the applicant comes from a country with an oppressive government regime, their potential involvement with the government would be an indication that needs to be explored further. Depending on the country of origin, different levels of involvement, roles and responsibilities could be considered.
▪ **member of an organisation**	Depending on the aims, goals and methods of the organisation and on the applicant's activities, role and responsibilities, as well as their position within the organisation, this could be an indication that exclusion clauses should be considered.
▪ **persons otherwise linked to the categories above**	In some cases, persons who do not formally fall under the categories above may be implicated in the conduct of others who do. For example, medical personnel assisting in torture or female genital mutilation, discriminating against patients or withholding treatment or the provision of vital medicine; engineers or other personnel developing chemical/biological weapons; civilian informants, persons who fund or otherwise support an oppressive regime in the commission of excludable acts, etc.

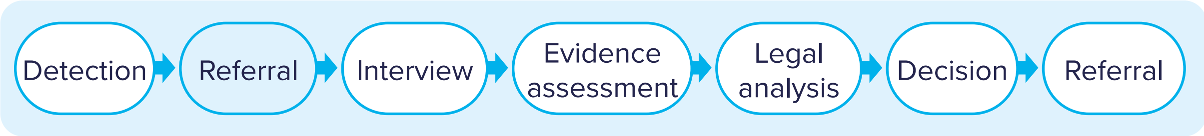
The potential relevance of these indications would largely depend on the country of origin:	
■ **link to an event**	Based on the information about the applicant (e.g. place of residence, a certain travel route or travelling to an area of conflict, bodily injures), they may be linked to an event related to potential exclusion considerations.

Additionally, and not necessarily related to the country of origin information:

■ **criminal act**	If there are indications that the applicant has committed a criminal act (e.g. murder, rape, drug trafficking or trafficking in human beings) this may be a trigger to consider the application of exclusion. It should be noted that attempt may in itself be considered a crime.

Note. Some applicants may have committed or participated in the commission of excludable acts in a manner that may not be immediately apparent due, amongst others, to their position, role, responsibilities and general activities. For instance, an individual may have committed crimes while not actively participating in the hostilities or as they operated remotely from the conflict zone. Similarly, members of the judiciary, police or other public authorities may have facilitated abuses committed by other actors such as arbitrary arrests and detention, torture or inhumane or degrading treatment.

3. Referral and procedural guarantees



According to national legislation and practice, specific procedural actions may be triggered for potential exclusion cases.

Refer the potential exclusion case

Depending on national practice, (potential) exclusion cases may have to be referred to a specialised unit, specialised case officer or a senior colleague, etc.

Ensure applicable procedural guarantees are in place

In some cases, in addition to the general procedural guarantees applicable in the asylum procedure, particular procedural guarantees may apply when a potential case of exclusion is considered.

- **Informing the applicant (and/or their legal adviser) that exclusion is being considered**

Depending on the national law and practice, an applicant and/or their legal adviser may be informed at different stages of the asylum procedure that exclusion is being considered, of the main reasons for such an examination and of the consequences of exclusion. This may be done orally, during the personal interview or as part of a dedicated interview on exclusion considerations, or through a separate written notification, based on the evidence that is available in the asylum casefile.

During the examination, the applicant should be in a position where they can effectively make their views known as regards the information on which the determining authority intends to base its exclusion decision (e.g. in the context of an interview or through written submissions) ([19]).

- **Appointing a legal adviser if applicable**

Depending on national legislation, a legal adviser may be appointed at the request of the applicant or at the initiative of the determining authority to legally represent them once the applicant has been informed that exclusion is being considered in their case ([20]). If applicable,

([19]) See Judgment of the Court of Justice of 22 September 2022, *GM* v *Országos Idegenrendeszeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ*, C-159/21, ECLI:EU:C:2022:708, paragraphs 45-46, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0159. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2755.

([20]) See Article 15(3) APR.

the applicant should be provided with the necessary referral information. It can also be considered to offer dedicated legal counselling at this point of the examination process.

- **Granting access to restricted information or sources**

The applicant must be afforded, if necessary through a legal adviser, to access the information in their file on the basis of which a decision is or will be taken.

In some cases, relevant information for the exclusion examination may be available to the case officer that cannot be disclosed to the applicant as it may jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates. This may also be the case where the investigative interests relating to the examination of applications for international protection or the international relations of the Member State would be compromised or where the information or sources are classified under national law.

To ensure the applicant's right of defence in the circumstances above, access to such information that is relevant for the assessment of the application must be provided to the legal adviser who legally represents the applicant and who has undergone a security check. The legal adviser must have the possibility to use the information received to present their point of view before the determining authority or the competent court, as applicable, concerning that information and its relevance for the decision to be made ([21]).

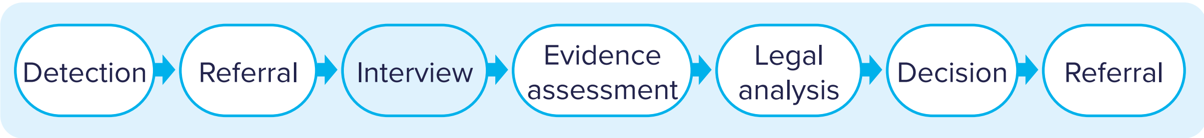
Important

An applicant whose involvement in potentially excludable acts is being considered should be afforded the special procedural guarantees they are entitled to, based on the assessments conducted by the competent authorities in the Member State concerned. The personal circumstances of the individual that are linked to these specific guarantees may also be relevant for the examination of their individual responsibility for the acts in question, including for the application of any grounds negating individual liability (e.g. age, serious mental illness or disorders) ([22]).

([21]) See Articles 18(1)-(3) APR; *GM*, see footnote 19, in particular paragraphs 47-58. Note that the CJEU held in paragraph 51 of the ruling that the rights of defence of the person concerned should be effective and the right to a remedy should not be rendered meaningless, in particular 'by not informing that person, or, as the case may be, his or her adviser, at the very least of the substance of the grounds on which the decision taken against him or her is based'. Summary available in the EUAA Case Law Database.

([22]) See Article 3(14) APR which defines the concept of 'applicant in need of special procedural guarantees' and Chapter II, Basic Principles and Guarantees, Section IV, on Special guarantees, APR.

4. Interview with a focus on exclusion



The interview is a fundamental element to accurately assessing whether an applicant should be excluded from international protection. It gives the case officer an opportunity to interact with the applicant directly and, most importantly, to present the evidence, giving the applicant an effective opportunity to address it.

Depending on national practice and on the case at hand, the interview with a focus on exclusion issues may form part of the (general) personal interview or could be a stand-alone interview focusing on exclusion matters.

In this section, the practical guide underlines some of the aspects of preparing and conducting an interview, which are particularly important from an exclusion perspective.

Related EUAA publication

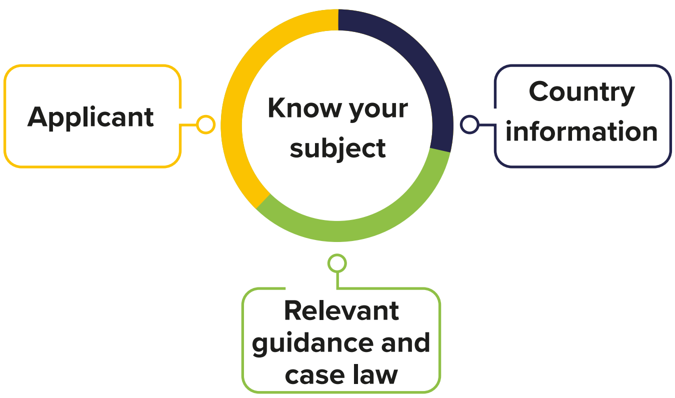
The general guidance on interviewing outlined in the EASO, Practical Guide: Personal interview, 2014 remains applicable, https://euaa.europa.eu/publications/practical-guide-personal-interview (update forthcoming).

4.1. Preparation

Importance of preparation – 'know your subject'

Preparation is the key element to conducting an exclusion interview. It can be broken down into three areas (see figure 3).

Figure 3. Preparation for the interview



Prior to the interview, the case officer should familiarise themself with all information available to them about the applicant. The case officer should also have a detailed understanding of the country where an excludable act was potentially carried out. Where relevant, this will include historical events, actors involved, as well as current affairs. When conducting research into both the applicant and the country, the case officer should utilise all available and reliable pieces of evidence (e.g. evidence from criminal proceedings, open source information).

They may also need to collect additional information, which is as specific as possible in relation to the individual case.

The case officer should consult available national and EUAA general and/or country-specific guidance on conducting an interview with a focus on exclusion. Additionally, case-law may be relevant when preparing to explore the necessary elements.

To the extent possible, identify the material facts related to exclusion

It is important for the case officer to distinguish between what is a material fact and what is not when exploring past and current events.

Important

The material facts related to exclusion are those that are directly linked to the exclusion clauses.

The case officer must identify any indications in the profile or actions of the applicant that point towards potential exclusion. In order to identify the material facts, the case officer should consider all elements of potential evidence, with a focus on the individual case.

Material facts should be identified as early as possible. Good preparation on the individual case at hand and on the country of concern assists the case officer in identifying the material facts and gives them the opportunity during the interview to react to what the applicant is saying. Failure to prepare, on the other hand, can lead to a failure to identify the material facts and distinguish them from potentially peripheral issues. It can lead to failure to accurately recognise and assess issues during the interview, which could then lead to weak and/or erroneous decisions.

This, of course, does not mean that all material facts would always be identified in preparation for, or even during, the interview. There may be many reasons for material facts to emerge at a later stage and the case officer should keep an open mind.

Related EUAA publication

More information on identification and formulation of material facts can be found in the EUAA, *Practical Guide on Evidence and Risk Assessment,* January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment (update forthcoming).

Prepare a case plan

Each case officer develops their own individual method of preparation. Having identified relevant material facts, it could be useful to draw up a timeline of areas to be covered during the interview. The level of detail of the plan is down to the individual case officer's preferences, but the case officer should not lose focus of the purpose of the interview and should remain flexible.

A chronological or logical/thematic structure to an interview is useful and may assist when drafting a decision; however, there is a fine balance to strike, as being too prescriptive in the case plan may be counter-productive for the interview.

The case plan should cover the material facts, i.e. the elements of the exclusion clauses, including aspects relevant to individual responsibility, to the extent they have been identified at this stage of the process. If at this point any potential credibility issues have been noted, they can also be reflected in the case plan in order to address them during the interview.

Prepare mentally

The case officer should give themself plenty of time to consider who they are interviewing and why. The case officer should also factor in that exclusion interviews can be intense and long.

Not all applicants who are interviewed in relation to possible exclusion issues will have significant profiles though some may have. For example, the applicant may have a background that suggests that they are used to being in a position of authority and control and/or have intelligence and counter-intelligence training.

Some applicants, including in potential exclusion cases, may have experienced traumatic situations or have other special needs due to vulnerability. It is important to remember and take this into account when the case officer is doing their mental preparation.

The case officer should also ask themself which attitudes, thoughts or preconceptions relevant to the case may influence their objectivity and should make an effort to avoid them.

Make practical arrangements

- **Consider whether it is appropriate to involve another case officer**

Based on the profile of the applicant and on national practice, it may be appropriate to involve another case officer in the conduct of the interview. Individual circumstances should be taken into account as well as the set-up available for the interview.

In some Member States, specific rules in this regard may apply to (potential) exclusion cases.

