

STRATEGY



EU AML / CFT
GLOBAL FACILITY

THE EU GLOBAL FACILITY'S STRATEGY ON BENEFICIAL OWNERSHIP

DELIVERING CHANGE FOR PARTNER JURISDICTIONS

MARCH 2023



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1. INTRODUCTION



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1. INTRODUCTION

Recent media investigations¹ have shown how legal entities and legal arrangements (or “legal vehicles”) have been used to hide the identity of beneficial owners, the individuals who really benefit from, own or control a given asset. On many occasions, criminals and corrupt government officials have misused corporates, non-profits, foundations and trusts to mask their identity and have combined such legal vehicles with complex, cross-border structures to protect their criminal profits.

Inadequate information on the ultimate ownership and control of these legal vehicles has handicapped the ability of jurisdictions and enforcement agencies to identify the individuals involved, preventing prosecutions and the recovery of bribes, illegitimate profits and unpaid tax revenues.

Since 2003, organisations such as the Financial Action Task Force (FATF), the Global Forum on the Exchange of Information for Tax purposes and the European Union (EU) strengthened transparency around the ownership and governance of legal vehicles as a central part of anti-money laundering efforts. Policies and laws have been designed to establish obligations and processes to disclose, share and check information on beneficial ownership.

The EU has been instrumental in implementing these beneficial ownership disclosure frameworks, introducing legislation and regulation that has become recognised as a global model. The EU model incorporates the stakeholders and elements of what the FATF calls a “multi-pronged approach” to ensure the availability of adequate, accurate, and up-to-date

beneficial ownership information. These constituent elements include the creation of beneficial ownership registries for legal persons and arrangements, access to effective existing beneficial ownership information (e.g. Client Due Diligence and KYC conducted by financial institutions and other relevant businesses and professions) and requirements for legal vehicles to obtain and hold their relevant beneficial ownership data.

Recognising the complexity of implementing these frameworks the EU is offering practical support through the EU Global Facility to jurisdictions around the world as they design and implement fit-for-purpose beneficial ownership disclosure frameworks.

The EU Global Facility assists partners to establish beneficial ownership disclosure frameworks in three complementary ways including undertaking cross-cutting support (such as research and development of methodologies and guidance), bilateral support (often tailored to the needs of, and carried out in close co-operation with, a specific jurisdiction) and thematic support involving a wide group of stakeholders that explores emerging trends in money laundering and beneficial ownership.

This paper summarises the context in which beneficial ownership has developed to become a central part of AML/CFT (section 2), the approach taken by the EU and EU Global Facility to support the development of effective beneficial ownership disclosure frameworks in partner jurisdictions (section 3) and an outline of options and activities that are on offer to partners from the EU Global Facility (sections 4 and 5). ■

1. Most notably those relating to the Offshore Leaks (2013), LuxLeaks (2015), Bahamas Leaks (2016), Panama Papers (2016), Paradise Papers (2017), FinCen Leaks (2020), and the Pandora Papers (2021).





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2. A REVIEW of how BENEFICIAL OWNERSHIP HAS EVOLVED OVER THE DECADES



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2. A REVIEW OF HOW BENEFICIAL OWNERSHIP HAS EVOLVED OVER THE DECADES

■ Origins and Development in Beneficial Ownership Disclosure

For many years corporates, trusts, bearer shares, complex legal structures, and other non-transparent mechanisms have been used by criminals to disguise the ultimate ownership and control of valuable assets and profitable economic entities.

Whilst it was known that these legal vehicles could be used to evade tax and launder criminal funds, they were seen as important to the global economy and financial system. The opacity created by these legal vehicles was justified on the basis that they provided privacy in the ownership of many types of private property, in protecting the beneficiaries of trusts who were sometimes children, and in distinguishing and separating corporate liability from personal responsibility. For a long time the role of these legal vehicles in global money laundering was little understood by the general public and policy makers did not prioritise their regulation until the extent of their abuse was revealed by investigative journalists.

