

## EU list of non-cooperative jurisdictions

National defensive tax measures towards non-cooperative jurisdictions

# Scope

This document provides insights on the defensive tax measures towards non-cooperative jurisdictions taken by the EU Member States. This slide deck is a **high-level overview of the rules** provided for general information only. Users should not rely on it as being complete or comprehensive and should undertake their own research and analysis taking into account the facts and circumstances of their particular case.

The questionnaire used to gather the information in this deck was framed in the context of the choices individual EU Member States have already announced or are widely expected to make. The information reflects the views of Deloitte tax professionals to the extent they are aware of relevant legislation and developments in their jurisdictions as at February 2022.

## Contents

The EU list of non-cooperative jurisdictions	1
The interaction between the EU-list and national lists	3
Type of legislation linked to the EU-list or national lists	6

# The EU list of non-cooperative jurisdictions

## Background and implications of the EU list of non-cooperative jurisdictions

- In 2016, the EU Anti-Tax Avoidance Package included a commitment to work on common EU criteria for listing third countries that are felt to be non-cooperative in the field of taxation. This eventually led to the first EU list of non-cooperative tax jurisdictions issued on 5 December 2017 (the EU-list). The overall goal of this list is to improve tax good governance globally, and to encourage the EU's international partners to respect the same standards as EU Member States do.
- The EU-list serves as a resource to combat tax avoidance, harmful tax practices, unfair tax competition and money laundering. Listed jurisdictions face both tax and non-tax sanctions at EU level, such as additional reporting obligations under the EU Mandatory Disclosure Regime (DAC6). In addition to the measures linked to the EU-list at EU level, the Member States agreed in 2017 to apply at least one of the administrative measures set out by the Council, which include reinforced monitoring of certain transactions, increased audit risks for taxpayers benefiting from certain tax regimes and increased audit risks for taxpayers using structures or arrangements involving non-cooperative jurisdictions.
- In December 2019, the Council's recommendations went further than the existing commitments, by recommending Member States introduce effective and proportionate national legislative defensive tax measures towards non-cooperative jurisdictions as of 1 January 2021. According to the Council these national sanctions should include (but are not limited to) at least one of the following measures:
  - Non-deductibility of costs related to entities in a listed jurisdiction;
  - Withholding tax (WHT) on payments;
  - Controlled foreign company (CFC) treatment of income; or
  - Limitation of the participation exemption on shareholder dividends.

## Listing process

- According to the EU, the aim of the listing process is not to name and shame countries, but to encourage positive change in tax legislation and practices through cooperation.
- Since the first EU-list in December 2017 the list has been updated several times and from 2020 the list will be updated twice per year.
- The updating process is a continuous process in which countries are screened against EU assessment criteria, set out in the Council's Conclusions, and are then added to or removed from the list accordingly. Jurisdictions that cannot meet the assessment criteria, which are linked to transparency, fair taxation and implementation of BEPS measures, are deemed non-cooperative. Such jurisdictions are asked for a commitment to address deficiencies within a set deadline.
- Jurisdictions that do not (yet) comply but have committed to reform are included on the preliminary nomination list. Only if they take effective action to address the EU concerns, they are removed from the preliminary nomination list. If they do not manage to comply within a set deadline (often one year after listing) they will be listed on the EU-list.
- The next revision is due in October 2022 and as of February 2022, the EU-list includes the following nine jurisdictions:

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American Samoa	Samoa
Fiji	Trinidad and Tobago
Guam	Vanuatu
Palau	The US Virgin Islands
Panama	

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### Assessment criteria

The standards a jurisdiction is expected to meet to avoid being listed are as follows.

#### • Transparency

- OECD Automatic Exchange of Information (CRS) 'Largely Compliant' or above rating
- OECD Exchange of Information on Request 'Largely Compliant' or above rating
- Ratify/participate in the OECD Multilateral Convention on Mutual Administrative Assistance or have broad network of exchange bilateral agreements

#### • Fair taxation

- Do not have harmful preferential tax measures
- Do not have measures/regimes that encourage attribution of profits without underlying economic activities or substance

