

PwC NL
Tax Knowledge
Centre

Implementation of the UBO registration requirement in the EU/EEA countries

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Introduction

All EU Member States and EEA countries (Norway, Iceland, Liechtenstein) had to introduce two types of UBO registers by this year at the latest. A public UBO register for companies and other legal entities by 10 January 2020 and a private UBO register for trusts and similar legal structures by 10 March 2020. This obligation to implement stems from the Fourth¹ and Fifth² Anti-Money Laundering Directives (the Directive).

These deadlines have not been met by all EU Member States and EEA countries. In Lithuania, for example, the UBO registration for companies is not yet operational and in the Netherlands such registration only entered into force on 27 September 2020. The European Commission has referred the Netherlands to the Court of Justice of the EU for failing to meet an earlier deadline resulting from the Fourth Anti-Money Laundering Directive.³

An important deadline still ahead is 10 March 2021. As of that date, the various national UBO registers, both for companies and other legal entities and for trusts and similar arrangements, must be linked via the European central platform.

The responsibility for the implementation of the platform lies with the European Commission, which is currently working on the technical and legal details. Furthermore, the public UBO data can then be retrieved either directly from the national UBO registers or via the platform.

The Directive prescribes a minimum level of implementation and countries may choose to introduce a more extensive registration obligation. A number of countries have indeed made such a choice. As a result, the UBO registers for companies and other legal entities within the EU and EEA have not been introduced uniformly.

This PwC publication contains an overview of six specific aspects on which the UBO registration for companies and other legal entities has been implemented differently in 28 EU and EEA countries and Gibraltar.

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

³ Based on the Fourth Anti-Money Laundering Directive, all EU Member States and EEA countries were obliged to introduce a private company register by 26 June 2017 at the latest. The Netherlands had already received a letter of formal notice from the European Commission for *failing* to meet this deadline.

The publication was completed on **17 November 2020** and was carried out by the Tax Knowledge Centre of PwC Netherlands with the help of PwC's European network. It covers the following aspects:

1. The UBO definition and the threshold for qualification as UBO.
2. The territorial scope of the mandatory UBO registration.
3. Exceptions to the UBO registration obligation for certain entities.
4. The obligation to register at least one UBO.
5. The period within which a UBO must be registered.
6. An open or private UBO registration for trusts and similar legal arrangements.

Below are some notable results from this study.

1. The UBO definition and the threshold for qualification as UBO

What does the Directive prescribe?

