PwC NL
Tax Knowledge Centre

Overview of the implementation of the Anti-Tax Avoidance Directive into Member States' domestic tax laws

July 2020

pwc

www.pwc.nl

Content

For questions regarding this publication, please contact:

Vassilis Dafnomilis
PwC NL Tax Knowledge Centre
E: vassilis.dafnomilis@pwc.com

This version serves as an update of the November 2019 version and includes additional infographics on the exit taxation rules and the anti-hybrid rules, and ATAD implementation trends. It includes information on national implementation of the ATAD rules as of 1 June 2020. While any effort has been made to ensure the accuracy of the information contained on this publication, please contact your usual PwC contact for detailed information on the implementation of the ATAD rules.

1. Introduction

- On 12 July 2016, following a difficult negotiation process, the Economic and Financial Affairs Council configuration (ECOFIN) of the Council of the European Union (EU) adopted the Anti-Tax Avoidance Directive (ATAD I).[1] The adoption of this Directive represented a milestone in the efforts to tackle base erosion and profit shifting (BEPS) within the EU.
- ATAD I introduced five sets of rules of minimum standards of which four (interest limitation rule, GAAR, Controlled Foreign Company – CFC – rules and hybrid mismatches) are largely consistent with the OECD's BEPS recommendations in BEPS Action Plans 2, 3, 4 and 6, and the fifth (exit taxation) goes beyond the scope of the OECD's BEPS project. Importantly, subsequent rules relating to hybrid mismatches were finalised on 29 May 2017 when the ECOFIN adopted ATAD II (which amends ATAD I but only with respect to hybrid mismatches).[2] For the purposes of this publication, ATAD I and II will be collectively referred to as "ATAD" unless otherwise stated.
- The legal basis for ATAD is Article 115 of the Treaty on the Functioning of the EU (TFEU) which requires unanimity in the Council before the EU Directive could be adopted.
- Preamble no. 2 of ATAD I states that the introduction of the above rules was directly justified by the need to protect the EU's internal market against tax avoidance practices, thereby ensuring fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion.
- It is important to note that ATAD sets a minimum level of protection and therefore Member States can adopt stricter rules when transposing the ATAD rules into their national laws. At the same time, if Member States already apply stricter rules in the five areas covered by the ATAD, they do not have to amend their legislation. Only Member States that
  a) do not apply rules in the areas covered by the ATAD, or
  b) apply more lenient rules in the areas covered by the ATAD, must implement the ATAD rules or amend their existing laws, respectively, until a certain date, as indicated in the ATAD.

The below table presents the implementation deadline with regard to each ATAD rule.

ATAD rule	Implementation deadline
Interest deduction limitation rule/EBITDA rule	31 December 2018/31 December 2023 for Member States which are currently applying an interest limitation rule which is equally effective to that of the ATAD
Exit taxation	31 December 2019
GAAR	31 December 2018
CFC	31 December 2018
Hybrids	31 December 2019 / 31 December 2021 (for reverse hybrid mismatches) / 31 December 2022 (hybrid regulatory capital in the banking sector)

1 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.
2 Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

1.1. Interest limitation rule (EBITDA rule)

- **General rule:** The deduction of “exceeding borrowing costs” (deductible borrowing costs reduced by taxable interest revenues) is limited up to 30% of taxpayer’s EBITDA (taxable income increased by tax-adjusted amounts for excess borrowing costs, depreciation and amortization).
- ***De minimis* threshold:** Member States may allow taxpayers to fully deduct exceeding borrowing costs up to EUR 3.000.000. Member State are allowed to apply a lower threshold or even no threshold.
- **Standalone exception:** Member State are allowed to exclude standalone entities from the application of the EBITDA rule. A standalone entity is a taxpayer that is not part of a consolidated group for financial accounting purposes and has no associated enterprise or permanent establishment (PE).
- **Group approach:** Member States may treat as a taxpayer: a) an entity which is permitted or required to apply the rules on behalf of a group, as defined according to national tax law; b) an entity in a group, as defined according to national tax law, which does not consolidate the results of its members for tax purposes. In such a case, exceeding borrowing costs and the EBITDA may be calculated at the level of the group and comprise the results of all its members.
- **Group escape:** Where the taxpayer is a member of a consolidated group, the taxpayer may be given the right to fully deduct its exceeding excess borrowing costs if it can demonstrate that the ratio of its equity to its total assets does not fall more than 2 percentage points below the equivalent ratio of the group. Alternatively, Member States may increase the deduction limit to an amount calculated by multiplying the group ratio (exceeding borrowing costs of the group divided by the EBITDA of the group) by the EBITDA of the taxpayer.
- **Exclusion for financial undertakings:** Member States may exclude financial undertakings from the scope of the interest limitation rule. The term “financial undertaking” is explicitly defined in the ATAD.
- **Exclusion for certain loans:** Member States may exclude from the interest limitation rule exceeding borrowing costs incurred on:
  - loans which were concluded before 17 June 2016, but the exclusion shall not extend to any subsequent modification of such loans,
  - loans used to fund a long-term public infrastructure project in case the project operator, borrowing costs, assets and income are all located or originating within the EU.

- **Carry-forward and carry-back rules:** Member States may provide for carry forward and carry back rules for exceeding borrowing costs that cannot be deducted in the current tax period, as well as for unused interest capacity under certain conditions.

1.2. Exit taxation rules

- **General rule:** Asset transfers from a corporate taxpayers’ head office to its PE in another Member State or in a third country and vice versa (i.e. from PE to head office as well as between PEs in different States) should be subject to an exit tax, provided that the Member State of the head office/ PE (Member State of departure) no longer has the right to tax the transferred asset. Exit tax should also become due when a corporate taxpayer transfers its tax residence or its entire business from one Member State to another Member State or a third country.
- **Deferred payment of the exit tax:** For transfers within the EU/European Economic Area (EEA), taxpayers shall be given the right to defer the payment of the exit tax by paying it in equal instalments over five years, provided that in case of an EEA Member State the latter is party to an agreement equivalent to the EU Recovery Directive 2010/24/EU.[3]
- **Interest and bank guarantee:** The Member States of departure are allowed to charge interest or require a bank guarantee under certain circumstances.

3 Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

- **Step up:** ATAD prescribes for a mandatory step up to the market value as the starting value of the assets for tax purposes in the other Member State (destination Member State).
- **Temporary transfers:** ATAD allows Member States not to levy exit tax regarding asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place to meet prudential capital requirements or for the purpose of liquidity management. This applies provided that the assets are set to revert to the Member State of the transferor within a period of 12 months.

1.3. General Anti-Abuse Rule

- **General rule:** For the purposes of calculating the corporate tax liability, a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or particle.
- **Non-genuine arrangement:** An arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons that reflect economic reality.

1.4. Controlled foreign company (CFC) rule

- **General rule:** The ATAD's CFC rules apply to a) PEs which are not taxable or are exempt from tax in the Member State of taxpayer's residence (the head office state), and b) entities where the taxpayer itself, or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of capital or is entitled to receive more than 50% of the profits of that entity. The foreign entity/PE must be subject to an amount of corporate income tax (CIT) which is lower than 50% of the CIT it would have been paid in the taxpayer's Member State.
- **Model A or model B:** Member States can choose either the categorical/entity approach (model A) or the transactional approach (model B) to determine the CFC income.

Model A: certain predefined categories of passive income of the CFC are attributed to the taxpayer/parent company.

- When opting for **model A**, Member States shall not apply the CFC rules if the CFC carries on substantial economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances (the so-called "substance carve-out clause"). Nevertheless, Member States may opt not to apply the clause if the CFC is resident or situated in a third country. In such a case, there would be a CFC charge even if the third-country CFC has enough substance.
- When opting for **model A**, Member State may also opt not to treat an entity or PE as a CFC if one third or less of the income accruing to the entity or PE falls within the predefined categories of passive income. Furthermore, they may opt not to treat financial undertakings as CFCs if one third or less of the entity's income from the predefined categories of passive income comes from transactions with the taxpayer or its associated enterprises.

Model B: undistributed income of the CFC from non-genuine arrangements that have been put into place for the essential purpose of obtaining a tax advantage is attributed to the taxpayer/parent company.

- When opting for **model B**, Member States shall not apply the CFC rules in case of genuine arrangements. An arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity or the PE would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income
- When opting for **model B**, Member States may exclude CFCs: (a) with accounting profits of no more than EUR 750.000, and non-trading income of no more than EUR 75.000; or (b) of which the accounting profits amount to no more than 10% of its operating costs for the tax period.

- **Computation and taxation of CFC's income:** The income to be included in the tax base shall be calculated in proportion to the taxpayer's participation in the entity.

1.5. Hybrid mismatches

- **Targeted hybrid mismatches:** ATAD II prescribes rules regarding the following hybrid mismatches:
  - Hybrid financial instruments
  - Hybrid entities
  - Hybrid mismatches involving PEs
  - Imported mismatches
  - Reverse hybrid mismatches
  - Hybrid transfers
  - Tax residency mismatches

- **Undesired outcome and suggested solution:** A hybrid mismatch must lead to double tax deduction or deduction with no inclusion.
  - **Double deduction:** to the extent that a hybrid mismatch results in double deduction, the deduction shall be denied in the investor Member State as a primary rule or, as a secondary rule, in the payer Member State.
  - **Deduction/no inclusion:** to the extent that a hybrid mismatch results in a deduction without inclusion, the deduction shall be denied in the payer Member State, as a primary rule, or, as a secondary rule, the amount of the payment shall be included as taxable income in the payee Member State.

NB: although the United Kingdom is currently not a Member State, the below infographics show the implementation of the ATAD I and II rules also in the United Kingdom.

2. Interest deduction limitation rule (EBITDA rule)

2.1 Application of EBITDA rule

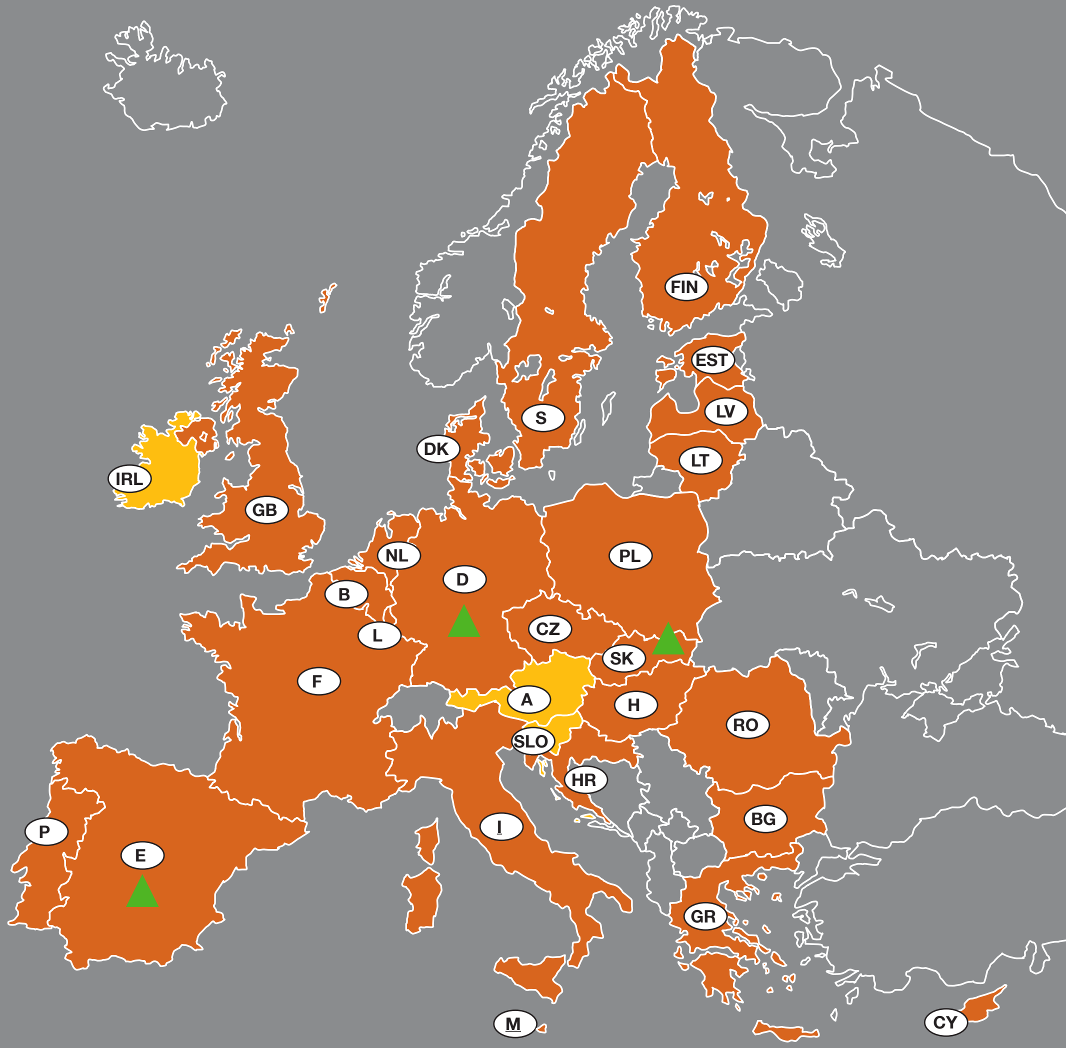
"Based on the ATAD, Member States shall introduce an EBITDA rule. However, not all Member States have done so. In addition, there are Member States that apply their domestic EBITDA rule."

25 **Applies EBITDA rule**
Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Slovakia, United Kingdom.

3 **Does not apply EBITDA rule**
Austria, Ireland, Slovenia.