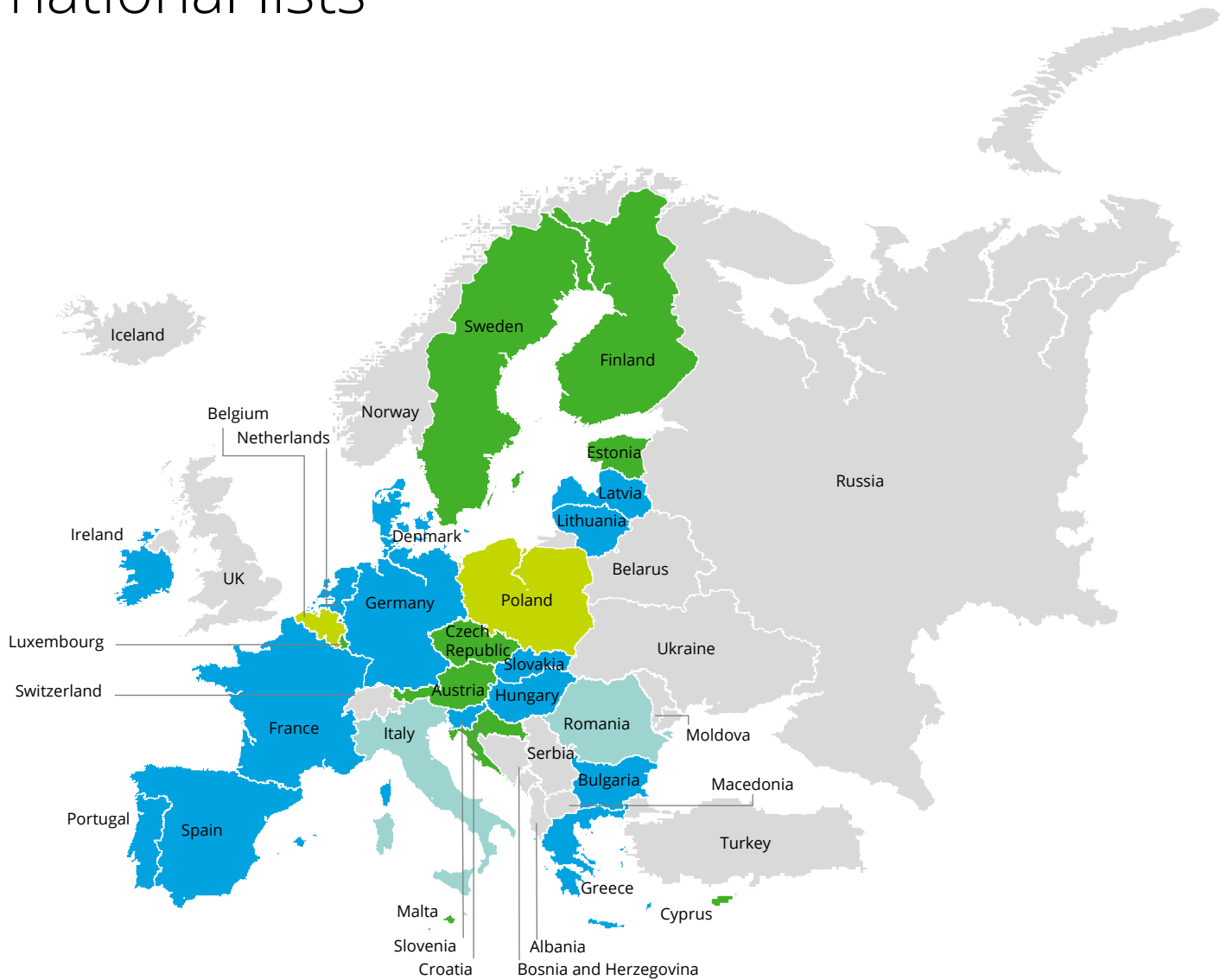
#### • Implementation of BEPS

- Comply with the implementation of BEPS measures
- Positive assessment based on criteria set by the Inclusive Framework

### Interaction between the EU-list and national lists

- Overall, there is little consistency in how the Member States have responded to this initiative and the influence the EU-list has at national level.
- There are countries: without national lists; with national lists that include all the jurisdictions on the EU-list (either by individual inclusion or by direct reference); and those with stand alone national lists independent of the EU-list. Whether an update of the EU-list has immediate effect on the national list also varies.
- It differs whether a Member State has any national legislation linked to the EU-list or a national list and when a country has such legislation, what type of legislation it has (e.g., the before mentioned CFC-rules, WHT, participation exemption, etc.).
- Depending on the impact of the EU-list in a particular Member State, an update of the EU-list can potentially activate measures at national level. Therefore, it is relevant to know both if and how each Member State refers to the EU-list and if and what kind of national legislation is linked to the EU list and/or a national list.

