

PwC NL
Tax Knowledge
Centre

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

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Content

Introduction	3
1. The applicable threshold which determines the UBO: 'more than 25%' vs. '25% or more'	4
2. The UBO registration requirement is limited to entities established within the country's territory or to legal arrangements governed by the country's law	6
3. Exceptions to the registration requirement for various bodies	8
4. UBO information is automatically shielded in case of minors	10
5. Obligation to register at least one UBO (a pseudo-UBO in case a real UBO is absent)	12



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Introduction

By 10 January 2020 an obligation for UBO registration within the European Union (EU) and the European Economic Area (EEA) had to be implemented. This obligation derives from the fourth¹ and fifth² Anti-Money Laundry Directive (the Directive). This PwC publication provides an overview of several specific aspects in relation to which the obligation for UBO registration shows remarkable differences in 30 EU/EEA countries, in the United Kingdom and Gibraltar. The publication includes information available on the national implementation of the Directive up to **8 June 2020**. Finally, the research work has been conducted by the Tax Knowledge Centre of PwC the Netherlands.

It is clear that several countries went beyond the minimum standard introduced by the Directive.

This finding led us to conduct a comparative research on the following five specific aspects of the UBO registration with the help of PwC's European network:

1. The applicable threshold which determines the UBO: 'more than 25%' vs. '25% or more'
2. The UBO registration requirement is limited to entities established within the country's territory or to legal arrangements governed by the country's law
3. Exceptions to the registration requirement for various bodies
4. UBO information is automatically shielded in case of minors
5. Obligation to register at least one UBO (a pseudo-UBO in case a real UBO is absent)

Below some notable findings of our research per aspect.

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.

1. The applicable threshold which determines the UBO: 'more than 25%' vs. '25% or more'

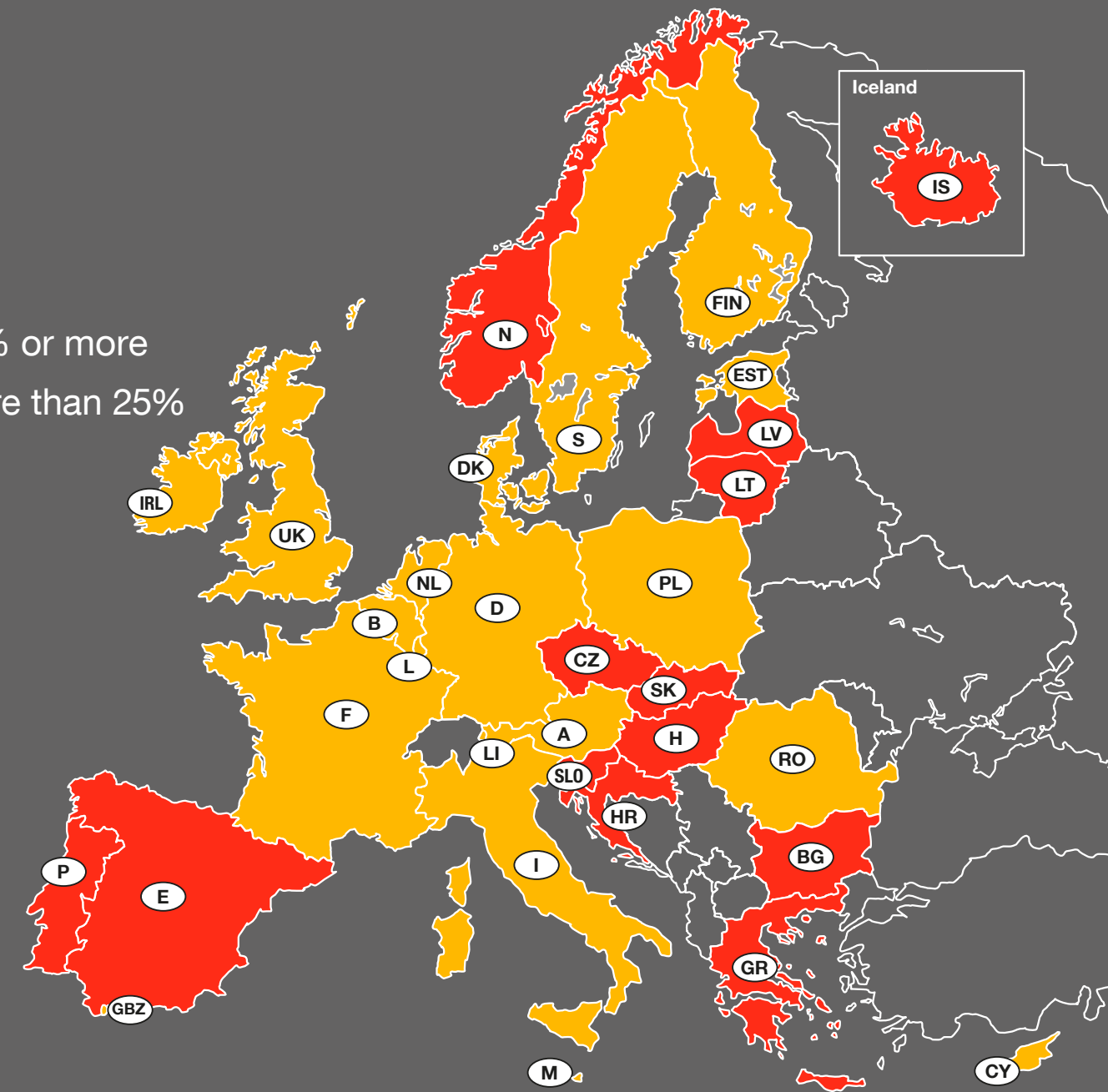
What does the Directive prescribe?