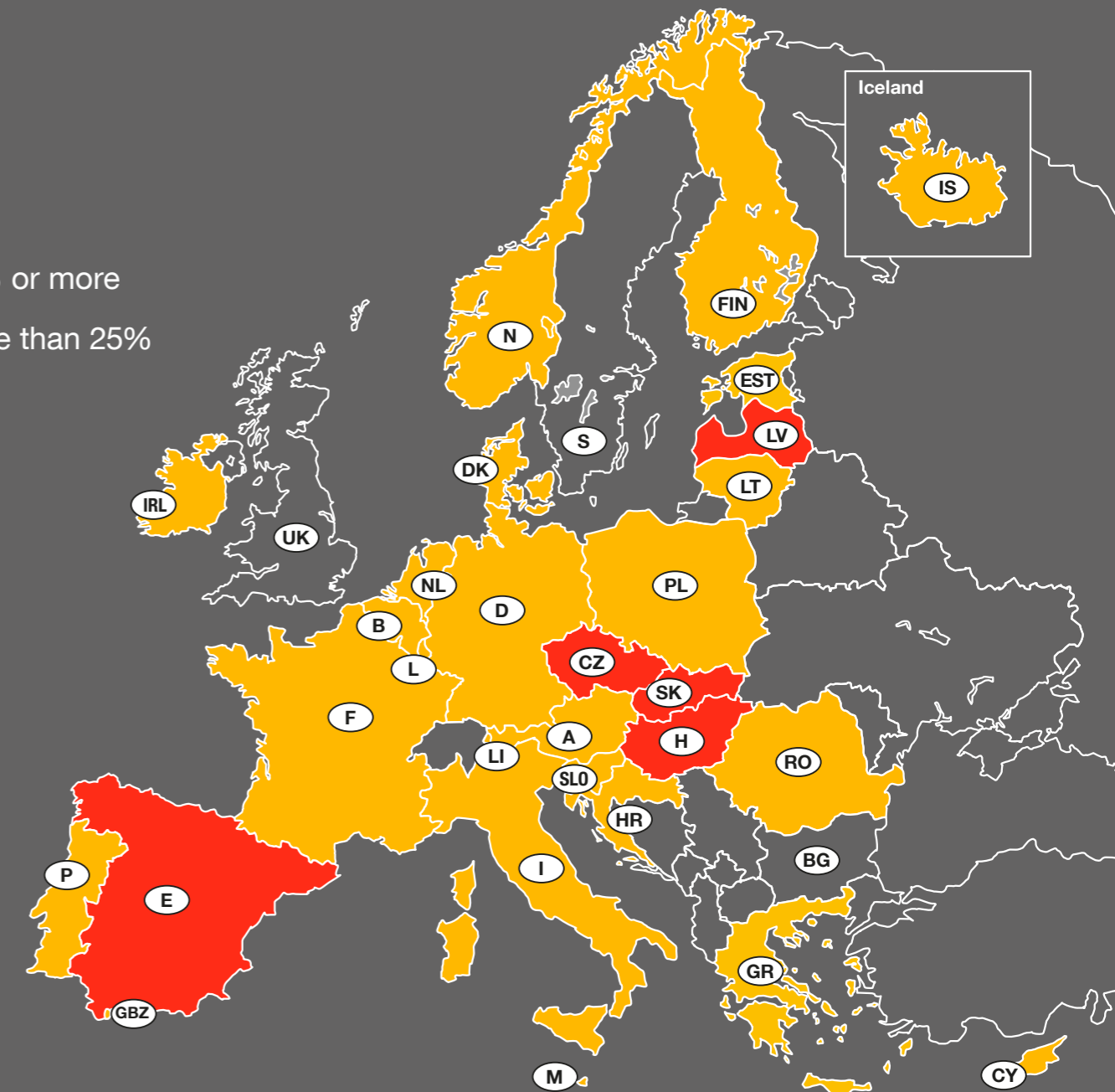
The Directive defines a UBO as follows: *'any natural person(s) who ultimately owns or controls the client and/or the natural person(s) for whom which account a transaction or activity is carried out'*.⁴ In the case of companies, this is met in any case if a direct or indirect 'sufficient percentage' of the shares, voting rights, or if ownership interest or control is held by other means. An equity interest of more than 25 percent (e.g. 25.1%) is taken as an indication for UBO qualification based on a direct interest. If a natural person controls a company that in turn has an interest of more than 25% in another company, this is regarded as an indication of an indirect interest.

How have the EU Member States and EEA countries implemented this aspect?

First of all, we note that the percentages of interest based on which a person qualifies as a UBO are fairly similar.

The threshold prescribed by the Directive of 'more than 25%' (e.g. 25.1% etc.) has been adopted by 23 countries while six of the EU Member States surveyed have opted for the lower threshold of '25% or more' (e.g. 25% or 25.1% etc.). The subtle difference between these two thresholds concerns the situation of a natural person with a 25% interest in a company; if a country has opted for a threshold of 'more than 25%', this person does not qualify as a UBO. Spain applies a threshold of more than 25% for companies, but a 25% or more threshold for foundations and associations. In Austria, in case of foundations and trusts no threshold exists. In Slovenia, the threshold for registering a person as a UBO may even be lower than 25% if that person controls the respective business entity on a different basis (i.e. has a dominant position in respect to the management of the business entity's assets or otherwise controls, directs or significantly influences the decisions of the management).

- 25% or more
- more than 25%



⁴ Article 3 section 6 of the Directive.

2. The territorial scope of compulsory UBO registration

What does the Directive prescribe?