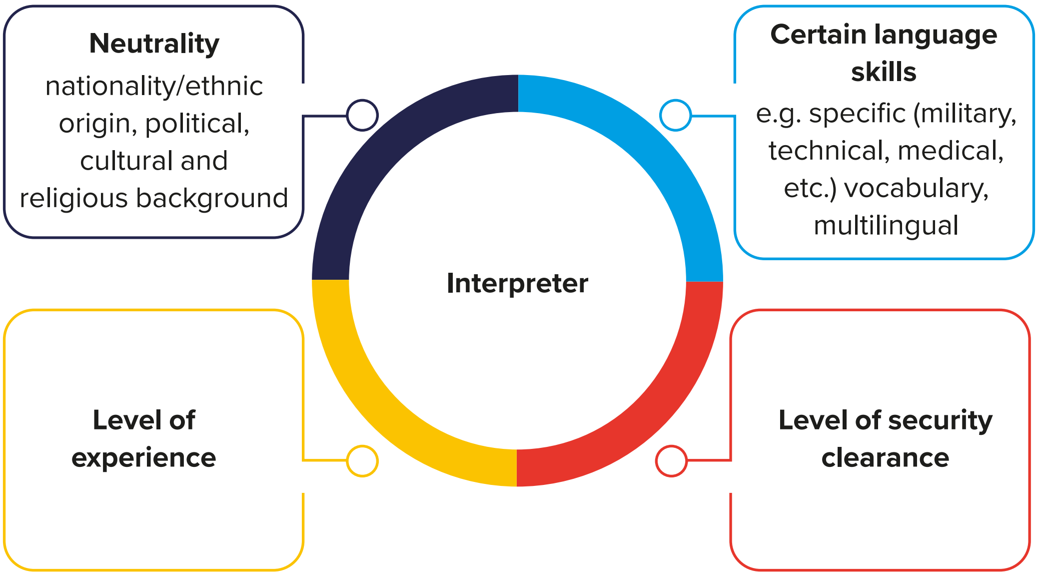
- **Security arrangements**

Security arrangements should be in place in accordance with national practice.

- **Selecting the interpreter**

When selecting an interpreter you may wish to consider the following aspects.

Figure 4. Selecting the interpreter



- **Briefing the interpreter**

The case officer should give the interpreter the opportunity to mentally prepare for the interview; it is as important for the interpreter to do this as it is for the case officer. The interpreter should be briefed by the case officer of the nature of the case, prior to the commencement of the interview. Given the exclusion issues potentially at play, the case officer may notify the interpreter of the areas that are going to be discussed as this will help them to adapt their mindset and preparation.

It may also be helpful if the case officer informs the interpreter that the interview may take longer than average.

The interpreter should be reminded of the principles of confidentiality and neutrality.

- **Possibility to conduct an additional interview**

Depending on the complexity of the case, it may be necessary to conduct more than one interview.

4.2. Conducting the interview

Provide information to the applicant according to national practice

Some specific information may have to be provided in the beginning of an interview which would focus on exclusion. Depending on national practice, this may include informing the applicant that issues related to potential exclusion would be explored.

Ensure the interpreter's conduct is appropriate

If the case officer has any concerns about the ability or conduct of the interpreter, this should be addressed according to national procedures (e.g. by raising it with senior officials). The interview may have to be suspended and recommenced with a different interpreter.

Maintain a professional attitude

The case officer should maintain a professional attitude at all times and make sure their verbal and non-verbal communication are not perceived as being judgemental.

Use appropriate interview techniques

During the interview, the case officer should establish the material facts, address the evidence and give the applicant the opportunity to effectively present their application.

- **Adapt to the individual**

Each applicant is different. The case officer should be aware that certain exclusion interviews will be conducted with individuals who may have held prominent positions within their country of origin. Conversely, some applicants may be uneducated or poorly educated. It will be important to ensure that all questions are tailored to the right level to be fully understood.

- **Invest in building rapport**

Building rapport with the applicant is fundamental. It is good practice to begin the interview with matters that are not directly linked to the material facts. A suggestion could be to begin by discussing the applicant's family background, educational background and life since entering the Member State, for example. This approach generally allows for all parties participating in the interview to feel more at ease.

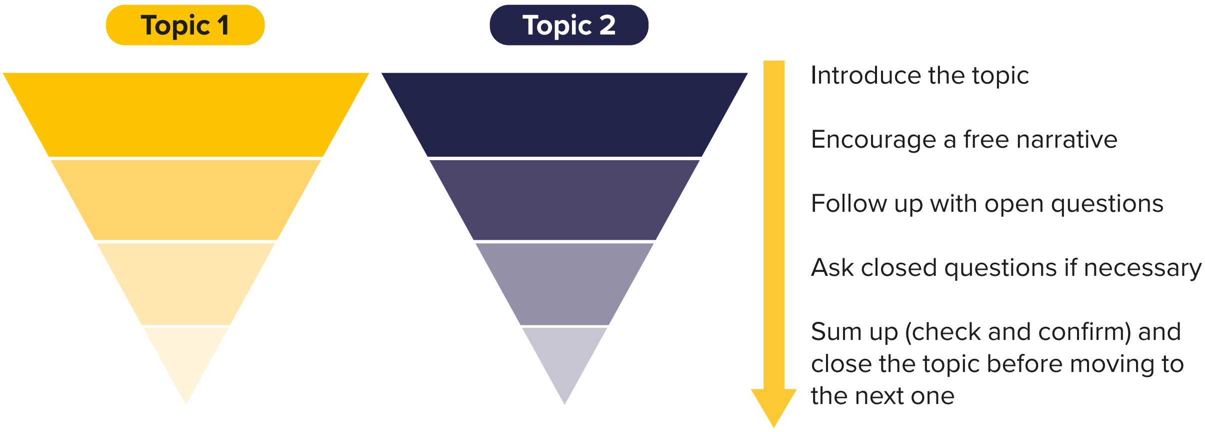
It is not advisable to begin the interview with a question directly linked to an exclusion matter, given the prospect of the applicant becoming defensive, wary and 'closing up' during the interview. This would undermine the quality of information collected and ultimately the quality of the decision.

Reminding the applicant that this is an asylum interview, i.e. for the purposes of considering whether they are eligible for international protection, could also assist in building rapport.

- **Apply the funnel approach**

A 'funnel' approach refers to the way the interviewer structures the interview. For each important topic, the interviewer should follow an approach which goes from introducing the theme and inviting free narrative through follow-up open questions to, only if still necessary, closed questions. This approach allows the interviewer to identify the key issues during the free narrative along with spontaneously provided information directly relevant to the aim of the interview. Information provided in this way is usually more detailed and of better quality than information provided to closed questions.

Figure 5. The funnel approach



- ### Use open questions and encourage free narrative

The aim of the **free narrative** is to obtain as much reliable and accurate information as possible by providing the applicant with an opportunity to give an uninterrupted personal account of the relevant facts. Enabling the applicant to provide contextual information is an important part of conducting an exclusion interview.

Open questions allow an exploration of each important issue and minimise the risk that the interviewer may miss relevant information.

Some applicants may have difficulties providing a free narrative or be unwilling to answer the questions. In such cases, the case officer should try to take a more active role and ask more focused questions, while remembering to introduce all topics and always starting a new topic by asking open questions. While promoting a free narrative and using open questions is important, the case officer should always ensure that the applicant answers the question asked.

Closed questions can also be useful if there are certain elements that need clarification or confirmation (timing, names, dates, etc.). Such questions allow the interviewer to explore all remaining necessary information before closing the topic. However, using closed questions too often may restrict the applicant's ability to engage in the interview, detracting from the quality and accuracy of the information.

- ### Check and confirm

A good practice during an exclusion interview would be to summarise and confirm (with a closed question) material facts and other important issues on a number of occasions. This will assist the case officer with controlling the interview, identifying key points and ensuring that no areas of concern are ambiguous, while promoting a free narrative.

Focus on the applicant's individual involvement: 'I' instead of 'we'

The main purpose of the interview is to obtain information enabling the case officer to establish whether acts that may fall within the scope of an exclusion clause occurred and, if so, the applicant's conduct and state of mind in relation to these acts.

All relevant issues need to be explored fully; however, the core aspect in order to determine whether exclusion applies or not is the aspect of individual responsibility.

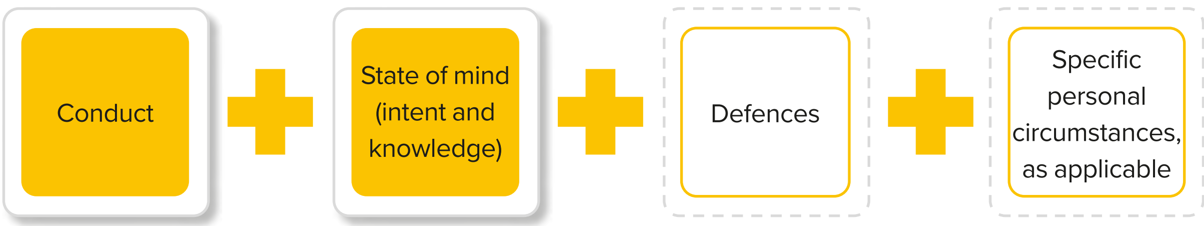
The applicant must be encouraged to talk about their personal activities, role and/or responsibilities. If the applicant instead refers to ‘us’ or ‘we’, they should be asked to clarify who they are referring to and then to clarify their specific involvement. In other words, the applicant should be answering with the personal pronoun ‘I’.

If the applicant continuously answers questions with ‘us’ or ‘we’, they must be reminded to answer specifically regarding their individual role then or now, if they are still involved. The question should be repeated and if necessary rephrased until the case officer can establish the applicant’s individual involvement.

Where the applicant refers to others as ‘they’, establishing who is meant by this may be important, especially in cases where the applicant may have been associated with crimes committed by others. In such cases, it would be important to establish who the perpetrator was, and what, if any, relationship existed between the perpetrator and the applicant.

The questions asked during the interview should help to establish the aspects below with regard to the applicant.

Figure 6. Focus of the questions during interview



Address potential credibility issues

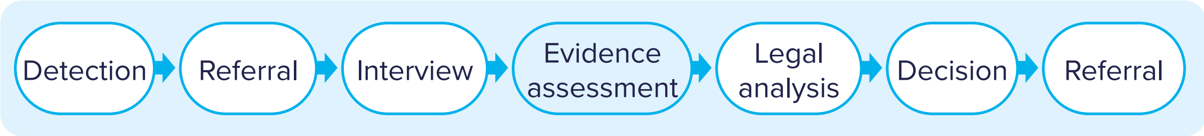
Potential issues may arise based on internal or external credibility considerations.

If there are any potential credibility issues, they should be addressed during the interview, giving the applicant an effective opportunity to explain. If the case officer does not challenge the identified credibility points during the interview, then they are not performing according to their duties to fully, objectively and impartially examine the relevant facts and circumstances. This would leave a potential decision referring to those credibility points open to challenge.

Related EUAA publication

For further guidance, see the assessment of the statements of the applicant against credibility indicators in the EUAA, *Practical Guide on Evidence and Risk Assessment,* January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment (update forthcoming).

5. Evidence assessment



As in all asylum cases, evidence assessment is a crucial and often challenging part of the examination. Particular challenges may be present in exclusion cases, stemming from the fact that the burden of proof lies on the determining authority and that in many cases the applicant may not be willing to cooperate in establishing the relevant facts and circumstances. In some cases, other institutions or bodies entrusted with specialised functions (e.g. the police, the prosecutor's offices, security services) may share relevant assessments, opinions and/or information for the exclusion examination.

The case officer must carry out their own assessment of all facts and circumstances in the case with a view to making a decision and providing a full statement of reasons for that decision ([23]).

Related EUAA publication

For general guidance on evidence assessment, see the EUAA, *Practical Guide on Evidence and Risk Assessment,* January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment (update forthcoming).

Apply the 'serious reasons to consider' standard

The 'standard of proof' is a threshold to be met in order to establish a given proposition.

The mandatory exclusion clauses themselves refer to the standard **'serious reasons to consider'.**

This standard of proof is higher than the one for risk assessment in determining the need for international protection, which is generally agreed to be 'reasonable degree of likelihood'.

Important

Excluding an applicant **requires clear and credible evidence** which satisfies the 'serious reasons' standard.

Simple suspicions would clearly not be enough to apply exclusion. This standard of proof is also considered to be higher than 'more likely than not' (balance of probabilities). However, it is not necessary to reach the criminal standard of 'beyond reasonable doubt', relevant for

([23]) See *GM*, see footnote 19, paragraphs 79, 80 and 83. Summary available in the EUAA Case Law Database.

establishing 'guilt'. In order to exclude, there is no prerequisite that an applicant has been convicted for the crime(s) or act(s) they committed or were guilty of, except for exclusion based on Article 17(1)(b) QR, where the serious crime was committed after the arrival on the territory of the Member State. If convicted, a final criminal judgement is not needed to apply exclusion.

Note that the optional exclusion clause provided for in Article 17(3) QR requires to demonstrate that the applicant '**has committed** one or more crimes outside the scope of points (a), (b) and (c) of paragraph 1'.