The Directive provides the following definition of UBO: *'any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted'*. In relation to corporate entities, this is met through the holding of direct or indirect ownership of *'a sufficient percentage'* of the shares or voting rights or ownership interest in that entity or through control via other means. A shareholding percentage of more than 25% (e.g. 25,1%) serves as an indication of direct interest. If a natural person exercises control over a company and in turn has more than a 25 per cent interest in another company, this serves as an indication of an indirect interest.

How have the EU/EEA countries implemented the applicable threshold for UBO qualification?

The applicable percentages for UBO qualification vary from country to country. Although the Directive provides for a threshold of 'more than 25%', twelve of the countries have opted for the lower threshold of '25% and more'. The subtle difference between these two thresholds relates to a situation where a natural person ultimately owns or controls an interest of exactly 25%. This means that if a country has opted for the threshold of 'more than 25%', a 25% shareholder is not considered to be the UBO. Interestingly enough, Spain applies, in general, a percentage of 'more than 25%' but a '25% or more' percentage for foundations and associations. In Finland, there was discussion to reduce the threshold for UBO registration to 10%.

- 25% or more
- More than 25%



2. The UBO registration requirement is limited to entities established within the country's territory or to legal arrangements governed by the country's law

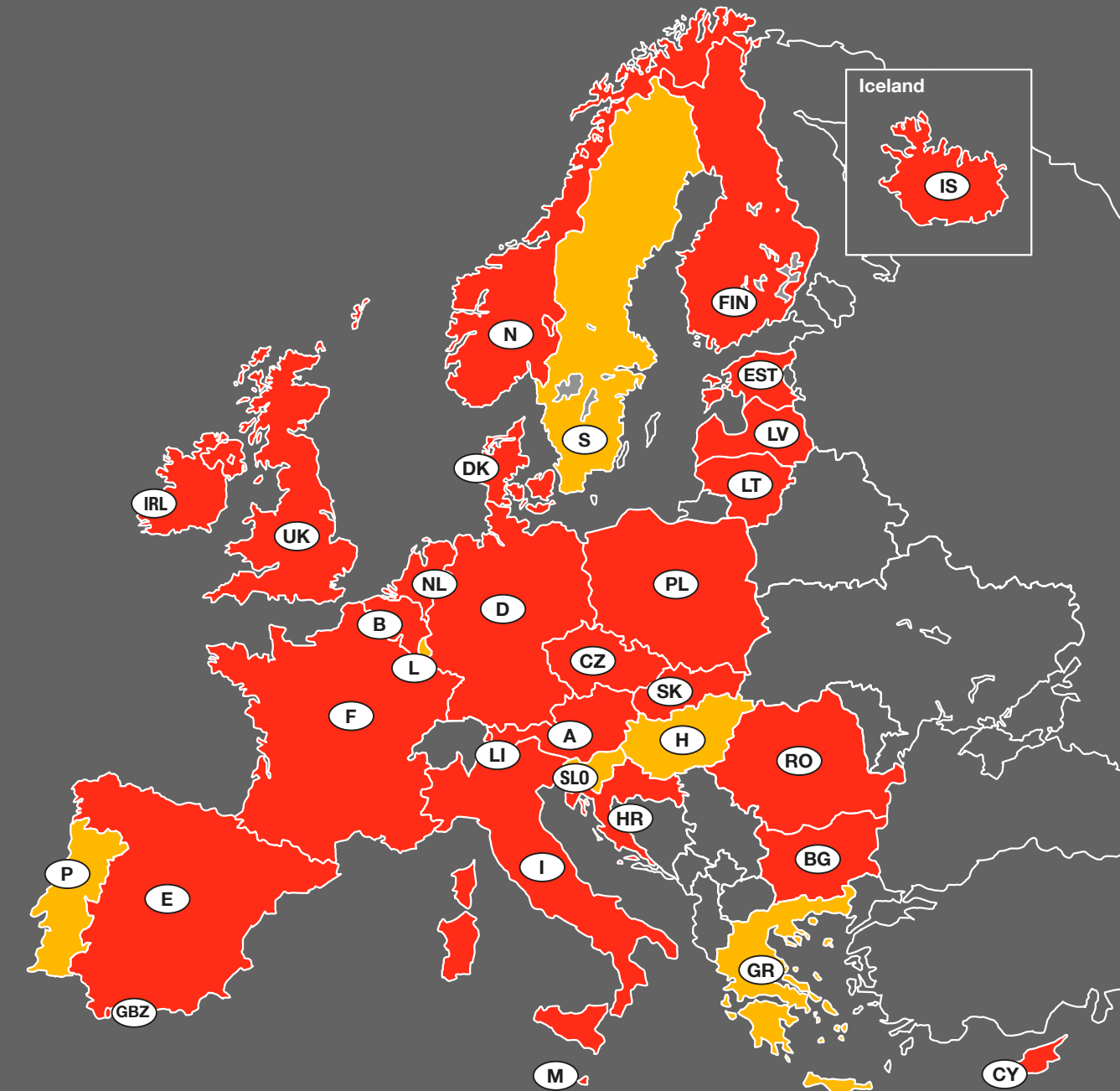
What does the Directive prescribe?

The Directive prescribes to the EU/EEA countries that 'corporate and other legal entities incorporated within their territory' shall be registered. Therefore, under the Directive, corporate entities that are established under a law other than that of the EU/EEA country at hand do not have to be registered in the national UBO registers of the EU/EEA countries at hand.

How did the EU/EEA countries implement this aspect?

Six countries decided not to limit the obligation for UBO registration to corporate entities established within their territory or to legal arrangements governed by their law. In these countries, the establishment of the entity in their territory is decisive for the UBO registration requirement.