3 **Applies a domestic EBITDA rule***
Germany, Slovakia, Spain.

* The below infographics on EBITDA rule include features of domestic EBITDA rules of these countries.



2.2 Transitional period

“ATAD allows Member States with equally effective rules as the EBITDA rule to apply their rules until 1 January 2024. The European Commission has issued a notice (2018/C 441/01) determining the Member States that may apply their domestic laws by 1 January 2024. France and Greece have decided not to use this option.”

22 Not equally effective rules
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Sweden, United Kingdom

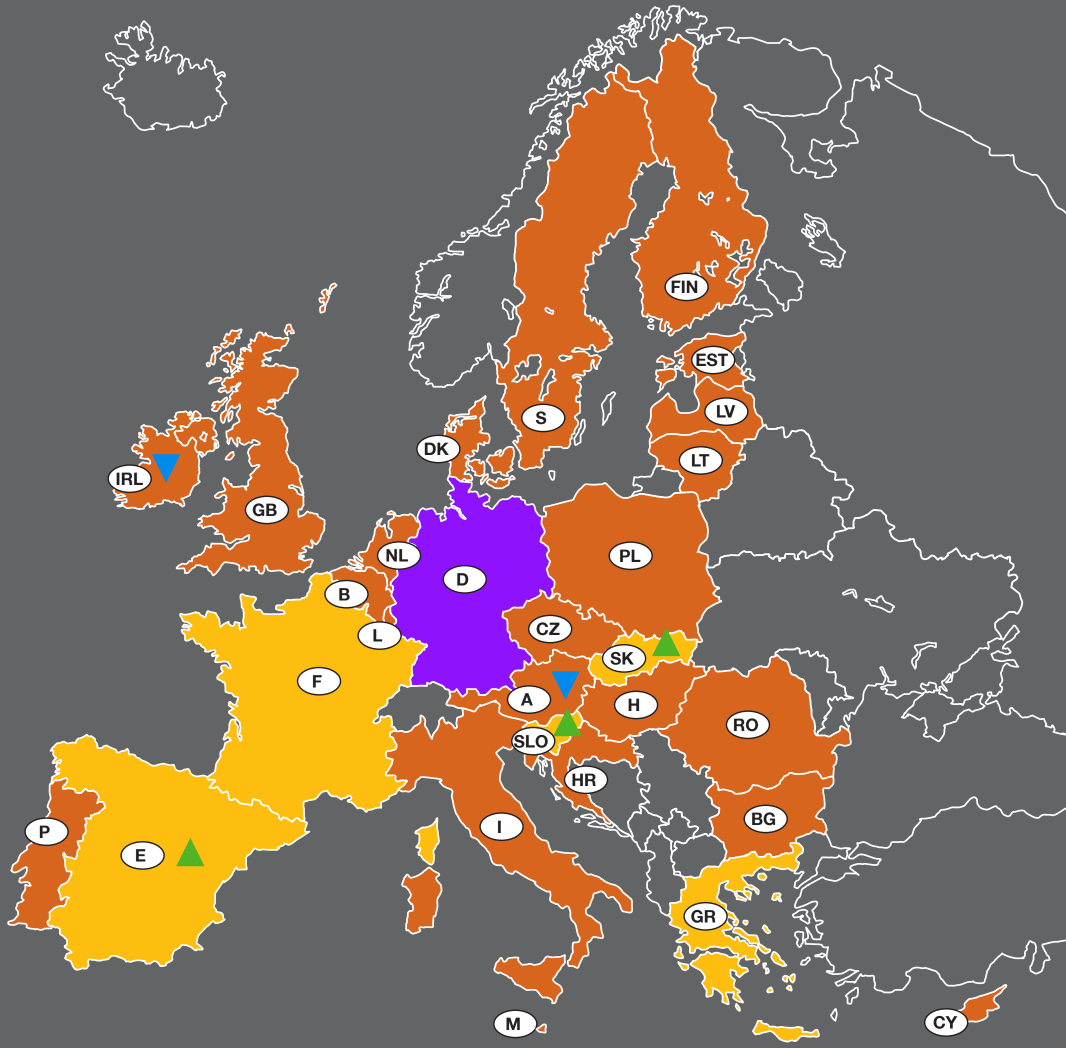
5 Equally effective rules
Greece, France, Slovakia, Slovenia, Spain

3 Used the transitional period
Spain, Slovenia, Slovakia

2 European Commission reasoned opinion for non-implementation*
Austria, Ireland

1 Not applicable
Germany.

*The European Commission may decide to refer the matter to the Court of Justice of the EU.



2.3 EBITDA percentage and *de minimis* threshold

"Exceeding borrowing costs shall be deductible in the tax period in which they are incurred only up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Nevertheless, Member States may opt for a *de minimis* threshold lower than EUR 3.000.000."

23 **30% of the EBITDA**
Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Poland, Romania, Sweden, Spain, United Kingdom.

1 **25% of the EBITDA**
Slovakia.

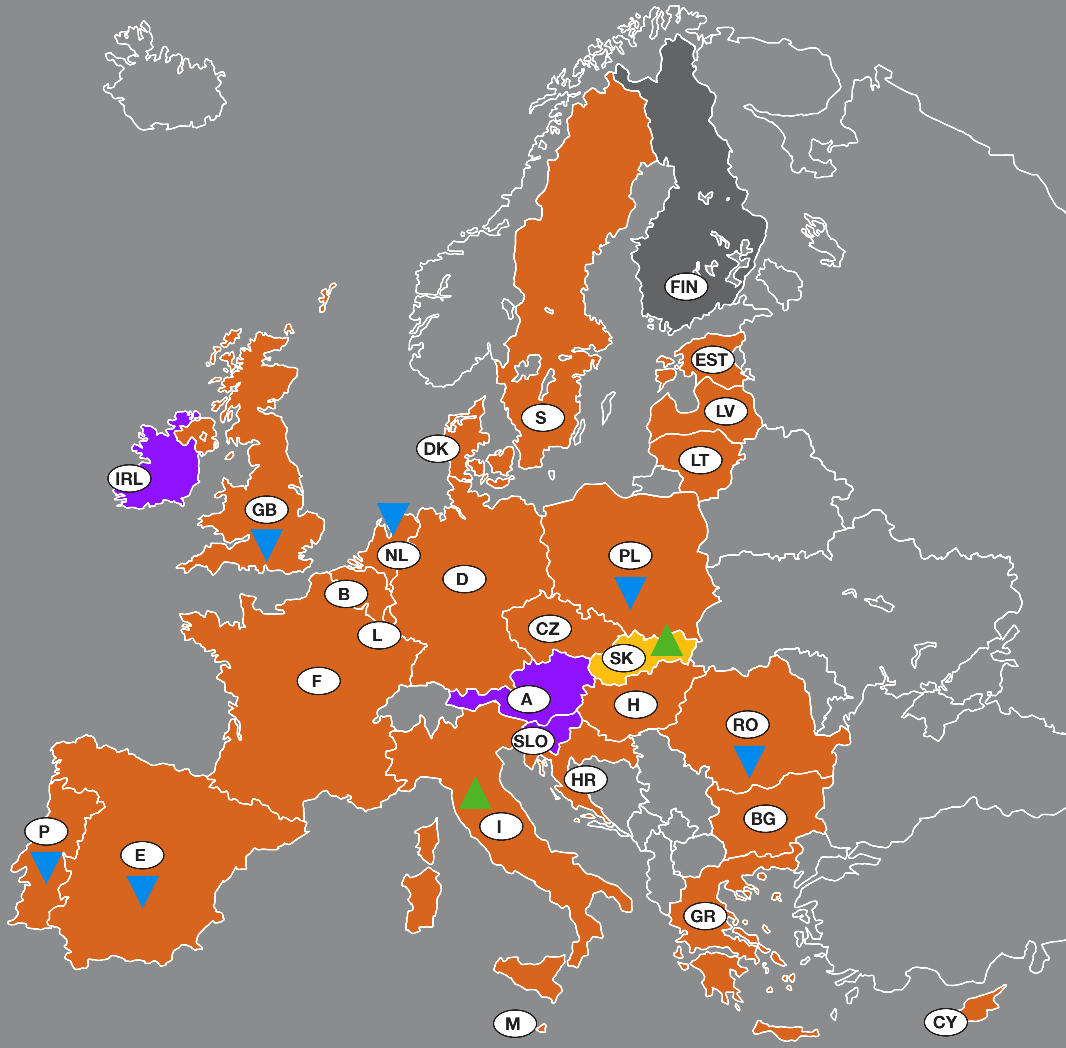
1 **25% of the EBITD**
Finland.

2 **No *de minimis* threshold**
Italy, Slovakia.

6 **De minimum threshold lower than EUR 3.000.000* (general or applicable in certain cases)**
Netherlands, Poland, Portugal, Romania, Spain, United Kingdom.

3 **Not applicable**
Austria, Ireland, Slovenia.

*Amounts in foreign currencies were converted to EUR



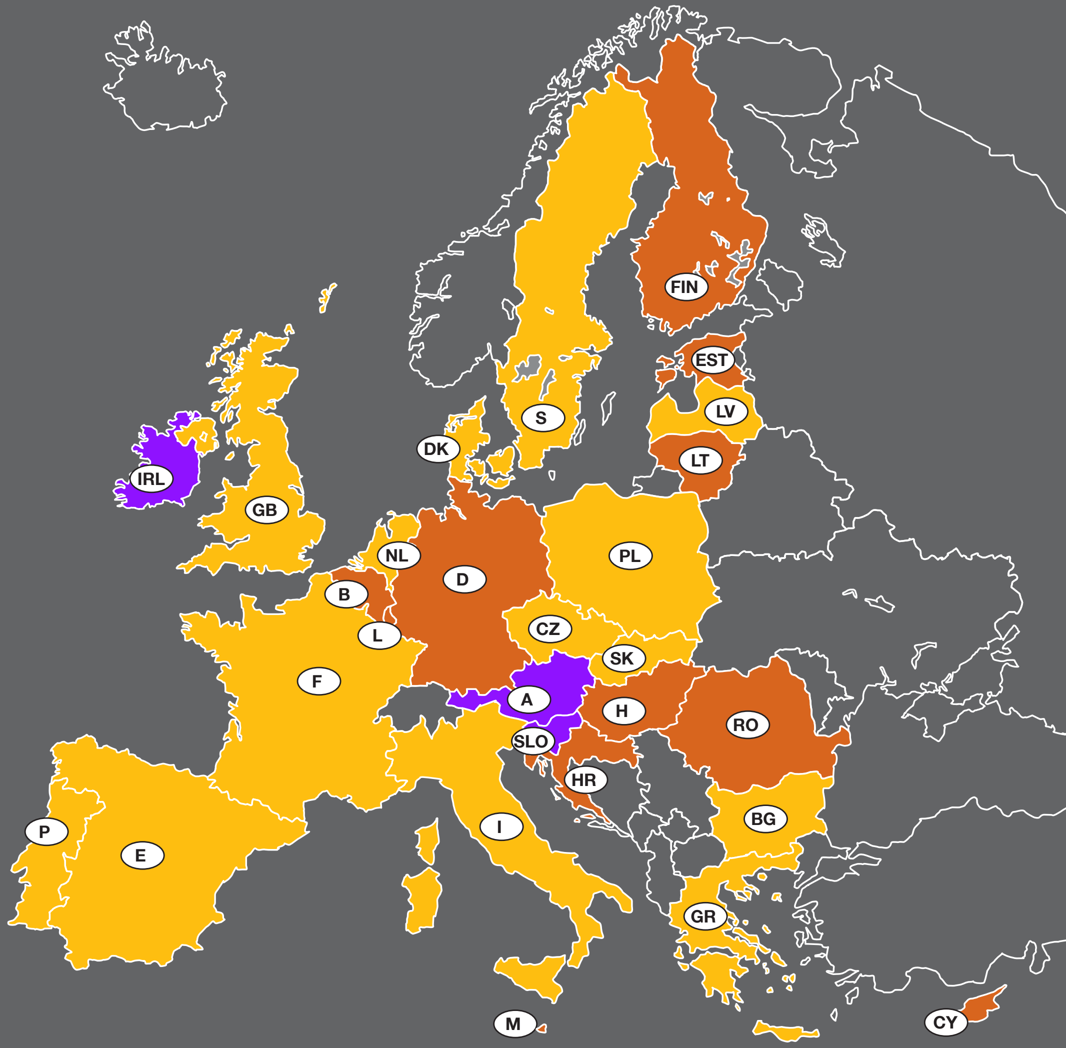
2.4 Standalone exception

"Member States may exclude standalone companies from the scope of the EBITDA rule. A standalone entity means a taxpayer that is not part of a consolidated group for financial accounting purposes and has no associated enterprise or PE."

11 Exception for standalone entities
Belgium, Croatia, Cyprus, Estonia, Finland, Germany, Hungary, Lithuania, Luxembourg, Malta, Romania.

14 No exception for standalone entities
Bulgaria, Czech Republic, Denmark, France, Greece, Italy, Latvia, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom.