Examine all relevant circumstances, even when the burden of proof is shifted to the applicant

Case officers should be aware of two situations where the burden of proof shifts from the state to the applicant, meaning that the establishment of individual responsibility could start from a presumption of its existence. Such a presumption could be justified based on the existence of sufficient information to indicate that there are serious reasons for considering that a person in the situations described below would have incurred individual responsibility in one way or another when:

- the applicant has been indicted by an international criminal tribunal;
- it is established that the applicant has voluntarily become or remained a member and occupied a prominent position in a repressive government or an organisation that commits excludable acts.

However, the presumption of individual responsibility in those cases is of course rebuttable. Caution should be exercised when applying it.

Important

It remains necessary to examine all relevant circumstances, such as the applicant's personal activities, role and responsibilities as well as possible defences, before a decision on exclusion is made.

The applicant should be given an effective opportunity to address the presumption of individual responsibility. In these cases, the standard of proof to be met by the applicant to rebut the presumption is that of a **plausible explanation** regarding non-involvement or dissociation from any excludable acts, coupled with an absence of serious evidence to the contrary.

The presumption of individual responsibility may also be rebutted when the applicant invokes defences. For example, the applicant may provide plausible explanations for acting under duress, by demonstrating that there was an imminent threat to their life or a risk of serious bodily harm and that they acted necessarily and reasonably to avoid that threat (for further details, see Section 6.2 Individual responsibility).

Take into consideration some specificities

Some specific pieces of evidence/sources of information may become especially relevant in exclusion cases and the case officer should know how to approach them.

- **Evidence that the applicant was subject to criminal proceedings in the country of origin**

The case officer should examine whether the prosecution was legitimate and the applicant was not, for example, prosecuted and/or convicted for political reasons. The case officer should also be aware that a certain behaviour may be considered as a criminal act in the country of origin but not in their Member State. A criminal conviction would not automatically mean that exclusion clauses are to be applied.

- **Confidential or classified materials**

The case officer must look into whether and how confidential or classified materials, if available, can be used in assessing the case and drafting the exclusion decision. This may vary depending on national legislation and practice and also depends on the materials in the particular case. If such materials cannot be used, the case officer should consider if there are other relevant sources of evidence that can be utilised in the case.

In cases where such information is available to the determining authority, it is extremely important to apply caution so as to ensure the procedural rights of the applicant ([24]). See also Section 3 Referral and procedural guarantees.

- **Open-source intelligence**

Open-source intelligence (OSINT) research refers to the collection and analysis of publicly available and legally accessible information. This includes geospatial data (e.g. Google Maps, Maxar), media (e.g. journals, networks, platforms, outlets), database-archived materials (e.g. internet archive, collection of e-books) and social media intelligence (known as SOCMINT).

Such research should always be conducted according to national guidelines and procedures. OSINT research may be carried out at any stage of processing an application for international protection and can serve as a useful tool in preparing for the personal interview, for an additional interview or to corroborate other pieces of evidence available in the file.

Attention should be paid when using this information in an exclusion case. If evidence from open sources is to be used in the assessment, the case officer should inform the applicant about the evidence and provide them with an effective opportunity to comment.

([24]) See Articles 8(5), 18(1) and (2) APR; *GM*, see footnote 19. Summary available in the EUAA Case Law Database.

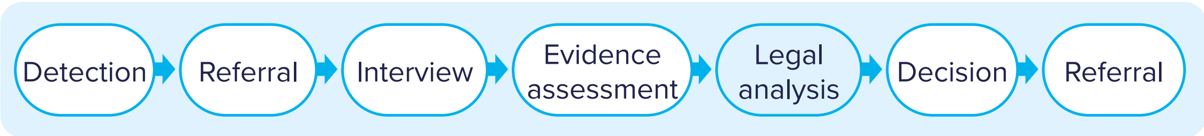
- **Anonymous testimonies**

Anonymous testimonies would generally not be used as a piece of evidence to justify an exclusion decision. The reasons such anonymous testimonies are provided may vary widely (jealousy, vengeance, genuine concern, etc.) and given that the source cannot be confirmed they would have very limited credibility. However, in some cases anonymous testimonies could be an indication of potentially excludable acts, which the case officer may have to explore further.

6. Legal analysis

Based on the accepted facts, the case officer analyses the applicability of exclusion grounds and the elements necessary to establish individual responsibility.

6.1. Qualification of excludable acts



In this step, the case officer should demonstrate whether the **elements of an exclusion ground are present**.

It should be taken into account that the applicant could have committed multiple excludable acts, each falling under different exclusion clauses. National practice may vary regarding whether one particular act should be qualified under more than one ground where the necessary elements are present.

6.1.1. Crimes against peace – war crimes – crimes against humanity

1951 Refugee Convention

- Article 1F(a)

Qualification Regulation

- Article 12(2)(a)
- Article 17(1)(a)

The same exclusion ground applies with regard to exclusion from refugee status and subsidiary protection. The crimes under this provision would trigger the application of the exclusion clauses independently of where and when they were committed, including if committed in the Member State and/or after the person has been granted international protection.

Are there serious reasons to consider the act as a **crime against peace?**

The case officer must determine if an act is a crime against peace (often referred to as 'crime of aggression') by considering the following elements.

- **Act.** It includes the planning, preparation, initiation or waging of a war of aggression, or an armed conflict in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing. ([25])

The 'crime of aggression' includes 'the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations' ([26]).

The crime of aggression may be seen as a modern equivalent of crime against peace ([27]).

Crimes against peace are identified, among others, under Article 8 *bis* of the Rome Statute ([28]).

- **Context.** Crimes against peace can only be committed if there is an international armed conflict (the concept is defined below in the table explaining the context of war crimes).
- **Actor.** Since international armed conflicts are normally waged by states or state-like entities, a crime against peace is usually committed by individuals in a high position of authority representing a state or state-like entity (who are able to effectively exercise control over or to direct its political or military action) ([29]).

Are there serious reasons to consider the act as a **war crime**?

The case officer must determine if an act is a war crime by considering the following elements.

- **Act.** War crimes are serious violations of international humanitarian law that entail individual responsibility directly under international law. War crimes can only be committed in the context of an armed conflict, which may be international or non-international in character. The elements of the war crimes depend on the nature of the conflict (international or non-international) and, for that reason, it is important to establish (i) the existence of an armed conflict and (ii) its nature.

  It is important to highlight that not all acts of war are war crimes. Combatants who lawfully take part in hostilities are not committing war crimes as long as they follow the

([25]) Article 6(a) of the Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ('London Agreement'), 82 UNTS 279, 8 August 1945, https://ihl-databases.icrc.org/public/treaties/350-IHL-49-EN.pdf.

([26]) Article 8 *bis*, paragraph 1, of International Criminal Court, *Rome Statute of the International Criminal Court* (English version incorporating all amendments adopted by the Assembly of States Parties, May 2024), https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf

([27]) See Section 3.3.2. in EASO, *Judicial Analysis on Exclusion: Articles 12 and 17 Qualification Directive: Second edition*, 2020, https://euaa.europa.eu/publications/judicial-analysis-exclusion-articles-12-and-17-qualification-directive.

([28]) International Criminal Court, *Rome Statute of the International Criminal Court*, see footnote 26.

([29]) UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection – Guidelines on International Protection no. 5: Application of the Exclusion Clauses, Reissued, Geneva, 2019, paragraph 11, p. 117, https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967.

rules provided for by international humanitarian law. Depending on the circumstances, a combatant who unlawfully takes part in hostilities or a civilian that takes direct part in the hostilities may be linked to an excludable act for which their individual responsibility would need to be assessed.

War crimes are listed, among others, under Article 8 of the Rome Statute ([30]), under the 'Grave Breaches' provisions of the 1949 Geneva Conventions ([31]) and Additional Protocol I ([32]), common Article 3 and relevant provisions of Additional Protocol II ([33]), the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) ([34]) and Statute of the International Criminal Tribunal for Rwanda (ICTR) ([35]).

International humanitarian law seeks to limit the destruction and suffering caused by armed conflict. The principles of military necessity, distinction and proportionality are central to this aim ([36]).

In non-international armed conflicts, international humanitarian law does not confer any particular legal status to the rebel armed groups taking part in the hostilities. Consequently, Member States may assess if an act committed in a non-international armed conflict, which was not prohibited under international humanitarian law, meets the constitutive elements of a serious (non-political) crime as provided for in Articles 12(2)(b) and 17(1)(b) QR. This assessment must take into account that Article 6(5) of Additional Protocol II encourages prosecutorial restraint by providing that '[a]t the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict […]'. Moreover, if the act remained proportionate to its objectives, it may not meet the condition for exclusion from refugee status, meaning that it is considered non-political ([37]).

([30]) ICC, *Rome Statute of the International Criminal Court*, see footnote 26. The Assembly of States Parties to the Rome Statute of the International Criminal Court has identified **the elements of war crimes**. See 'Legal references' in Annex. Resources.

([31]) International Committee of the Red Cross (ICRC), *The Geneva Conventions of 12 August 1949,* https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0173.pdf.

([32]) ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, 8 June 1977, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0321.pdf.

([33]) ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, 8 June 1977, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0321.pdf.

([34]) UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), 25 May 1993, https://www.refworld.org/legal/constinstr/unsc/1993/en/30367.

([35]) UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), 8 November 1994, https://www.refworld.org/legal/constinstr/unsc/1994/en/15174. See also, ICRC, *War Crimes under the Rome Statute of the International Criminal Court and their source in International Humanitarian Law – Comparative Table*, icrc.org website, 2008, https://www.icrc.org/sites/default/files/document/file_list/war-crimes-comparative-table.pdf.

([36]) ICRC, 'Fundamental principles of IHL', icrc.org website, undated, https://casebook.icrc.org/a_to_z/glossary/fundamental-principles-ihl.

([37]) EASO, *Exclusion: Articles 12 and 17 Qualification Directive – Judicial analysis,* Second edition, see footnote 27, Section 3.4.1.3 Applicability of Article 12(2)(b) to acts that are not prohibited under international humanitarian law when committed in the context of armed conflict, p. 86.

- **Context.** There should be a sufficient **link between the crime and the armed conflict.**

  The case officer should establish the following elements:

  - whether **armed conflict took place at the time** of the crime;
  - whether the act in question took place **in connection with** and was associated with the armed conflict (nexus);
  - whether the armed conflict was **international** or **non-international** at the time of the crime.

  In order to determine the nexus, it is not necessary for the conflict to have been the only cause of the conduct of the perpetrator nor for the conduct to have occurred in the midst of battle. The armed conflict must have played a major role in the perpetrator's decision, in their ability to commit the crime or in the manner in which the crime was committed ([38]).

International armed conflict	Non-international armed conflict
An international armed conflict is a conflict which involves two or more states (or other entities with international legal personality) or a state and a national liberation movement ([39]).	Non-international armed conflicts can be defined as large-scale hostilities, between State authorities and rebels, or between two or more organised armed groups within a State. At least two factual criteria are used for classifying a situation of violence as a non-international armed conflict: ▫ parties involved must demonstrate a certain level of organisation, and ▫ violence must reach a certain level of intensity. Other internal disturbances and tensions, or riots or isolated or sporadic acts of armed violence would not qualify as a non-international armed conflict.

There can be country of origin information or national guidance specifying the nature of the armed conflict. Helpful sources for confirming the nature of conflicts could be judgments of the International Court of Justice, verdicts of the International Criminal Court (ICC), resolutions of the UN Security Council, statements of the International Committee of the Red Cross (ICRC), state opinions or UN reports. The War Watch online portal, which systematically qualifies situations of armed violence using the definition of armed conflict under international humanitarian law, also identifies the parties to these conflicts and applicable international law. ([40])

([38]) ICC, Trial Chamber Decision of 6 October 2025, *the Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, ICC-02/05-01/20-1240, paragraph 685, https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180cb3b4e.pdf.

([39]) ICRC, *How is the term "Armed Conflict" Defined in International Humanitarian Law?*, Opinion Paper, 2024, Chapters 2A. and B, pages 9-10.

([40]) War Watch, 'War Watch: World Assessment and Tracking of Civilian Harm', War Watch website, undated, www.warwatch.ch.

It is important to bear in mind that conflict situations may change, including their nature (e.g. from non-international to international) and may overlap.