Yes
No



3. Exceptions to the registration requirement for various bodies

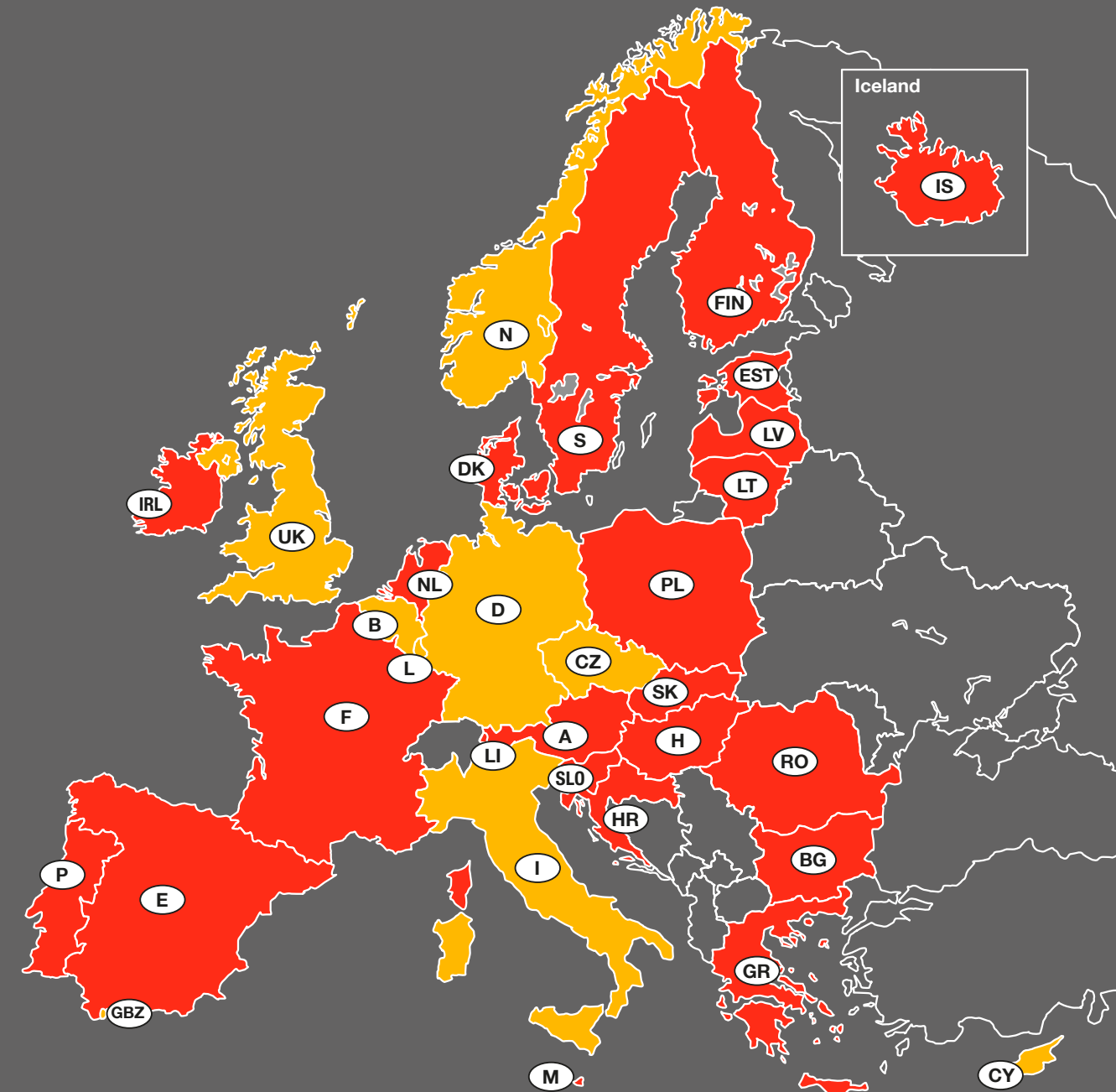
What does the Directive prescribe?

The Directive provides only for an explicit exemption for public companies listed on a stock exchange and their 100% participations. Apart from this, the Directive does not provide any other exemption in relation to the UBO registration requirement for specific bodies.

How did the EU/EEA countries implement this aspect?

Nevertheless, 19 countries have implemented additional exemptions. This is the case, for instance, in Portugal in relation to public bodies, international public organisations and associations of owners. Also the Netherlands applies additional exemptions. One of them relates to church societies. However, on 10 December 2019 the Dutch Parliament repealed this exemption. On 16 April 2020 this issue is still under consideration by the Dutch Senate.

