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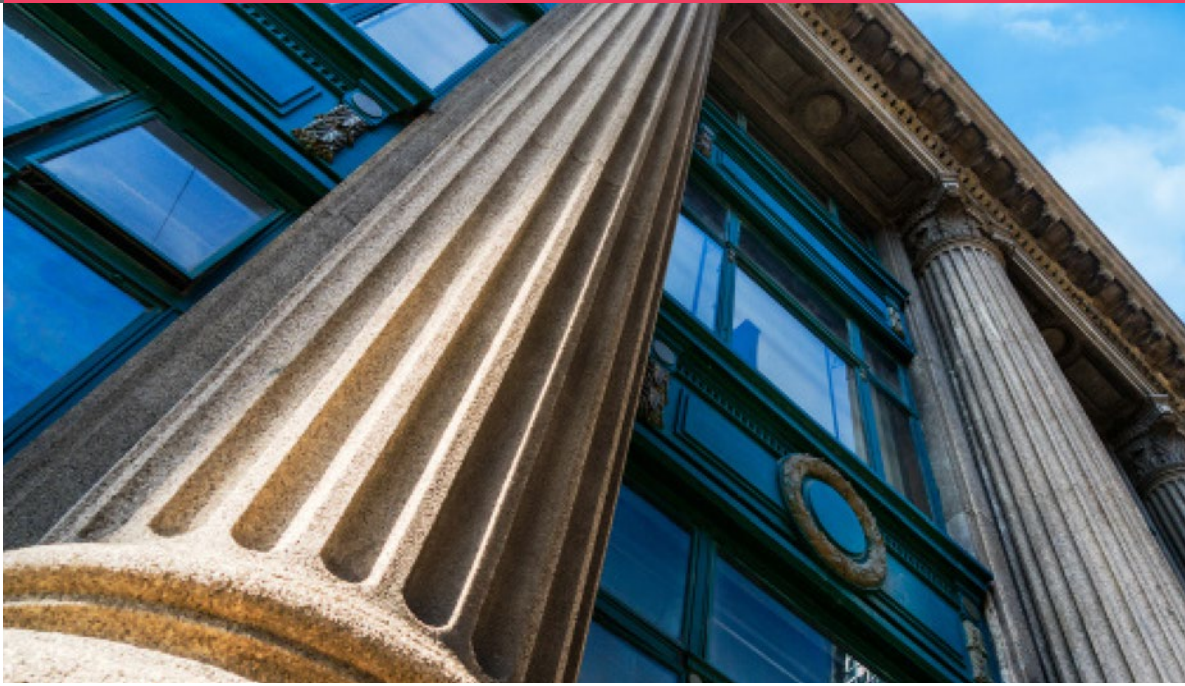
# ATAD I and II implementation overview

April 2024



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# In this publication:



2024 marks the year in which all EU Member States are required to apply all ATAD measures. The Anti-Tax Avoidance Directive, commonly known as ATAD, is an EU Directive that mandated EU Member States to incorporate five anti-tax avoidance measures into their national laws. The rules were presented with several implementation options, which is why PwC decided to visualize the implementation of these rules and the choices made by each EU Member State. In addition, given the options provided in the ATAD, EU Member States can, after the initial implementation of the rules, amend these rules by adopting another option offered in the ATAD. This has been more recently the case with Belgium and its CFC rules.

2024 also marks the year in which all EU Member States are obliged to apply an interest deduction limitation rule, commonly refered to as the EBITDA rule. The European Commission had identified five EU Member States with measures equivalent to this rule, granting them an exemption from implementing the ATAD's EBITDA rule until the end of 2023. Nevertheless, not all of these states took advantage of this option, with some choosing to implement the rule earlier.

Finally, in recent years, the European Commission has played an active role in overseeing the correct implementation of ATAD rules of the EU Member States, including those that have met the initial implementation deadlines. The European Commission has decided to refer two EU Member States with allegedly incorrect implementation to the European Court of Justice. This action underscores the Commission's commitment to ensuring a consistent and accurate application of ATAD rules throughout the European Union.

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Corporate taxpayers in EU Member States should carefully evaluate the implementation of ATAD rules and their potential impact. It's crucial for taxpayers to understand how these rules may affect them and to consider appropriate strategies in response.

This version of the ATAD I and II implementation overview includes information on national implementation of the ATAD rules as of 15 January 2024. 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. Your PwC tax advisor can provide valuable assistance in navigating these complexities and ensuring compliance with relevant regulations.



# 1. ATAD recent developments

Since the last update of the ATAD I and II overview, several significant developments have occurred:

- Germany amends its EBITDA rule, tightening, amongst others, the standalone exception.
- Spain amends its domestic EBITDA rule, effective from 1 January 2024.
- Slovakia amends its domestic EBITDA rule, effective from 1 January 2024.
- Slovenia has introduced an EBITDA rule, effective from 1 January 2024.
- Belgium has transitioned from Model B to Model A for the application of its CFC rules.
- The European Commission has referred Belgium to the ECJ for incorrectly implementing (previous) ATAD CFC rules due to the lack of credit for the CFC tax in Belgium.
- The European Commission has referred Luxembourg to the ECJ for failing to properly transpose ATAD, particularly for exempting securitization entities from the EBITDA rule.
- Lithuania has amended its definition of a hybrid entity to fully comply with ATAD II.
- Hungary amends its CFC rules to align them with ATAD.

At the same time, alongside legislative amendments, ATAD has led to EU Member States providing clarifications on the application of the rules, as seen, for instance, in the cases of the Netherlands and Greece regarding the EBITDA rule.

While not all of these developments could be illustrated in our infographics, we have endeavored to accurately present the current status of ATAD I and II implementation in the EU Member States.

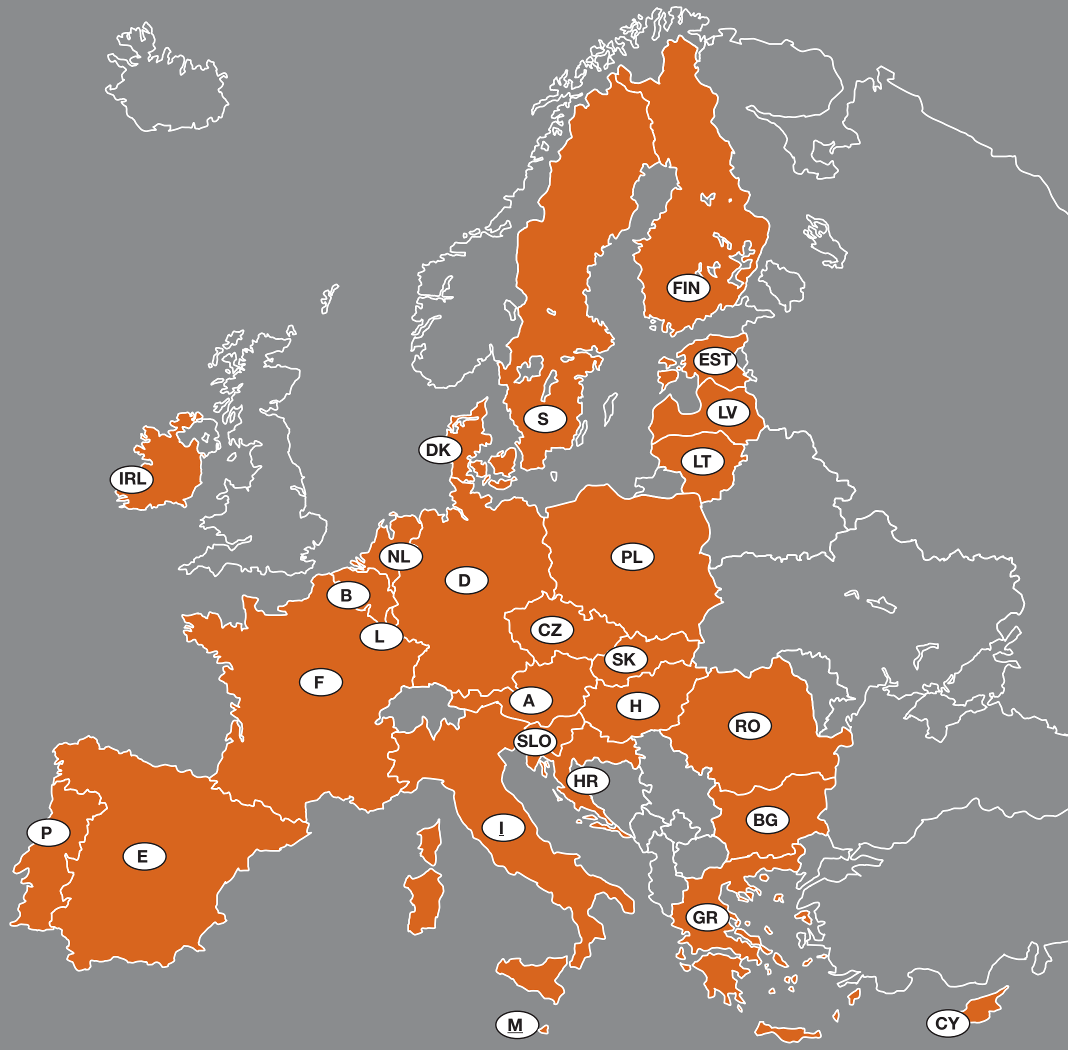
# 2. Interest deduction limitation (EBITDA) rule



## 2.1 Application of ATAD's EBITDA rule

As per the ATAD, all but 5 Member States were required to apply an EBITDA rule in line with that provided in the ATAD. Five Member States were granted an exception to this and were allowed to apply their national interest deduction limitation rules by 31 December 2023. However, not all of these 5 Member States made use of this choice. As of 1 January 2024, all Member States apply an EBITDA rule in line with that provided in the ATAD.

**27 Applies ATAD's EBITDA rule**
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, Slovenia, Spain, Sweden



## 2.2 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, may allow taxpayers to fully deduct exceeding borrowing costs up to EUR 3.000.000.