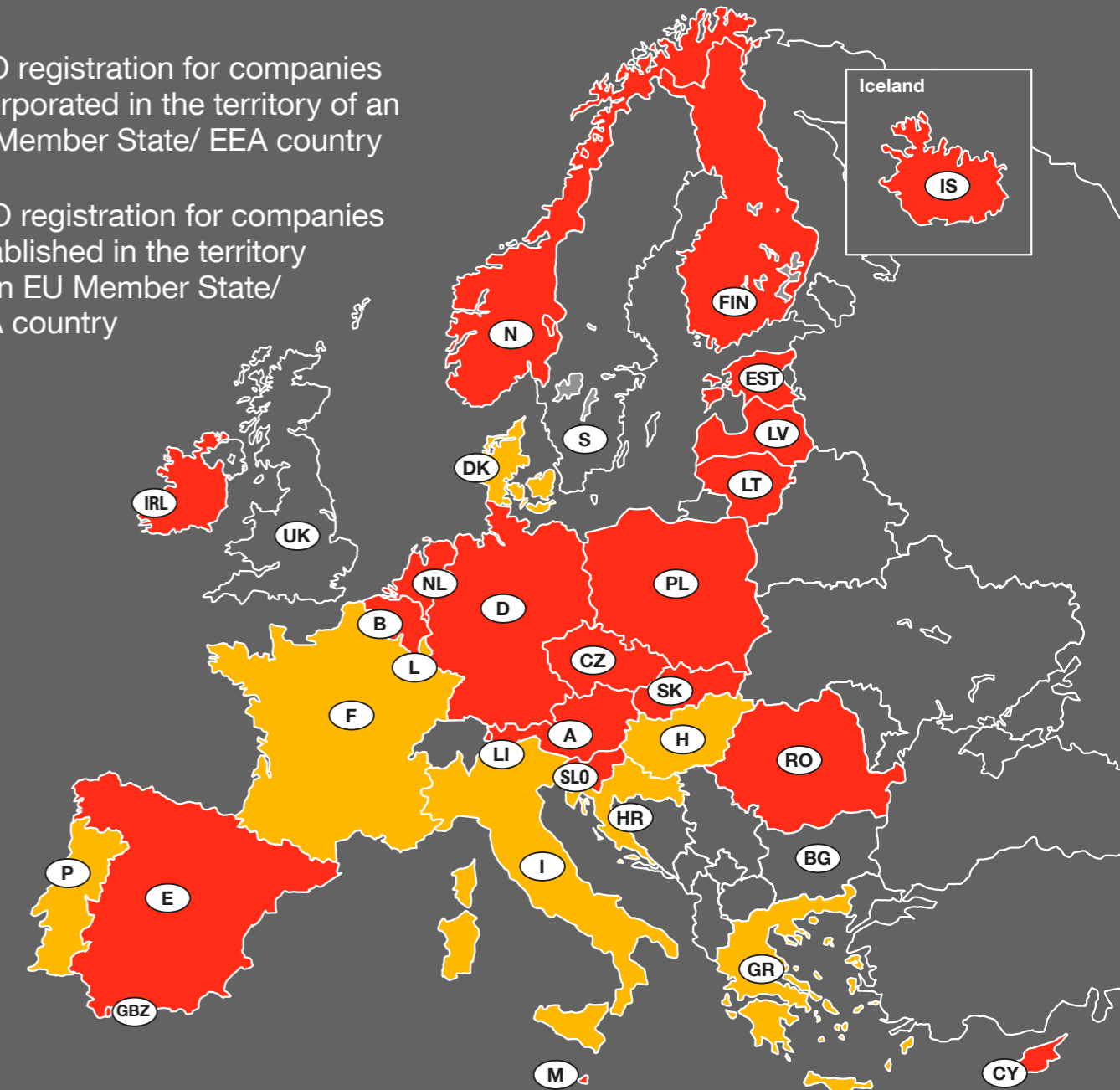
The Directive requires EU Member States and EEA countries to register the UBO of 'companies and other legal entities incorporated in their territory'.⁵ Thus, the Directive does not require companies that are not incorporated under the law of an EU Member State or EEA country to be registered in that country's national UBO register. Even if they are established within that country.

How have the EU Member States and EEA countries implemented this aspect?