- **Actor**. War crimes can be committed by anyone, including by civilians who do not take part in the hostilities, as long as there is sufficient link to the armed conflict (nexus).
- **Object.** The case officer needs to establish that a war crime occurred based on the specific requirements established for that crime. This may include, amongst others, a finding that the crime was directed against protected persons or objects (e.g. civilians, combatants placed out of combat, civilian objects such as buildings dedicated to religion, education or hospitals and places where the sick and wounded were collected), or that the crime was committed through the use of unlawful weapons or means of warfare, or that the crime otherwise harmed persons or objects in a manner prohibited by the international humanitarian law.
- **Specific mental element.** The mental element requires knowledge of the factual circumstances (awareness of the existence of the armed conflict) and, depending on the crime, of the protected status of the person or object. Some war crimes require an additional specific mental element (e.g. the war crimes of treacherously killing or wounding, hostage-taking). This mental element is in addition to the general requirements outlined in the sub-section on individual responsibility.

Are there serious reasons to consider the act as a **crime against humanity**?

The case officer must determine if an act is a crime against humanity considering the following elements.

- **Act.** The crimes qualified as crimes against humanity are fundamentally inhumane acts, when committed as part of a systematic or widespread attack directed against civilians. Criminal acts such as murder, extermination, torture, rape, political or religious persecution and other inhumane acts reach the threshold of crimes against humanity if they are part of a widespread or systematic attack against civilians.

Important

Even a single act may fall under the definition of crimes against humanity as long as there is a link to a widespread or systematic attack.

Crimes against humanity are defined in international instruments, including, among others, Article 7 of the Rome Statute ([41]).

- **Context.** The case officer should establish that an attack took place. An attack is a course of conduct involving perpetration of a series of acts of violence or mistreatment such as those referred to in Article 7(1) of the Rome Statute. It may precede, outlast or continue during an armed conflict and need not be part of it ([42]).

([41]) ICC, *Rome Statute of the International Criminal Court*, see footnote 26. The Assembly of States Parties to the Rome Statute of the International Criminal Court has identified **the elements of crimes against humanity**. See 'Legal references' in Annex. Resources.

([42]) ICTY, *Prosecutor* v. *Momčilo Perišić*, Judgement, 6 September 2021, paragraph 82, https://www.icty.org/x/cases/perisic/tjug/en/110906_judgement.pdf.

The case officer should determine whether the following aspects apply to the attack at hand.

Figure 7. Requirements for the attack

directed against a civilian population	The attack to which the crime is linked is directed against a civilian population. During armed conflict, this would include persons who do not – or no longer – take part in armed hostilities. The attack does not have to be of military nature. Its main aim or object can be to attack civilians but it can also serve other objectives or motives.
widespread or systematic	'Widespread' refers to the large-scale nature of the attack, whereas the adjective 'systematic' reflects the organised nature of the acts of violence, which is often part of a larger policy. The attack either forms part of a policy by a government, a de facto political authority, or an organised political group; or is tolerated, condoned, or acquiesced in by the aforementioned government, group or authority.

The crime should have a **sufficient link with the attack**. Isolated inhumane acts fall short of the stigma attached to crimes against humanity, although they may still constitute excludable acts (e.g. as serious non-political crimes).

Crimes against humanity differ from war crimes in that they can be committed in both times of peace and during an armed conflict.

- **Specific mental element.** The crime has to be committed by someone who had knowledge of the attack and the link of the act to the attack. Some crimes against humanity would require an additional specific intent (e.g. persecution and genocide). This mental element is in addition to the general requirements outlined in the sub-section on individual responsibility.

Are there serious reasons to consider the act as **genocide**?

Some crimes against humanity may amount to the crime of genocide (Article 6 of the Rome Statute ([43])).

In order to determine whether there are serious reasons to consider that a crime of genocide has been committed, the case officer should take into account whether '**genocidal intent**' is present.

([43]) ICC, Rome Statute of the International Criminal Court, see footnote 26. The Assembly of States Parties to the Rome Statute of the International Criminal Court has identified **the elements of genocide**. See 'Legal references' in Annex. Resources.

Figure 8. Genocidal intent

Intent to destroy → in whole or in part → members of a national, ethnical, racial or religious group, as such

Acts which may fall under the qualification of genocide if the intent is present include:

- killing members of the group;
- causing serious physical or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

6.1.2. Serious (non-political) crimes

1951 Refugee Convention

- Article 1F(b)

Qualification Regulation

- Article 12(2)(b)
- Article 17(1)(b)

The elements below **apply to refugee status and subsidiary protection status.** There are **some differences** specified **below**.

Are there serious reasons to consider the act as a serious (non-political) crime?

Related EUAA publication

For specific guidance on this exclusion ground, see the EUAA, *Practical Guide on Exclusion for Serious (Non-political) Crimes*, 2026, https://www.euaa.europa.eu/publications/exclusion-serious-non-political-crimes-practical-guide.

- **Act.** A **crime** that is sufficiently **serious** (for both refugee status and subsidiary protection).

Not all crimes can lead to exclusion under this provision. In assessing whether a crime is to be regarded as serious, all relevant factors of the individual case must be taken into account (see **non-exhaustive** examples below).

Figure 9. Relevant factors to consider when assessing seriousness

- Nature of the act
- Actual harm inflicted
- Form of procedure used to prosecute such crime
- Nature of envisaged penalty
- Whether most jurisdictions would consider it serious
- Specific circumstances of the individual case

There is no requirement that the act constitutes a crime in both the country of origin and the country of asylum. International standards, i.e. whether or not most jurisdictions consider the acts in question to be a serious crime, should be taken into account.

- **Non-political** (refugee status only)

In order for an act to qualify as a non-political crime, it should be considered to have a predominantly non-political motivation or be disproportionate to a claimed political objective. Particularly cruel actions, even if committed with an alleged political objective, may be classified as serious non-political crimes. Several aspects could be considered to assess whether an act qualifies as a non-political crime, as indicated in the following figure.

Figure 10. Assessing whether an act qualifies as a non-political crime

1. Is the offence **connected to a struggle for political power** within the state (e.g. acts by the opposition party to gain power)?
2. Is the offence **motivated by political ideology** (e.g. is the act committed for a personal or common purpose)?
3. Is there a **close and causal link between the act and its claimed objective** (e.g. does the act have an expected effect on reaching the political objective)?
4. Are the means used and the harm caused **proportionate to the claimed political objective** (e.g. does the act result in vast material or personal damage)?

- **Context** (refugee status only): The criminal acts must have occurred:
  - **outside the country of refuge**; and
  - **prior to the applicant's admission as a refugee.**

In accordance with Article 12(2)(b) QR, 'admission as a refugee' should be interpreted as the time of granting refugee status. The explanation of 'prior to the admission as a refugee' is an addition in the QR as it is not present in the Refugee Convention ([44]).

- **Context** (subsidiary protection status only). The crime occurred:
  - **prior to arriving on the territory of the Member State;** or
  - **after arrival and the applicant has been convicted for that crime.**

The period **prior to the arrival** should be understood as any period spent outside of the Member State examining the application, prior to issuing the decision in the case at hand. In other words, at the time of making the decision on the application, the case officer should take into account any serious crimes that the applicant committed outside the Member State, irrespective of any subsequent entries and re-entries onto its territory.

If the crime was committed **after arriving on the territory** of the Member State, **a criminal conviction** for a serious crime must be issued before considering exclusion based on this ground (the conviction does not have to be final). There is **no such specific requirement** if the serious crime was perpetrated **prior to** the applicant's **arrival**.

6.1.3. Acts contrary to the purposes and principles of the UN

1951 Refugee Convention

- Article 1F(c)

Qualification Regulation

- Article 12(2)(c)
- Article 17(1)(c)

The **same exclusion ground** applies with regard to **exclusion from refugee status and subsidiary protection**. The acts under this provision would trigger the application of the exclusion clauses independently of where and when they were committed, including if committed in the Member State and/or after the person has been granted international protection.

Are there serious reasons to consider the acts as contrary to the purposes and principles of the UN?

([44]) It is noted that UNHCR, in its guidelines on the application of the exclusion clause in Article 1F(b), on which the EU provision is based, indicated that 'admission' in the context of this exclusion ground should include 'mere physical presence in the country' of refuge (UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, paragraph 45, https://www.refworld.org/policy/legalguidance/unhcr/2003/en/33331).

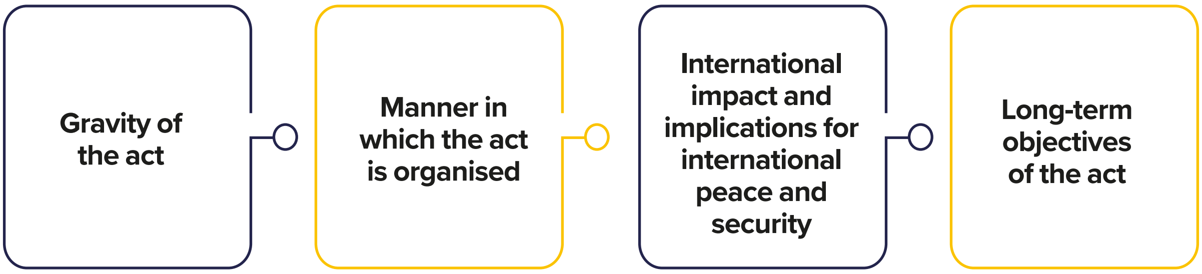
The case officer must determine if an act is contrary to the purposes and principles of the UN considering the following elements.

- **Act.** The purposes and principles of the UN are set out in the Preamble and Article 1 and 2 of the UN Charter ([45]). Accordingly, this exclusion ground may apply to certain acts which constitute serious and sustained human rights violations and/or to acts capable of affecting international peace, security and peaceful relations between states that may be specifically designated by the international community as contrary to the purposes and principles of the UN.

Acts of international terrorism have been designated by the UN Security Council to be contrary to the purposes and principles of the UN, irrespective of any state participation, because they pose a threat to international peace and security ([46]). For further details, see section 6.1.6 Acts of a terrorist nature below.

Since international law is constantly evolving, the interpretation of relevant concepts is also subject to continuous change. While taking into account that exclusion grounds should be interpreted in a restrictive manner, elements which can be considered in this regard are as follows.

Figure 11. Factors to determine if an act is contrary to the purposes and principles of the UN



- **Context.** The acts must have an **international dimension**, in the sense that they are capable of having a negative impact on international peace and security or the friendly relations between states.

- **Actor.** In principle, any person can be the actor of the acts falling within this exclusion ground. However, many of the acts could only be committed by high-ranking officials in a position of authority in a state or a state-like entity.

Important

Having been guilty does not imply that there needs to be a criminal prosecution or conviction in place in order to qualify the act under this exclusion clause. The same standard 'serious reasons for considering' applies.

([45]) UN, *Charter of the United Nations*, 1 UNTS XVI, 24 October 1945, https://www.refworld.org/legal/constinstr/un/1945/en/27654.

([46]) See also recitals 43-46 QR.

The broad and general terms of 'the purposes and principles of the United Nations' make the scope of this provision vague in comparison to the provisions under (a) and (b). Therefore, it may be more practical for the case officer to consider whether (a) or (b) are applicable before assessing (c).

6.1.4. Danger to the community or to national security

Qualification Regulation

- Article 17(1)(d)

This applies **only to exclusion from subsidiary protection.**

Are there serious reasons to consider that the person constitutes a danger to the community or to national security?

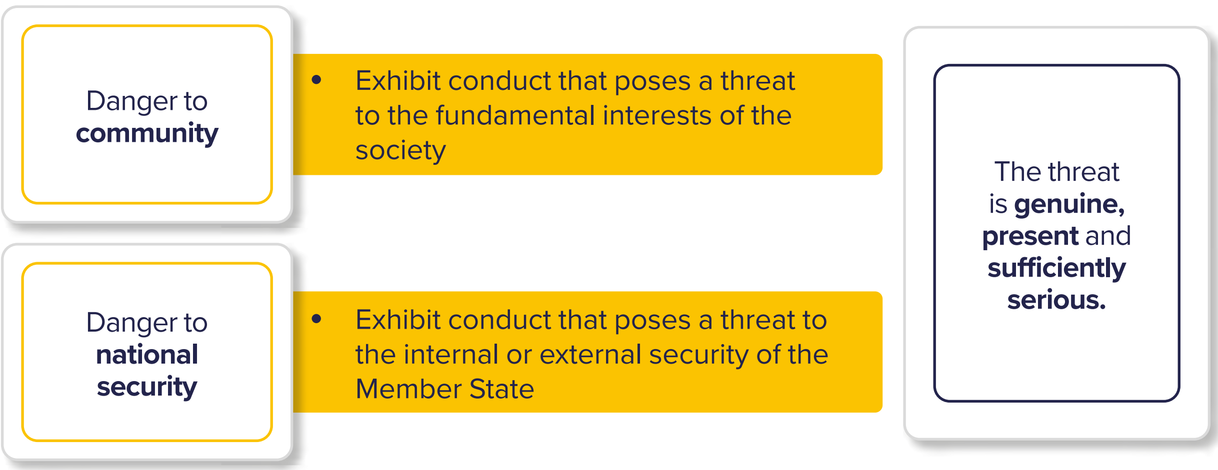
A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that they constitute a danger to the community or to national security of the Member State examining their application.