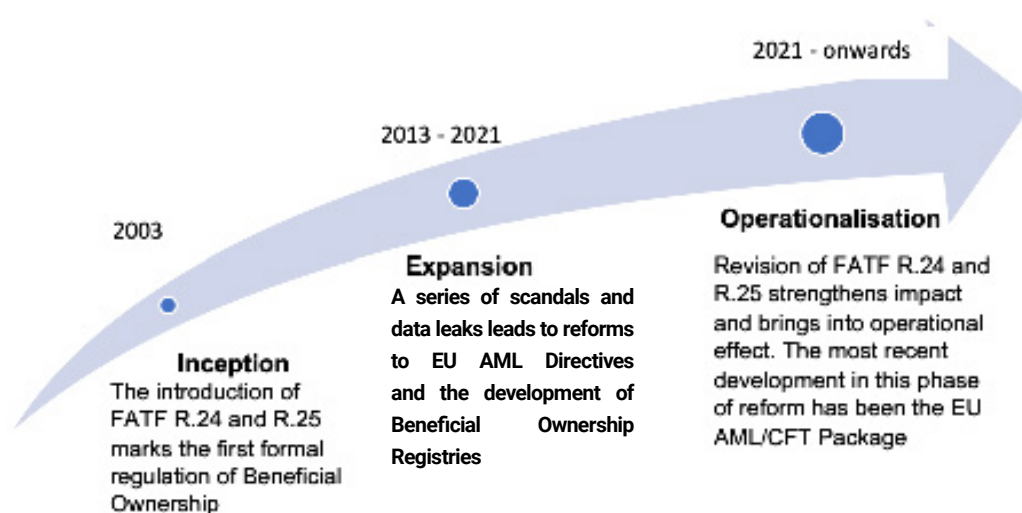
In the late 1980's authorities had been concerned about the corrosive effect of corruption and the scale of drugs-related money laundering. In response, the Financial Action Task Force on Money Laundering (FATF) was established in July 1989. Its forty recommendations to

governments around the world focused on due diligence checks to expose the identity of legal - not beneficial - owners of bank accounts.

In 2003, the FATF's recommendations were amended to require the disclosure of beneficial ownership information. These strengthened standards required jurisdictions to ensure that adequate, accurate, and up-to-date information about the beneficial ownership of legal vehicles was available to enforcement agencies and other competent authorities.

In the following years FATF members and members of FATF-style regional bodies introduced legal and regulatory frameworks. In implementing FATF recommendations, however, there was little coordination and standardisation amongst members. National legislatures, supervisors, financial institutions and designated non-financial businesses and professions ("DNFBP's") often took different approaches to implementing beneficial ownership disclosure frameworks. Whilst implementation may have complied with FATF standards, variations between jurisdictions confused stakeholders, hampered tackling cross-border criminal activities and limited effectiveness.

Three phases in the development of beneficial ownership disclosure reform



From 2013 a series of global news stories about financial scandals² reinforced the need for improved disclosure and sharing of beneficial ownership information. Disclosure frameworks needed to be based on strong and consistent regulation to limit loopholes and supported with adequately resourced supervisors and enforcement agencies around the world. The number and size of scandals that involved criminals hiding their beneficial ownership of wealth ensured the issue became a political priority.

Subsequently, the EU responded by strengthening its AML/CFT framework. In 2015 it issued its fifth anti-money laundering directive (or "AMLD"), which was further amended in 2018. The new directive required legal vehicles to obtain and hold adequate, accurate and up-to-date information about their beneficial owners and share the data with new beneficial ownership registers established by public authorities. The directive broadened access to beneficial ownership registers and enabled the linking of registers and sharing of data across EU jurisdictions.

At the same time, in 2020, the FATF initiated a review

of Recommendations 24 and 25 to address the shortcomings identified in country mutual evaluations. These had shown that many beneficial ownership frameworks were ineffective. So far, the review has resulted in the FATF amending Recommendation 24 to: introduce/strengthen the need to consider the risks of all legal persons operating in a jurisdiction, wherever they may be incorporated; the need for enhanced controls over nominee arrangements; the manner in which beneficial ownership information should be obtained and held, including the explicit requirement that jurisdictions adopt a multi-pronged approach in the collection of beneficial ownership information.

Whilst the AMLD reinforced the EU's framework, gaps still remained when national legislatures implemented standards, and supervision has been weak. As a result, the EU has proposed a comprehensive package of measures which would amount to a single rulebook on AML/CFT, supervised in part by a single authority. One objective of these measures is to harmonise the gathering, verification and sharing of beneficial ownership data across all EU member states.