**25** **30% of the EBITDA**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden

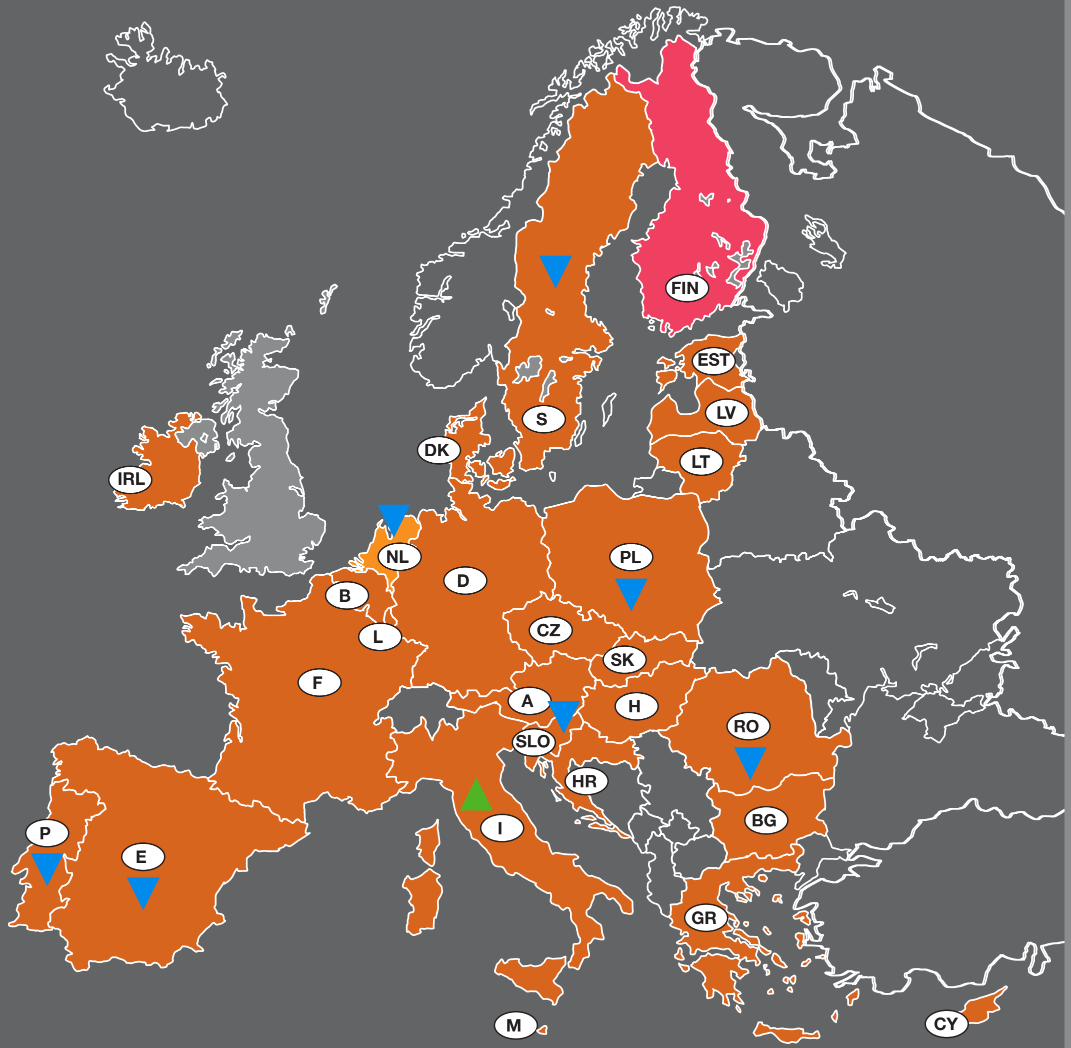
**1** **25% of the EBITD**
Finland

**1** **20% of the EBITDA**
Netherlands

**1** **No *de minimis* threshold**
Italy

**7** **De minimum threshold lower than EUR 3.000.000* (general or applicable in certain cases)**
Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden

*Amounts in foreign currencies were converted to EUR



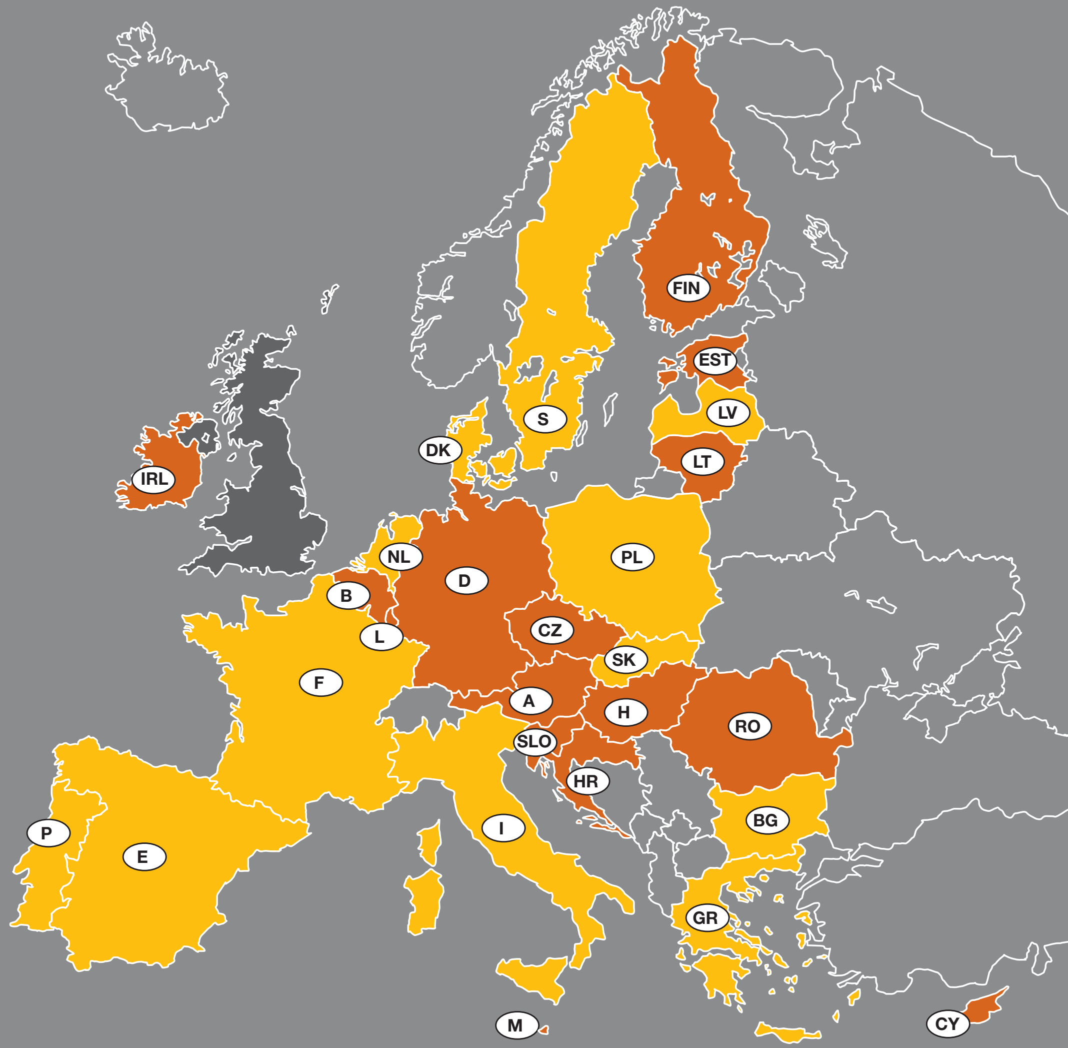



## 2.3 Standalone exception

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.

**15** **Standalone entities exempt**
Austria, Belgium, Czech Republic, Croatia, Cyprus, Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Luxembourg, Malta, Romania, Slovenia

**12** **Standalone entities not exempt**
Bulgaria, Denmark, France, Greece, Italy, Latvia, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden

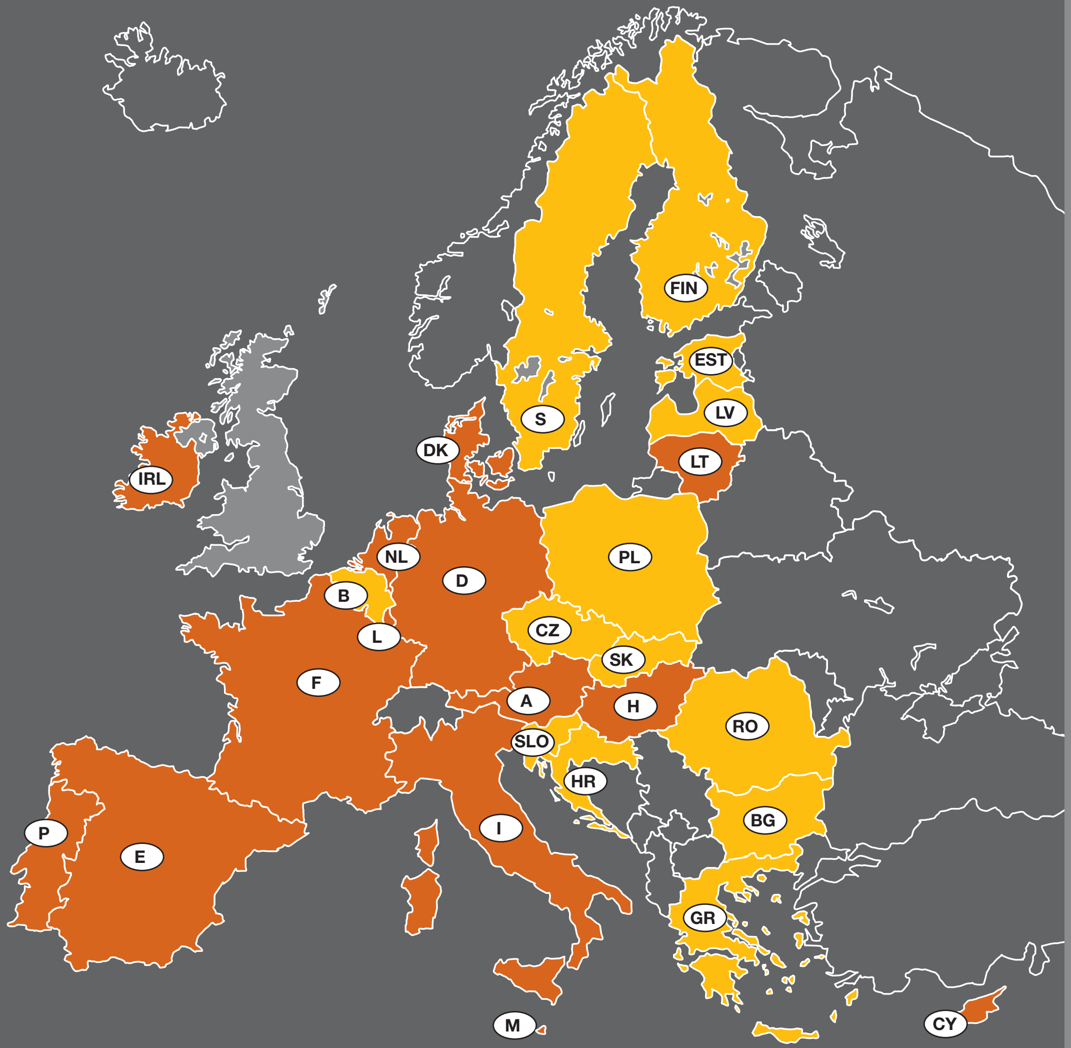


## 2.4 Group approach

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.

**14 Group approach applied**
Austria, Cyprus, Denmark, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Spain

**13 No group approach applied**
Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Greece, Latvia, Poland, Romania, Slovakia, Slovenia, Sweden



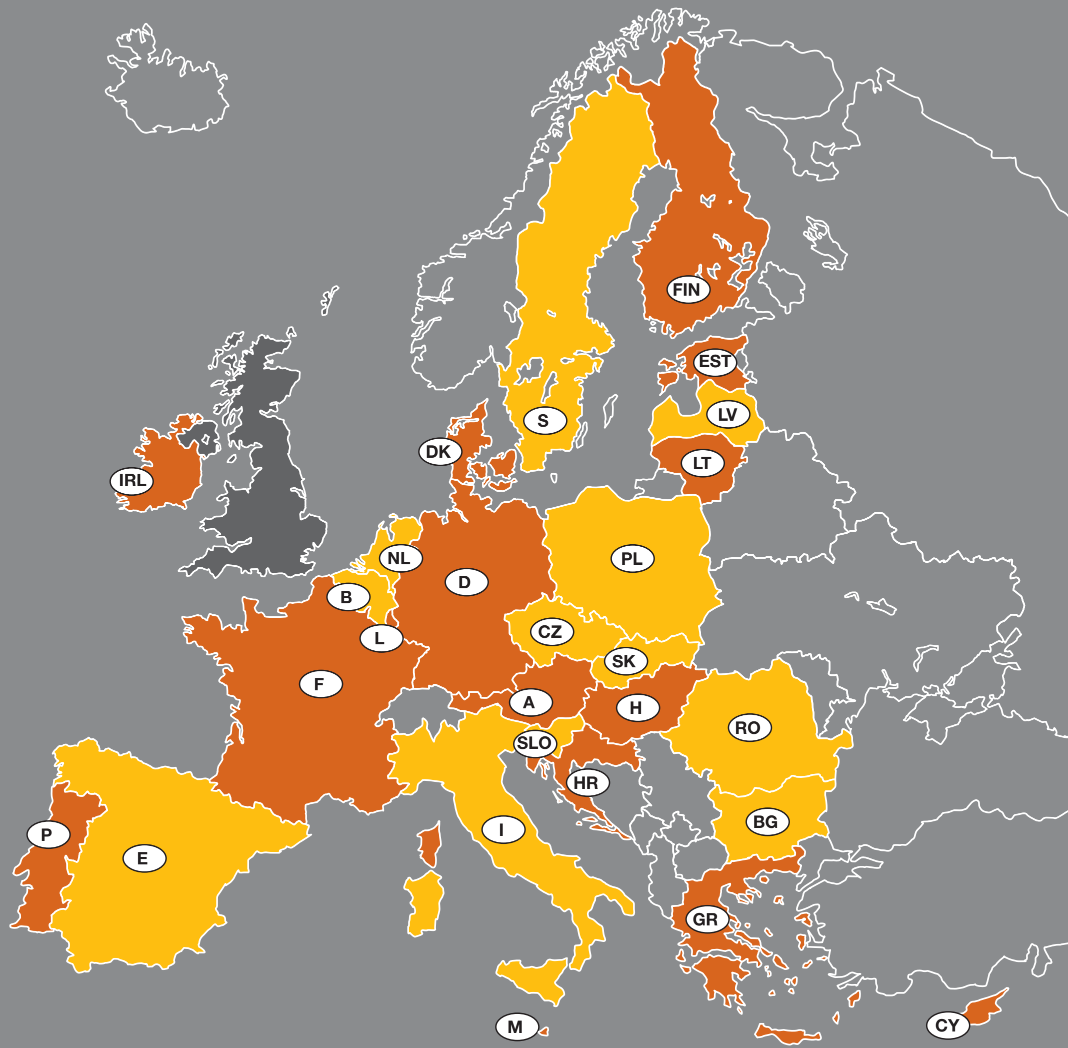



## 2.5 Group escape

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.