A few countries go beyond the Directive and do not limit the UBO registration obligation to legal entities established within their territory. Luxembourg, for example, includes all entities that have registered in the business register. Greece goes further; companies with activities taxed in Greece must also register their UBO there. In Austria, the UBO registration is applicable to legal entities with registered offices in Austria and trust and arrangements of a similar nature to trusts provided that such trusts or arrangements are managed from within Austria, or in the case that the management is not located in Austria or in another EU Member State, where the person comparable to a trustee establishes a business relationship or purchases properties in Austria on behalf of the trust or arrangement of a similar nature to a trust.

⁵ Article 30 section 1 of the Directive.

- UBO registration for companies incorporated in the territory of an EU Member State/ EEA country
- UBO registration for companies established in the territory of an EU Member State/ EEA country



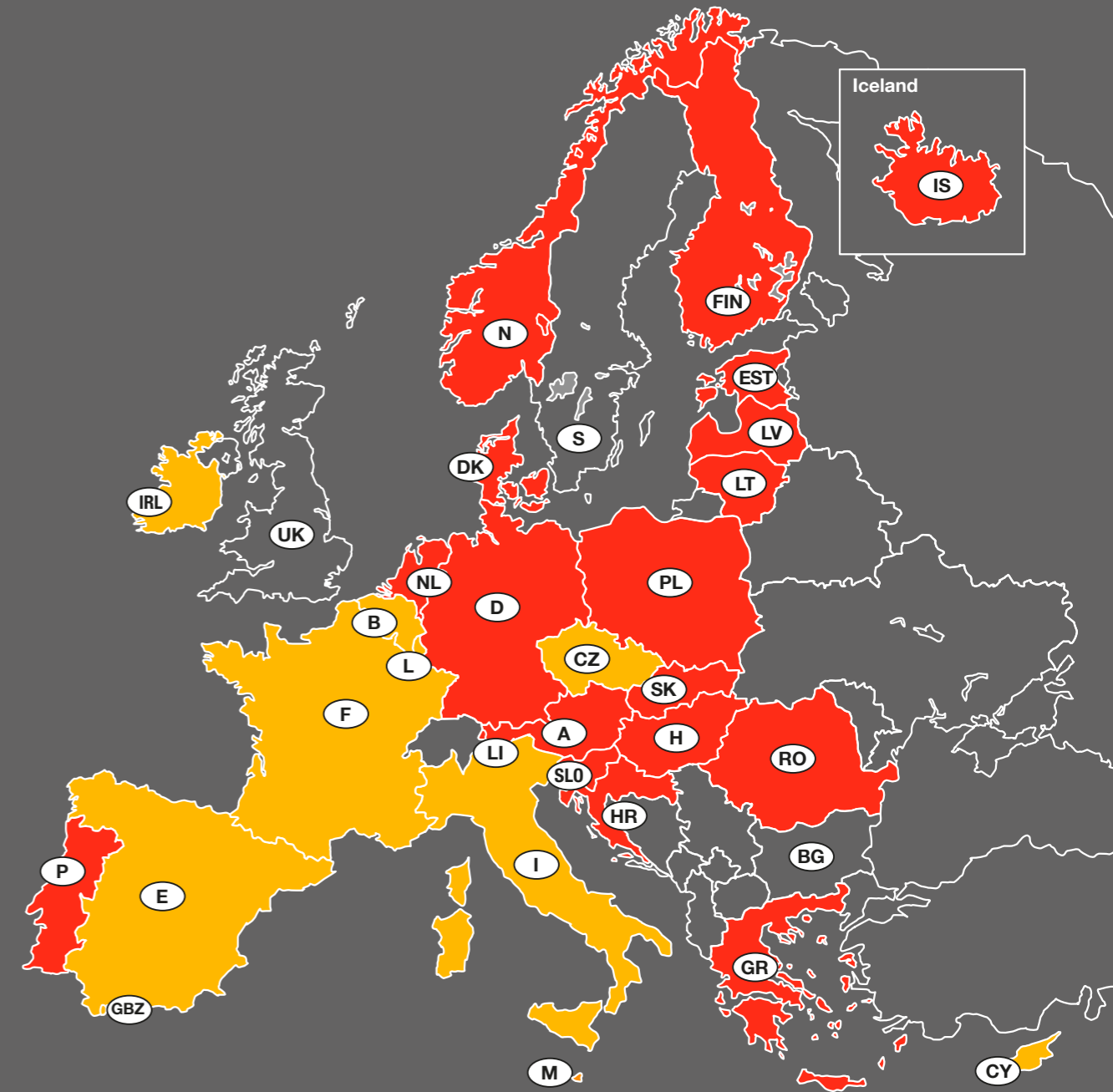
3. Exceptions to the UBO registration requirement for certain entities

What does the Directive prescribe?