■ Fixing the Information Gap

The numerous scandals that were revealed between 2013 and 2021 showed the widespread and continuing ease with which beneficial ownership could be hidden despite strengthened policies. A lack of availability and accessibility to beneficial ownership information remained and work was needed to bring frameworks into effect.

The EU Global Facility has developed insights into how to establish a beneficial ownership disclosure framework that has a strong legal basis and is operationally effective. To date, the Global Facility has shared its expertise and experience in beneficial ownership disclosure frameworks with nineteen partner jurisdictions.

The EU Global Facility's experience is that any beneficial ownership disclosure framework must not just hold data that names the beneficial owner but the process should provide unique identifying data including, for instance,

the beneficial owner's name, address, date of birth and other identification features (e.g., TIN or equivalent).

In addition to identity information, the data should also describe the nature and extent of the interest they hold. This would allow jurisdictions to assess in a timely manner the benefits and control linked to the assets concerned. For instance, this may mean including the percentage of shares or voting rights, or how a legal entity is controlled through other means. This may involve identifying the ownership structure and the intermediaries through which the beneficial owners use or control the legal vehicle.

Many jurisdictions focus on the identification of beneficial owners at the expense of assessing the "why" and "how" of beneficial ownership. Considering such questions allows typologies of threats to be identified, the origins of money launderers, and the nature of international

2. Amongst others the Offshore Leaks (2013), LuxLeaks (2015), Bahamas Leaks (2016), Panama Papers (2016), Paradise Papers (2017), FinCen Leaks (2020), and the Pandora Papers (2021).

networks. Recording and ensuring appropriate access to information on the nature and extent of the interest held by the beneficial owner makes it considerably more difficult to disguise beneficial ownership. In the long term it helps assess and identify those complex structures which are particularly vulnerable to money laundering, cross-border risks and novel threats and trends.

Closing the information gap needs practical, technological solutions too. All data needs to be available in digital or machine-readable format so it can be efficiently searched and accessed. This will also

allow interoperability between jurisdictions and the application of data analytical techniques.

Access to large sets of financial and ownership data will also support complementary policy objectives including procurement and public finance management, identification of conflicts of interest, economic sanctions enforcement, building trust in public authorities through transparency and creating a favourable economic environment.

■ Making standards effective: from the multi-pronged approach to multi-stakeholder engagement and enforcement

When jurisdictions implement FATF standards on beneficial ownership they tend to follow three phases.

First, they focus on the legal and regulatory framework so as to incorporate the multi-pronged approach required by the FATF.

Second comes the multistakeholder engagement phase. This is more complex. Jurisdictions in this phase often initiate a stakeholder engagement plan to communicate and educate beneficial ownership disclosure rules and processes across an array of actors from both public and private sectors. In the public sector this includes financial institutions and DNFBP supervisors, financial intelligence units, tax revenue authorities, anti-corruption units, law enforcement, judges and prosecutors, and asset recovery offices. In the private sector, this would involve financial institutions and DNFBPs, civil society, industry representatives as well as legal vehicles within the scope of the beneficial ownership disclosure framework.

With sufficient understanding of their identification and verification obligations, and the right resources, these stakeholders can provide and verify a wealth of beneficial ownership data. They can help drive a cultural shift towards a proactive and collective commitment to unearthing and sharing accurate beneficial ownership data. Strong working relationships amongst stakeholders can ensure beneficial ownership disclosure

requirements are actively supported and incorporated into day-to-day business, and are not simply rules to be tolerated. Ideally, establishing an effective stakeholder network should be considered from the earliest stages when laws are being drafted.

Once a shift in culture amongst the stakeholders has been achieved jurisdictions can adopt a third phase of implementation. This is when a stable system has been created in which flows of information are increasing and stakeholders are increasingly using the information for checking and updating beneficial ownership information.

This is what the EU Global Facility calls the multi-stakeholder enforcement phase. This is where a broad group of stakeholders is not just aware of beneficial ownership issues, but becomes embedded in the information gathering, verification and enforcement process. In this phase stakeholders efficiently cooperate to share, update and correct discrepancies as well as data. Individual stakeholders continually seek to strengthen and update their internal processes and transparently cooperate with others to strengthen the network as a whole.

The EU Global Facility provides support to work with partner jurisdictions during each of these developmental phases, providing experts with in-depth knowledge, experience and understanding of the legal, operational and technological issues.