3 Not applicable
Austria, Ireland, Slovenia.



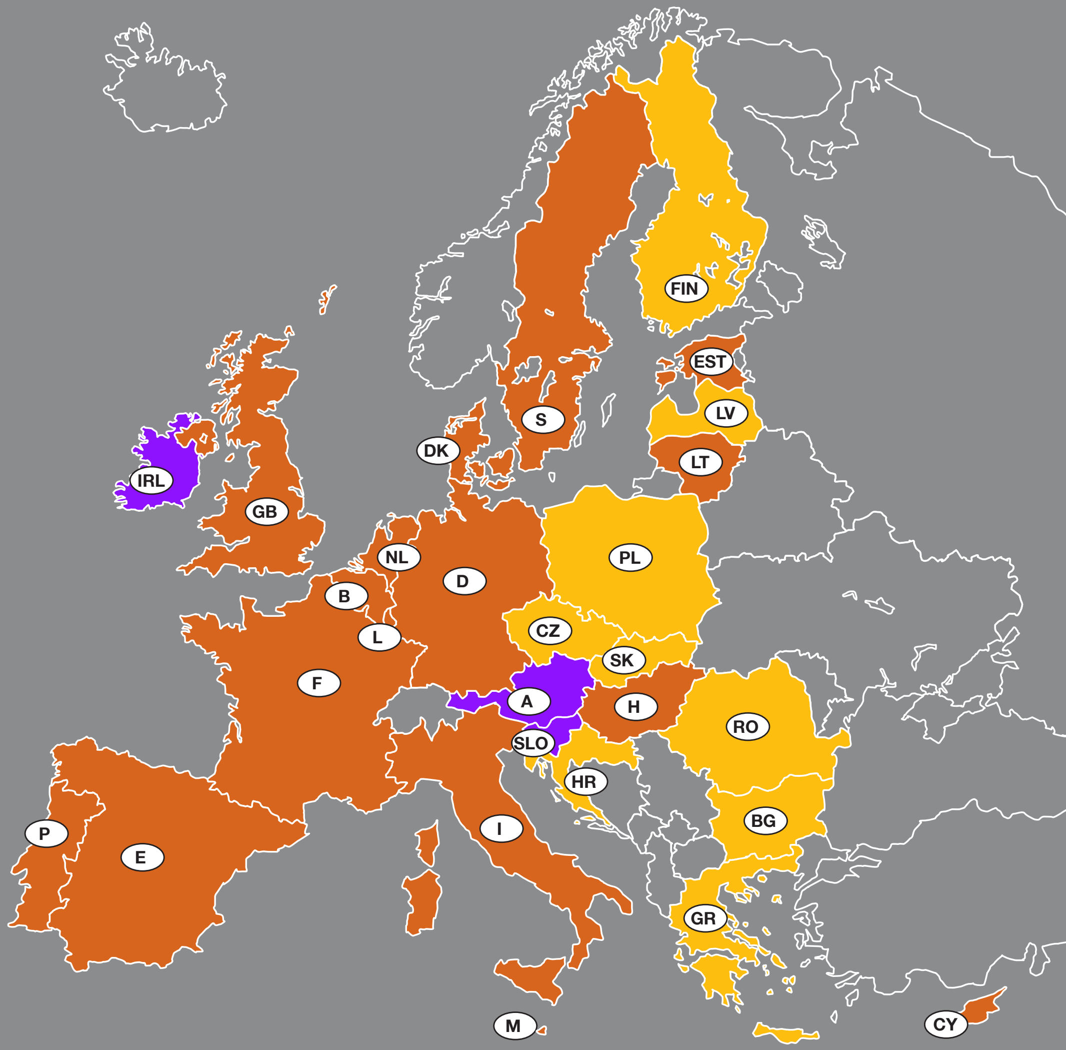
2.5 Group approach

"Member States may treat as a taxpayer: a) an entity which is permitted or required to apply the rules on behalf of a group, as defined according to national tax law; b) an entity in a group, as defined according to national tax law, which does not consolidate the results of its members for tax purposes. In such a case, exceeding borrowing costs and the EBITDA may be calculated at the level of the group and comprise the results of all its members."

16 Group approach applied
Belgium, Cyprus, Denmark, Estonia, France, Germany, Hungary, Italy, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Spain, Sweden, United Kingdom.

9 No group approach applied
Bulgaria, Croatia, Czech Republic, Finland, Greece, Latvia, Poland, Romania, Slovakia.

3 Not applicable
Austria, Ireland, Slovenia.



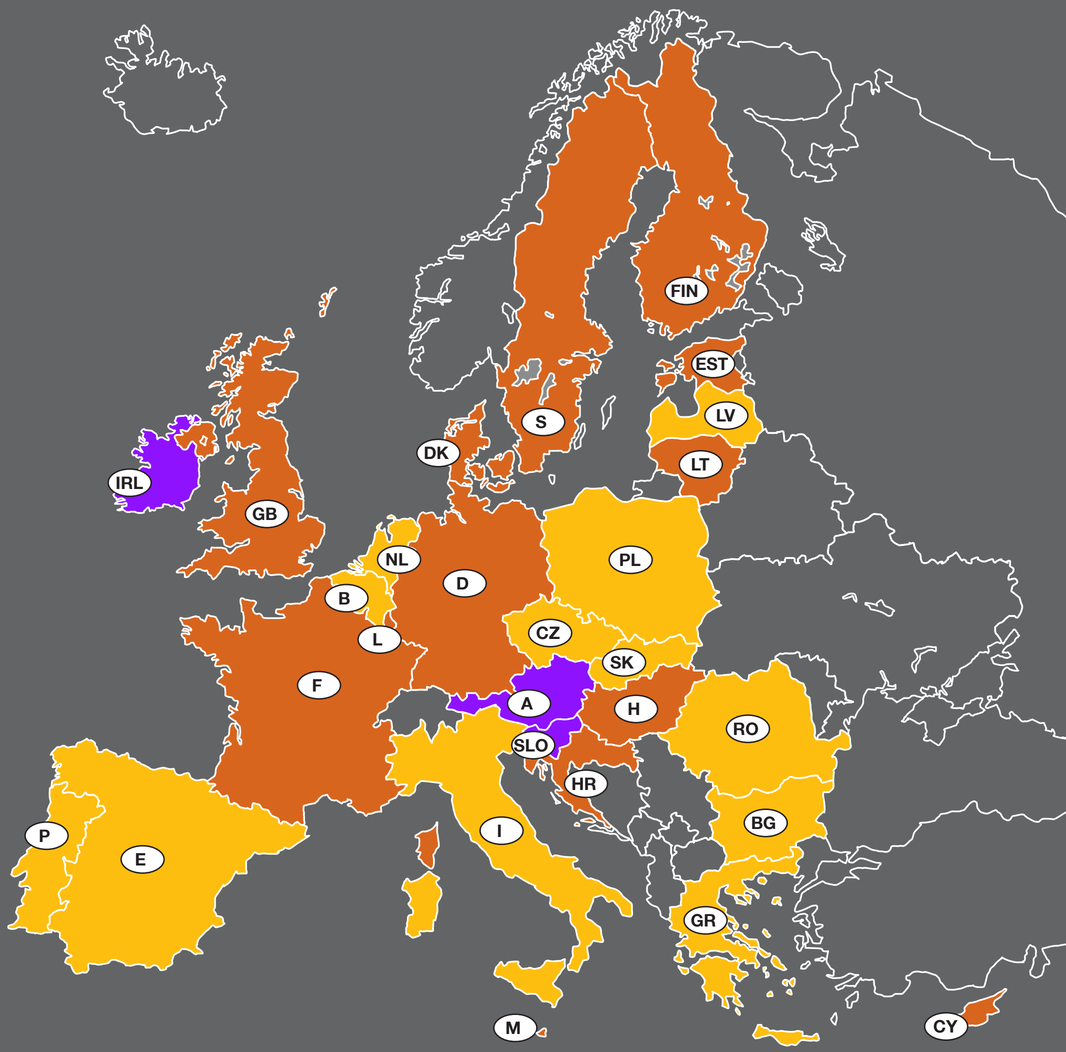
2.6 Group escape

"Member States may allow taxpayers that are part of a consolidated group for financial accounting purposes to apply a group escape clause for the deduction of exceeding borrowing costs based on either an equity/total assets ratio or a group EBITDA test."

13 Group escape opted
Croatia, Cyprus, Denmark, France, Finland, Germany, Estonia, Hungary, Lithuania, Luxembourg, Malta, Sweden, United Kingdom.

12 No group escape opted
Belgium, Bulgaria, Czech Republic, Greece, Italy, Latvia, Netherlands, Poland, Portugal, Romania, Slovakia, Spain.

3 Not applicable
Austria, Ireland, Slovenia.



2.7 Exclusion for existing loans and infrastructure exception

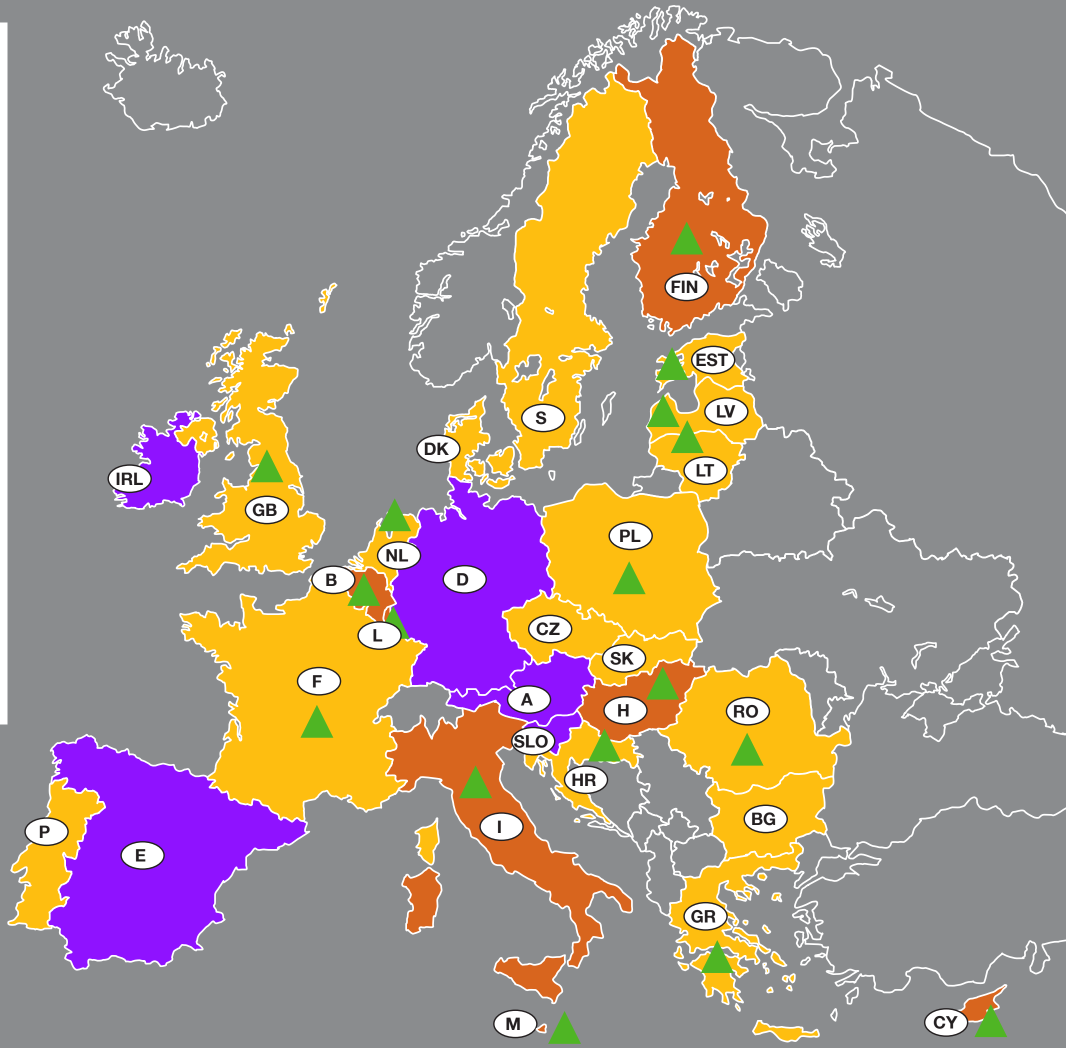
“Member States may exclude loans concluded before 17 June 2016 and loans used to fund a long-term public infrastructure project where the project operator, borrowing costs, assets and income are all in the EU.”

7 General or specific exclusion of existing loans
Belgium, Cyprus, Finland, Hungary, Italy, Luxembourg, Malta.

16 No exclusion of existing loans
Bulgaria, Croatia, Czech Republic, Denmark, Greece, Estonia, France, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Sweden, United Kingdom.

5 Not applicable
Austria, Germany, Ireland, Slovenia, Spain.

17 General or specific exclusion of loans for long-term infrastructure projects
Belgium, Croatia, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, United Kingdom.