**15 Group escape opted**
Austria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, Portugal

**12 No group escape opted**
Belgium, Bulgaria, Czech Republic, Italy, Latvia, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden



## 2.6 Exclusion for existing loans and infrastructure exception

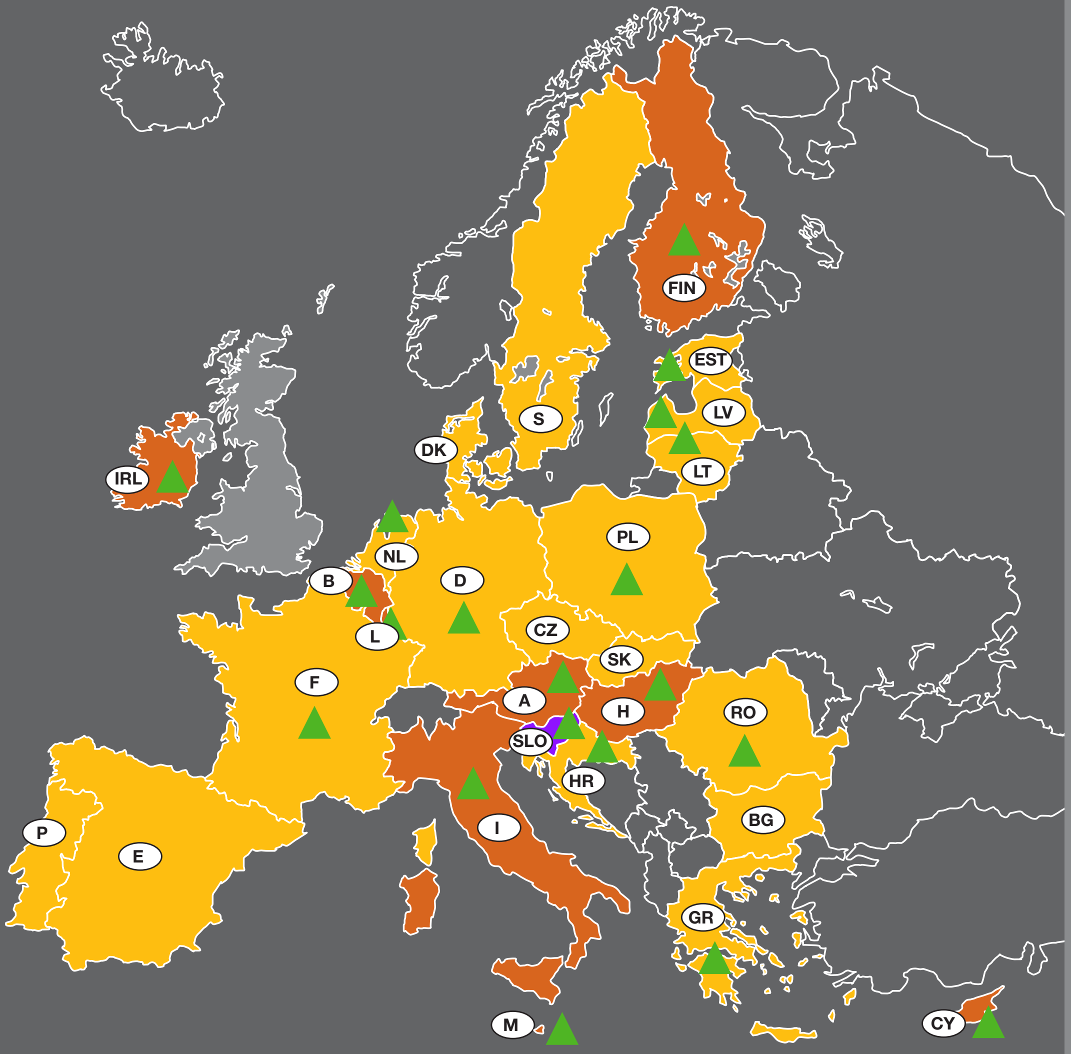
Member States may exclude loans concluded before 17 June 2016 and loans used to fund a long-term public infrastructure project where the project operator, borrowing costs, assets and income are all in the EU.

**9 General or specific exclusion of existing loans**
Austria*, Belgium, Cyprus, Finland, Hungary, Ireland, Italy, Luxembourg, Malta

**17 No exclusion of existing loans**
Bulgaria, Croatia, Czech Republic, Denmark, Greece, Estonia, France, Germany, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden

**20 General or specific exclusion of loans for long-term infrastructure projects**
Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia

* Interest on contracts concluded prior to 17 June 2016 are excluded from the scope of the interest limitation rule until the assessment for FY2025.



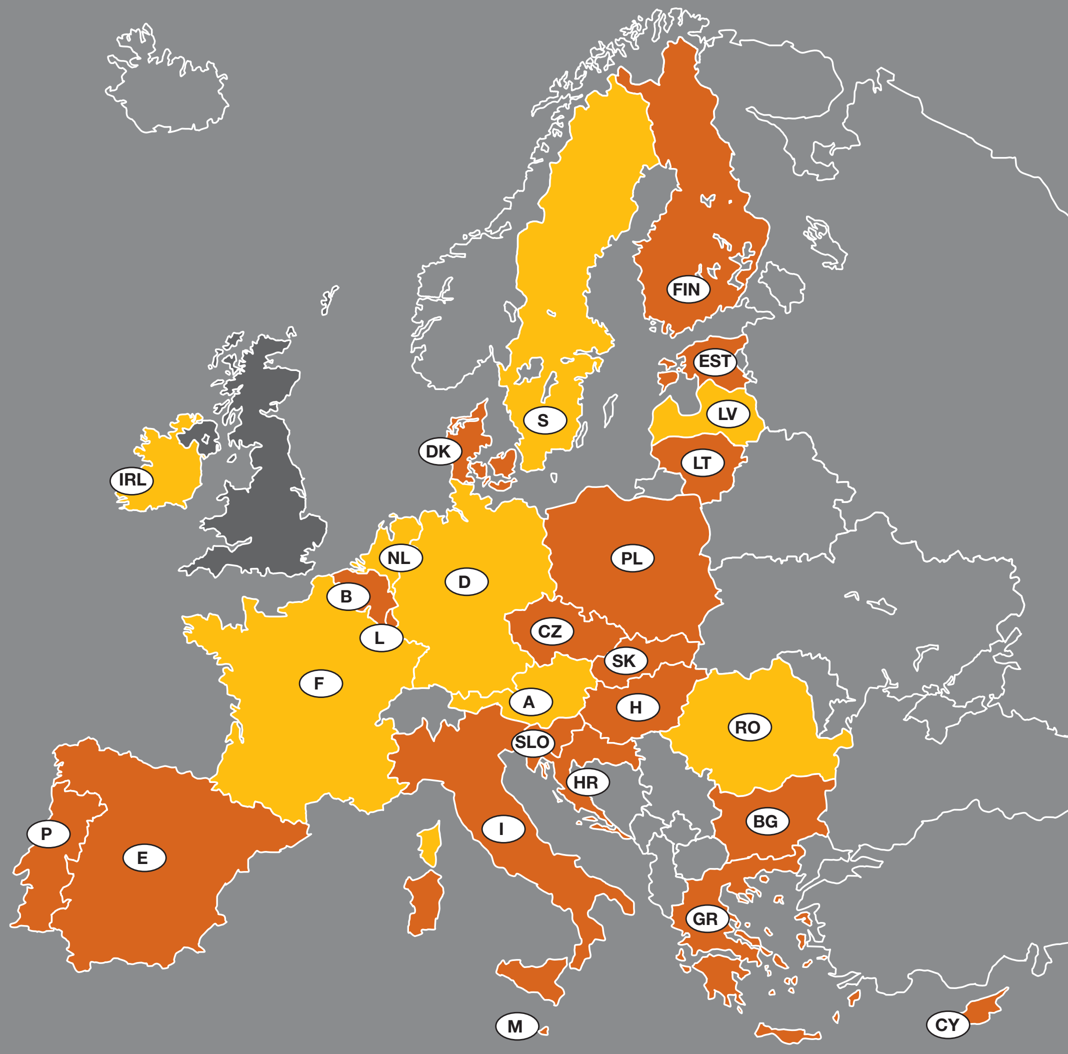



## 2.7 Financial undertakings exception

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

**19 Financial undertakings excluded**
Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Greece, Italy, Finland, Hungary, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain

**8 Financial undertakings not excluded**
Austria, France, Germany, Ireland, Latvia, Netherlands, Romania, Sweden



## 2.8 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

**11** **Unlimited carry forward, five-year unused interest capacity**
Austria, Denmark, France, Germany, Hungary, Ireland, Italy, Luxembourg, Malta, Slovakia, Spain