# The interaction between the EU-list and national lists

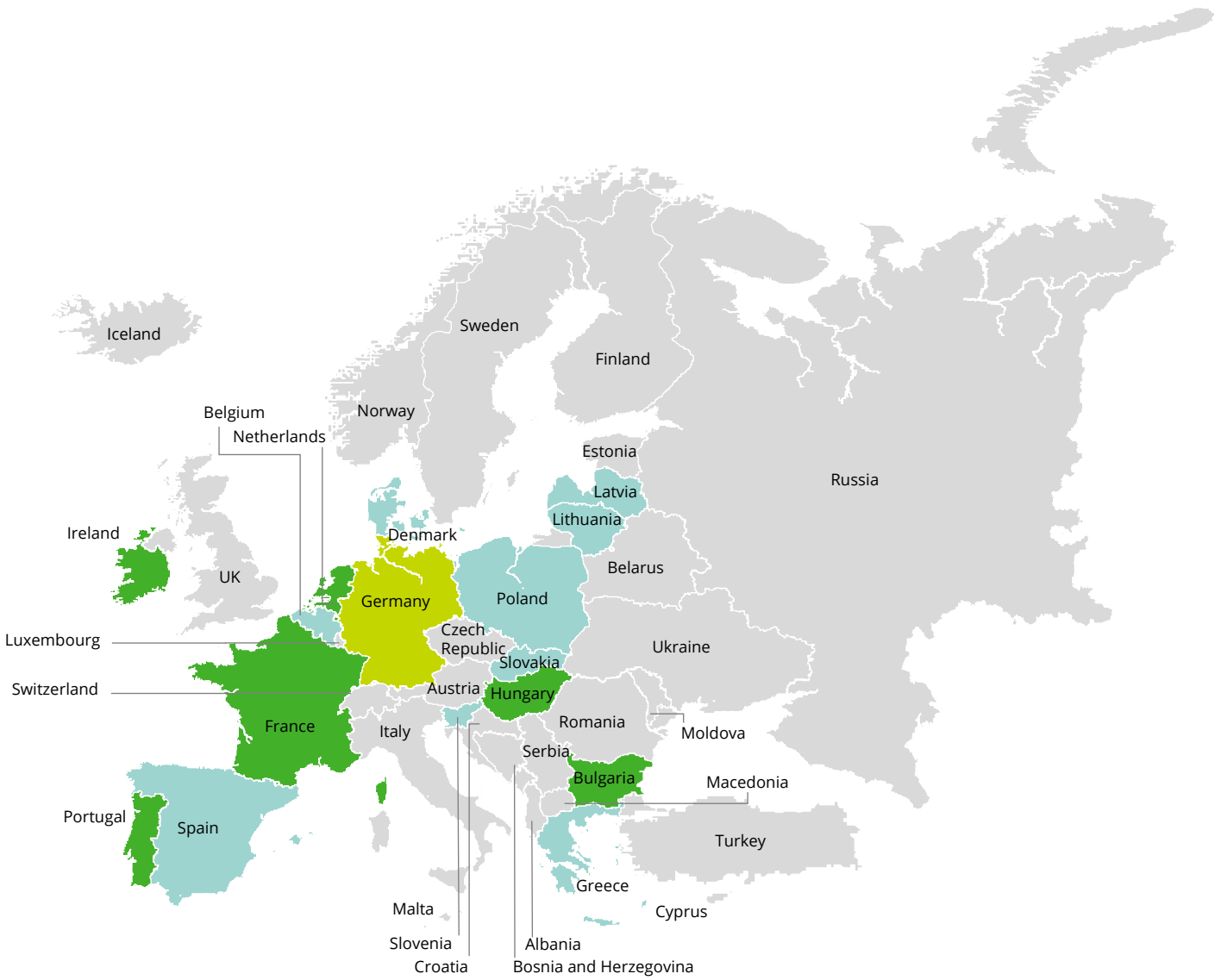


Does your country have (draft) national legislation linked to the EU-list and/or a national list?