The assessment of whether this exclusion ground is applicable or not is informed by the past or present conduct of the person but it is ultimately an **assessment of the present threat**.

Given the nature of this provision, its application would often require the involvement of other authorities, which may have access to relevant information.

The case officer must determine if an individual constitutes a danger to the community or national security by considering the following elements ([47]).

Figure 12. Factors to assess a danger to the community or to national security



([47]) Judgment of the Court of Justice of 6 July 2023, *XXX* v *Commissaire général aux réfugiés et aux apatrides*, C-8/22, ECLI:EU:C:2023:542, paragraph 60, by analogy, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0008. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3498.

In general, the finding of a genuine, present and sufficiently serious threat **implies a propensity** in the individual concerned **to repeat the conduct** constituting such a threat **in the future** ([48]).

A person may constitute a danger to the community or national security or both.

Constitutes a **danger to the community**

- **A threat to the fundamental interests of the society**

The EU countries share common values such as the respect for human dignity and human rights, the promotion of peace and the security of the citizens ([49]). A danger to the community can include a threat 'to the peace of mind and physical security of the population [of the Member State concerned]' ([50]).

- **A threat that is genuine, present and sufficiently serious**

The threat must cumulatively fulfil the three requirements of being genuine, present and sufficiently serious. For practical reasons, these elements are usually assessed together given the connection between them when applied to a concrete case.

- **Assessment based on personal conduct**. Any exclusion decision for constituting a danger to the community must be based exclusively on the personal conduct of the individual concerned. Considerations of **general criminal prevention** or **a potential threat** do not suffice to consider that a person constitutes a danger to the community.

- **Past acts or conduct** (before or after arriving in the Member State examining the application) may be relevant if it indicates a tendency to maintain or to repeat such conduct. The case officer should in particular regard the seriousness of that conduct, the time elapsed since it occurred and any subsequent developments ([51]).

- **A criminal conviction is not required but can support the assessment**. In order to pose a threat to the community, there is no specific requirement in Article 17(1)(d) QR that the person has been convicted at first instance or by a final judgment of a serious (or particularly serious) crime.

([48]) *XXX*, see footnote 47, paragraph 67, also by analogy. Summary available in the EUAA Case Law Database.

([49]) Enshrined in Articles 2 and 3 of the Treaty on European Union, consolidated Version, (OJ C 202 7.6.2016), http://data.europa.eu/eli/treaty/teu_2016/2020-03-01 and in the Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2012_326_R_0391_01.

([50]) Judgment of the Court of Justice of 2 May 2018, *K.* v *Staatssecretaris van Veiligheid en Justitie,* and *H.F.* v *Belgische Staatand*, C-331/16 (*K and H.F.*), ECLI:EU:C:2018:296, paragraph 66, by analogy, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0331. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=850.

([51]) *XXX*, see footnote 47, paragraphs 63-64. Summary available in the EUAA Case Law Database. See also, Judgment of the Court of Justice of 27 February 2025, *K.A.M.* v *Republic of Cyprus*, C-454/23, ECLI:EU:C:2025:114, paragraph 45, by analogy, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62023CJ0454. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4906.

The conviction of such a crime, depending on the circumstances surrounding its commission, may help to establish the existence of a genuine and sufficiently serious threat. However, it cannot be automatically inferred from the criminal record of the individual that they pose a danger to the community at the moment of the examination ([52]).

- **Exclusion based on other ground(s) does not automatically imply a danger to the community.** The fact that the person concerned was/is the subject of an exclusion decision based on other grounds does not automatically conclude that the mere presence of that person in the territory of the Member State examining their application constitutes a genuine, present and sufficiently serious threat. However, the case officer must take into account the findings in relation to the other exclusion grounds while conducting their own individual assessment of the potential danger to the community ([53]).

- **Conduct subsequent to an act or crime/conviction is important**. For the time elapsed since the crimes or acts were committed by the applicant, subsequent conduct needs to be considered. This may include the conduct while in prison or after (partially) serving the sentence, where relevant. Considering the subsequent developments will help to determine whether a genuine and sufficiently serious threat exists at the time the decision is made ([54]).

- **Conduct in a specific context in the country of origin can represent a danger**. The mere fact that the past conduct of the individual, for example the commission of war crimes or other serious crimes, 'took place in a specific historical and social context in [their] country of origin, which is not liable to recur in the [country of asylum], does not preclude' a finding of danger to the community ([55]). It is particularly relevant for the assessment if the person's conduct reveals a persistently hostile disposition to the fundamental values of the society.

- **Situations that fall solely under the exclusion ground 'danger to community'**. Article 17(1)(d) QR must be interpreted as having **an autonomous existence**, i.e. not based on the prior application of other grounds for exclusion from eligibility for subsidiary protection ([56]). Consequently, it covers other situations, where the past conduct is not excludable under Articles 17(1)(a)–(c) QR, but where it is determined that the person poses a genuine, present and sufficiently serious threat to the society.

The assessment to determine if an applicant poses a threat to the community can include the type of the crime(s) committed, any aggravating or mitigating circumstances, whether the criminal conduct was intentional, the nature and extent of the harm caused by the crime(s), repetitive or escalation of criminal conduct, violent behaviour, any threats to commit serious crimes, close relationship with members of criminal networks or terrorist organisations, etc.

([52]) *XXX*, see footnote 47, paragraph 64, by analogy. Summary available in the EUAA Case Law Database.

([53]) *K and H.F.*, paragraphs 65 and 66, by analogy, see footnote 50. Summary available in the EUAA Case Law Database.

([54]) *K.A.M.*, see footnote 51, paragraph 45, by analogy. Summary available in the EUAA Case Law Database.

([55]) *K. v Staatssecretaris van Veiligheid en Justitie* and *H.F. v Belgische Staatand*, paragraph 66, by analogy, see footnote 50. Summary available in the EUAA Case Law Database.

([56]) *K.A.M.*, see footnote 51, paragraph 55, by analogy. Summary available in the EUAA Case Law Database.

Constitutes a **danger to the national security**

- **A threat to the internal or external security**

The concept of 'national security' covers **both the internal and external security** of a Member State. Consequently, the **security** of the Member State may be affected by the following:

- a threat to the functioning of institutions and essential public services;
- a threat to the survival of the population;
- the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations;
- a risk to military interests ([57]).

'Member States' authorities retain a certain discretion with regard to public policy and national security, which should be interpreted in accordance with national, Union and international law' ([58]).

- **A threat that is genuine, present and sufficiently serious**

The threat must cumulatively fulfil the three requirements of being genuine, present and sufficiently serious. For practical reasons, these elements are usually assessed together given the connection between them when applied to a concrete case.

The guidance provided in the section above is to be applied accordingly to the individual case, in relation to a danger to the national security.

Potential danger to the community	Potential danger to national security
Example: an individual who was involved for a long time in the Member State examining their application in trafficking in human beings for financial gains, as part of a criminal network that took advantage of vulnerable persons, including children, endangering their life.	**Example:** a former combatant with radical views who stated before the determining authority that he would support an EU designated terrorist organisation when feasible. The applicant has regular contacts with individuals linked to that organisation.
The existence of a **genuine**, **present** and **sufficiently serious threat** to the community or to national security must be established taking into account all circumstances of the individual case.	

See also Section 6.1.6 Acts of a terrorist nature below.

([57]) *K.A.M.*, see footnote 51, paragraph 49, by analogy. Summary available in the EUAA Case Law Database.
([58]) Recital 67 QR.

6.1.5. Commission of one or more crimes of lesser seriousness

Qualification Regulation

- Article 17(3)

This applies only to exclusion from subsidiary protection and is not a mandatory exclusion clause.

The elements in Figure 13 have to be demonstrated in order to apply this exclusion ground.

Figure 13. Factors to apply exclusion based on Article 17(3) QR

Additional national guidance may be in place regarding the criteria for the application of this optional provision.

6.1.6. Acts of a terrorist nature

Acts of a terrorist nature do not constitute a specific exclusion ground but relevant activities may be qualified under any of the grounds.

There is no universally accepted definition as to what constitutes terrorism. Many international legal instruments have been adopted in the field of counterterrorism ([59]). Despite not offering a universally binding definition, these instruments are an important reference point for determining the types of acts which, at the international level, are properly viewed as being of a 'terrorist' nature, provided they are sufficiently serious and are characterised by additional intent and purpose requirements. This is reflected in the description by the UN Security Council of the kinds of acts which Member States are called upon to prevent and suppress under relevant obligations pertaining to acts of terrorism:

([59]) The international community has elaborated 19 international legal instruments to prevent terrorist acts. See UN, Office of Counter-Terrorism, 'International Legal Instruments', UN website, undated, accessed 14 October 2024, https://www.un.org/counterterrorism/international-legal-instruments.

> *criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism* [60].

At EU level, Directive (EU) 2017/541 on combating terrorism [61] is the main criminal law instrument in the field of counterterrorism. It groups the acts of a terrorist nature in three main categories: terrorist offences, offences related to a terrorist group and offences related to terrorist activities.

International and EU instruments relating to terrorism are relevant to understand what conduct can fall under 'acts of a terrorist nature' and thus help to identify and analyse potential exclusion cases.

The qualification of an act as being 'of a terrorist nature' is not as such conclusive for the exclusion examination. Its focus is on the commission, incitement to or the participation in the commission of an excludable act as provided for in Articles 12(2) and (3) and 17(1) to (3) QR.

Acts of a terrorist nature could be qualified as follows.

Crime against peace	If committed in planning, preparation, initiating or waging a war of aggression.
War crime	Acts or threats of violence aimed at spreading terror among the civilian population are explicitly prohibited under international humanitarian law (Additional Protocols I and II [62]). Generally, acts which in peacetime would be considered to be of a terrorist nature would, if committed in the context of and with a link to an international or non-international armed conflict, qualify as war crimes.
Crime against humanity	If consisting of one of the underlying crimes, when committed as part of a widespread and systematic attack against a civilian population.
Serious (non-political) crime	The non-political element would generally be satisfied given that acts of a terrorist nature are always considered disproportionate to a political objective, if the crime is sufficiently serious. The geographic and temporal criteria (for refugee status) and the existence of a criminal conviction for the serious crime committed after arrival in the Member State (for subsidiary protection) also need to be met.

(60) UN Security Council, Resolution 1566 (2004) / adopted by the Security Council at its 5053rd meeting, on 8 October 2004, S/RES/1566(2004), https://digitallibrary.un.org/record/532676?v=pdf, paragraph 3. See also UNHCR, Note on the Impact of Security Council Resolution 1624 (2005) on the Application of Exclusion under Article 1F of the 1951 Convention Relating to the Status of Refugees, 9 December 2005, https://www.refworld.org/legal/intlegcomments/unhcr/2005/en/10850.

(61) Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017), http://data.europa.eu/eli/dir/2017/541/oj.

(62) See 'Legal references' in Annex. Resources.

Acts contrary to the purposes and principles of the UN	A direct link with this ground can be found, amongst others, in the 2001 UN Security Council resolutions 1373 and 1377 ([63]): 'Acts, methods and practices of terrorism are contrary to the purposes and principles of the UN' and 'knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the UN' ([64]). These acts do not solely include terrorist acts, such as those specified in relevant UN Security Council resolutions and terrorist offences as specified in Article 3(1) Directive 2017/541 (e.g. killing, hostage-taking, seizure of aircrafts, etc.). They also include, amongst others, the financing, planning and preparation of, as well as any other form of support for, acts of international terrorism ([65]). Depending on the circumstances, exclusion may be applied to an applicant who participated in the activities of a terrorist group even if the individual concerned has not personally committed, attempted to commit or threatened to commit a terrorist act ([66]). For example, if an individual has been convicted in the EU of a charge of participation in the activities of a terrorist group or if the individual was a member of the leadership of that group, this carries a particular weight for the exclusion assessment ([67]). Under certain circumstances, acts properly qualified as 'acts of terrorism' may thus fall within the scope of this exclusion ground. An international dimension ([68]) is necessary in order to consider terrorism under this provision.
Danger to the community or to national security	The applicant will be excluded from subsidiary protection if they are found to constitute a danger to the community or to national security regardless of meeting the criteria for the above. Such a threat may, depending on the circumstances of the case, cover situations where the applicant belongs to an association which supports international terrorism or supports such an association ([69]).