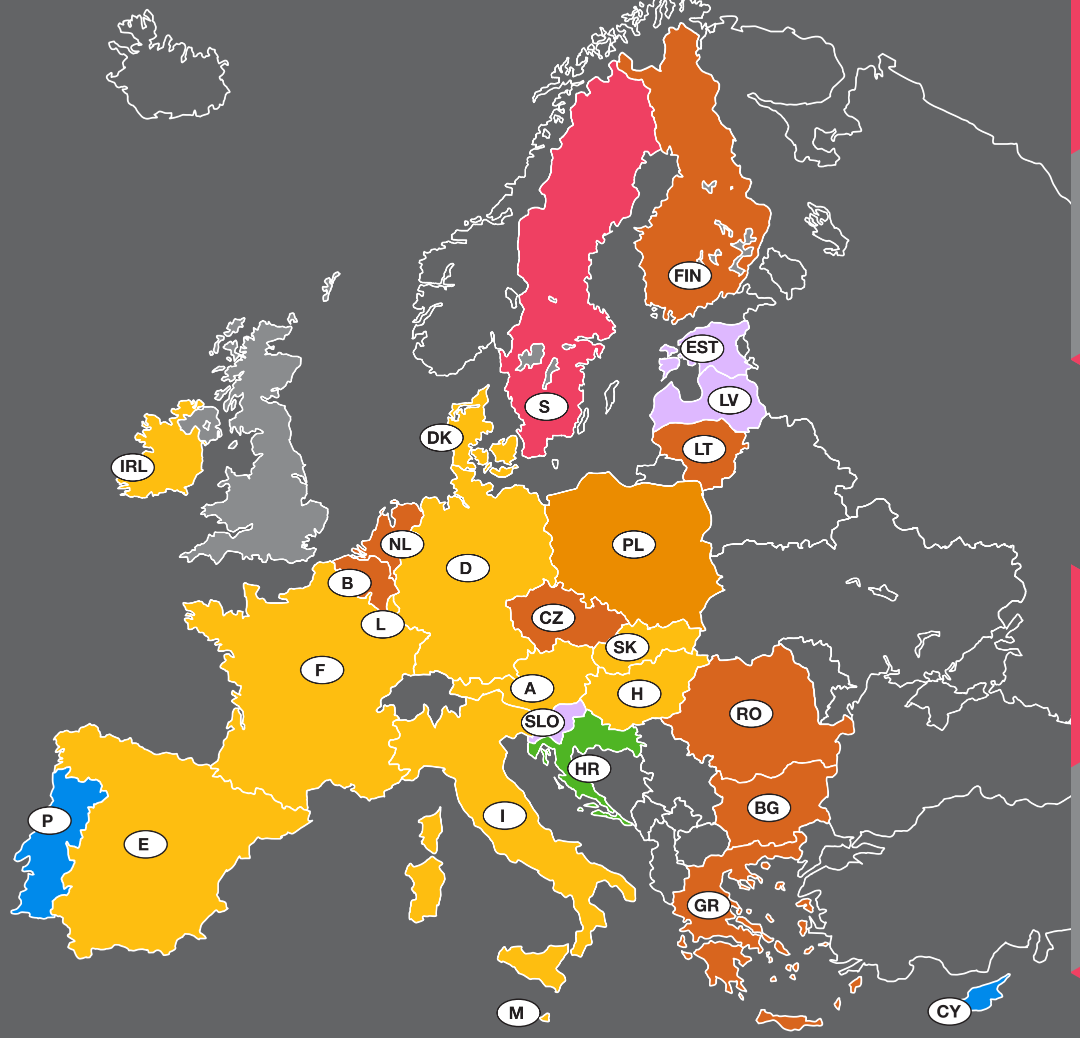
**3** **No carry forward rules available**
Estonia, Latvia, Slovenia

**1** **Three-year carry forward, no carry back**
Croatia

**2** **Five-year carry forward, five-year unused interest capacity**
Cyprus, Portugal

**1** **Five-year carry forward, no carry back**
Poland

**1** **Six-year carry forward, no carry back**
Sweden



# 3. Exit taxation rules

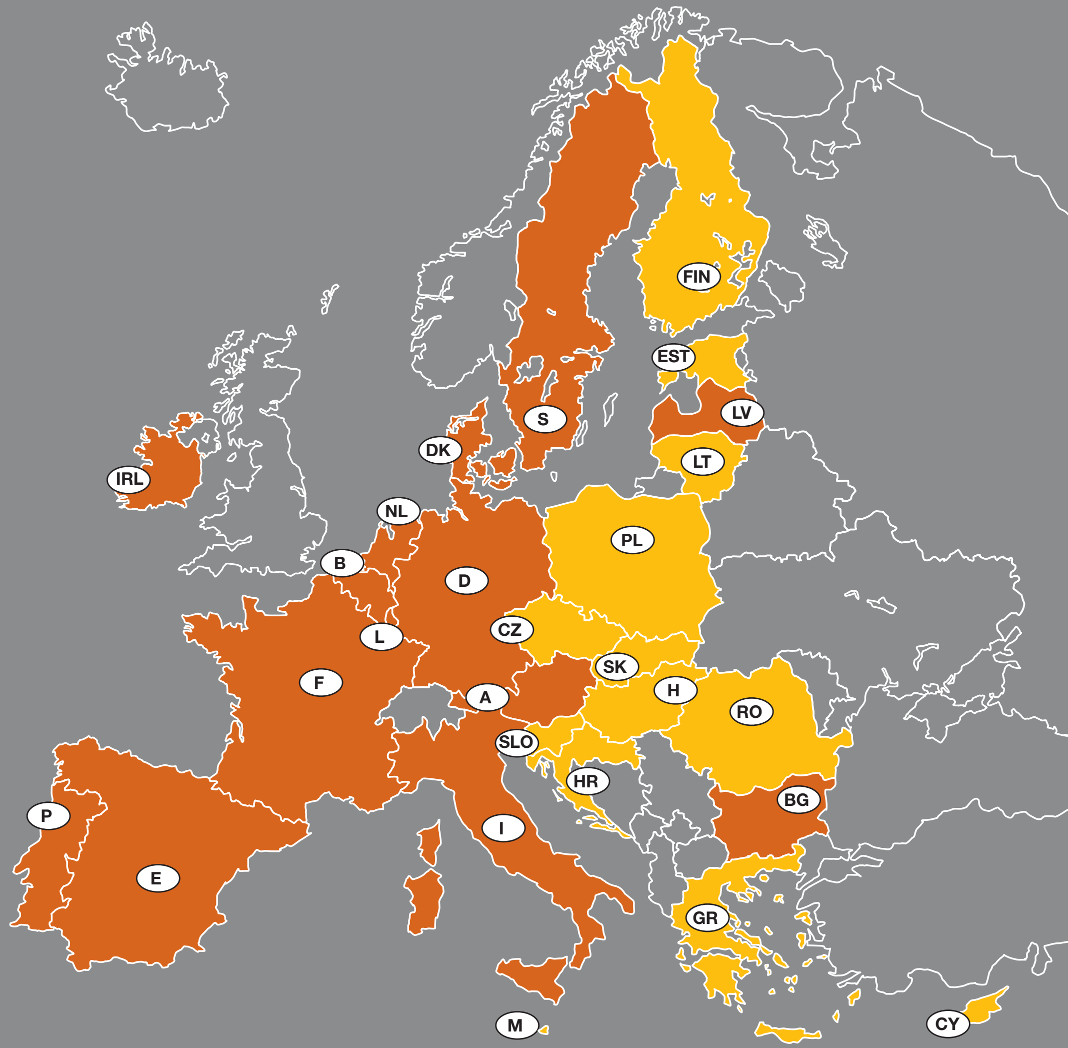


## 3.1 Application of domestic exit taxation rules

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

**14 Was already applying exit taxation rules**
Austria, Belgium, Bulgaria, Denmark, France, Germany, Ireland, Italy, Latvia, Luxembourg, Netherlands, Portugal, Spain, Sweden

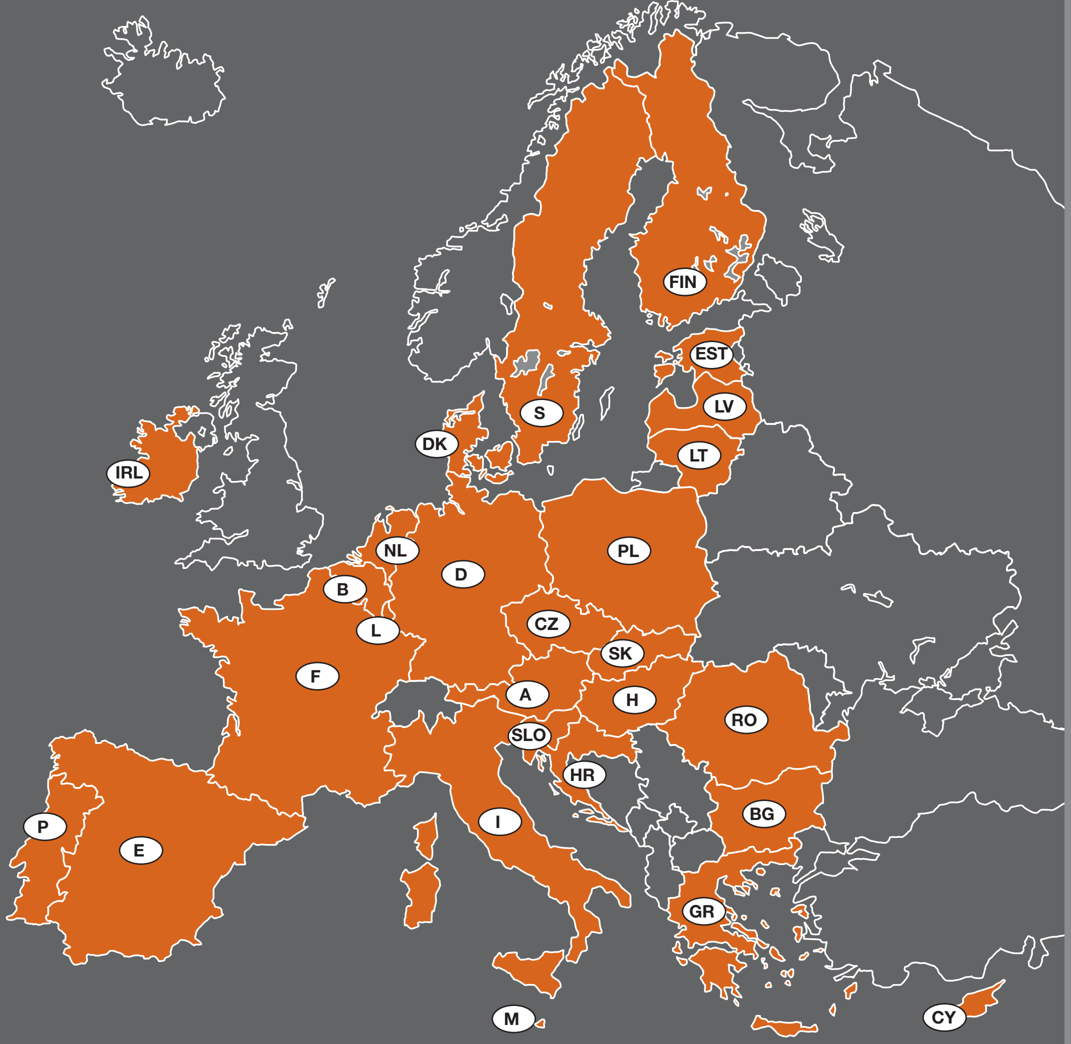
**13 Was not applying exit taxation rules**
Croatia, Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia



## 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.

**27 Implemented ATAD's exit taxation rules**
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, Slovenia, Spain, Sweden






## 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.

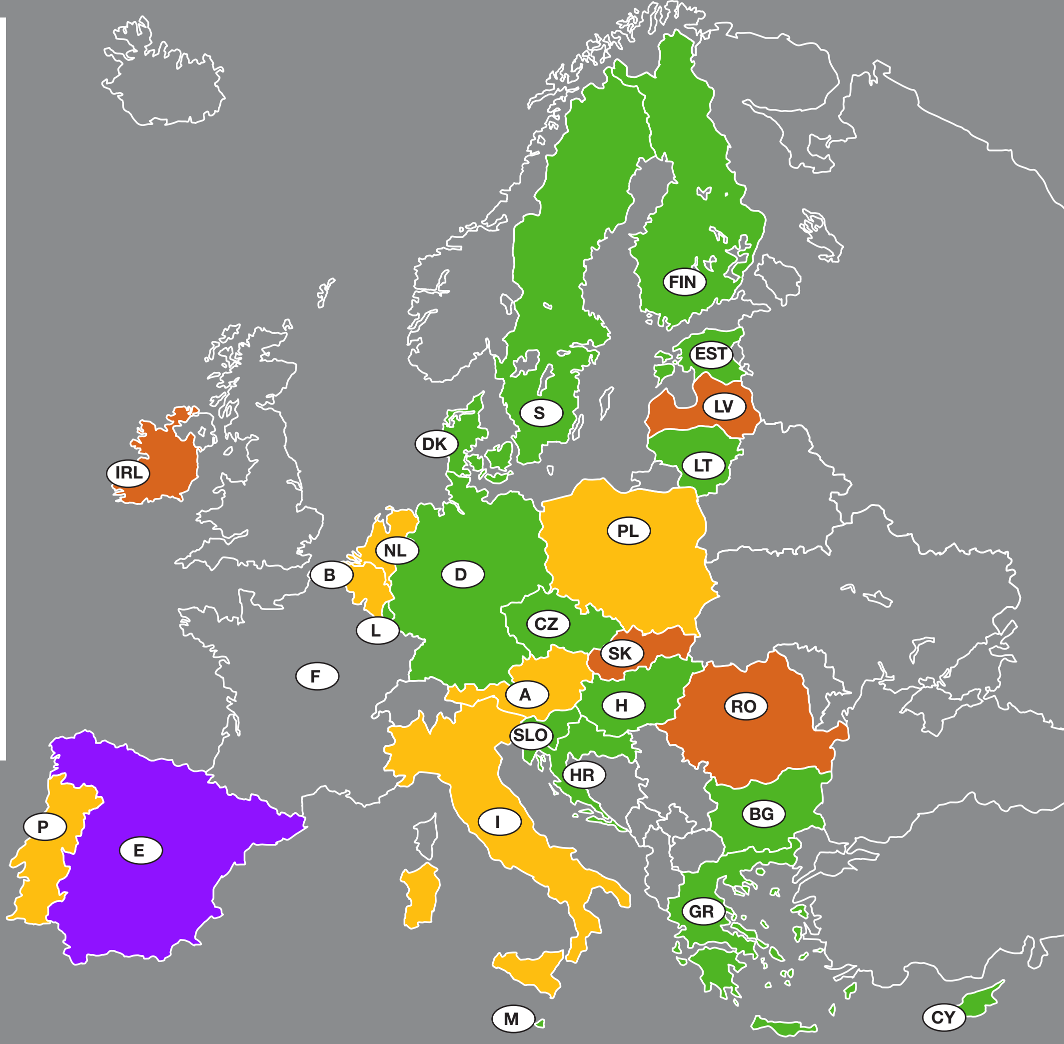
**4 Application or amendment to the existing exit taxation rules as of 1 January 2018**
Ireland*, Latvia, Romania, Slovakia