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3. The EU Global Facility's STRATEGY FOR BENEFICIAL OWNERSHIP FRAMEWORKS



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■ Results so far

In 2017, the European Commission established the EU Global Facility to provide technical assistance to countries around the world and to support their efforts to address gaps and weaknesses in their AML/CFT frameworks.

The EU Global Facility seeks to increase compliance with the FATF's Recommendations and Immediate Outcomes amongst partner countries. By strengthening AML/CFT systems and their participation in a global AML/CFT network, the project complements European measures aimed at protecting the EU's financial system.

Since its establishment the EU Global Facility has provided over 50 technical assistance activities on beneficial ownership in over eleven jurisdictions.

Areas addressed have included all aspects of implementation of beneficial ownership disclosure frameworks, including:

- Conducting risk assessments on the misuse of legal persons and arrangements,
- Assisting in the drafting of legal and regulatory frameworks,
- Assisting the establishment of beneficial ownership operating models,
- Providing detailed guidance on beneficial ownership identification, verification, supervision and enforcement,
- Identifying the business and technical requirements as well as ongoing support to jurisdictions as they procure and maintain IT services and the monitoring of the subsequent IT developments.

■ Three pillars of support available to partners on Beneficial Ownership

There are three outcome areas that the EU Global Facility seeks to support the development of beneficial ownership disclosure frameworks. They are designed to identify and address specific issues in a particular context while also supporting processes of collective learning and problem solving in the face of common challenges.

Outcome 1: Strengthening legislative, regulatory and policy frameworks

This outcome results from support activities that are bilateral in nature and is designed in response to a problem analysis of a beneficial ownership framework in the particular context. Analysis involves working with jurisdictions to identify their level of compliance and undertaking a detailed country-wide analysis of their existing framework.

Solutions involve introducing specific laws, regulations, and guidance to address identified problems, and adapting FATF recommendations and approaches developed in the EU for the context of the partner jurisdictions. Measures designed in the EU have been developed over time and provide a wealth of techniques, rules and guidance to address issues identified in the problem analysis.

Outcome 2: Building institutional capacity

This outcome combines bilateral activities, that seek to strengthen national stakeholders' beneficial ownership framework, with addressing thematic issues that a group of partner jurisdictions face. Such themes are developed by the EU Global Facility with a group of jurisdictions and addressed in expert groups, closed webinars for competent authorities, FATF Style Regional Bodies and other partner organisations in the context of the Outcome 3 detailed below.

Outcome 3: Increasing national, regional and international cooperation and networks

These are usually thematic activities designed and implemented with a wide array of stakeholders and experts from both public and private sectors, with audience targeted at a global level. Through education and discussion organised in various formats this outcome is designed to build long-term resilience in institutions and networks of stakeholders. Beneficial ownership is a fast-moving and complex area that requires institutions, supervisors and others to have the latest knowledge on risks and innovations.

Examples of the various activities conducted by the EU Global Facility are detailed in the Section 4 below.

■ Principles of intervention of the EU Global Facility

The EU Global Facility follows five principles in implementing its technical assistance:

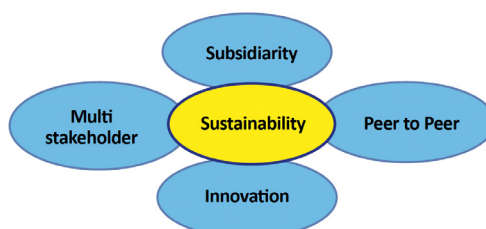
Sustainability: The EU Global Facility seeks to build solutions in beneficial ownership disclosure frameworks in close cooperation with partner jurisdictions that can develop and adapt over the long term. Compliance must be comprehensive with the capability of responding to new risks and learning in beneficial ownership disclosure standards and practices. Sustainability rests on the implementation of the following four underlying principles.

Subsidiarity: The EU Global Facility commits resources to authorities in response to demand and according to local need and capacity. Outcomes in beneficial ownership are optimised through close support and coordination with national authorities and international stakeholders wherever possible and necessary. The EU Global Facility encourages lessons and resources to be shared amongst partners so as to avoid duplication and inefficiencies.

A multi-stakeholder approach: To maximise effectiveness the EU Global Facility seeks to bring together all interested stakeholders. Opportunities for collaborative learning and mutual exchanges between a broad group of stakeholders also enables the EU Global Facility to understand and address challenges jurisdictions face.