**Legend:**

- 14** National legislation is linked to a national list
- 9** National legislation is directly linked to the EU-list
- 2** There is no national legislation linked to a national list or EU-list
- 2** National legislation is partially linked to the EU- and partially to a national list

EU list of non-cooperative jurisdictions

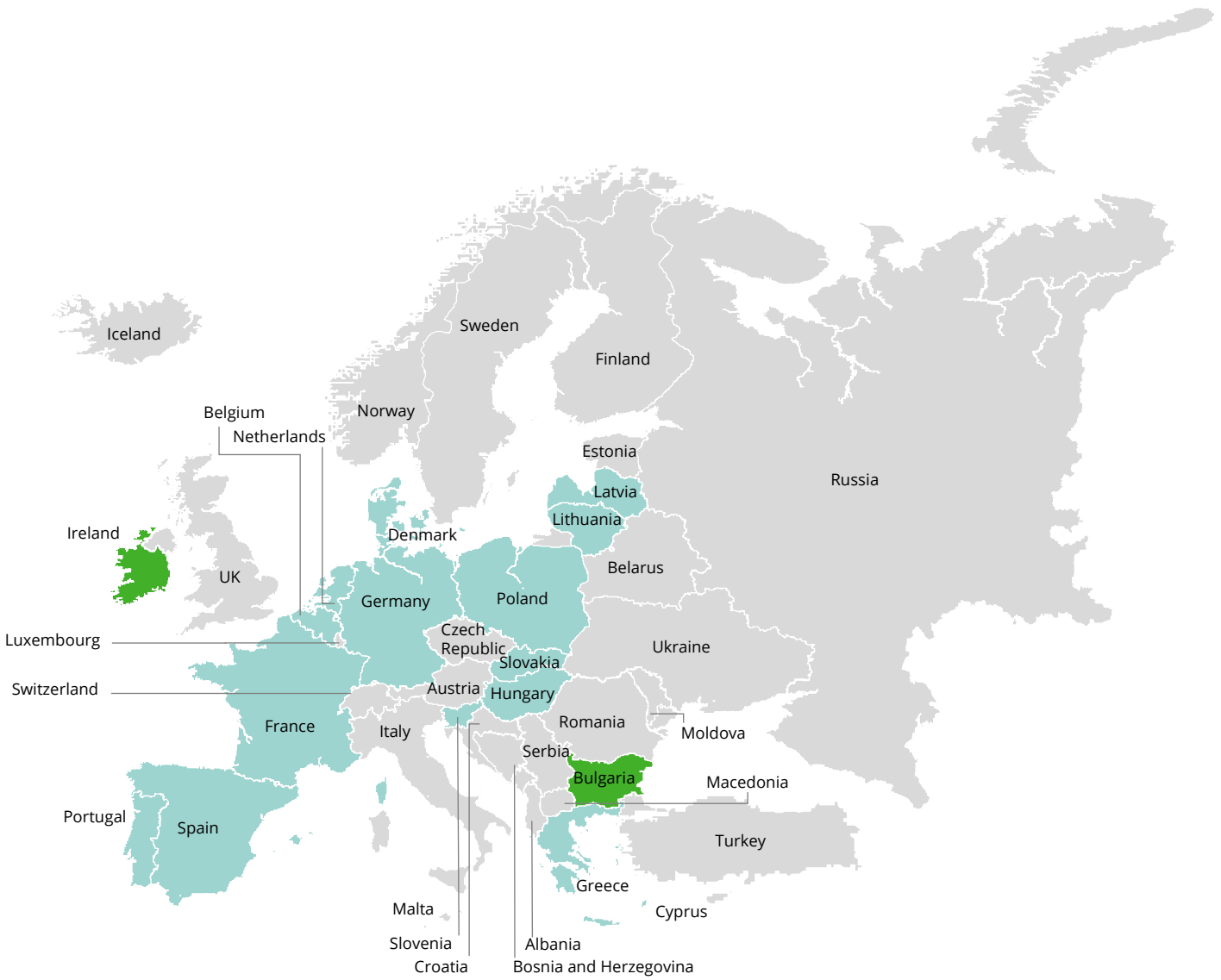


If your country has a national list, are all countries on the EU-list included on it (either by individual inclusion or by directly referencing to the EU-list)?