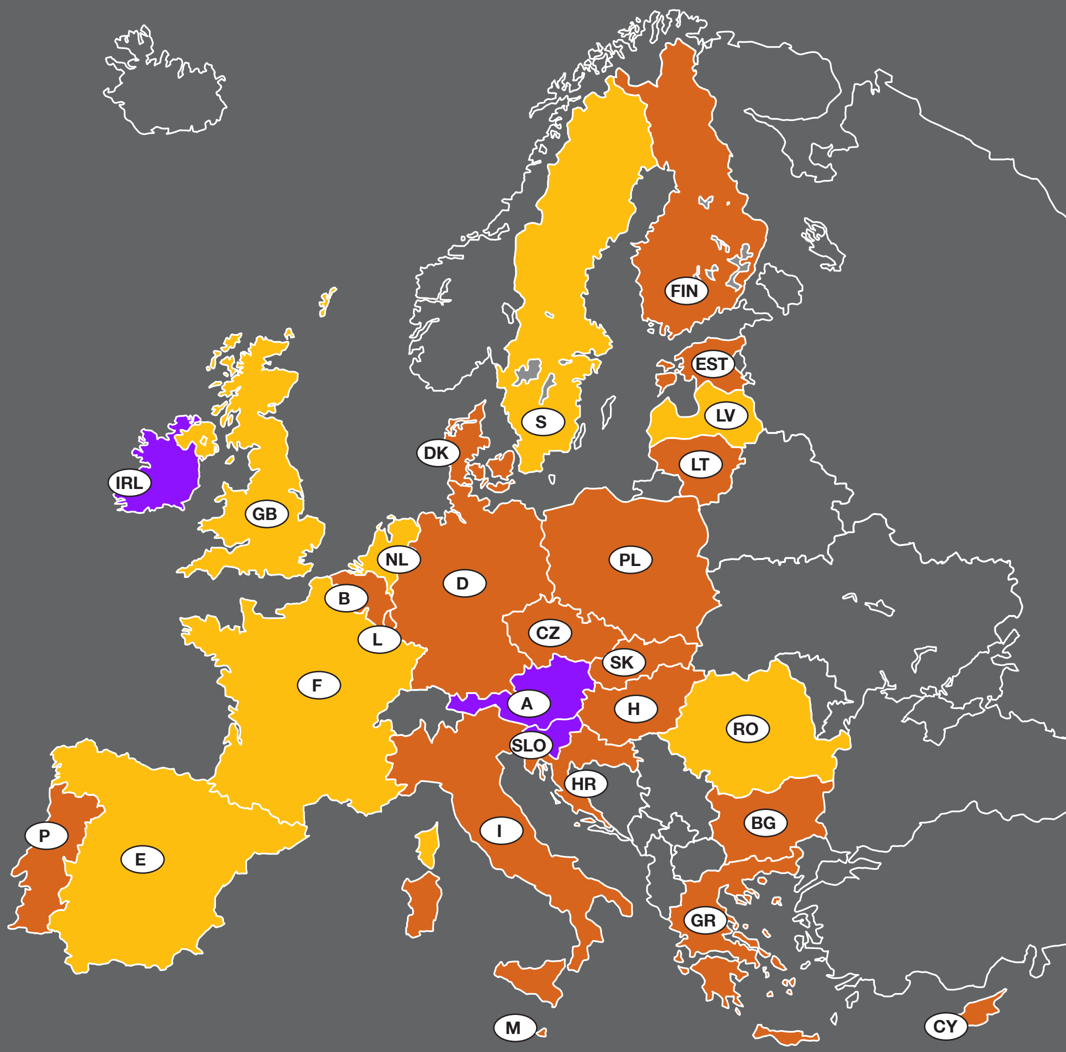
2.8 Financial undertakings exception

"Member States may exclude financial undertakings from the scope of the EBITDA rule."

18 Financial undertakings excluded
Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Italy, Finland Hungary, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia.

7 Financial undertakings not excluded
France, Netherlands, Latvia, Romania, Spain, Sweden, United Kingdom.

3 Not applicable
Austria, Ireland, Slovenia.



2.9 Carry forward and carry back rules

"Member States may provide for carry forward and carryback rules for exceeding borrowing costs that cannot be deducted in the current tax period, as well as for unused interest capacity under certain conditions."

8 Unlimited carry forward, no carry back
Belgium, Bulgaria, Czech Republic, Finland, Greece, Lithuania, Netherlands, Romania.

8 Unlimited carry forward, five-year unused interest capacity
Denmark, France, Germany, Italy, Luxembourg, Malta, Spain, United Kingdom.

3 No carry forward rules available
Estonia, Latvia, Slovakia.

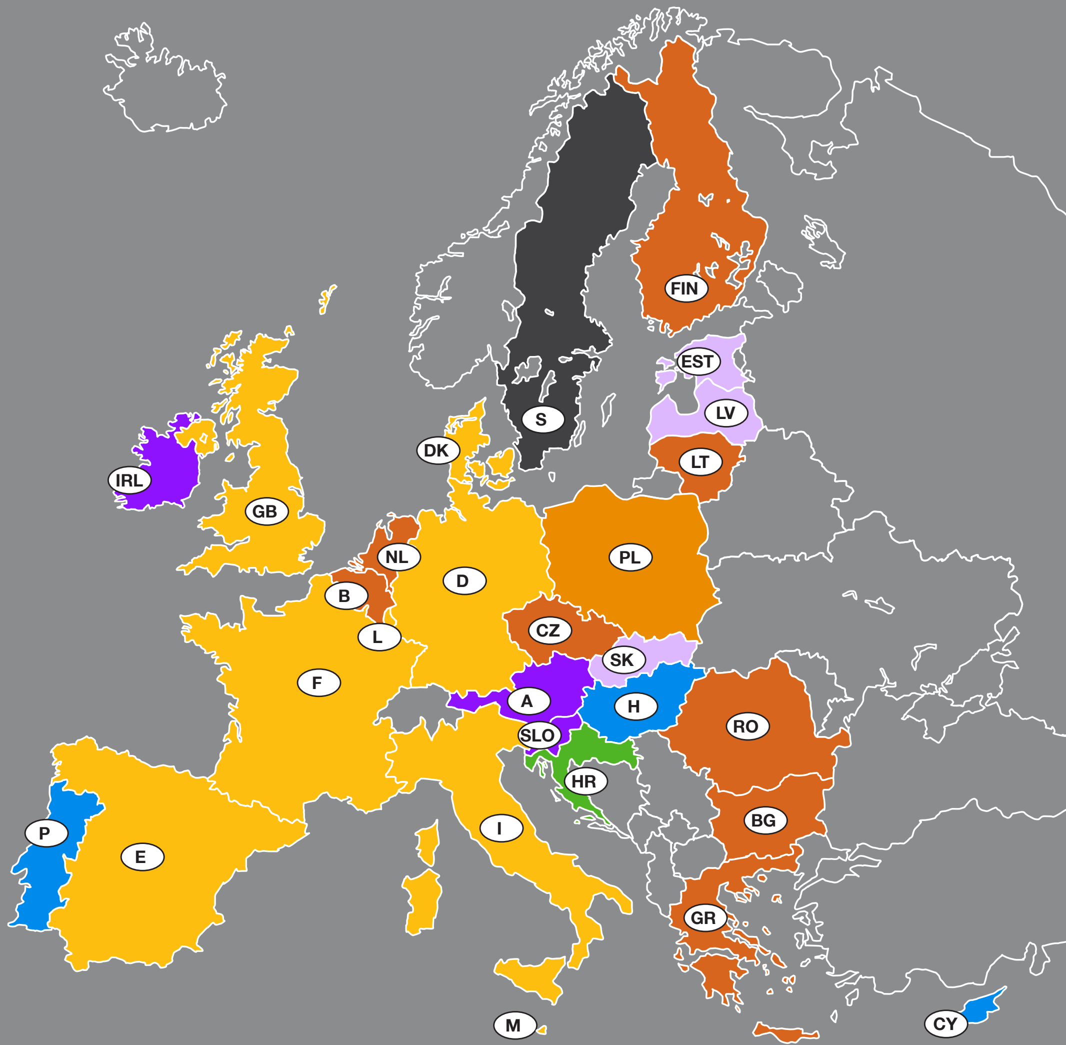
1 Three-year carry forward, no carry back
Croatia

3 Five-year carry forward, five-year unused interest capacity
Cyprus, Hungary, Portugal

1 Five-year carry forward, no carry back
Poland

1 Six-year carry forward, no carry back
Sweden

3 Not applicable
Austria, Ireland, Slovenia.



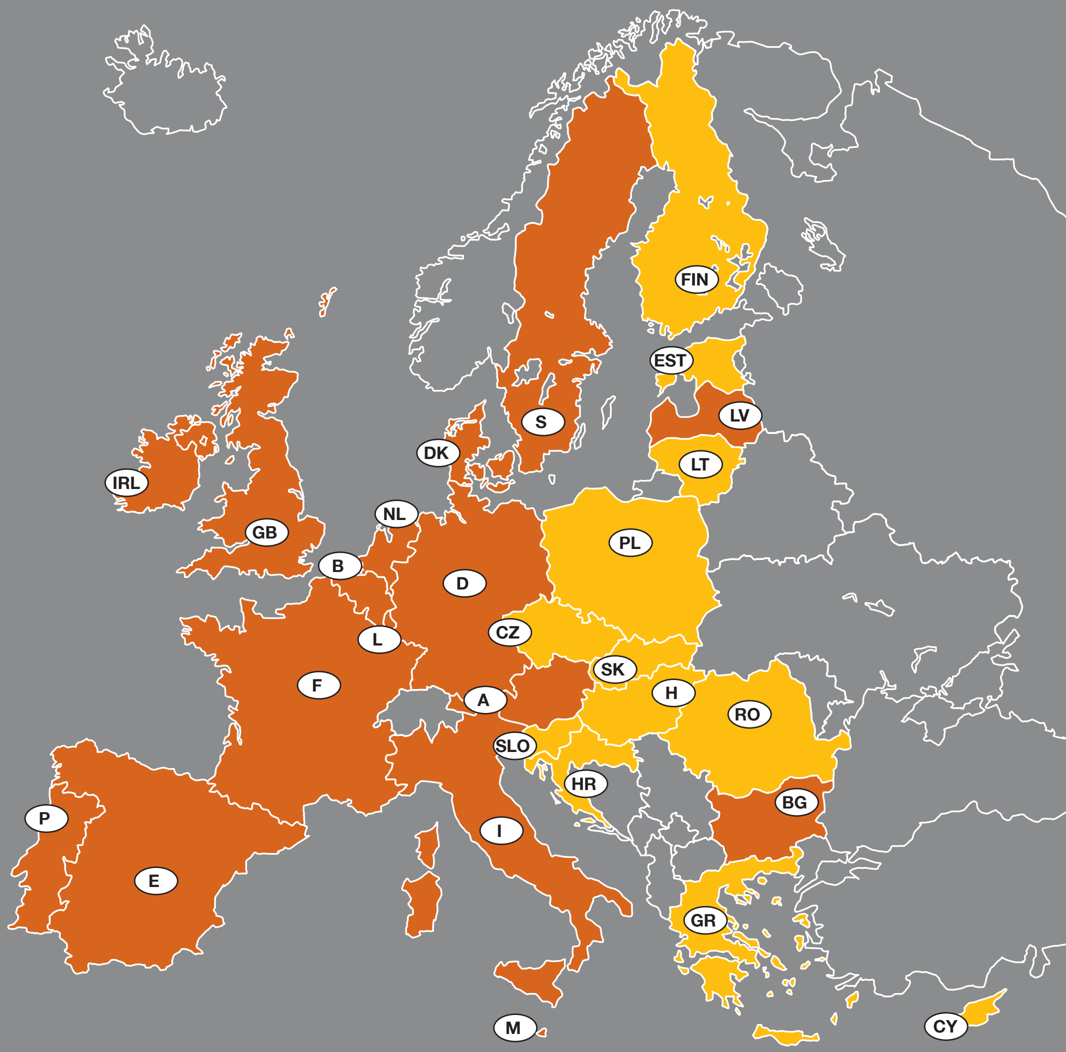
3. Exit taxation rules

3.1. Application of domestic exit taxation rules

"Several Member States were applying exit taxation rules even before 1 January 2020"

16 Was already applying exit taxation rules
Austria, Belgium, Bulgaria, Denmark, France, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Spain, Sweden, United Kingdom.

12 Was not applying exit taxation rules
Croatia, Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Lithuania, Poland, Romania, Slovakia, Slovenia.



3.2. Implementation of ATAD's exit taxation rules

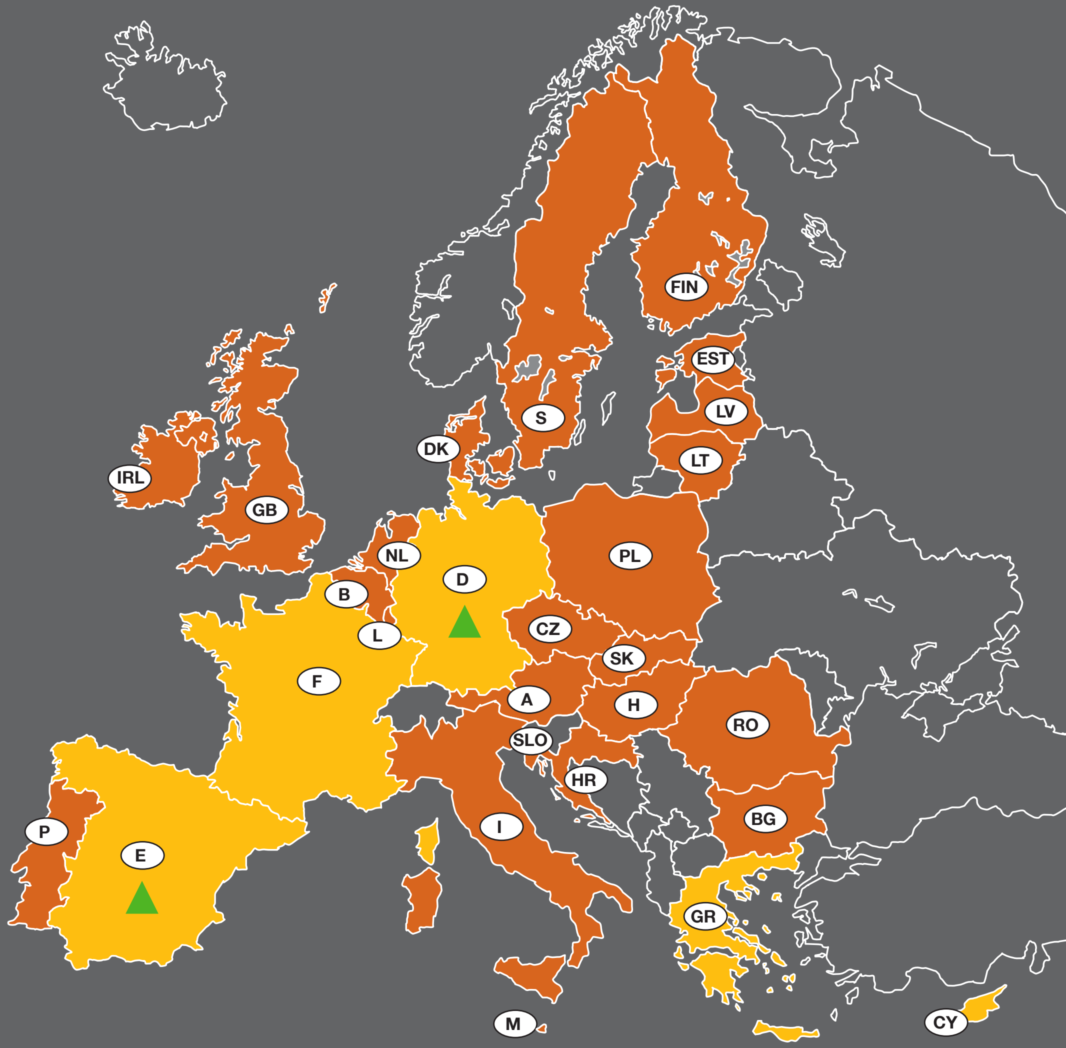
"Member States shall introduce exit taxation rules or amend their existing ones by 31 December 2019."