The Directive provides for an explicit exception to the UBO registration for listed companies and their 100% shareholdings.⁶ Apart from this point, the Directive does not seem to offer any leeway for additional exceptions to the UBO registration.

How have the EU Member States and EEA countries implemented this aspect?

Most EU Member States have included additional exceptions. These exceptions are largely limited to public authorities. However, several countries have also made specific exceptions. The Netherlands, for example, had an exception relating to churches, but on 10 December 2019 the Lower House of Parliament abolished this exception, so that churches also have to register their UBOs. This usually comes down to the full board. Another example is Austria, which makes an exception, amongst others, for agricultural communities. Finally, Norway has an exception for study associations.



⁶ Article 3 section 6 letter a sub i of the Directive.

4. The obligation to register at least one UBO

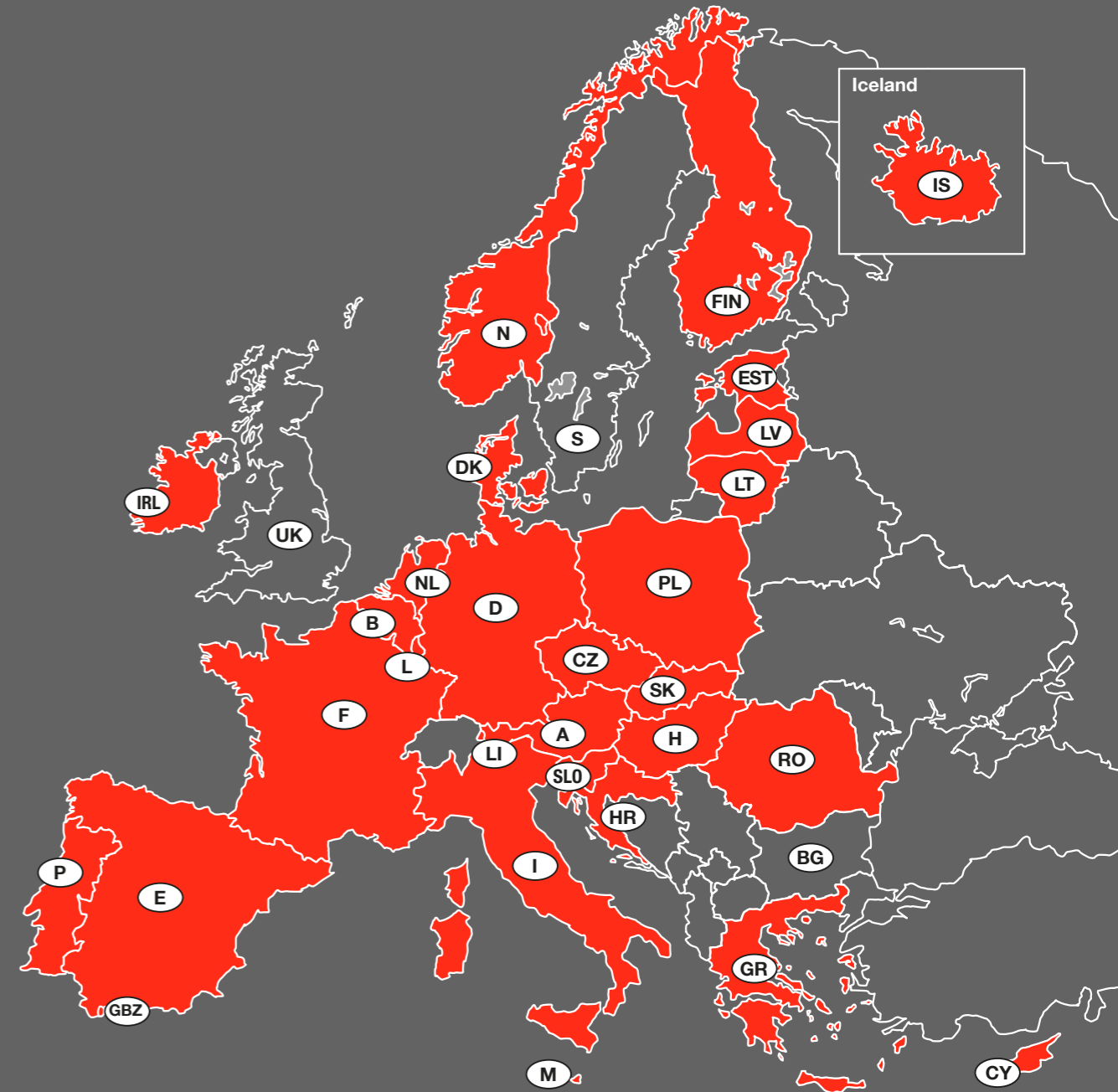
What does the Directive prescribe?