**6 Application or amendment to the existing exit taxation rules as of 1 January 2019**
Austria, Belgium, Italy, Netherlands, Poland, Portugal**

**15 Application or amendment to the existing exit taxation rules as of 1 January 2020**
Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Lithuania, Luxembourg, Malta, Slovenia, Sweden

**1 Application or amendment to the existing exit taxation rules as of 1 January 2021**
Spain

* Application as per 10 October 2018
** Application as per 4 May 2019

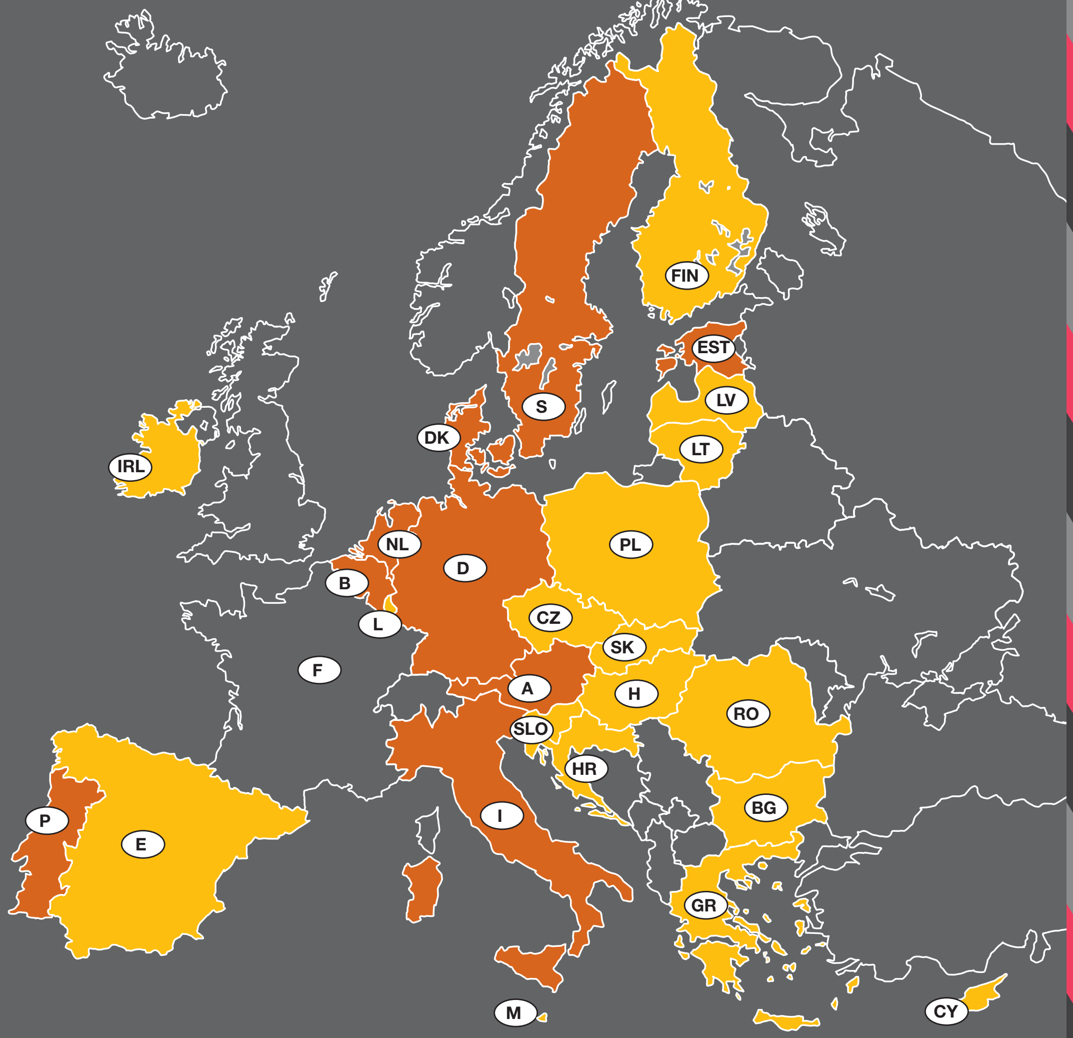


### 3.4 Exception for temporary transfers

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.

**9 Does not exempt temporary transfers**
Austria, Belgium, Denmark, Estonia, Germany, Italy, Netherlands, Portugal, Sweden

**17 Exempts temporary transfers**
Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Spain



# 4. General Anti-Avoidance Rule

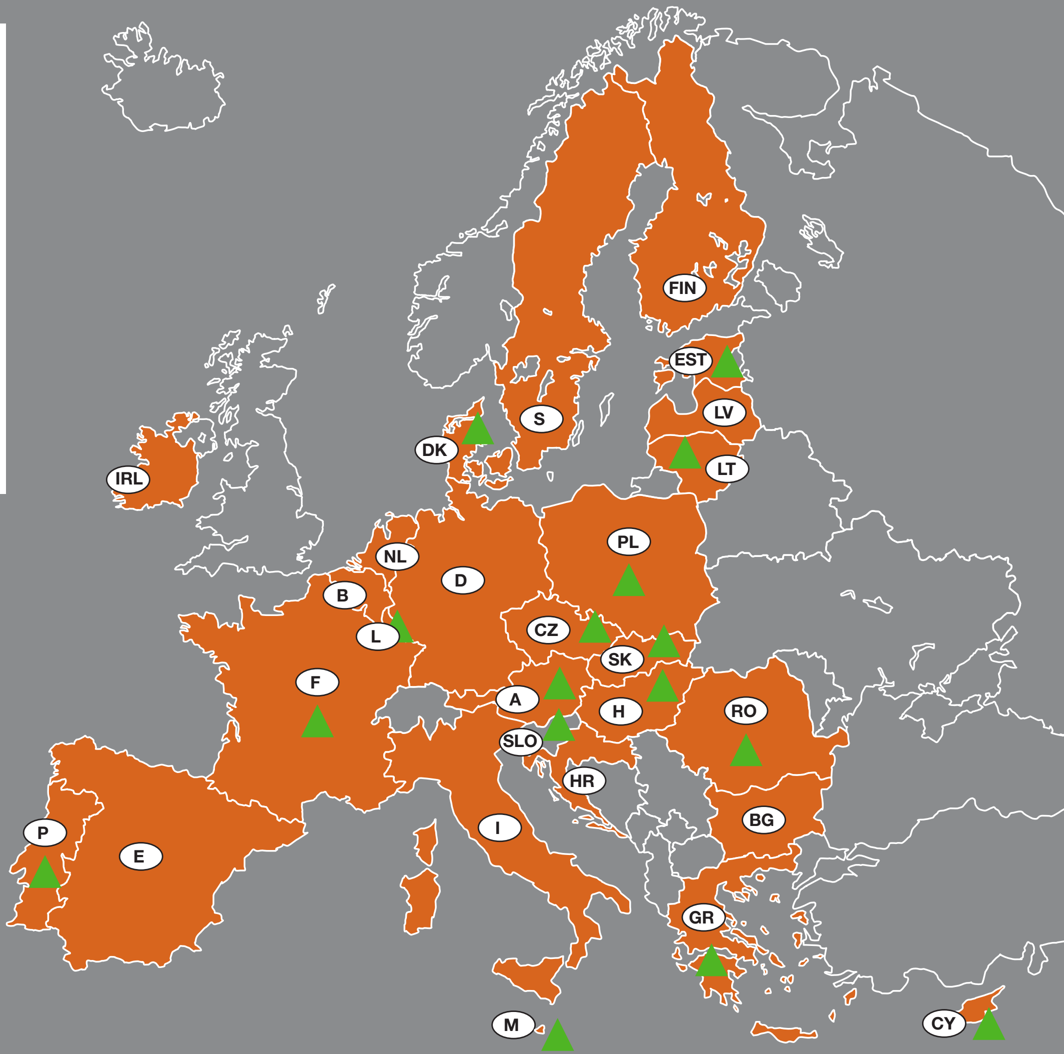


### 4.1 Implementation of ATAD's GAAR

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

**26 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

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



# 5. Controlled Foreign Company rule



## 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.

**20 Application or amendment to existing CFC rules per 1 January 2019)**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal*, Slovakia, Slovenia, Sweden

**1 Application or amendment to existing CFC rules per 1 April 2019**
Czech Republic

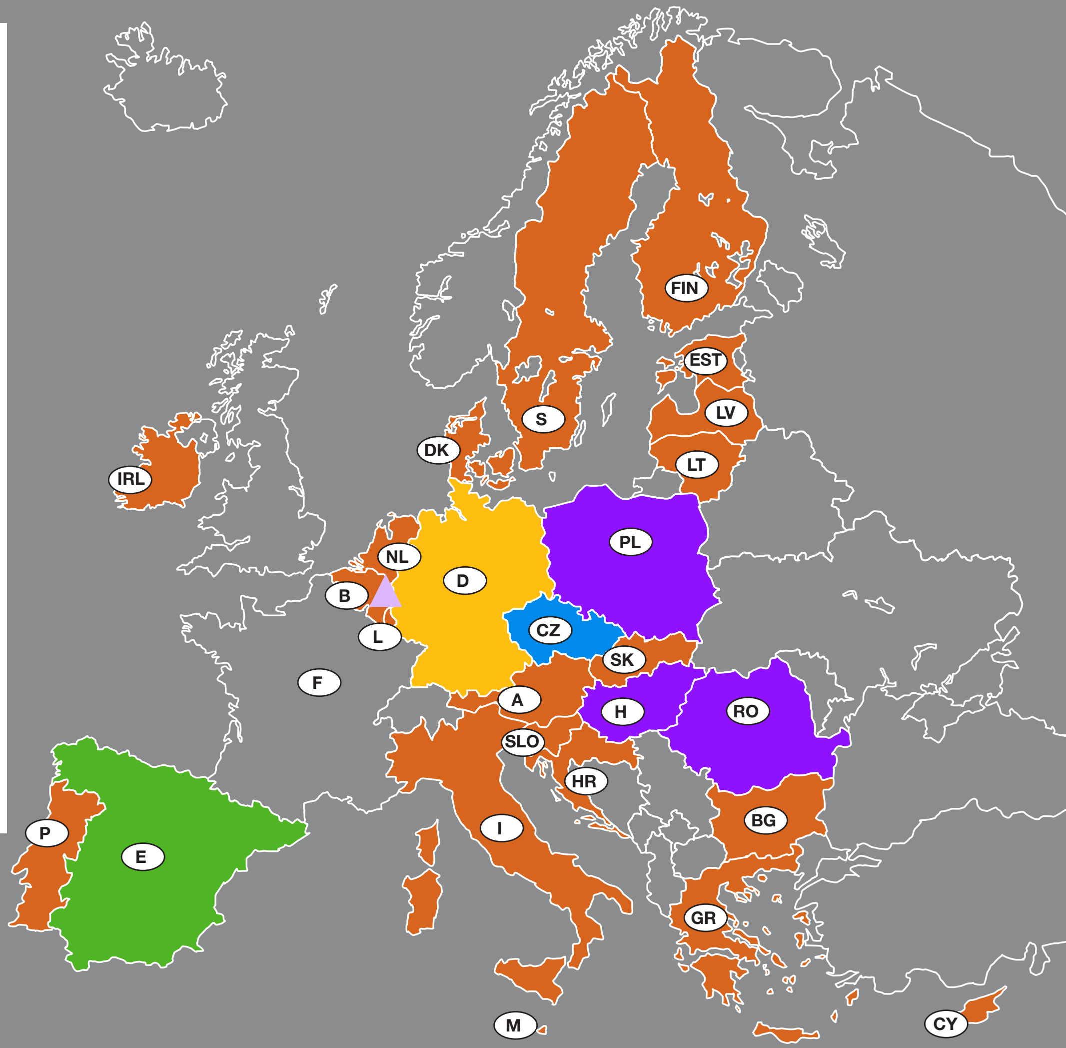
**3 Application or amendment to existing CFC rules per 1 January 2018)**
Hungary, Poland, Romania