23 **Implemented ATAD's exit taxation rules**
Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom.

5 **Has not implemented ATAD's exit taxation rules**
Cyprus, France, Germany, Greece, Spain.

2 **Draft legislation amending domestic exit tax rules**
Germany*, Spain*.

* The below infographics do not include the features of *domestic* exit taxation rules of these countries.



3.3. Date of entry into force of ATAD's exit taxation rules in Member States

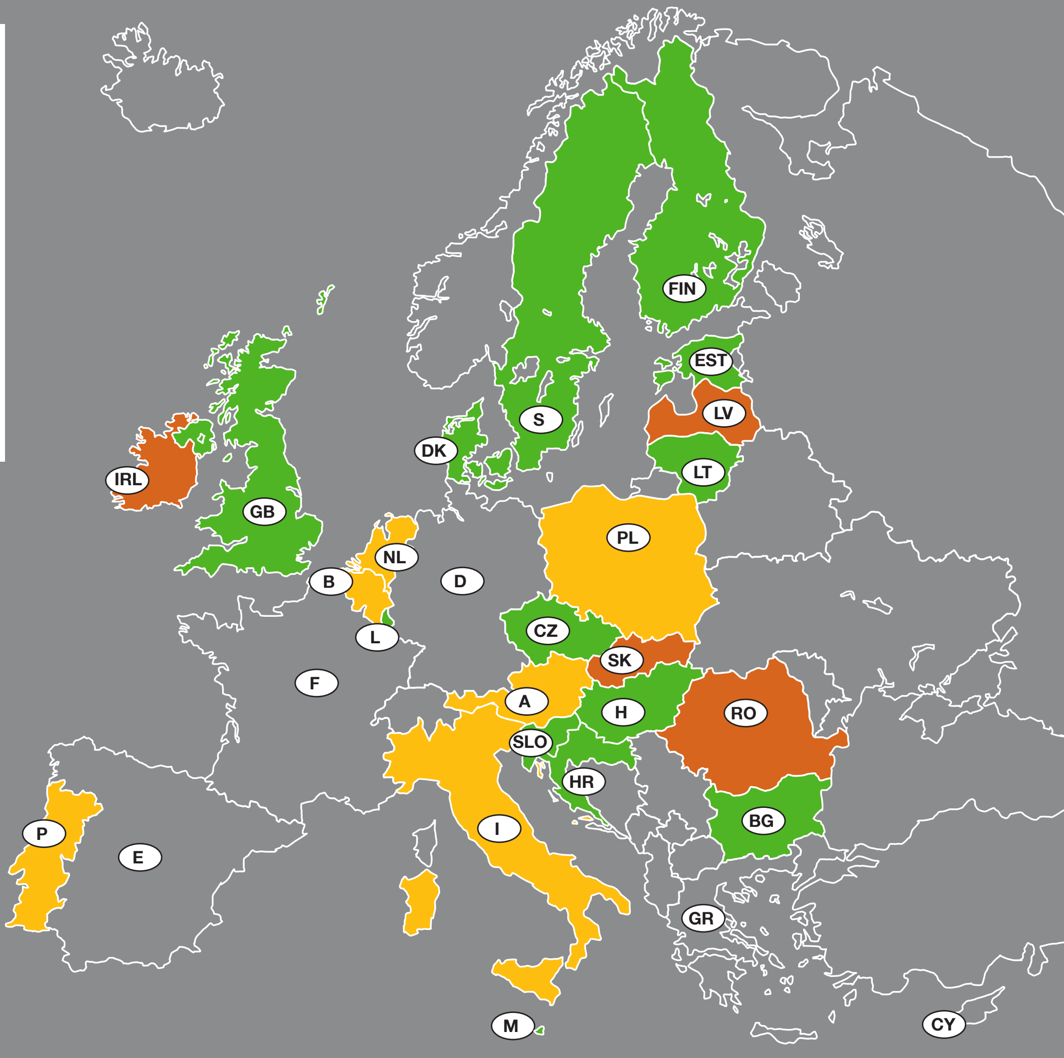
"Although ATAD obliged Member States to apply exit taxation rules as of 1 January 2020, there are Member States that apply ATAD's exit taxation rule as of 2018 and 2019."

4 **Application as of 1 January 2018**
Ireland, Latvia*, Romania, Slovakia.

6 **Application as of 1 January 2019**
Austria, Belgium, Italy, Netherlands, Poland, Portugal.

13 **Application as of 1 January 2020**
Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Hungary, Lithuania, Luxembourg, Malta, Slovenia, Sweden, United Kingdom.

*Changes in 2020

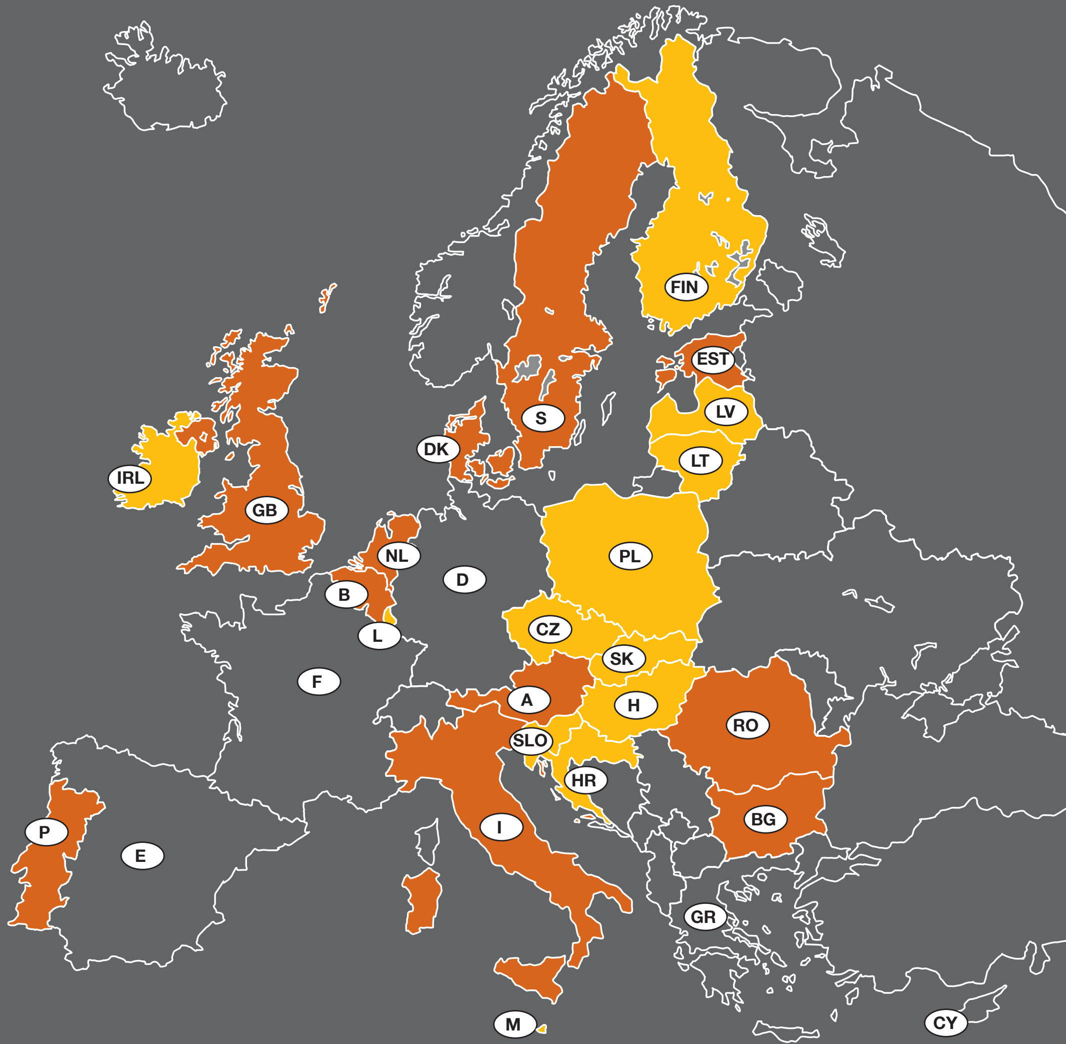


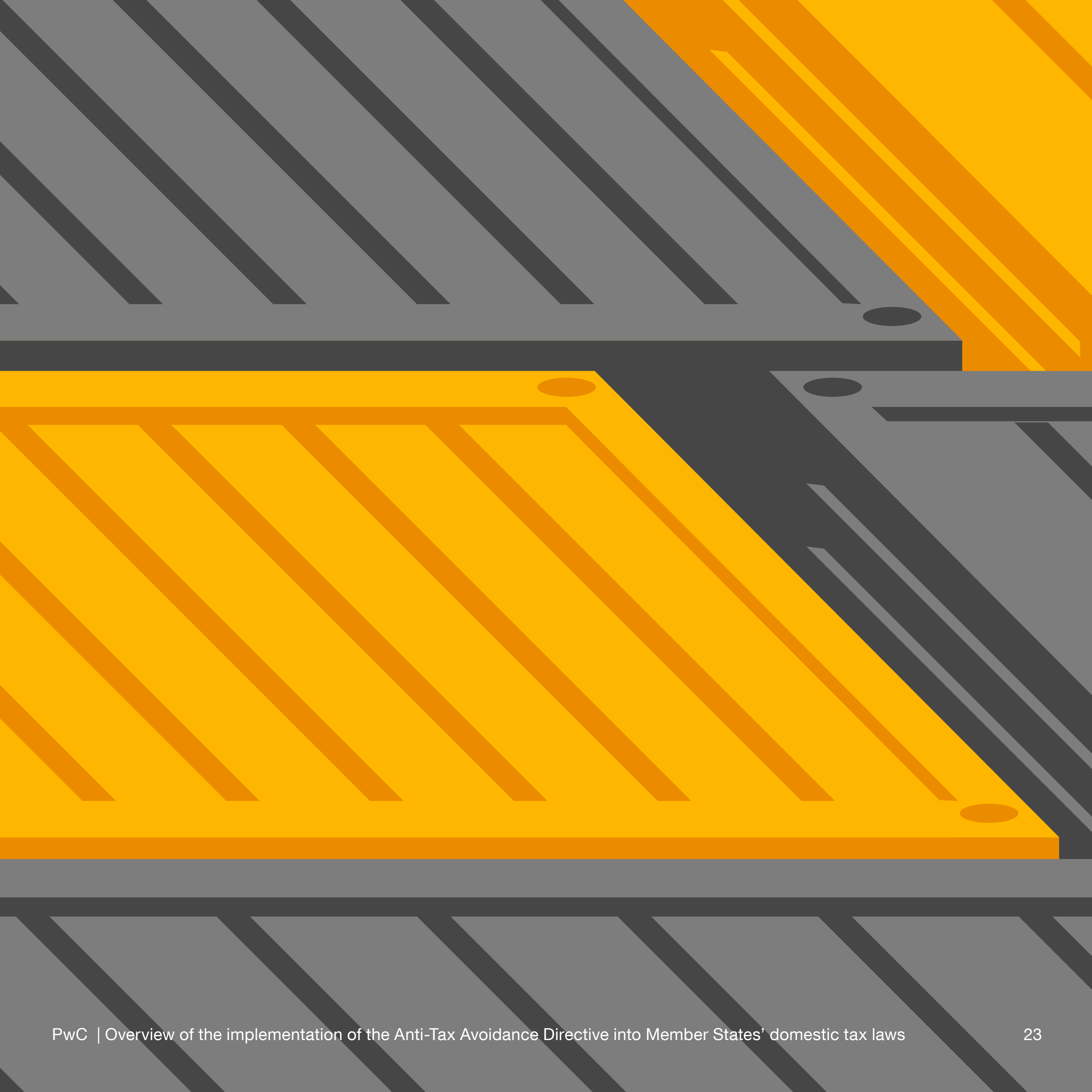
3.4. Exception for temporary transfers

"The ATAD allows Member States to exclude asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management provided that these assets are set to revert to the Member State of the transferor within a period of 12 months"

11 Does not exempt temporary transfers
Austria, Belgium, Bulgaria, Denmark, Estonia, Italy, Netherlands, Portugal, Romania, Sweden, United Kingdom.