If no natural person qualifies as a 'real' UBO, the Directive requires senior management to be registered as a UBO (the so-called 'pseudo-UBO').⁷

How have the EU Member States and EEA countries implemented this aspect?

We observe that the EU Member States have implemented this aspect in a consistent manner.

- Yes
- No



⁷ Article 3 section 6 letter a sub ii of the Directive.

5. The period within which a UBO must be registered

What does the Directive prescribe?

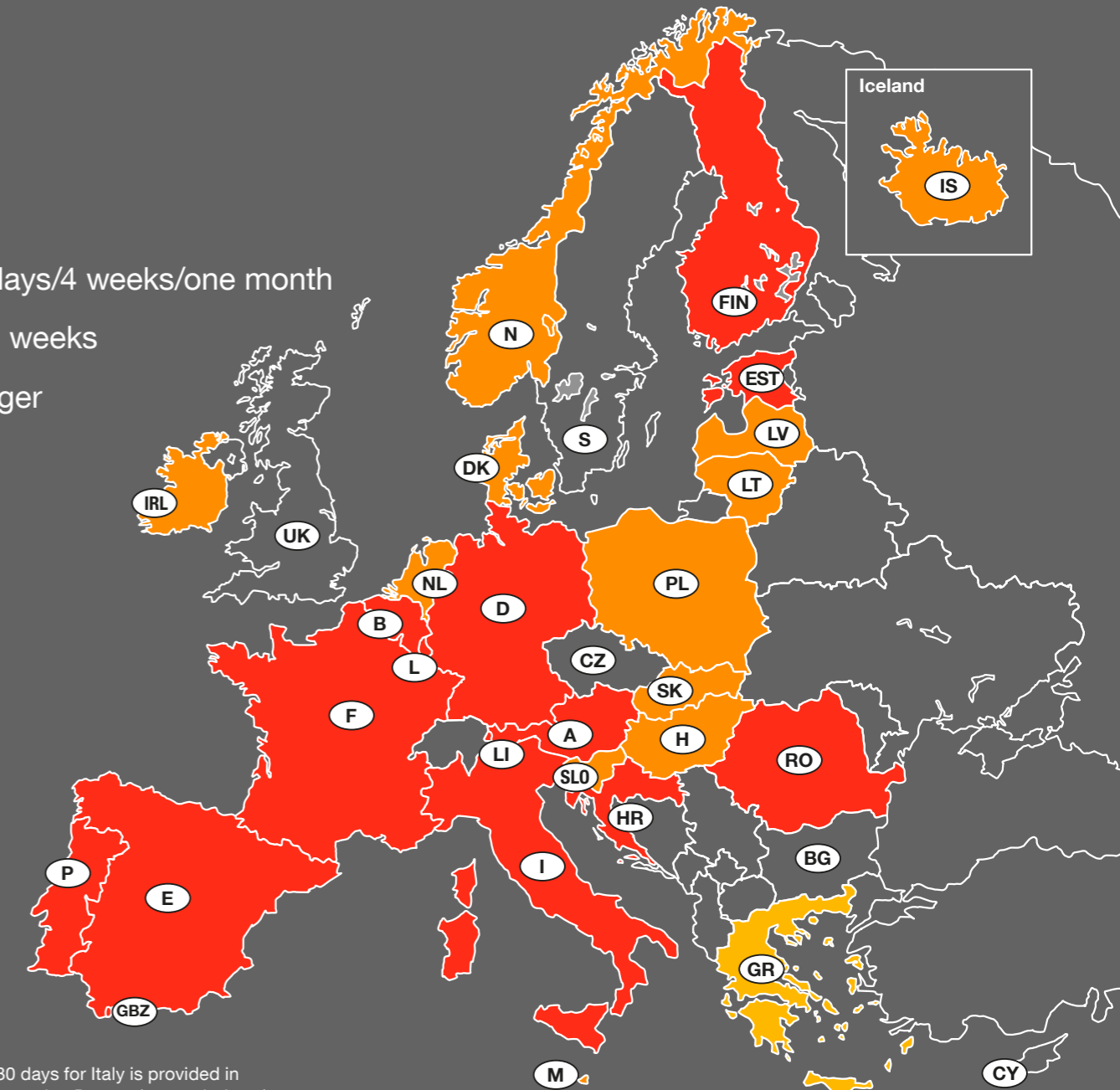
The Directive requires that UBO information is ‘*accessible in a timely manner to competent authorities and [Financial Intelligence Units]*’ and that UBO information held in a public national UBO register is ‘*adequate, accurate and up to date*’.⁸ The Directive does not specify a concrete deadline by which, for example, any changes to UBO must be registered.