Yes
No



4. UBO information is automatically shielded in case of minors

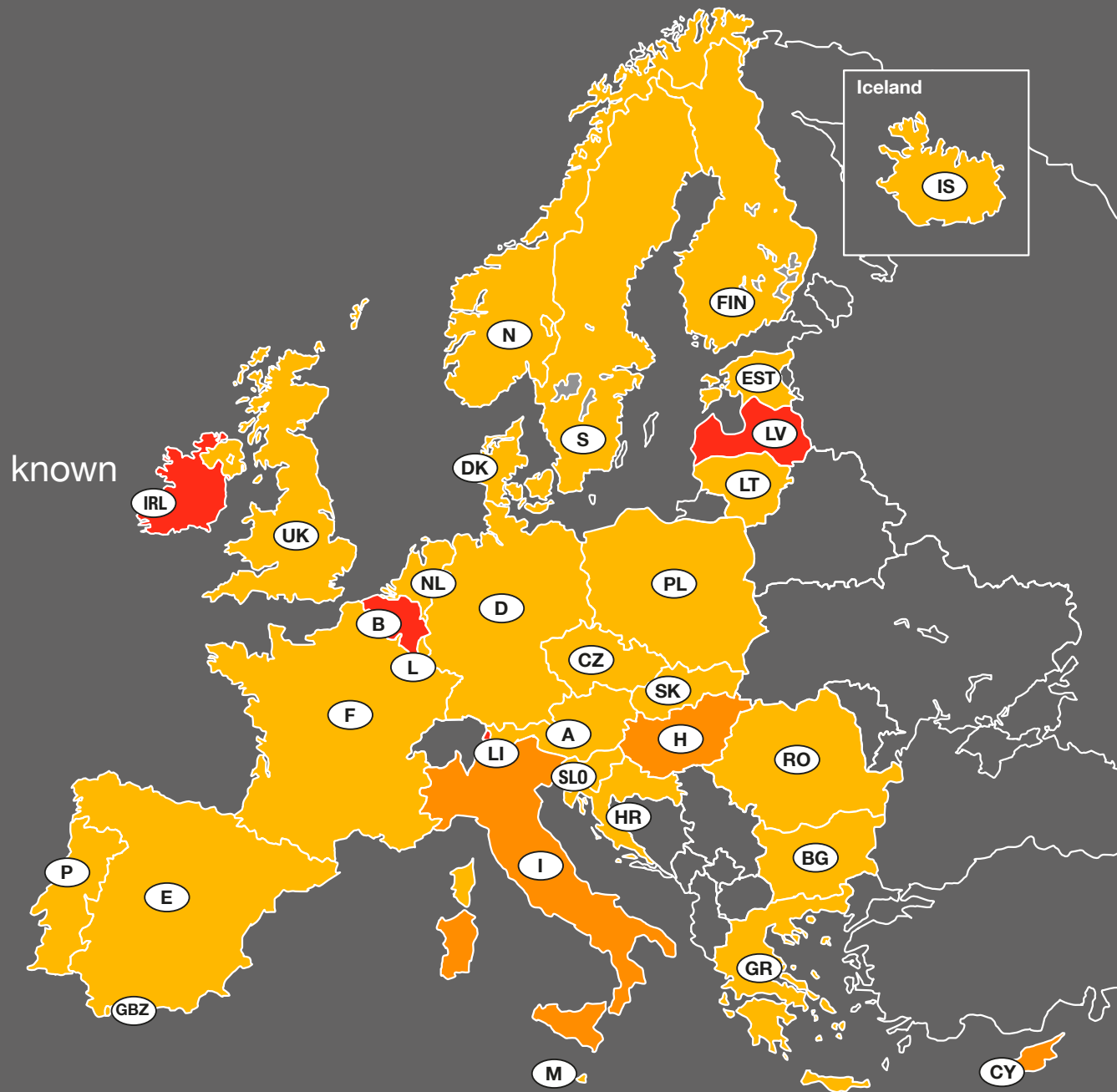
What does the Directive prescribe?

The Directive does not explicitly refer to whether an automatic shield of UBO information in case of minors is possible. In our view, this leaves open the possibility for countries to provide for an automatic shielding of UBO information in case of minors. However, the views on this point are divided. This is also reflected in the varying national implementation of this aspect of UBO registration.

How did the EU/EEA countries implement this aspect?

In three of the countries surveyed (Belgium, Ireland and Latvia) the UBO information in case of minors automatically is shielded. In some countries, shielding of UBO information in case of minors is possible upon request. In some of them, a request is automatically accepted. Interestingly enough, Sweden does not provide for any possibility for shielding of UBO information in case of minors.