**1 Application or amendment to existing CFC rules per 1 January 2022**
Germany

**1 Application or amendment to existing CFC rules per 1 January 2021**
Spain

**Switches from Model B to Model A as per 1 January 2024**

* Application as per 4 May 2019.



## 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.

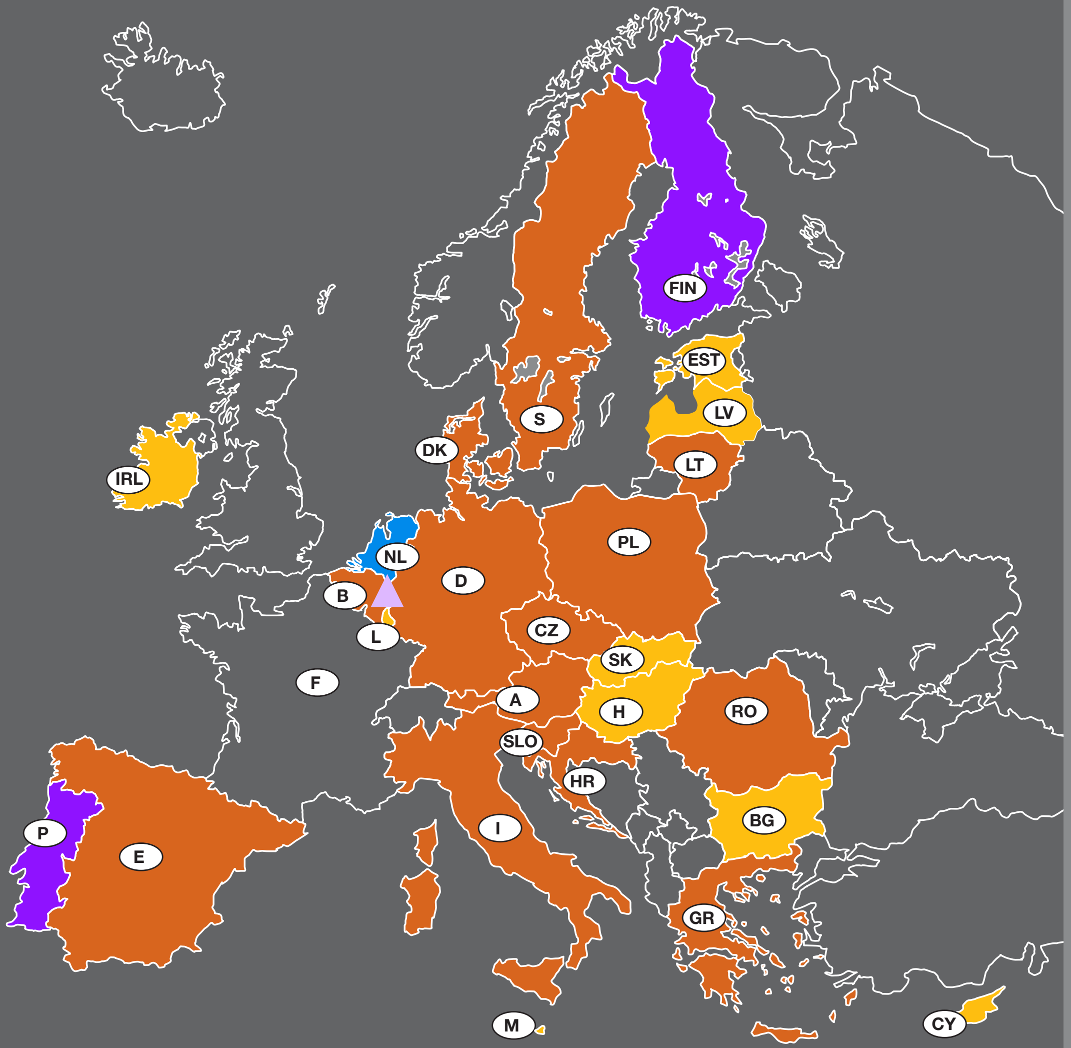
**14 Opted for model A**
Austria, Belgium, Croatia, Czech Republic, Denmark, Germany, Greece, Italy, Lithuania, Poland, Romania, Slovenia, Spain, Sweden

**9 Opted for model B**
Bulgaria, Cyprus, Estonia, Hungary, Ireland, Latvia, Luxembourg, Malta, Slovakia

**2 Neither model A nor B**
Finland, Portugal

**1 Combination of two models**
Netherlands

**Switches from Model B to Model A as per 1 January 2024**





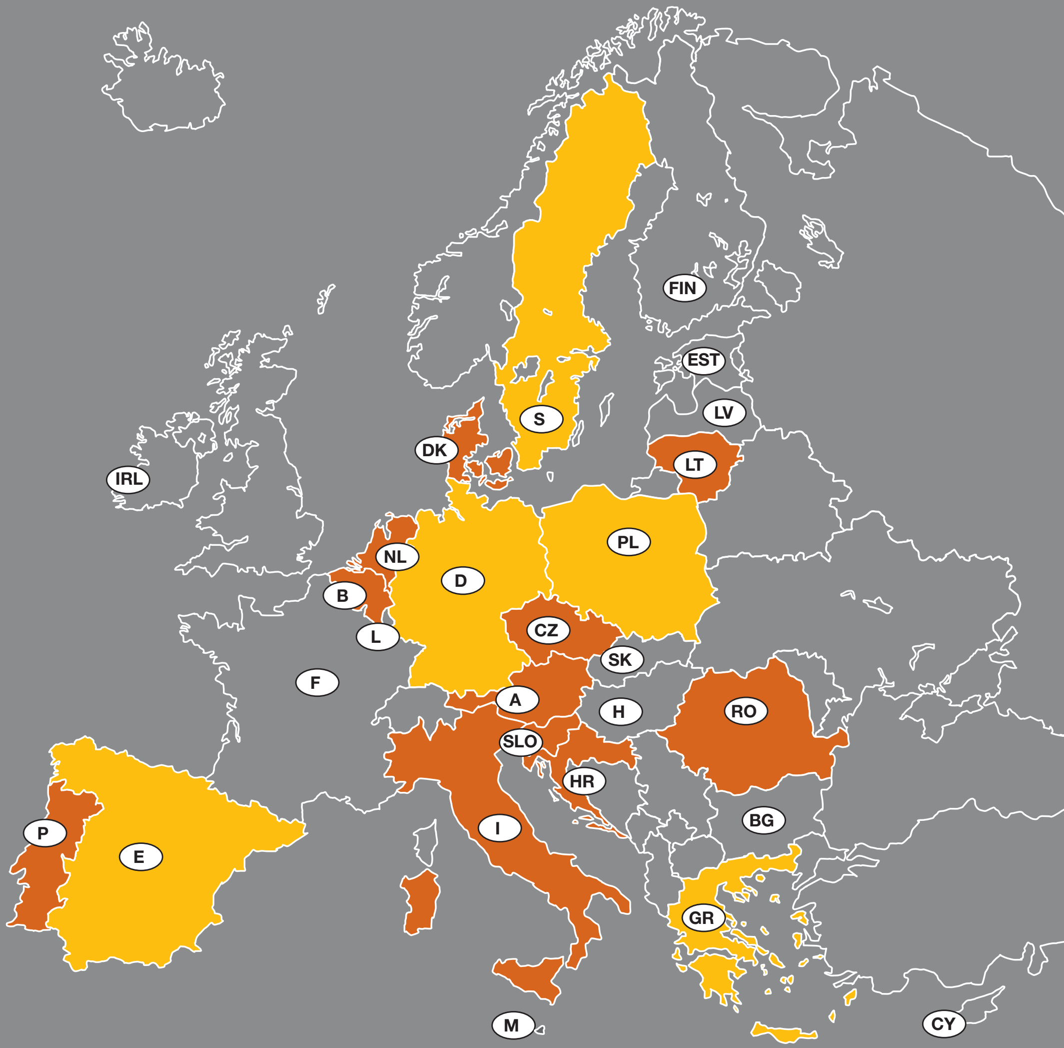

## 5.3 Model A: Substance carve-out for CFCs in third countries

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, Belgium, Croatia, Czech Republic, Denmark, Italy, Lithuania, Netherlands, Portugal, Romania, Slovenia

**5 No application of substance carve-out to third country situations**
Germany, Greece, Poland, Spain, Sweden

In Denmark, a partial substance carve-out test applies. In addition, there are EU Member States that have opted not to apply the substance carve-out where the CFC is a resident in a jurisdiction that has been included in the EU list of non-cooperative jurisdictions.
PwC has created a seperate overview on this topic available here.