([63]) UN Security Council resolutions relevant to terrorist actions can be consulted here: https://www.un.org/securitycouncil/ctc/content/security-council-resolutions.

([64]) See also recital 43 QR.

([65]) Judgment of the Court of Justice of 31 January 2017, *Belgium* v *Mostafa Lounani*, C-573/14, ECLI:EU:C:2017:71, paragraphs 46-50 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CJ0573. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=284. The QR codified some of the *Lounani* judgment in recitals 44-46.

([66]) Recital 45 QR.

([67]) Recital 46 QR; *Lounani*, see footnote 65, paragraph 79. Summary available in the EUAA Case Law Database.

([68]) *B and D*, see footnote 13, paragraph 84. Summary available in the EUAA Case Law Database; *Lounani*, see footnote 65, paragraph 74. Summary available in the EUAA Case Law Database.

([69]) Recital 67 QR.

If the applicant is on a list of terrorist suspects or associates themself with a listed terrorist group, this should be explored as an indication that such individual may be linked to excludable acts. However, exclusion will always be based on a full assessment of individual responsibility. This does not mean that if the applicant has not personally taken part in any particular terrorist act, they could not be excluded from international protection.

6.2. Individual responsibility

In this step, the case officer needs to demonstrate whether there are serious reasons for considering that the applicant is linked to the excludable act(s) under consideration in a manner that gives rise to individual responsibility.

The case officer will assess potential individual responsibility based on the nature and extent of the applicant's involvement in the act(s), as well as their state of mind in relation to the act(s).

6.2.1. Conduct incurring individual responsibility (*actus reus*)

Conduct could refer to act or failure to act. Furthermore, the case officer should bear in mind that a basis for individual responsibility may exist when (there are serious reasons for considering that) the applicant only attempted the excludable act(s).

Direct commission

The case officer must focus on evidence that shows whether the applicant committed, as a perpetrator or co-perpetrator, the excludable act(s) in question.

This generally requires **intent** with regard to the conduct and/or its consequences and **knowledge** with regard to conduct, consequences and/or other relevant circumstances. Depending on the circumstances, the definition of the crime(s) involved may include specific intent and/or knowledge requirements.

Inducing commission of an excludable act by others

A link between the individual and the act(s) committed by others will exist if the conduct of the applicant induced (incited) others to commit the crime. Forms of inducing the commission of a crime by others could be as shown in the following figure.

Figure 14. Inducing the commission of a crime by others

The conduct of the applicant should be a **clear contributing factor** to the criminal conduct of the other person(s). However, it is not necessary for the case officer to demonstrate that the excludable act(s) would not have occurred without the applicant being involved.

The intent and knowledge requirements for these forms of participation to the crime(s) will be demonstrated where the applicant **intended to provoke or induce** the commission of such act(s) or **was aware of the substantial likelihood** that the commission of the crime(s) would be a probable consequence of their act(s).

Aiding and abetting

Substantial contribution to the commission of an excludable act by other could take the form of aiding and abetting.

The case officer can establish a link to the excludable act(s) in question when evidence indicates the applicant:

- **provided practical assistance** to the commission of the excludable act(s) (e.g. by organising the physical or logistical support necessary to enable a criminal group to operate or by providing funds to such criminal group);
- encouraged the commission of the excludable acts by others or **provided moral support** to such conduct.

What needs to be established is that the conduct of the applicant had a **substantial effect** to the perpetration of the excludable act(s) by others. For example, in the case of abuse of individuals, can the case officer establish this was due to information provided by the applicant, in the sense that this information was significant to the commission of the crime(s)? However, it is not required to demonstrate that the commission of the excludable act would not have been possible without the conduct of the applicant.

In the case of someone who is viewed as an authority figure (a superior or anyone with moral or religious authority, etc.) there may be significant legitimising or encouraging effect by their mere presence at a scene where the excludable act(s) are committed.

Whether this form of participation happened before, during or after the criminal conduct of others or geographically separated therefrom is irrelevant for establishing individual responsibility, provided it is established that the conduct (act or failure to act) had a significant effect on the commission of the crime(s) by the principal perpetrator(s).

Finally, in order to link the applicant to the act(s) under consideration on the basis of this form of participation, the case officer must demonstrate that the applicant **knew that their conduct would assist or facilitate** the probable commission of the act(s) in question. It is not necessary that the aider or abettor knew the precise act that was intended or which was actually committed, insofar as they knew that one of a number of such acts will probably be committed and one of them was in fact committed. Aiding and abetting **does not require the person to share the intent of the principal perpetrator**.

Joint criminal enterprise

Joint criminal enterprise is another form of significantly contributing to the commission of an excludable act by others. The requirements for joint criminal enterprise are shown in the following graphic.

Figure 15. Requirements for joint criminal enterprise

plurality of persons sharing a common criminal purpose → significant contribution to this common criminal purpose → commonly intended crime took place

Joint criminal enterprise, therefore, requires more than merely associating with persons committing crimes.

Command or superior responsibility

Attention must be drawn to individuals who were in a position of authority over subordinates involved in excludable act(s). If the case officer cannot demonstrate individual responsibility for the act(s) based on the personal conduct of the applicant, such may be incurred due to 'command responsibility'. This is based on the consideration that persons in superior positions in hierarchies have particular responsibilities with regard to the conduct of those under their effective command and control.

The following elements would have to be established.

- Existence of a **superior-subordinate relationship** between the individual and the other(s) linked to the excludable act(s).

Identifying a formal chain of command – whether in a military or in a civilian hierarchy – is one indicator, but not exclusive. The case officer can establish a superior-subordinate relationship whenever the applicant had effective command/authority and control over those who committed the excludable act(s).

- Serious reasons for considering the applicant **knew or should have known** that their subordinate had committed, was committing, or was about to commit, the excludable act(s).

Here, knowledge should be interpreted in a broad sense, including whether the applicant should have known due to their position.

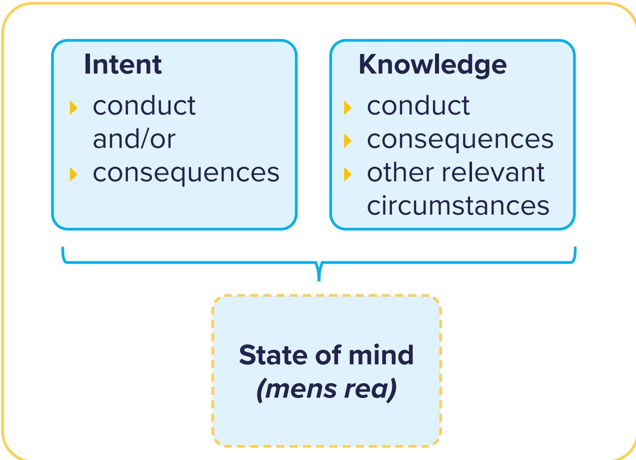
- The applicant **abstained** or **failed to prevent or halt** the commission of the act(s) and **to punish** the perpetrators.

The applicant is to be deemed individually responsible if they failed to take all necessary and reasonable measures within their power to prevent or repress the commission of the act(s) or to submit the matter to the competent authorities for investigation and prosecution.

6.2.2. State of mind: intent and knowledge (*mens rea*)

At this stage, based on the evidence at hand, the case officer must examine whether there are – or not – serious reasons for considering that the applicant had **knowledge** and **intent** to participate in the excludable act(s).

Figure 16. Elements of the state of mind



Without those elements individual responsibility cannot be established and the exclusion clauses would not be applicable.

- **Knowledge**

In general, when discussing individual responsibility, 'knowledge' is understood as awareness that a circumstance exists or a consequence will occur in the ordinary course of events. The case officer should therefore demonstrate that there are serious reasons for considering that the applicant was aware thereof.

Depending on the qualification of the excludable act, knowledge may have a more precise meaning in the specific circumstances (e.g. genocide, war crimes).

The different forms of conduct incurring individual responsibility may also require demonstrating specific knowledge elements (e.g. inducing, command responsibility).

The case officer may demonstrate knowledge and awareness based on the available evidence, including the applicant's statements. Caution should, however, be exercised when knowledge is inferred from circumstantial evidence, such as information about the general context during which the conduct occurred, the scale of atrocities committed, their general nature in a region or a country, etc. What is available in country of origin information would not necessarily have been known by the applicant at the time of committing the crime.

- **Intent**

Two aspects of intent need to be taken into account:

- did the applicant mean (intend) to engage in the conduct?
- did the applicant mean (intend) to cause the consequence (or was aware it will occur in the normal course of events)?

In some cases, the qualification of excludable acts would require a further intent element (e.g. 'genocidal intent', specific intent for persecution as a crime against humanity).

Some modes of participation in the commission of a crime by another person require intent not only with regard to one's own conduct but also the crime (to be) committed by that person (e.g. planning, ordering or instigating the commission of crimes by another person, joint criminal enterprise).

6.2.3. Excludable acts attributed to a group or regime

Caution is required when assessing exclusion with regards to applicants who were associated with a group or regime implicated in excludable acts.

Important

The fact that an applicant was/is linked to a group or regime responsible for excludable act(s) does not relieve the case officer from demonstrating the applicant's individual responsibility for such act(s).

There is no such thing as individual responsibility based on mere association with a criminal group or regime. Depending on the nature, scale of the group or regime, the voluntary association with the group and the position, rank, standing and influence of the applicant within the group, there may be sufficient evidence for both the 'conduct' requirements under the applicable mode of individual responsibility and the 'state of mind' of the applicant to be inferred. It remains necessary, however, that the case officer identify the relevant mode of individual responsibility and examine the facts in light of the respective criteria.

The following elements need to be taken into account in addition to the actual activities of the applicant.

Form of association of the applicant with the group or regime

In addition to the applicant's activities, role and responsibilities, the case officer should look into the precise form of association the applicant has or had with the group or regime implicated in excludable acts (e.g. through formal membership or informal association).

Activities and nature of the group or regime

The case officer should consider the activities of the group and its criminal nature (e.g. excludable crimes can be attributed to it) during the period in which the applicant was or is associated to the group.

The fact that the group or regime was/is proscribed by the EU and/or the international community (UN Security Council Resolutions, scrutiny by the ICC, etc.) would be a strong indicator to take into account but it is not as such determinative.

The possible fragmentation of the group or regime in political, militant, intelligence wings, etc. must be taken into account. The assessment should then focus on the part of the group or regime the applicant was directly associated with.

Such analysis will also take into account knowledge by the applicant of the excludable acts committed by the group or regime.

Freedom of choice when associating with the group or regime

In order to demonstrate individual responsibility, the case officer is required to establish that the applicant did the following voluntarily.

- **Associated themself** with the group or regime.

  And/or

- **Continued their involvement** with the group or regime. In this regard, the case officer should consider the length of time the applicant associated themself with the group or regime and the opportunities they had to dissociate from it.

Considerations of duress may be applicable.

Position, rank, standing and influence of the applicant in the group or regime

The position, rank, standing and influence of the applicant within the group or regime would help to determine the capacity of the applicant to control or to influence the activities of the group or regime.

6.2.4. Grounds negating individual responsibility

Lack of mental capacity to comprehend and control one’s conduct

Certain grounds would negate the subjective element required for individual responsibility (‘state of mind’).

The following indications that the person lacked the capacity to comprehend the nature or unlawfulness of their conduct or the capacity to control it should be taken into account.

- **Mental disease or defect**

Mental disease or defect which destroys that person's capacity to appreciate the unlawfulness or nature of their conduct, or capacity to control their conduct to conform to the requirements of law is a circumstance negating individual responsibility.

- **Involuntary intoxication**

A state of intoxication that destroys a person's capacity to appreciate the unlawfulness or nature of their conduct, or capacity to control their conduct to conform to the requirements of law is a circumstance negating individual responsibility.