How have the EU Member States and EEA countries implemented this aspect?

The vast majority of countries apply a deadline of thirty days or one month or four weeks. In the infographic, the countries are therefore subdivided into countries that apply a registration obligation of a maximum of two weeks, a maximum of one month and more than one month. It is noteworthy that in the countries that apply a registration obligation of less than two weeks, the periods vary. In Lithuania, for example, there are ten days to notify a change in UBO, in the Netherlands one week, in Slovenia eight days, in Hungary five working days, in Slovakia two working days and in Poland the change must be notified on the day of the change itself. Ireland applies two weeks for UBO changes, but newly established entities are given five months for first registration, including UBO registration. Portugal applies a period of just over two weeks, i.e. fifteen days. Finally, Greece gives companies more time to register the UBO and applies a period of sixty days.

⁸ Article 30 section 2 and section 4 of the Directive.

- 30 days/4 weeks/one month
- Two weeks
- Longer



The period of 30 days for Italy is provided in a Draft Implementation Decree (not yet in force).

6. An open or private UBO register for trusts and similar legal constructions

What does the Directive prescribe?

In addition to the UBO register for companies and other legal entities, the Directive requires the registration of UBOs of trusts and similar legal arrangements. Contrary to the corporate UBO register, the UBO registration for trust(s) may be private.⁹ A private register means that the UBO information must be accessible to:

1. competent authorities and Financial Intelligence Units (FIU), without any restrictions,
2. compulsory entities, in the context of customer due diligence,
3. any person or organisation that can demonstrate a legitimate interest, and
4. any person or organisation submitting a written request concerning a trust(s) controlling an entity not subject to the UBO registration requirement.

According to the Directive, persons or organisations in categories 3 and 4 must at least have access to the name, month and year of birth, nationality and country of residence of