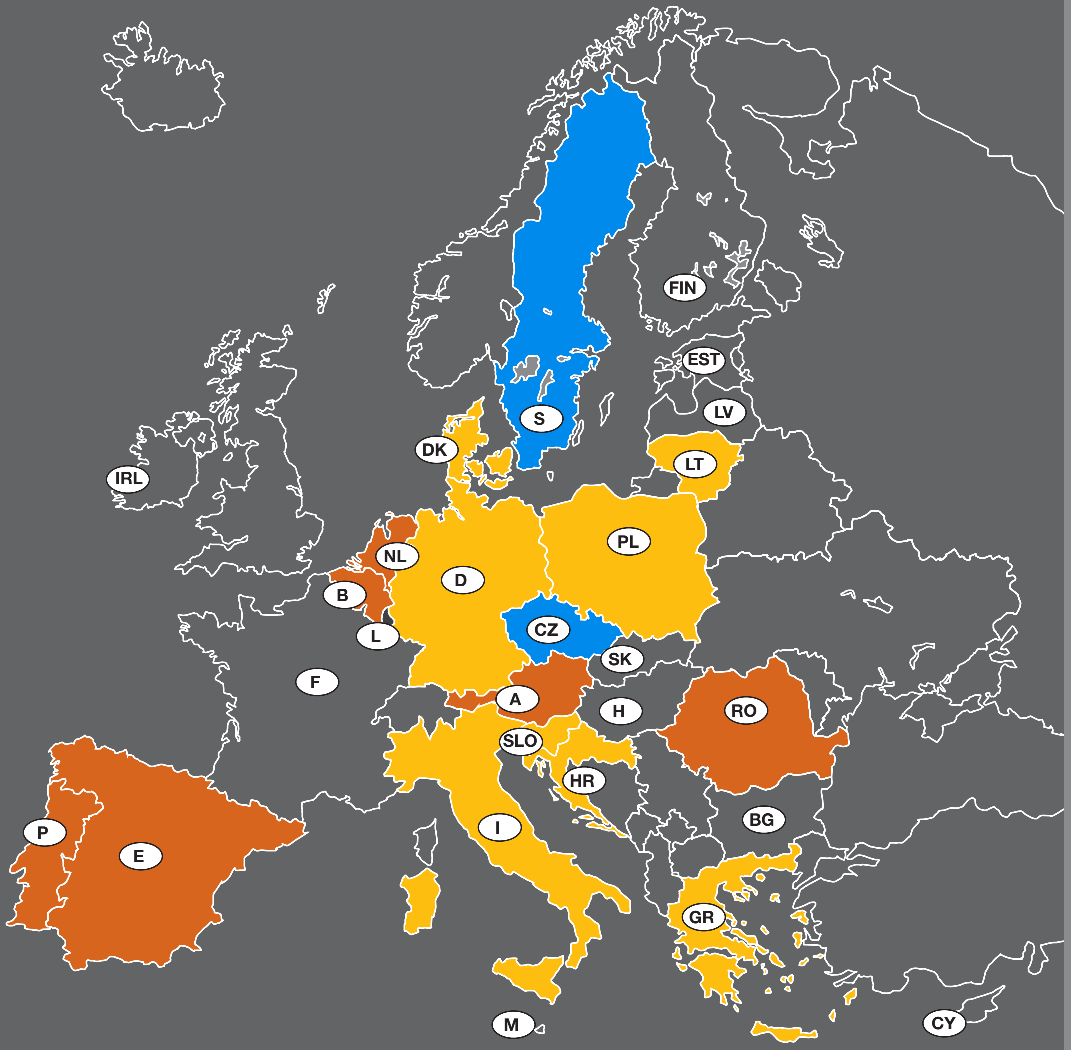
### 5.4 Exceptions under model A

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.

**6 One-third exception and financial undertakings exception**
Austria, Belgium, Netherlands, Portugal, Romania, Spain

**8 One-third qualifying income exception only**
Croatia, Denmark, Germany, Greece, Italy, Lithuania, Poland, Slovenia

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






### 5.5 Exceptions under model B

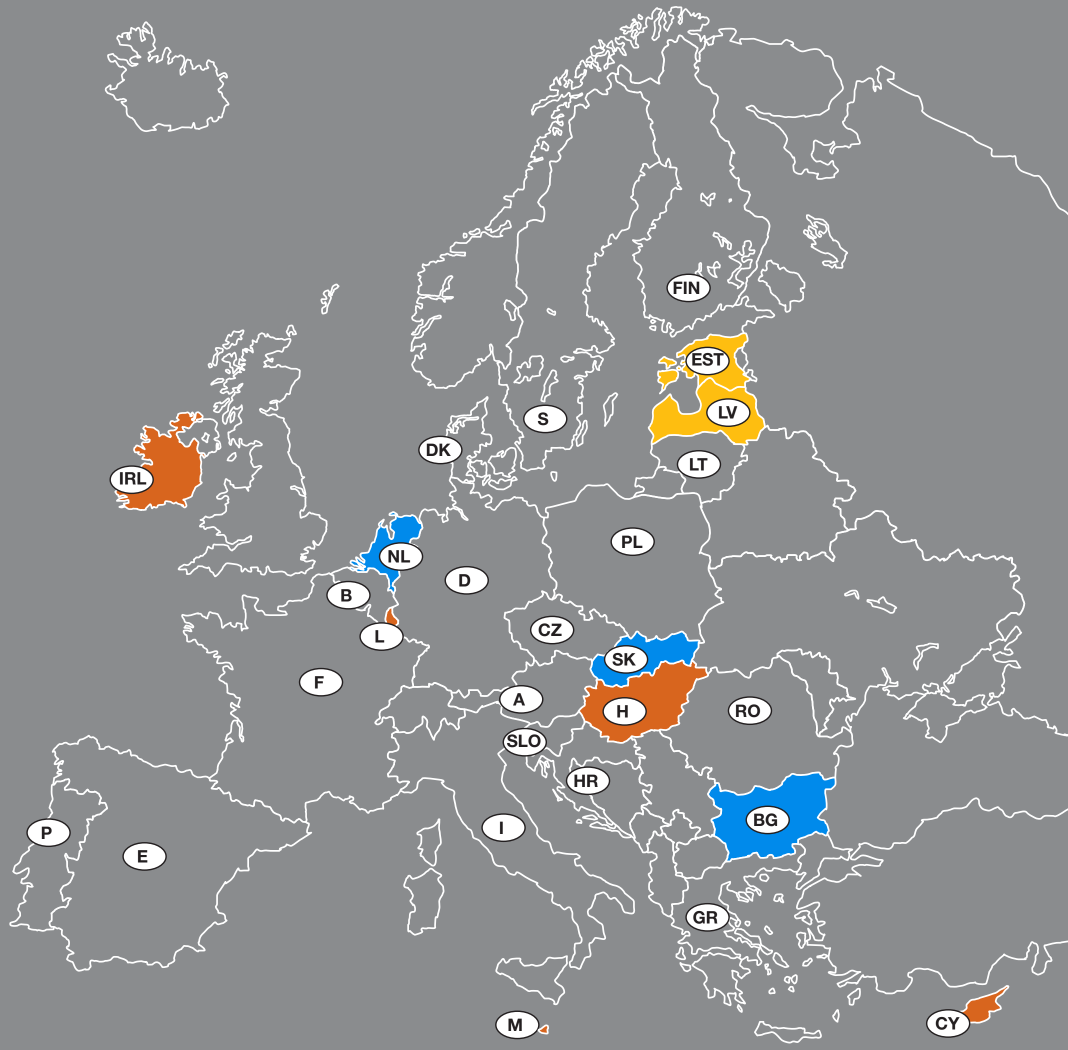
When opting for model B, Member States may exclude CFCs: (a) with accounting profits of no more than EUR 750.000, and non-trading income of no more than EUR 75.000; or (b) of which the accounting profits amount to no more than 10% of its operating costs for the tax period.

**5 Both accounting profits exceptions**
Cyprus, Hungary, Ireland, Luxembourg*, Malta

**2 Accounting profits < EUR 750.000**
Estonia, Latvia

**3 No exceptions**
Bulgaria, Netherlands, Slovakia

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



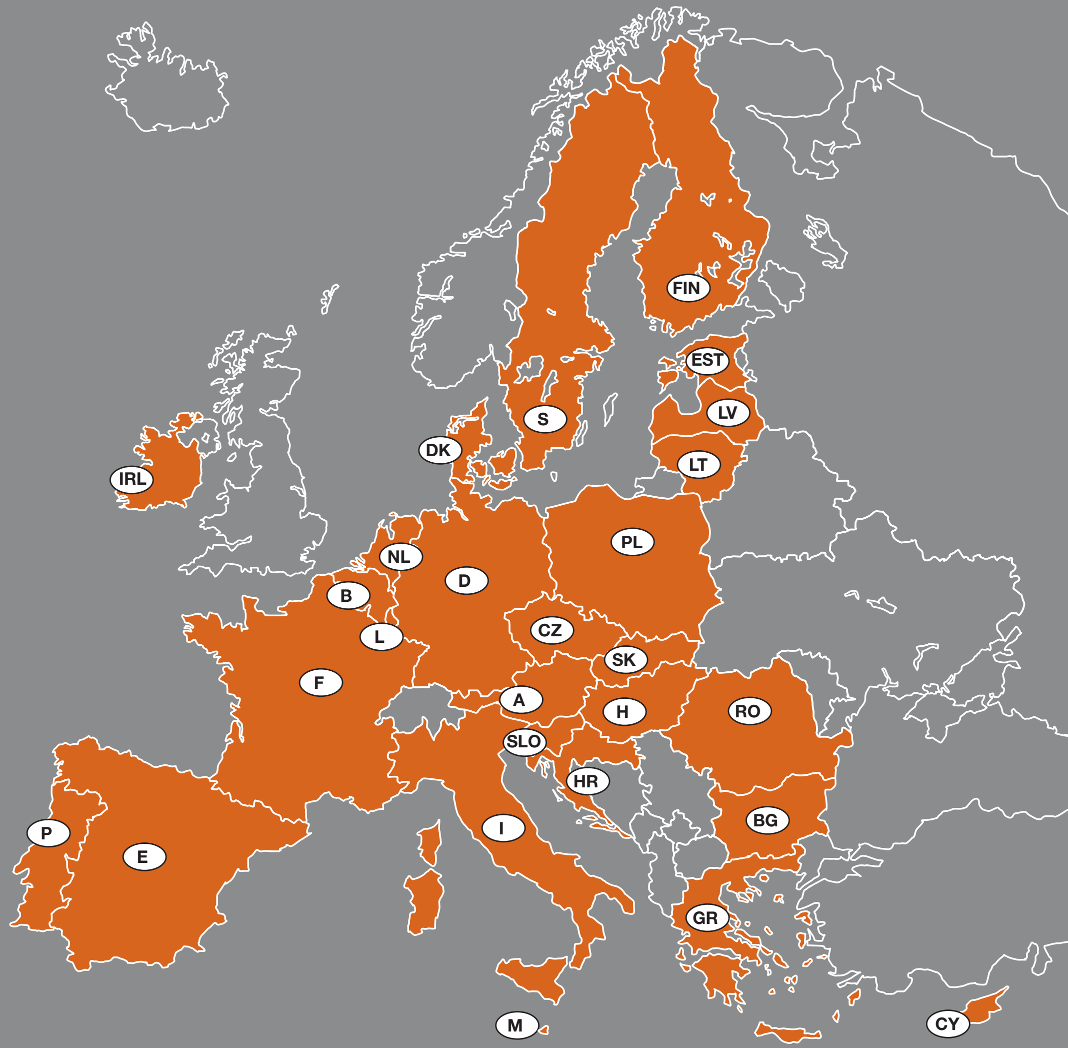
# 6. Anti-hybrid rules



### 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.

**27 Implemented ATAD II's rules**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Spain, Romania, Slovakia, Slovenia, Sweden