12 Exempts temporary transfers
Croatia, Czech Republic, Finland, Hungary, Ireland, Latvia, Lithuania, Malta, Luxembourg, Poland, Slovakia, Slovenia.





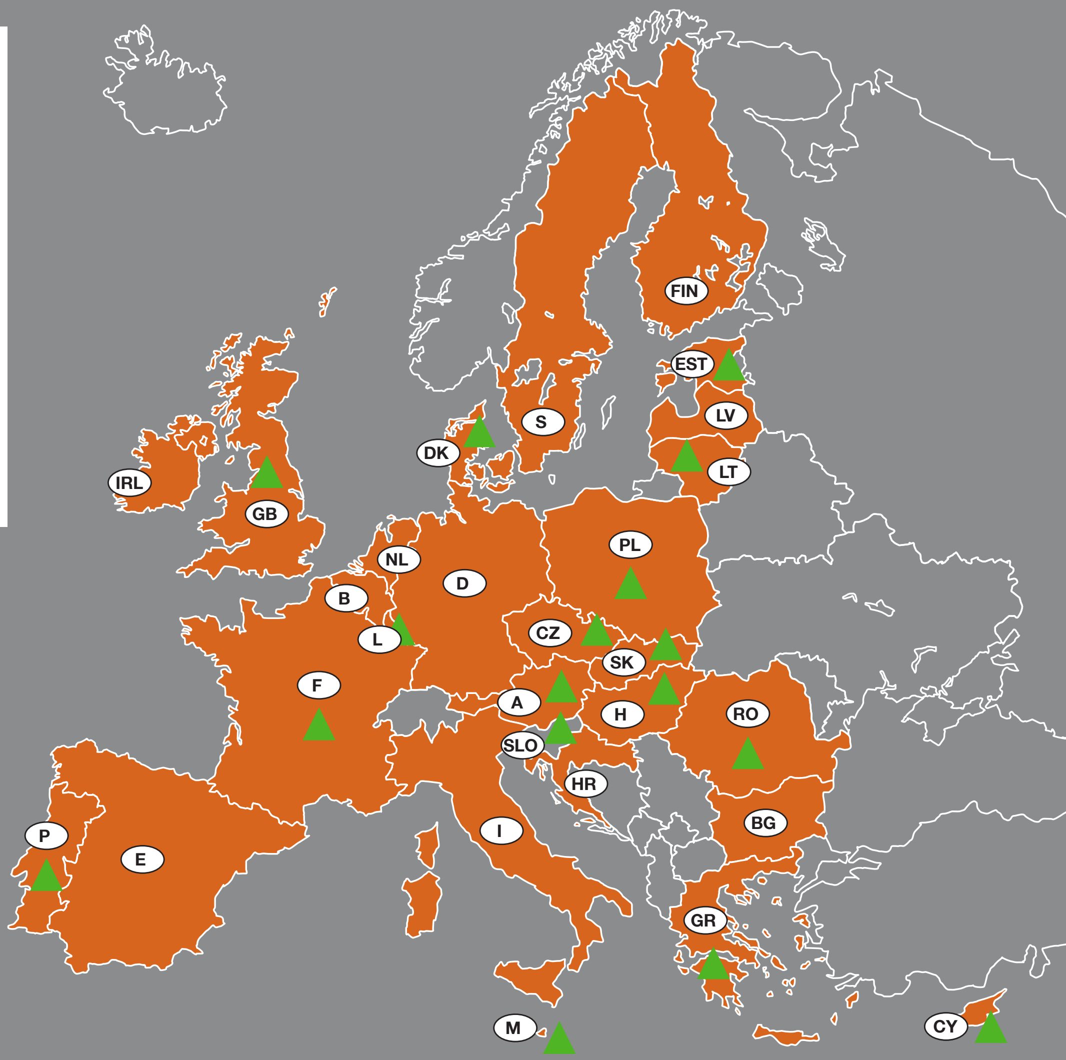
4. General Anti-Avoidance Rule

4.1 Implementation of ATAD's GAAR

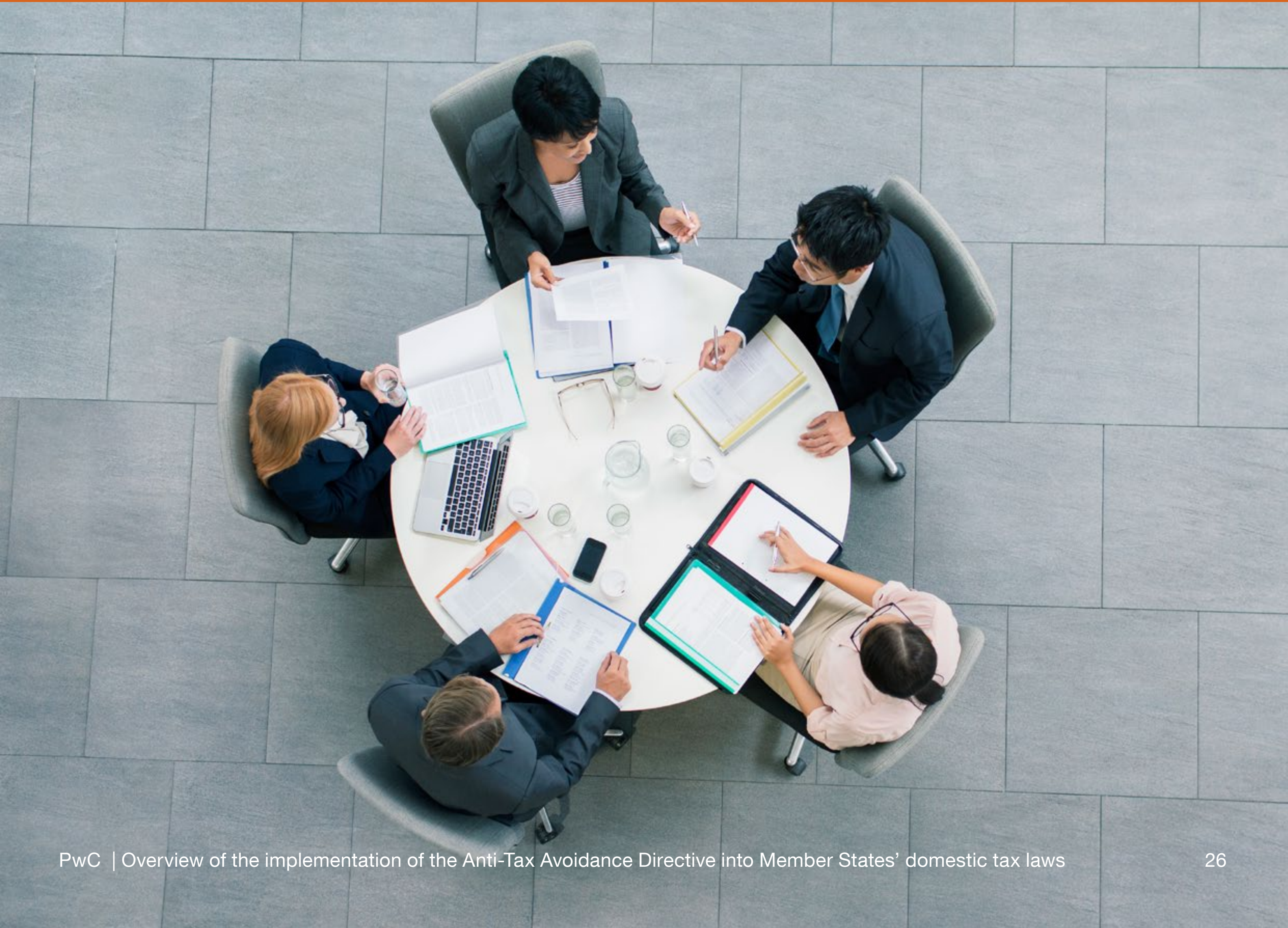
"Member States have to implement a GAAR by 31 December 2018. Nevertheless, many Member States were already applying a GAAR in their national law."

27 **Was already applying a GAAR**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, United Kingdom.

17 **Implemented ATAD's GAAR**
Austria, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom.



5. Controlled Foreign Company rules



5.1 Implemented ATAD's CFC rules

"Member States shall implement the ATAD's CFC rules by 31 December 2018. Member States already applying CFC rules have to adjust them in line with those of the ATAD. In the same vein, Member States that do not apply CFC rules, have to introduce the ATAD's CFC rules in their tax legislation."

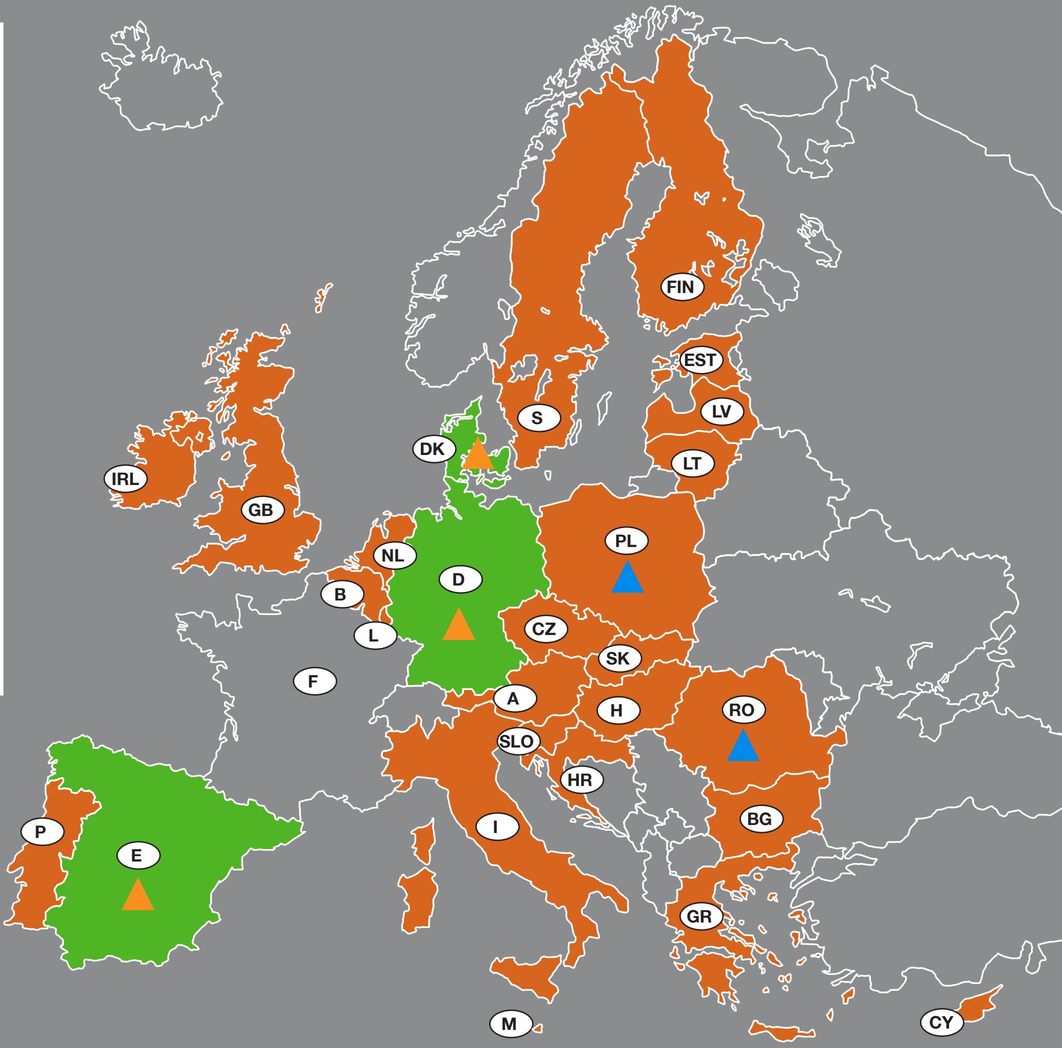
24 **Implemented ATAD's CFC rule (application as per 1 January 2019)**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom.

3 **Did not implement ATAD's CFC rules***
Denmark, Germany, Spain.

2 **Application per 1 January 2018**
Romania, Poland.

3 **Proposed amendments**
Denmark, Germany, Spain.

* The below infographics on ATAD's CFC rules do not include features of *domestic* CFC rules.