Peer-to-peer engagement: The EU Global Facility has a pool of technical experts with practical experience of designing and implementing beneficial ownership disclosure frameworks. The Global Facility endeavours to provide experts who have related and relevant experience to those national officials they are supporting.

Innovation: The EU Global Facility undertakes thematic work to identify new threats, trends and developments in beneficial ownership disclosure. This includes identifying likely legal developments, operational challenges and new areas of risk. This allows the Global Facility to provide the best assistance to partners through innovative responses and futureproofing measures.



These techniques are mutually reinforcing. Together they form the foundation of an ecosystem that can anticipate and respond effectively to emerging threats that can undermine beneficial ownership frameworks.



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4. How the EU Global Facility delivers change



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4. How the EU Global Facility delivers change

To achieve the three outcomes described in section 3, the EU Global Facility delivers three types of activities: cross-cutting, bilateral, and thematic.

Cross-cutting activities include carrying out research into risks in existing beneficial ownership framework; the development of appropriate methodologies in the EU Global Facility’s training and advice; fostering discussions on issues related to beneficial ownership disclosure. This work supports the content and delivery of the EU Global Facility’s bilateral and thematic activities on beneficial ownership.

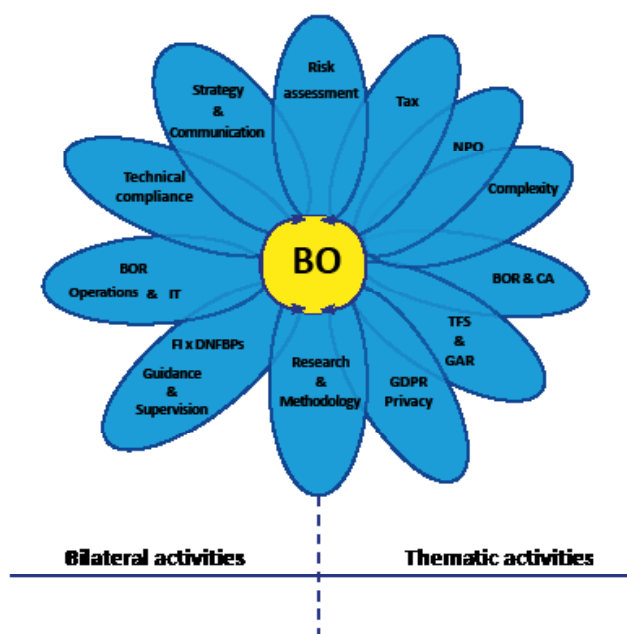
Bilateral activities are specifically tailored to the needs of the partner jurisdiction and are undertaken jointly with the partners own authorities applying the EU Global Facility’s technical knowledge and methodology. Activities may include early-stage activities, such as initial country assessments, developing plans to address specific gaps and weaknesses, and strategic beneficial ownership reforms, planning and communication activities between stakeholders. Later-stage activities include drafting guidance, awareness raising, education - all designed to deliver consistent standards for supervisors, competent authorities, public and private sectors.

On a bilateral basis, the EU Global Facility also advises jurisdictions in the identification of business and technical needs, the procurement and development of implementation and monitoring processes, including in the procurement and introduction of IT and data solutions.

Thematic Activities are designed to engage a group of partners who face similar challenges. These activities seek to explore new, innovative, or emerging topics, trends and risks based around a specific theme.

Thematic activities often lead to closer support through bilateral activities with partners. Current themes being addressed include:

- Assessing AML/CFT risks around legal persons and arrangements
- Transforming of [beneficial ownership registries into competent authorities](#)
- Challenges in identifying and verifying [beneficial ownership information in complex ownership structures](#)
- Using of beneficial ownership registers to enforce targeted financial sanctions, and the path towards other asset registries
- Delivering public access to beneficial ownership registers and the right to privacy