This would **not** apply as a ground negating individual responsibility if the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, they were likely to engage in conduct constituting an excludable act.

- **Immaturity**

Exclusion will, in general, not be justified in cases involving an applicant who, at the time of their involvement in criminal acts, had not reached the minimum age of criminal responsibility according to the national law of the Member State examining their application ([70]).

This ground for negating criminal responsibility may also apply if an applicant had reached the minimum age of criminal responsibility at the time of the criminal acts, but it is determined that they had not reached the level of intellectual, physical and/or emotional maturity required to comprehend the nature or unlawfulness of their conduct.

In the case of a child, the exclusion analysis needs to take into account certain additional considerations, in particular those related to the best interests of the child, the mental capacity of the child and their ability to understand and consent to acts that they are requested or ordered to undertake. The case officer should further ensure that the necessary procedural safeguards have been put in place.

However, children under the age of 18 may be held criminally responsible if in line with national legislation. The level of maturity, taking into account education, awareness, vulnerability, etc. of the child should be considered in this regard, including when assessing the possible application of a defence and/or mitigating circumstances.

Mistake of fact and mistake of law

Under international standards, mistake of fact and mistake of law may, under certain circumstances, negate individual responsibility by negating the requisite mental elements:

- **mistake of fact:** a mistake of fact will be a ground for negating responsibility only if it negates the mental element required by the crime;

([70]) In accordance with Articles 12(5) and 17(5) QR. See also European Union Agency for Fundamental Rights, *Children's rights and justice – Minimum age requirements in the EU*, 2018, Key Findings, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-minimum-age-children-rights_en.pdf, p. 23 and Figure 5, p. 24.

- **mistake of law:** a mistake of law as to whether a particular type of conduct is a crime could be a ground for excluding responsibility only if it negates the mental element required by such a crime, or in relation to the defence of superior orders where the conditions are met.

Defences

In cases where serious reasons for considering that the applicant has committed the excludable act have been established, the case officer further needs to consider whether other circumstances which would negate individual responsibility may apply.

The case officer should consider the extent to which the applicant, in committing the excludable act(s), did so in one of the circumstances set out below.

Duress

The following **cumulative** conditions have to be met:

1. The applicant's conduct resulted from a threat (against the applicant or another person) of imminent death or continuing or imminent serious bodily harm.
2. The applicant acted necessarily and reasonably to avoid this threat.
3. The applicant did not intend to cause a greater harm than the one sought to be avoided.

Self-defence or defence of others (or property in case of war crimes)

The following **cumulative** conditions have to be met:

1. Imminent and unlawful use of force against the applicant or another person (or property).
2. The applicant acted reasonably to defend himself or herself or another person (or property).
3. The conduct of the applicant was proportionate to the degree of danger.

Defence of property can exclude responsibility only for war crimes.
One of the following conditions needs to be met:

a. the property was essential for the applicant's survival or the survival of another person, or
b. the property was essential for accomplishing a military mission.

Superior orders

The following **cumulative** conditions have to be met:

1. The conduct was pursuant to an order of a government or of a superior of the applicant (whether military or civilian);
2. The person was under a legal obligation to obey orders of the government or the superior in question;
3. The person did not know that the order was unlawful; and
4. The order was not manifestly unlawful (under international standards, an order to commit torture, genocide or crimes against humanity would be considered manifestly unlawful).

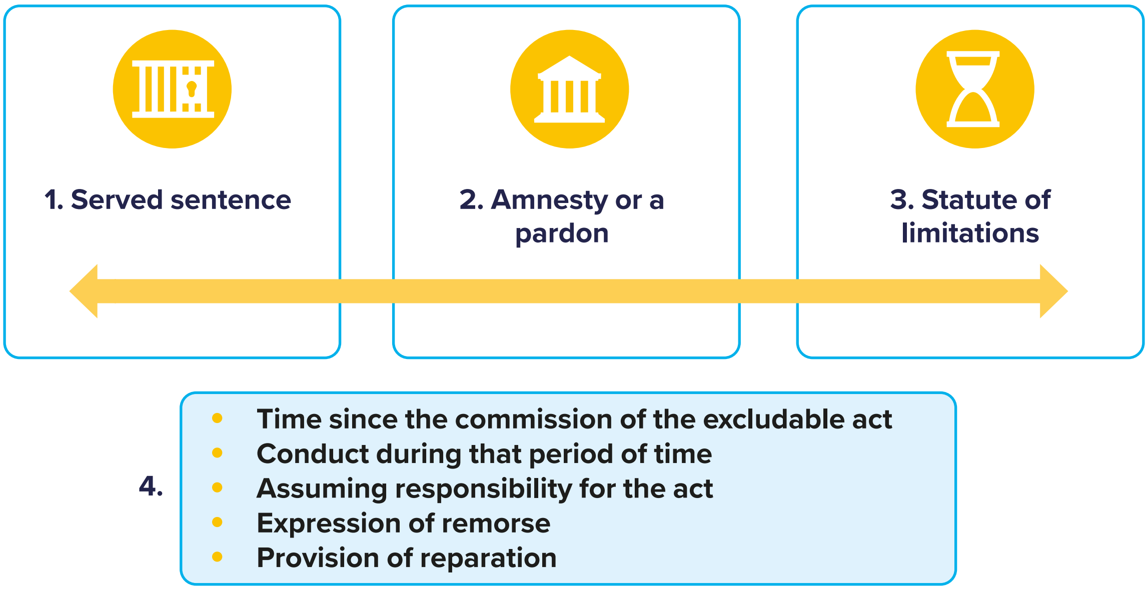
6.3. Post-offence circumstances to consider before applying exclusion

In its judgment in Galte, the CJEU held, with regards to exclusion for a serious (non-political) crime, that a person who committed serious acts at some point in their life cannot be permanently regarded as being necessarily unworthy of international protection without taking into consideration, in particular, their possible rehabilitation ([71]).

When there are serious reasons for considering that an applicant incurs individual responsibility for excludable act(s), the case officer should continue to consider whether exclusion in this case would meet the purposes of the exclusion clauses, if certain post-offence circumstances are present in the individual case (see Figure 17).

These circumstances would not, in themselves, prevent a decision to exclude. They should be assessed in a holistic manner. The seriousness of the excludable act for which the applicant is deemed individually responsible constitutes a reference point for their assessment. Hence, all specific factors considered for the seriousness of the excludable act, such as the type of the act, the penalty provided by law and the penalty imposed, if any, should be taken into account in this regard. The more serious the excludable act(s), the less relevant such circumstances would be when making the final decision ([72]).

Figure 17. Post-offence circumstances to consider before excluding an individual responsible for an excludable act



In case the applicant has served their sentence or benefits from amnesty, pardon or a statute of limitations, the case officer should consider if exclusion can no longer be justified by the

([71]) *Galte*, see footnote 12, paragraph 38. Summary available in the EUAA Case Law Database.

([72]) UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, paragraph 73, https://www.refworld.org/policy/legalguidance/unhcr/2003/en/33331.

objective of preventing that person from escaping criminal liability. If exclusion is no longer justified for that purpose, the case officer should assess if the applicant is still underserving of international protection. You can find below a **non-exhaustive** list of relevant post-offence circumstances to be considered in this regard.

6.3.1. Served sentence for the (otherwise) excludable act

The case officer **should take account** of the fact that the applicant has **served the sentence** imposed on them for the excludable acts they committed, but that fact however **does not, in itself, prevent** the applicant from being excluded from international protection ([73]).

The case officer should consider whether the applicant has already borne sufficient punishment for the excludable act(s) by taking into account the **time that has been served** in relation to what would be considered a **reasonable time under EU standards**.

The applicant may have been **released before serving** their **full sentence** based on their behaviour in prison, their efforts at rehabilitation, the risk they pose to the society, etc. ([74]). The interval between the date of (conditional) release and the date of completion of the sentence constitutes a period of supervision for the person concerned.

Other elements that could be considered may include the **age of the person** when the crime was committed, the **length of the sentence imposed** as opposed to the maximum limit provided by the law and any **relevant aspects surrounding the execution of the sentence**.

6.3.2. Amnesty or a pardon

The case officer should also take into consideration whether the act(s) committed by the applicant is/are subject to amnesty or pardon.

In that case, further consideration should be given as to whether:

- the amnesty or pardon were the **expression of the democratic will** of the relevant country; and
- whether the individual has been held **accountable in other ways** (e.g. through a truth and reconciliation commission).

The reason for and the nature of the amnesty or pardon, as well as the behaviour of the applicant, are of importance when assessing amnesty or pardon. Various reasons not linked to the seriousness of the acts, such as political decisions, can justify amnesty or pardon. In

([73]) In case of exclusion based on a serious (non-political) crime according to Articles 12(2)(b) and 17(1)(b) QR, the case officer must take account of the fact that the applicant has served the sentence, together with other circumstances of the individual case, such as the type of act at issue, the sentence provided for and imposed, the period which has elapsed since the criminal conduct, the conduct of the person concerned during that period and the remorse, if any, expressed, in line with CJEU judgment in *Galte*. See footnote 12, paragraphs 43 and 45 and the operative part (Court's ruling). Summary available in the EUAA Case Law Database.

([74]) This measure is usually subject to specific conditions such as regular check-ins with a parole officer, restrictions of movement and on their activities, other requirements provided by the law.

some cases, a crime may be of such a heinous nature that exclusion is still considered justified despite the existence of a pardon or amnesty ([75]).

6.3.3. Statute of limitations

The case officer should consider the statute of limitations to which the respective crime(s) are subject.

This might be relevant when considering serious crimes of a lesser gravity since other excludable acts – due to their particular gravity – would not be covered by a statute of limitations ([76]).

6.3.4. Other circumstances

In the situations detailed in the preceding sections, the case officer should also look at the other relevant circumstances of the individual case, such as the following.

- **Time since the commission of the excludable act(s)**

The period elapsed since the criminal conduct will give the case officer a better opportunity to assess the subsequent behaviour of the applicant.

- **Conduct of the individual since the commission of the act(s), including when in prison**

The overall behaviour of the applicant after the commission of an excludable act is a key element and should be taken into account in combination with other relevant factors.

The fact that, since their involvement in an excludable act, the **individual has engaged in other crimes** that do not meet the threshold for exclusion, is an important circumstance to consider when determining whether a person should be deemed undeserving of international protection even after serving a sentence, as it may indicate a propensity for criminal conduct. Even more so if the criminal conduct takes place while serving the sentence for an excludable act.

The longer the time that has elapsed since the participation in the act(s) **without any subsequent criminal conduct**, the more manifest the applicant's desire to be rehabilitated. The fact that the applicant was released earlier from prison based on good conduct should also be taken into account together with their compliance with any obligations related to probation.

([75]) UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, paragraph 75, https://www.refworld.org/policy/legalguidance/unhcr/2003/en/33331.

([76]) UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, paragraph 74, https://www.refworld.org/policy/legalguidance/unhcr/2003/en/33331.

Assuming responsibility for the act(s), expression of remorse and/or provision of reparation

Assuming responsibility for one's excludable act(s) is an important factor for rehabilitation. This mere fact, however, does not replace the need to bear responsibility for the acts committed. The case officer should take it into account in light of all circumstances of the case, especially the served sentence and the conduct of the person since the participation in the excludable act(s).

Expressing **genuine regret** (remorse) for the harm caused through the commission of a serious crime may affect the sentencing, leading to less severe punishments. However, the extent to which this circumstance is taken into account generally depends on various factors, including the nature of the crime, the extent of harm inflicted, and the individual's overall demeanour. Being a chiefly subjective element, its relevance for exclusion cannot be assessed separately but only through corroboration with other circumstances such as the served sentence, amnesty or pardon and the conduct since the commission of the excludable act(s).

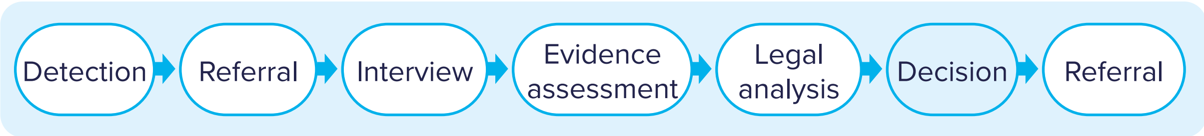
The absence of remorse together with applicant's failure to acknowledge their guilt, responsibility and the serious consequences of their actions are elements that may indicate that the applicant is undeserving of international protection.