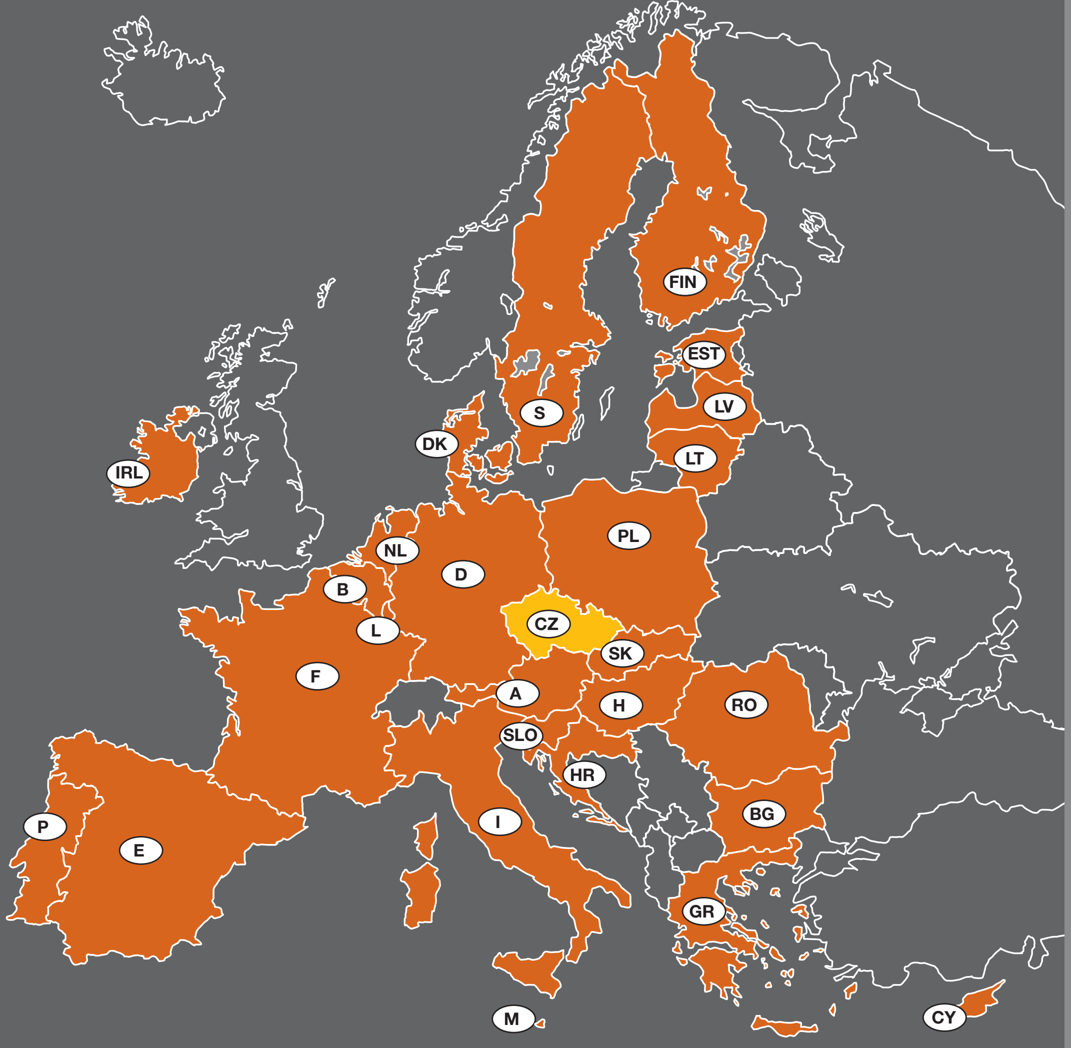
## 6.2 ATAD II's anti-hybrid rules in more detail

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

26 **Has implemented all six anti-hybrid rules***
Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

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

* Regarding the reverse hybrid rule, please see the following infographic.
** ATAD II's rules on tax residency mismatches and hybrid transfers were not directly implemented into the domestic legislation. It is covered by other provisions and concepts of domestic law.






## 6.3 Reverse hybrid rule

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

26 **Rule on reverse hybrid mismatches**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

1 **Application as of 2019**
Belgium

2 **Application as of 2020**
Denmark, Romania

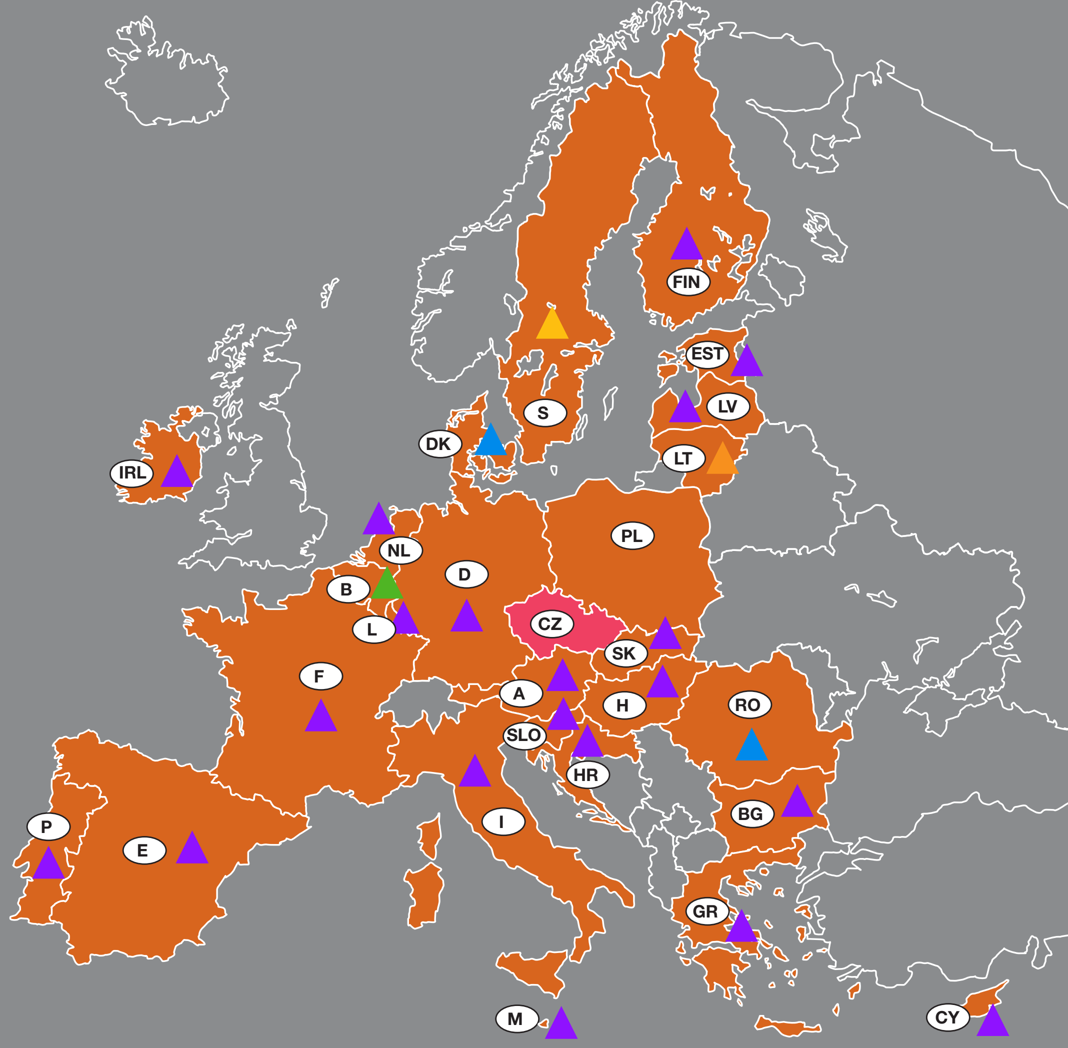
1 **Application as of 2021**
Sweden*

20 **Application as of 2022**
Austria, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Spain, Slovakia, Slovenia

1 **Application as per 2023**
Lithuania

1 **Not applicable**
Czech Republic**

* Application for fiscal years starting after 30 June 2021.
** ATAD II's rules reverse hybrid was not directly implemented into the domestic legislation. It is covered by other concepts of domestic law.



# 7. ATAD implementation trends



### 7.1 Interest deduction limitation rule (EBITDA rule)

- All Member States have introduced or amended their 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% or 20% of the EBITDA or EBITD.
- Member States are devided as to the application of the EBITDA rule to standalone companies.
- 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.

### 7.2 Exit taxation rules

- 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.
- Almost 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 rules or adjusted their existing CFC rules in line with ATAD's CFC rules, 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. In addition, most Member States apply for one of the available exceptions provided for model A, i.e. financial undertakings exemption and/or one-third exemption.
- Most Member States that opted for model B apply for a specific exception available for model B.
- Most EU Member States have opted to apply the ATAD's CFC rules where the CFC is a resident in a jurisdiction that has been included in the EU list of non-cooperative jurisdictions. PwC has created a seperate overview on this topic available here.

### 7.5 Anti-hybrid rules

- All Member States have implemented ATAD II's hybrid rules.
- 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 are applying a reverse hybrid rule as of 1 January 2022. A few Member States were already applying such a rule even before 1 January 2022.

# 8. Annex

### 1. Interest deduction limitation (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.

### 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.[1]

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



- **Interest and bank guarantee:** The Member States of departure are allowed to charge interest or require a bank guarantee under certain circumstances.
- **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.

### 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.

### 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.

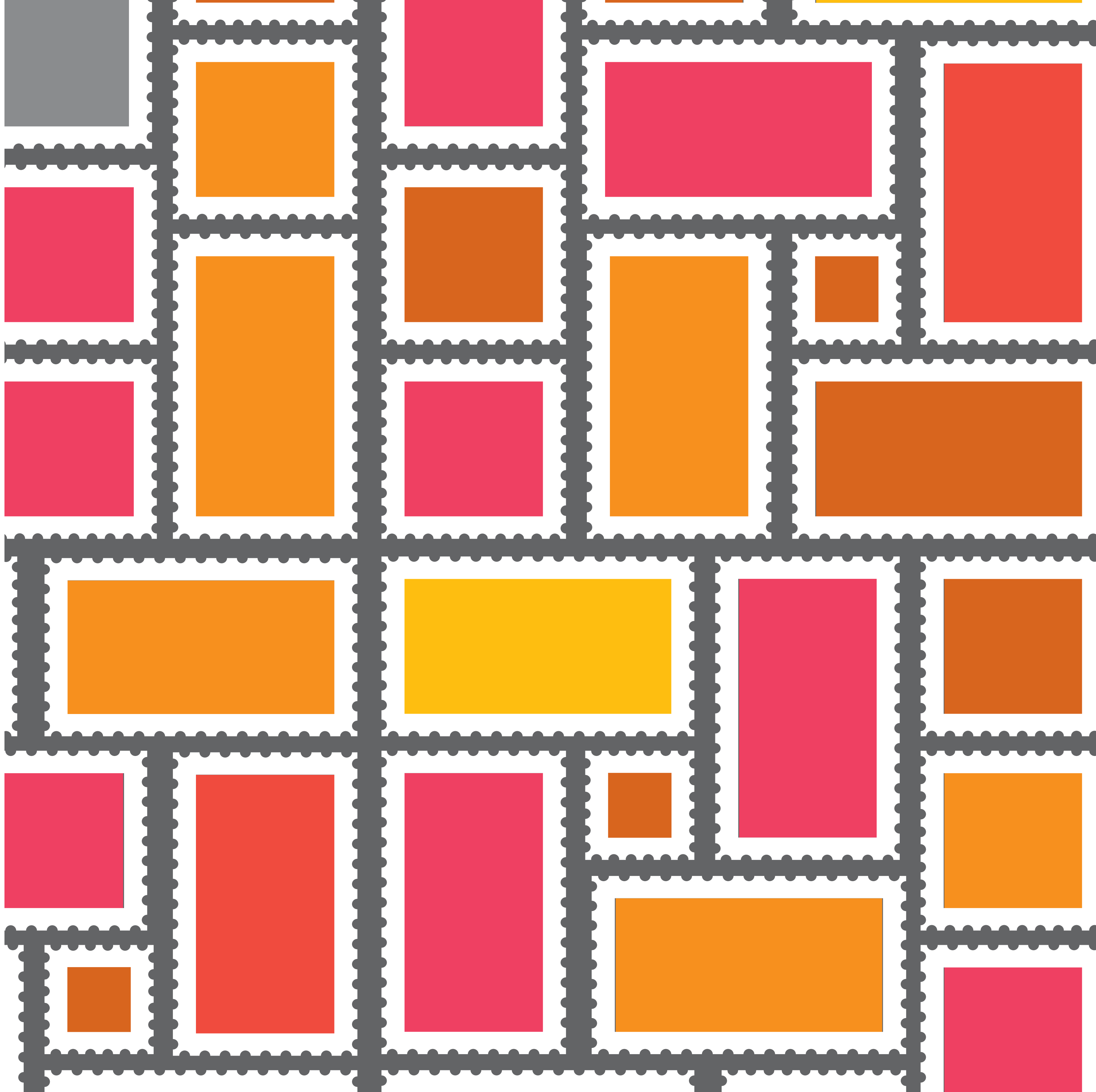
  **Model B:** undistributed income of the CFC from non-genuine arrangements that have been put into place for the essential purpose of obtaining a tax advantage is attributed to the taxpayer/parent company.
  - When opting for **model B**, Member States shall not apply the CFC rules in case of genuine 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.

### 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.



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