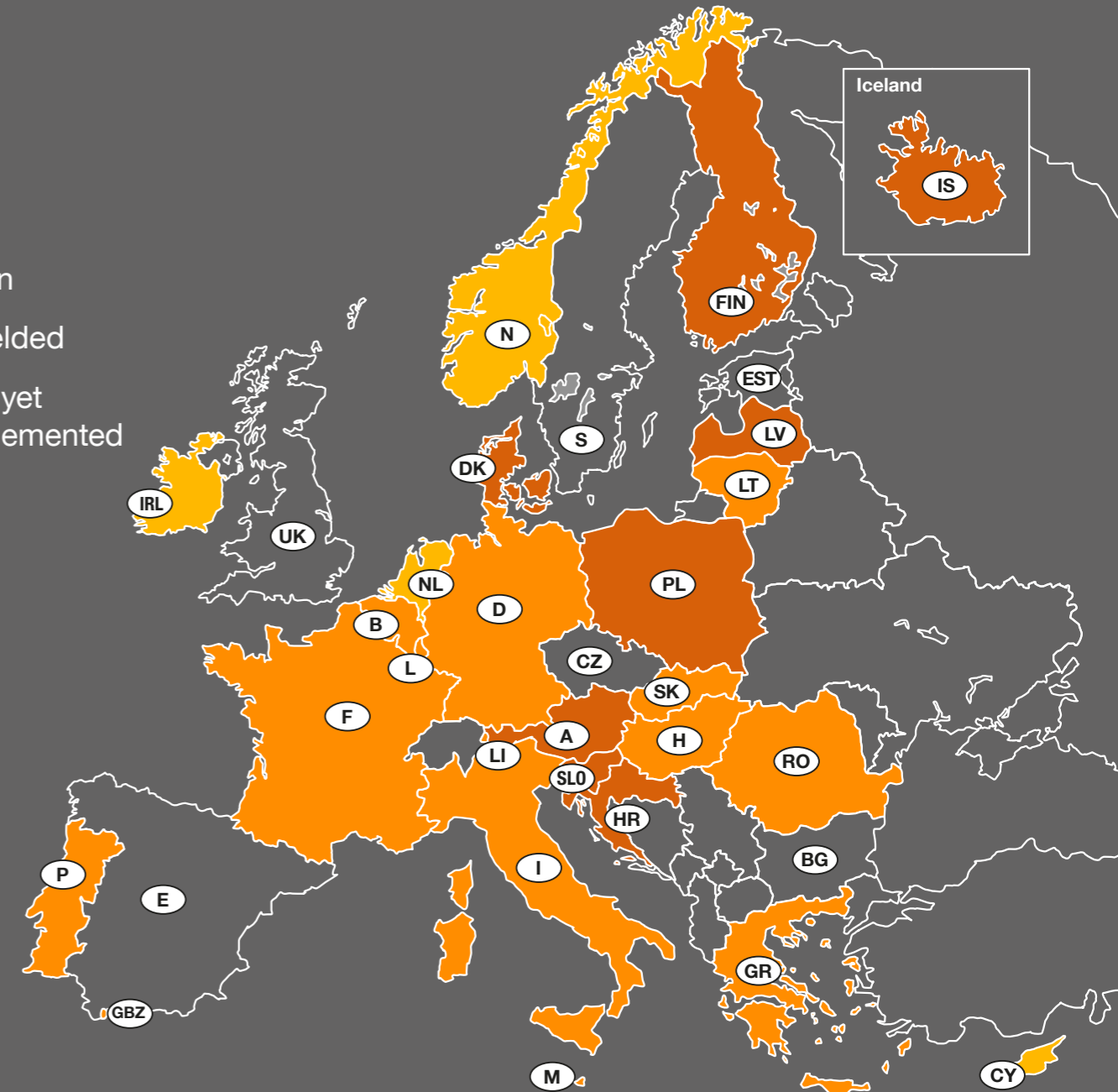
the UBO, as well as the nature and extent of the interest held.

The registration of the UBO data of trust(s) also requires the registration of information about the trust(s) in question. Not all EU Member States and EEA countries have kept such records so far.

How have the EU Member States and EEA countries implemented this aspect?

Making this data publicly available raises questions about the privacy sensitivity of the register in several countries. This controversy is therefore reflected in the input from the countries. The majority of countries have decided to operate a closed (i.e. restricted) register in line with the Directive. This means that third parties can only gain access to the UBO register if they have a legitimate interest. Eight countries, however, have made the UBO register publicly accessible for trust(s). In four countries, the UBO register for trustee(s) has not yet entered into force.

- Open
- Shielded
- Not yet implemented



⁹ Article 31 section 4 of the Directive.

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This publication is a high-level overview of the implementation of the fourth and fifth Anti Money Laundering Directive (AMLD 4 and AMLD 5, respectively) into EU/EEA states' domestic tax laws. It includes information available on the national implementation of the AMLD 4 and AMLD 5 known as of **17 November 2020**. While any effort has been made to ensure the accuracy of the information contained in this publication, please contact your usual PwC contact for detailed information on the implementation of the AMLD 4 and AMLD 5.

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