- Yes
- No
- Not known yet



5. Obligation to register at least one UBO (a pseudo-UBO in case a real UBO is absent)

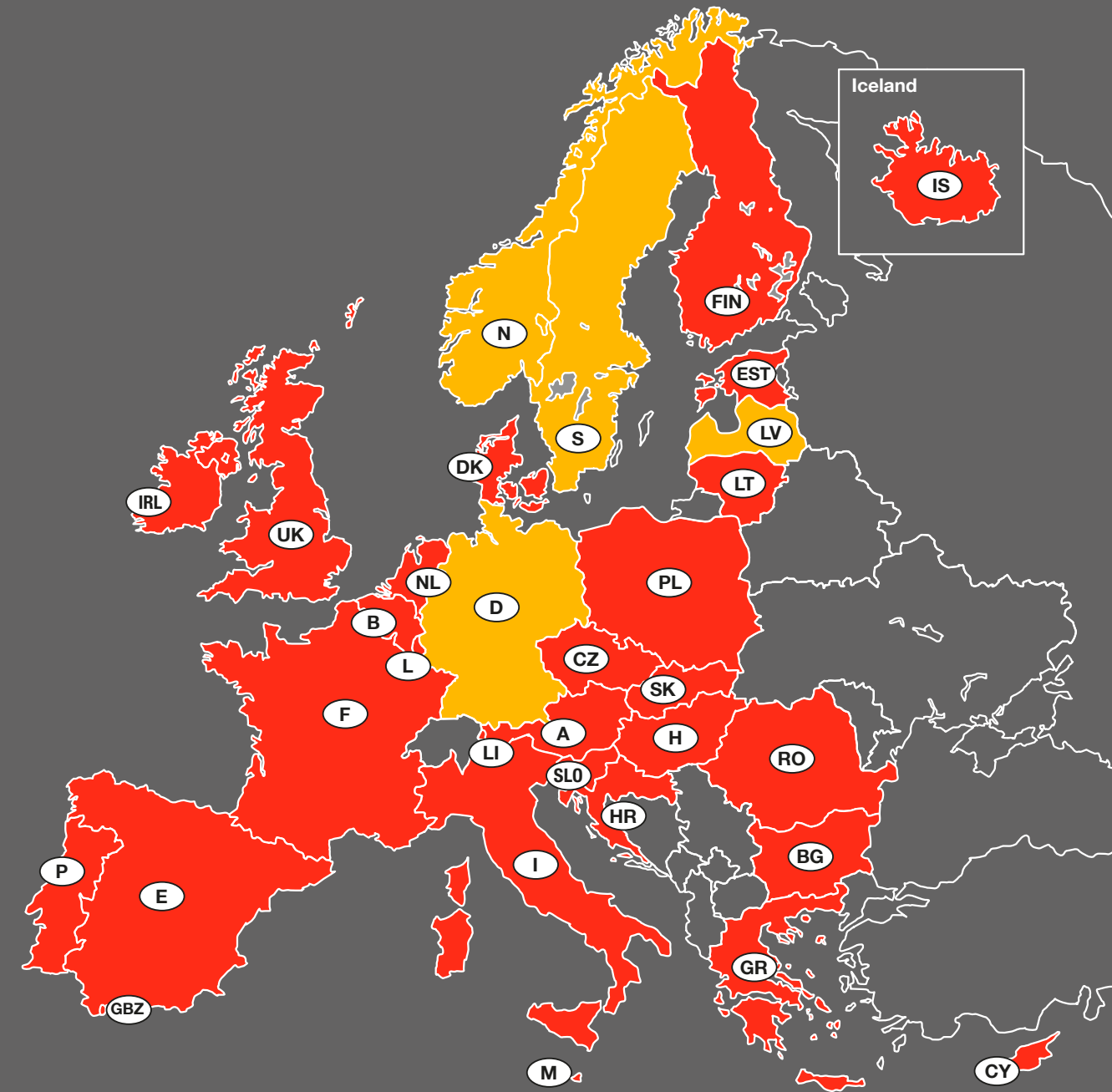
What does the Directive prescribe?

The Directive provides that if there is no natural person which can qualify as the 'real' UBO, the senior management of the company should be regarded as UBO and thus registered in the national UBO registers (the so called 'pseudo-UBO').

How did the EU/EEA countries implement this aspect?

Four countries do not provide for an obligation that at least one UBO needs to be registered, namely Germany, Latvia, Norway and Sweden. As a result, if there is no real UBO, there is no obligation for registration of a pseudo-UBO (i.e. the senior management of the company).

Yes
No



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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 8 June 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. This content is for general information purposes only, does not constitute professional advice and should therefore not be used as a substitute for consultation with professional advisors.

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