5.2 Model A or model B

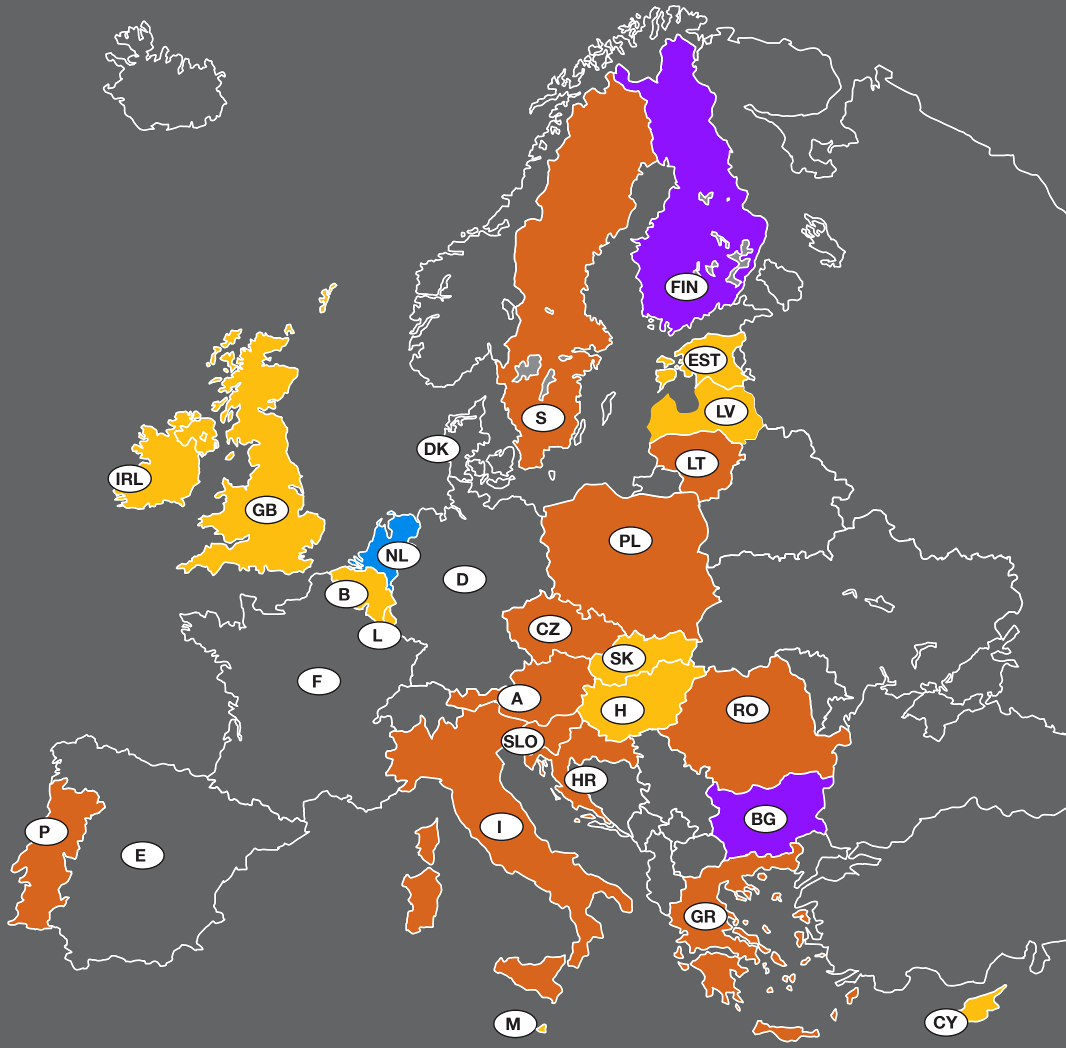
“Member States are free to choose either the categorical/entity approach (model A) or the transactional approach (model B) to determine the CFC income.”

11 Opted for model A
Austria, Croatia, Czech Republic, Greece, Italy, Lithuania, Poland, Portugal, Romania, Slovenia, Sweden.

10 Opted for model B
Belgium, Cyprus, Estonia, Hungary, Ireland, Latvia, Luxembourg, Malta, Slovakia, United Kingdom.

2 Neither model A nor B
Bulgaria, Finland.

1 Combination of two models
Netherlands.



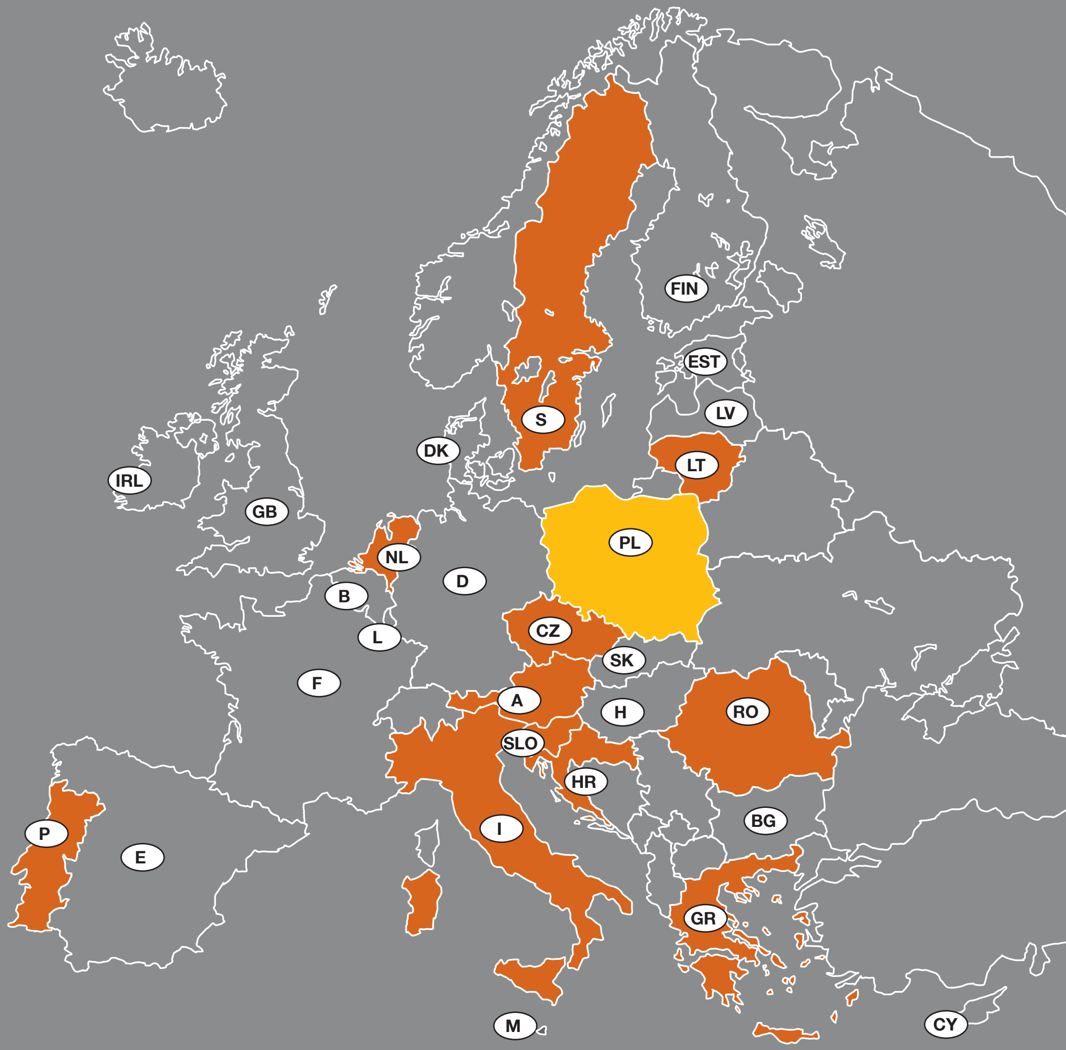
5.3 Model A: Substance carve-out for CFCs in third countries

"Member States that have opted for model A shall not apply their CFC rules where the controlled foreign company carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances (substance carve-out clause). Nevertheless, Member States may opt for refraining from applying a substance carve-out clause for CFCs that are resident or situated in a third country that is not party to the EEA agreement."

11 Application of substance carve-out to third-country situations
Austria, Croatia, Czech Republic, Greece, Italy, Lithuania, Netherlands, Portugal, Romania, Slovenia, Sweden.

1 No application of substance carve-out to third country situations
Poland.

1 No application of substance carve-out to either EU/EEA or third country situations
Denmark.



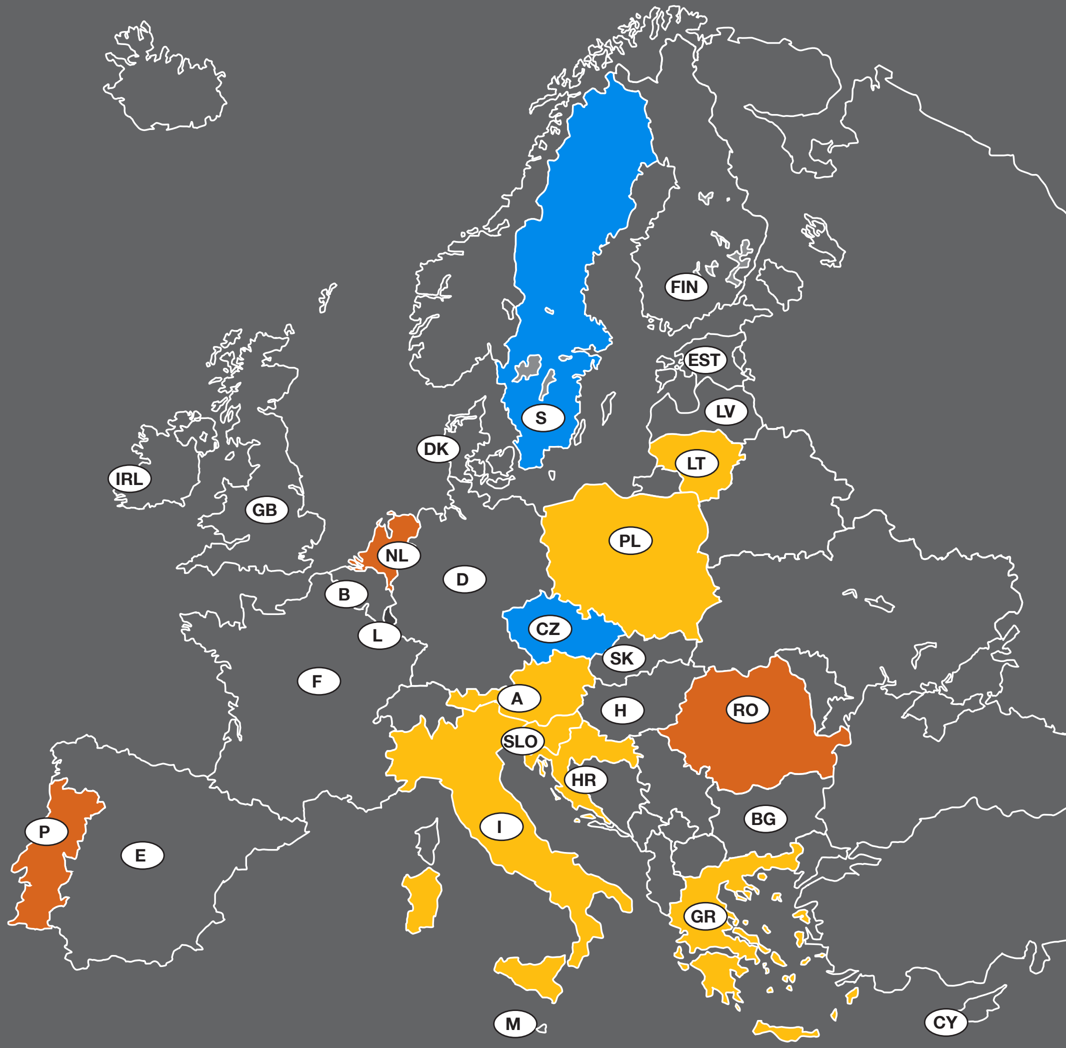
5.4 Exceptions under model A

"Member States that have opted for model A may opt not to treat an entity or a PE as a CFC if one third or less of the income accruing to the entity or PE falls within the specific categories of passive income as listed in model A. Furthermore, they may opt not to treat a financial undertaking as a CFC if one third or less of its income from the specific categories of passive income as listed in model A comes from transactions with the taxpayer or its associated enterprises."

3 One-third exception and financial undertakings exception
Netherlands, Portugal, Romania.

7 One-third qualifying income exception only
Austria, Croatia, Greece, Italy, Lithuania, Poland, Slovenia.

2 Neither one-third exception nor financial undertakings exceptions
Czech Republic, Sweden.



5.5 Exceptions under model B

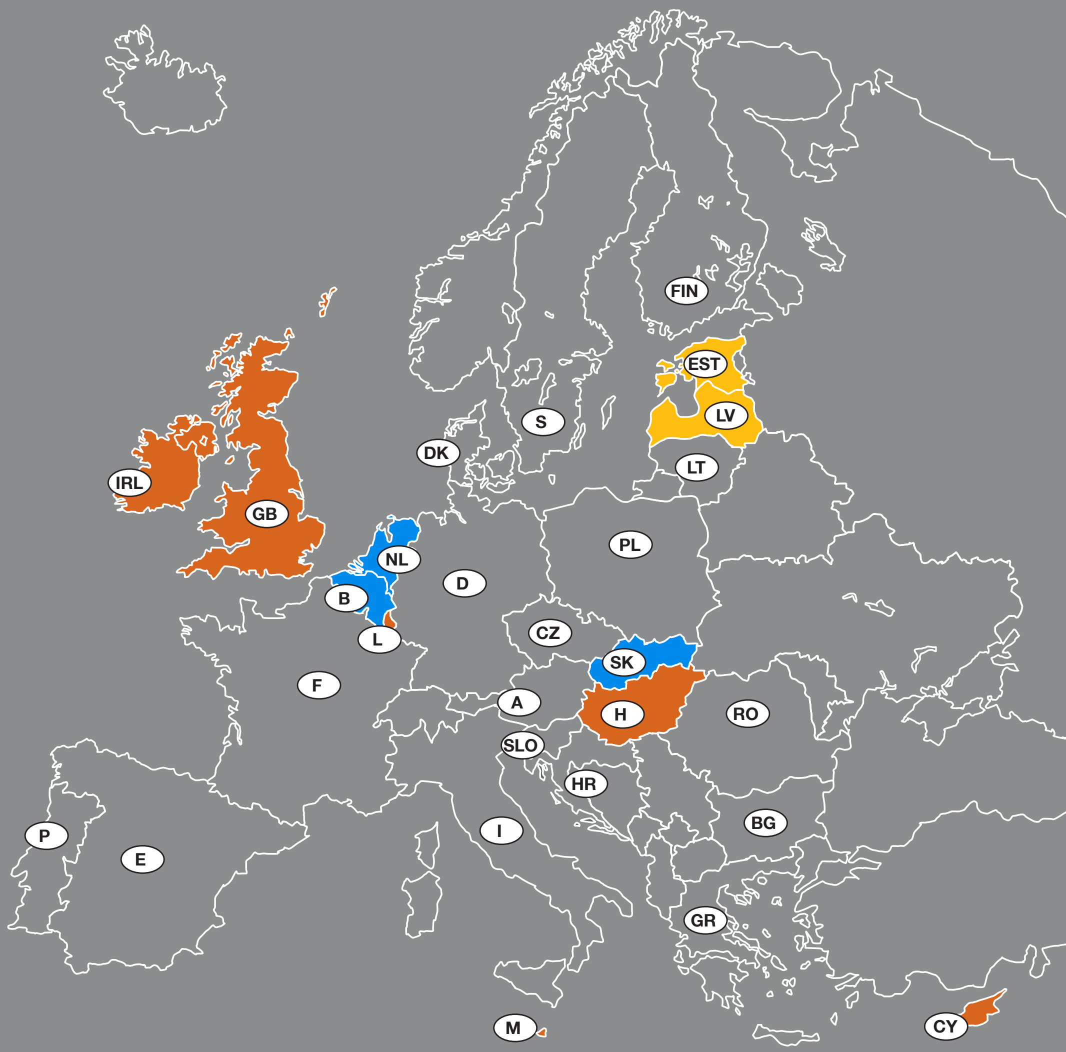
"When opting for model B, Member States may exclude CFCs: (a) with accounting profits of no more than EUR 750.000, and non-trading income of no more than EUR 75.000; or (b) of which the accounting profits amount to no more than 10% of its operating costs for the tax period"

6 Both accounting profits exceptions
Cyprus, Hungary, Ireland, Luxembourg*, Malta, United Kingdom.

2 Accounting profits < EUR 750.000
Estonia, Latvia.

3 No exceptions
Belgium, Netherlands, Slovakia.

* Luxembourg does not apply the exception for CFCs with non-trading income of no more than EUR 75.000.