**Legend:**

- 6 Yes
- 9 No
- 1 Not yet clear

EU list of non-cooperative jurisdictions

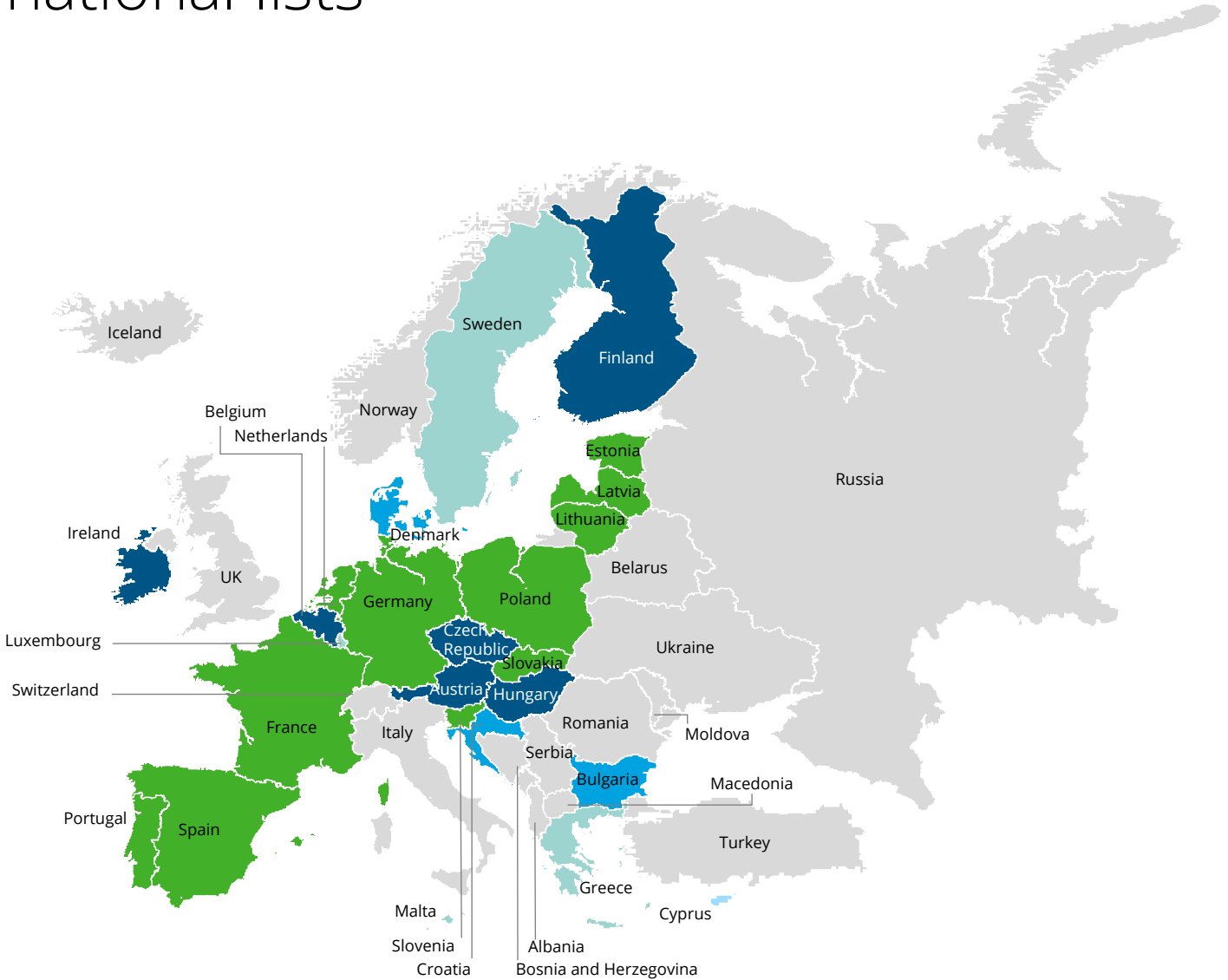


If your country has a national list, does an update of the EU-list have immediate effect on this national list?

**Legend:**

- 2 Yes
- 14 No

# Type of legislation linked to the EU-list or national lists



If your country has national legislation linked to the EU-list or a national list, does this legislation involve CFC's and/or WHT?

Legend:	
6	Only CFC
3	Only WHT
1	Only WHT (in draft)
11	Both CFC and WHT
4	None



EU list of non-cooperative jurisdictions



If your country has national legislation linked to the EU-list or a national list, does this legislation involve the participation exemption?

**Legend:**

- 11 Yes
- 14 No



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