Reparation for harm caused aims to restore the situation as it was before the commission of the excludable act(s), if feasible or to provide compensation for the damage. The crimes or acts that fall under the exclusion clauses due to their gravity often result in permanent or long-lasting harm. The case officer may take this into consideration as part of the overall assessment of the conduct of the applicant.

Note

National guidance regarding specific post-offence circumstances to consider before applying exclusion may be available.

7. Drafting the decision elements related to exclusion



The decision would have to clearly and objectively justify the exclusion of the applicant from refugee status and/or subsidiary protection.

Ensure that the different parts of the decision are clearly defined

Having a clearly defined structure in the decision contributes to more clarity, transparency and objectivity in the reasoning and the conclusions. The separation of the questions of facts and questions of law is an important element to demonstrating that a fair and structured approach has been followed in the assessment of the case.

The structure suggested below reflects the guidance above and should be read in conjunction with the content included in the respective sections. It is without prejudice to demonstrating in the decision that the criteria to qualify for refugee status or subsidiary protection are otherwise met.

Figure 18. Elements of the exclusion decision

Questions of facts	**1.** Basis of claim	The first part of a decision normally summarises the identified material facts. The available elements of evidence should also be specified. This part should contain no assessment.
	2. Credibility assessment	The credibility (evidence) assessment part focuses on the identified material facts and the respective pieces of evidence and assesses them in accordance with the credibility indicators. Based on this part, it should be clear which material facts have been accepted and which rejected.
Questions of law	**3.** Qualification of the excludable act	The accepted material facts are the basis for the qualification of the potential excludable act in accordance with the elements outlined above.
	4. Individual responsibility: **a.** conduct of the applicant **b.** intent and knowledge **c.** circumstances negating individual responsibility	A crucial part of the decision is the establishment of individual responsibility. It should look at all elements: the conduct through which the applicant is linked with the excludable act(s), if the mental element (intent and knowledge) as required under the definition of the act(s) and the relevant mode of individual responsibility was present, and if circumstances negating responsibility apply.
	5. Post-offence circumstances to consider before applying exclusion	Specific post-offence circumstances (e.g. served sentence, amnesty or pardon) should be considered before excluding an individual responsible for an excludable act, as applicable.
	6. Decision	If exclusion from refugee status and/or subsidiary protection has been applied, Member States may still decide to grant residence/protection on humanitarian or other grounds to excluded persons. Depending on the national system, this may be part of the exclusion decision or a separate act.

8. Referral for investigation and/or prosecution

Detection → Referral → Interview → Evidence assessment → Legal analysis → Decision → Referral

Depending on the findings made in a potential exclusion case (without prejudice to its actual outcome), there may be necessary further steps for the case officer to consider. Such steps may be required at any stage of the examination of the case. If the findings relate to acts that can be investigated and prosecuted in the Member State concerned, referral to the relevant authorities should take place as soon as possible.

> Even if the person would not be excluded, there may be sufficient reasons to refer the case to the national authorities responsible for investigation and/or prosecution.

Depending on national regulations as well as obligations under international law, this may require that the information collected in the case is sent to relevant authorities such as the prosecutor's office, police and/or the security services.

In those actions, the case officer should take into account the applicable **privacy and confidentiality** regulations, as well as any national arrangements.

Annex. Resources

This section outlines relevant legal references, sources of jurisprudence and additional guidance and materials that could assist the case officer when examining a potential exclusion case (non-exhaustive).

I. Legal references	
Topic	**Legal references**
Burden and standard of proof	• Articles 4, 12 and 17 **QR**
	Qualification of excludable acts
Crime against peace	• Article 1F(a) **Refugee Convention** • Articles 12(2)(a) and 17(1)(a) **QR** • Article 8 *bis* **Rome Statute*** • Article 6 of the **1945 Charter of the International Military Tribunal (London Charter)**
War crime	• Article 1F(a) **Refugee Convention** • Articles 12(2)(a) and 17(1)(a) **QR** • Article 8 **Rome Statute*** • Grave breaches provisions of the **1949 Geneva Conventions** (**I**, **II**, **III**, **IV**) and **Additional Protocol I** (ICRC summary here) • Article 3 common to the 1949 Geneva Conventions (see previous links) • Articles 4, 13, 16 **Additional Protocol II**
Crime against humanity	• Article 1F(a) **Refugee Convention** • Articles 12(2)(a) and 17(1)(a) **QR** • Article 6 **Rome Statute*** • Article 7 **Rome Statute*** • Article 5 **ICTY Statute** • Article 3 **ICTR Statute** • **1948 Convention on the prevention and punishment of the crime of genocide**
Serious (non-political) crime	• Article 1F(b) **Refugee Convention** • Article 12(2)(b) **QR** • Article 17(1)(b) **QR**

Acts contrary to the purposes and principles of the UN	• Article 1F(c) **Refugee Convention** • Articles 12(2)(c) and 17(1)(c) **QR** • **UN Charter**
Danger to the community or to national security	• Article 17(1)(d) **QR** • Articles 2 and 3 of the **Treaty on European Union, consolidated version**, (OJ C 202 7.6.2016) • **Charter of Fundamental Rights of the European Union**
Acts of a terrorist nature	• **International Conventions and Protocols pertaining to Terrorism** (here) • Article 51(2) **Additional Protocol I** • Articles 4(2)(d) and 13(2) **Additional Protocol II** • **Directive (EU) 2017/541 of 15 March 2017 on combating terrorism** **Note**. For a selection of international and regional instruments relating to terrorism, consult (EASO), *Judicial Analysis on Exclusion: Articles 12 and 17 Qualification Directive: Second edition*, 2020, Appendix B. Selected instruments relating to terrorism. UN Security Council resolutions relevant to terrorist actions can be consulted here.
	Individual responsibility
General aspects	• Article 12 **QR** • Article 17 **QR** • Articles 25, 28, 30-33 **Rome Statute**
Modes of individual responsibility • **Commission of an excludable act**	• Article 12(3) **QR** • Article 17(2) **QR** • Article 25(3)(a) **Rome Statute** • Article 30 **Rome Statute**
• **Inducing the commission by others**	• Article 12(3) **QR** • Article 17(2) **QR** • Article 25(3)(b) **Rome Statute** • Article 25(3)(e) **Rome Statute** • Article 30 **Rome Statute**
• **Aiding and abetting**	• Article 12(3) **QR** • Article 17(2) **QR** • Article 25(3)(c) **Rome Statute** • Article 30 **Rome Statute**

• **Joint criminal enterprise**	• Article 12(3) **QR** • Article 17(2) **QR** • Article 25(3)(d) **Rome Statute**
• **Command or superior responsibility**	• Article 12(3) **QR** • Article 17(2) **QR** • Article 28 **Rome Statute**
State of mind (intent and knowledge)	• Article 30 **Rome Statute** • Article 32 **Rome Statute**
Excludable acts attributed to a group or regime	• Article 12 **QR** • Article 17 **QR**
Grounds negating individual responsibility: • **Lack of mental capacity to comprehend and control one's conduct**	• Articles 31(1)(a) and 31(1)(b) **Rome Statute** • Article 40(3) **Convention on the Rights of the Child**
• **Mistake of fact and mistake of law**	• Article 32 **Rome Statute**
• **Duress**	• Article 31(1)(d) **Rome Statute**
• **Self-defence and defence of others**	• Article 31(1)(c) **Rome Statute**
• **Superior orders**	• Article 33 **Rome Statute**
Post-offence circumstances to consider before applying exclusion	
• **Served sentence for the (otherwise) excludable act** • **Amnesty or a pardon** • **Statute of limitations** • **Time since the commission of the excludable act** • **Conduct since the commission of the excludable act, including while in prison** • **Assuming responsibility, expression of remorse and/or provision of reparation for the excludable act**	• Article 12(2)-(4) **QR** • Article 17(1)-(4) **QR**

*** Elements of crimes ([77])**

The ICC published the elements of the crimes of genocide, crimes against humanity and war crimes following the structure of the corresponding provisions of Articles 6, 7 and 8 of the Rome Statute ([78]). This facilitates the identification of the respective elements.

II. Where can I find relevant jurisprudence?

- The EUAA Case Law Database contains relevant decisions on exclusion issued by **national courts of the Member States of the EU and the Schengen associated countries**, the **Court of Justice of the European Union** and the **European Court of Human Rights**. The information can be filtered by various elements such as keywords (including topics mentioned in the legal references - forthcoming), country/jurisdiction of decision, court name, date, type of the decision, legislative provision, country of origin and case number. The database is available at https://euaa.europa.eu/new-look-euaa-case-law-database.

EUAA compilation of jurisprudence on exclusion

The information in the EUAA Case Law Database is constantly updated. However, it is non-exhaustive. It is also recommended to consult the EASO, *Compilation of Jurisprudence on Exclusion - update*, September 2021, accompanying EASO, *Judicial Analysis on Exclusion: Articles 12 and 17 Qualification Directive: Second edition*, 2020. It includes jurisprudence from the European courts, the international tribunals, national courts and tribunals of the EU Member States and of other states (such as Australia, Canada and the United Kingdom).

- You may also wish to consult directly the following **case-law databases.**
  - **InfoCuria** (you may also wish to visit Court of Justice of the European Union homepage).
  - **Hudoc** (you may also wish to visit European Court of Human Rights homepage).
  - **Refworld** (you may also wish to visit UNHCR homepage)**.**
  - **European Database of Asylum Law** (you may also wish to visit European Council on Refugees and Exiles homepage).
  - **National case-law databases – a list of links to national case-law sites maintained by the European Commission.**

([77]) ICC, *Elements of Crimes* (adopted by the Assembly of States Parties to the Rome Statute of the International Criminal Court), ICC, 2013, PDF, https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf.

([78]) ICC, *Rome Statute of the International Criminal Court*, see footnote 26.

- The website of the **International Criminal Court** (**ICC**) contains a large database on international instruments and international and national jurisprudence on international crimes. The ICC Case Law Database allows for 3 types of searches of **legal findings** or **decisions**: **text search**, **keyword search** and **advanced search**. A helpful tool for case officers dealing with elements of crimes could also be the ICC Legal Tools.

- The **International Criminal Tribunal for the former Yugoslavia (ICTY)**, the **International Criminal Tribunal for Rwanda (ICTR)** and the **Special Court for Sierra-Leone (SCSL)** have examined cases and issued decisions that are relevant for exclusion. These international criminal courts ceased to function however, extensive information on their jurisprudence was preserved and can be consulted in the case-law database of the **UN International Residual Mechanism for Criminal Tribunals** here (for ICTY and ICTR) and of the Residual Special Court for Sierra Leone here.

Note: The case-law database of the UN International Residual Mechanism for Criminal Tribunals allows for extensive searches and filtering of the information based on a full list of notions presented in alphabetical order. The results delivered are precise, focusing on relevant paragraphs of the decisions allowing at the same time to download the full document.

- The **International Court of Justice** (**ICJ**) documents may also be useful for the examination. A **document search** may be conducted on any words, in all cases/specific cases, based on a certain type of document, within a specified period of time.

Main difference between the ICJ and the ICC

ICJ cases involve countries while the ICC is a criminal court, which brings cases against individuals for war crimes or crimes against humanity ([79]).

- The **EUROJUST – Genocide Prosecution Network**'s **national jurisprudence database on core international crimes** can be consulted here**.** It allows for searches by free text, date, country of trial or country of crime, key terms, crime type or decision type.

III. Additional guidance and materials

- The **EUAA judicial publications** relevant for exclusion that are part of the EUAA Professional Development Series for Members of Courts and Tribunals, https://euaa.europa.eu/publications?field_category_target_id=15212&language=en.

- **Relevant materials from UNHCR**:
    - Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,

([79]) UN, 'What is the International Criminal Court?', UN.org website, https://news.un.org/en/story/2024/05/1149981, see the box How is the ICJ different from the ICC?', accessed on 13 October 2025.

Chapter IV. Exclusion Clauses, 1979, reissued 2019, https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967.

- Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, https://www.refworld.org/policy/legalguidance/unhcr/2003/en/33331.

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- On issues relating to **international humanitarian law** and **the laws and conducts in international or non-international conflicts**, the website of the International Committee of the Red Cross **(ICRC)** could be a relevant source.

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