6. Anti-hybrid rules

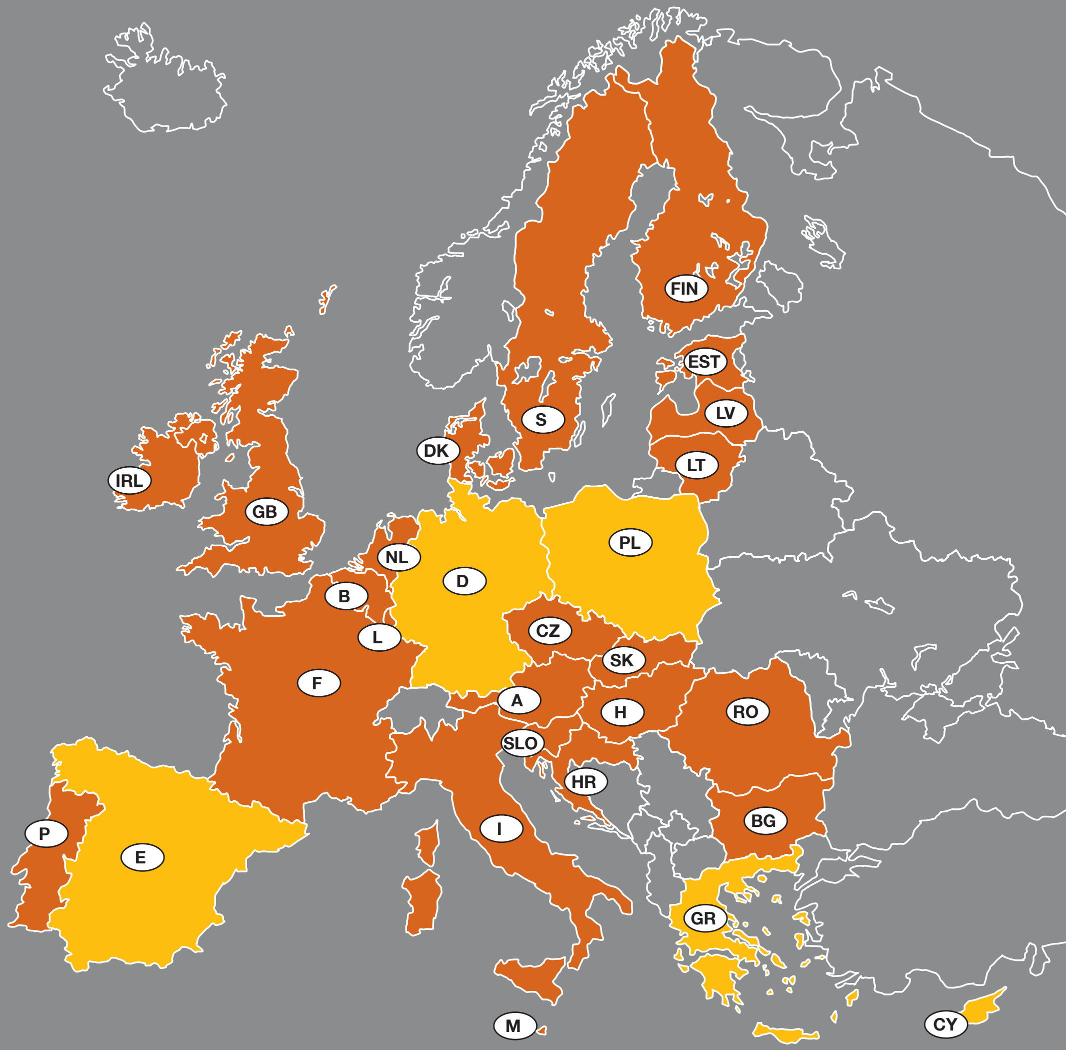
6.1. Implementation of ATAD II's anti-hybrid rules

"Member States have to implement ATAD II's hybrid rules, in principle, by 31 December 2019."

23 **Implemented ATAD II's rules***
Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom.

5 **Has not implemented ATAD II's rules yet**
Cyprus, Germany, Greece, Poland, Spain.

* Introduced new anti-hybrid rules or amended the existing ones.



6.2. ATAD II’s anti-hybrid rules in more detail

“Most Member States shall introduce anti-hybrid rules on hybrid entities, hybrid instruments, imported mismatches, tax residency mismatches and hybrid transfers.”

22 **Has implemented all six anti-hybrid rules**
Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom.

1 **Has decided not to implement all six hybrid-rules**
Czech Republic*.

*No rules on tax residency mismatches and hybrid transfers.

6.3 Reverse hybrid rule

"Member States shall introduce a reverse hybrid rule by 31 December 2021."

14 **Rule on reverse hybrid mismatches**
Belgium, Croatia, Denmark, Estonia, France, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Romania, Sweden, United Kingdom*.

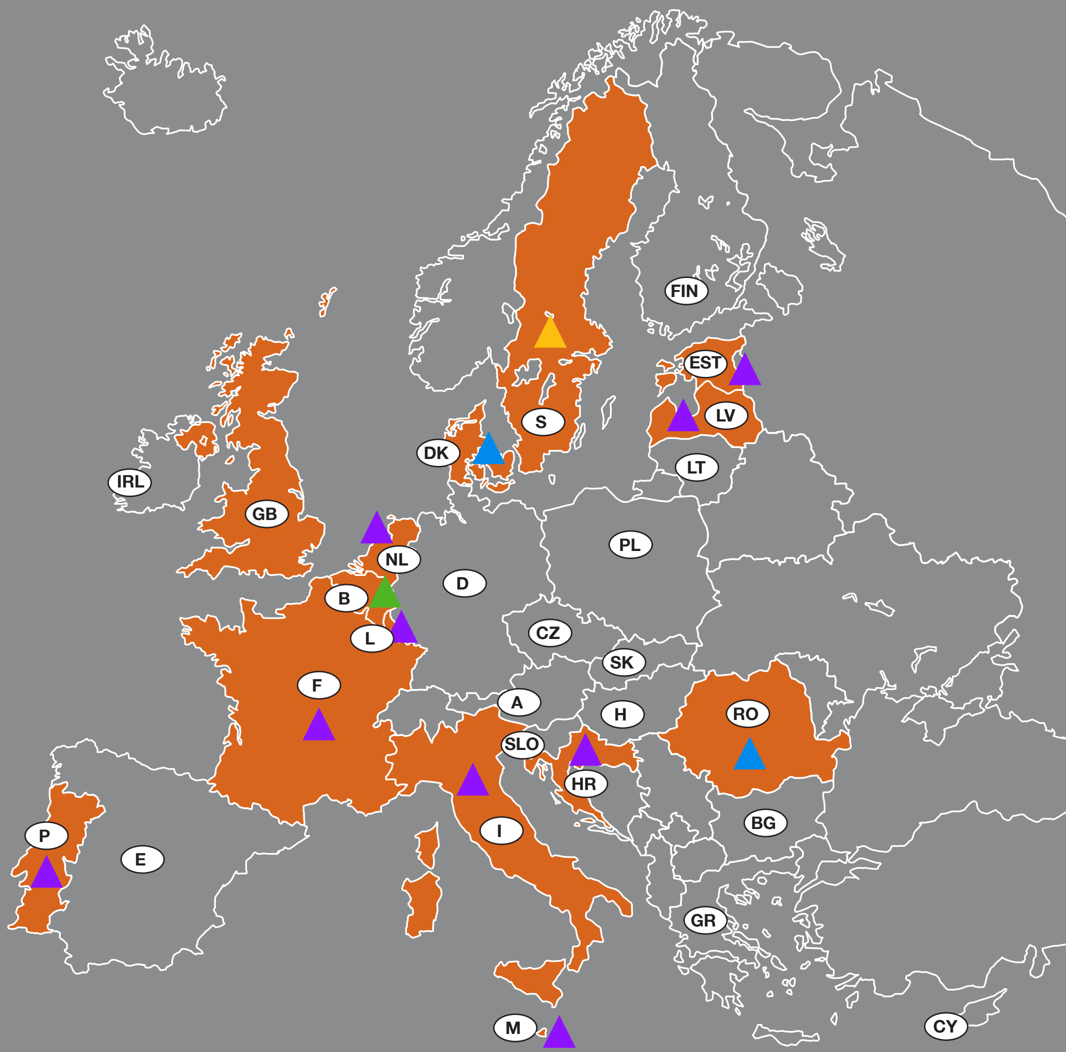
1 **Application as of 2019**
Belgium.

3 **Application as of 2020**
Denmark, Romania, United Kingdom.

1 **Application as of 2021**
Sweden.

9 **Application as of 2022**
Croatia, Estonia, France, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal.

*Only applicable in certain situations



7. ATAD implementation trends

7.1. Interest deduction limitation rule (EBITDA rule)

- Almost all Member States have introduced an EBITDA rule.
- Most Member States' EBITDA rule caps the deductibility of borrowing costs at 30% of the EBITDA, with a *de minimis* threshold for the deductibility of exceeding borrowing costs up to EUR 3.000.000. However, some Member States apply a lower threshold or apply no threshold at all, whereas others cap the deductibility of borrowing costs at 25% of the EBITDA or EBITD.
- Ten Member States exclude standalone companies from the scope of the EBITDA rule.
- Most Member States apply a group approach for the EBITDA rule.
- Roughly half of the Member States apply a group escape in their EBITDA rule.
- Most Member States do not exclude existing loans from the scope of the EBITDA rule.
- Most Member States provide for a general or a specific exclusion of loans for long-term infrastructure projects.
- Financial undertakings are excluded from the scope of the EBITDA rule of most Member States' legislations.
- Most Member States allow for the possibility of carrying forward exceeding borrowing costs that cannot be deducted in the current tax period, either for some years or unlimited in some cases. The same goes for unused interest capacity in some Member States. No Member States allow for carry back.

7.2. Exit taxation rules

- Half of the Member States were already applying exit taxation rules prior to 1 January 2020.
- Most of the Member States have introduced exit taxation rules or amended their existing ones in line with ATAD's exit taxation rules by 31 December 2019.
- Although ATAD obliged Member States to apply exit taxation rules as of 1 January 2020, there are Member States that apply ATAD's exit taxation rule as of 2018 and 2019.
- Half of the Member States have chosen to exempt temporary transfers of assets from the scope of exit taxation rule.

7.3. General Anti-Avoidance Rule

- Although most Member States were already applying a General Anti-Avoidance Rule prior to 31 December 2018, many Member States have nevertheless chosen to implement ATAD's GAAR.

7.4. Controlled Foreign Company rules

- Almost all the Member States have implemented the ATAD's CFC rule and apply them as of 1 January 2019.
- Member States seem to be divided as to the applicable CFC model (model A or model B).
- Most Member States that opted for model A apply a substance carve-out also to third countries. Most Member States apply for one of the available exceptions provided for model A.
- Most Member States that opted for model B apply for a specific exception available for model B.

7.5. Anti-hybrid rules

- Most Member States have implemented ATAD II's hybrid rules before the implementation deadline of 31 December 2019.
- Almost all Member States introduced all six anti-hybrid rules on hybrid entities, hybrid instruments, imported mismatches, tax residency mismatches, hybrid transfers.
- Most of the Member States will apply a reverse hybrid rule as of 1 January 2022. However, a few Member States are already applying such a rule.

This publication is a high-level overview of the implementation of the EU Anti-Tax Avoidance Directive (ATAD) into Member States' domestic tax laws. It includes information available on the national implementation of the ATAD rules known as of 1 June 2020. While any effort has been made to ensure the accuracy of the information contained on this publication, please contact your usual PwC contact for detailed information on the implementation of the ATAD rules.

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