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5. OFFERING THE EU GLOBAL FACILITY AS A RESOURCE



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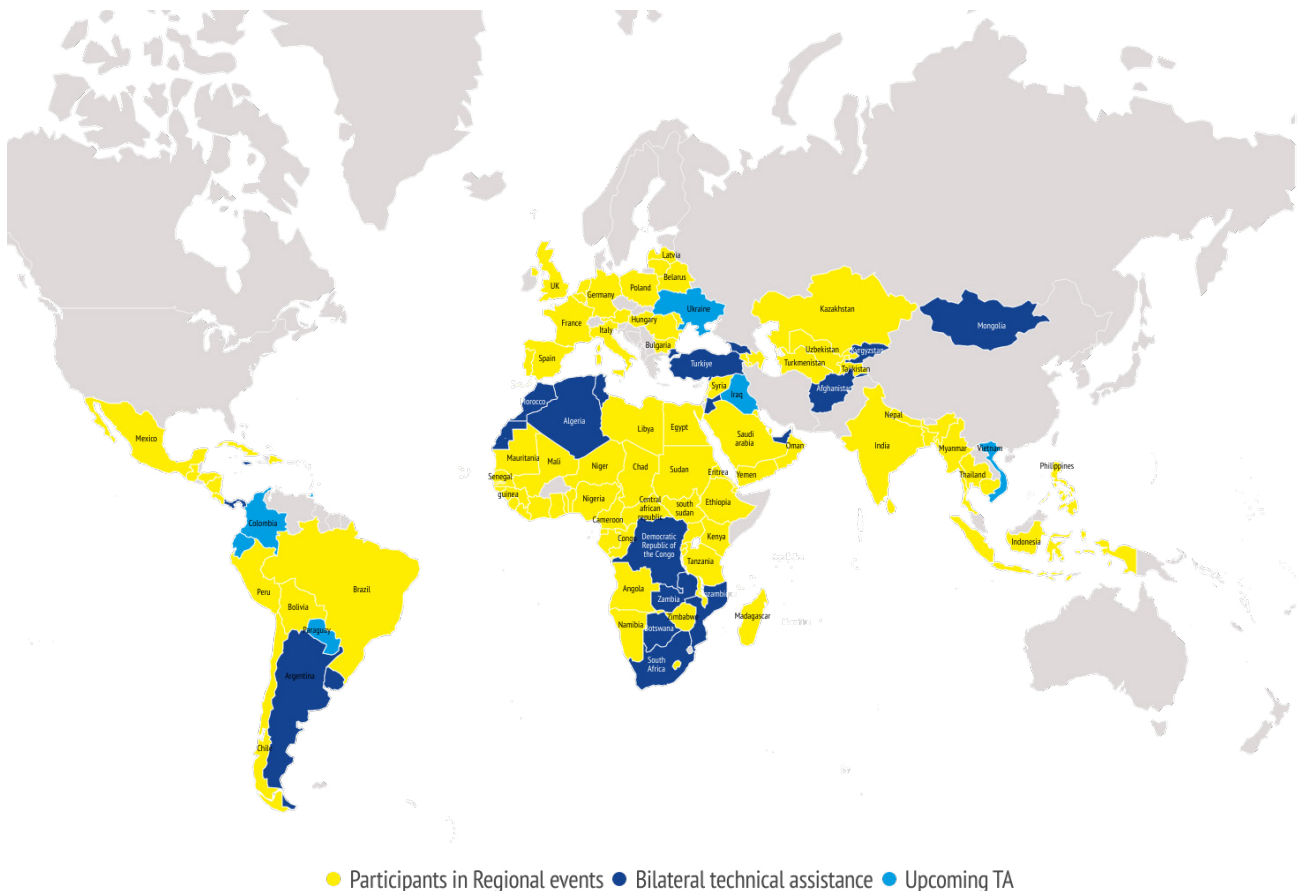
5. OFFERING THE EU Global Facility AS A RESOURCE

The Global Facility is available to jurisdictions that are in the process of implementing beneficial ownership disclosure frameworks to strengthen their compliance with FATF standards.

Support is offered in the form of tailored technical assistance delivered by experts who have both the technical knowledge and the practical experience needed for implementation. These experts support the jurisdiction's own dedicated implementation team to ensure that the beneficial ownership disclosure framework is tailored to the jurisdiction's specific situation and the risks it faces.

In order to receive technical assistance from the EU Global Facility, partner countries can submit requests for support to the EU Delegation in their country⁴. The European Commission will then assess requests and may commission the Global Facility to provide support. The EU Global Facility will propose initial scoping activities to address the specific circumstances of the partner country.

Further information can also be requested by sending an email to the Global Facility team at info@global-amlcft.eu.



4. The list of European Union delegations can be found at the following webpage https://www.eeas.europa.eu/eeas/eu-world-0_en

5. This map is a representation of the EU Global Facility's work as of 1 March 2023.



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