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RECOMMENDED PROPOSAL TO IMPROVE THE ANTI-MONEY LAUNDERING SYSTEMS IN THE OAS AT
THE MEMBERS OF STATES LEVEL

RECOMMENDATION FROM GELAVEX/CICAD TO IMPROVE THE ANTI-MONEY LAUNDERING SYSTEMS IN THE OAS AT THE MEMBERS OF STATES LEVEL

I. Updated status of the topic

In the current globalization of modern times, internal systems must react towards those phenomena dysfunctions through global criteria. This has taken countries to be conscious of the necessity to adapt the rules that are currently applied in the financial world and impacts in many ways the development of the countries. As a result, there is a commitment to the FATF 40 Recommendations, the same that now establish the international standards for preventing and suppressing money laundering and terrorism financing.

The 2003 version of FATF 40 Recommendations was modified in February 2012, changing some salient features, stating, among others, that the AML/CFT system should be based on "risk assessment and the implementation of a risk-based approach". This implies that countries must identify, evaluate and understand the risks of ML/FT, and therefore must take action and allocate the resources aimed to ensure that these risks are mitigated effectively (FAFT 's R.1).

Other relevant aspects are the Assets Forfeiture, the proactive patrimonial investigation simultaneously to predict offences, and the administration systems of criminals' seized assets. The FATF R.2 states that countries should take measures – even at legislative level- to enable their competent authorities to seize and confiscate the assets; product and instrument used or intended for use in offenses of ML/FT and predict offenses. The FATF R.38 provides that countries should ensure that they have their authority to take expeditious action in response to requests by foreign countries, to identify, seize and confiscate property related to ML/FT. It also addresses that they should have effective mechanisms to manage such assets as well arrangements for coordinating seizing and confiscation proceedings, which may include the sharing of confiscated assets.

Due to the review of these standards, worldwide countries will face a new round of mutual evaluations, and thus new challenges for the implementation of such standards effectiveness will arise.

Mutual evaluations of FATF-Style regional bodies (CFATF and GAFISUD), have certain influence in the progress of prevention and repression of AML/CFT systems in their legislations in the international level notwithstanding some modifications that countries must take in order to adapt their legal systems to these new standards.

As a result of mutual evaluations, currents statistics suggest that in this matter (effectiveness) there are obstacles and deficiencies to overcome, such as the low number of convictions in ML/FT cases, operational deficiencies in international cooperation of recovery assets and associated confiscation, as well as the absence of effective mechanisms for managing seized and forfeited assets in some countries.

As a consequence, the Group of Experts for the Control of Money Laundering of CICAD, based on the work approved in its last Plenary Session held in September 2013, in Brasilia, and other recommendations issued by the Group, recommends the following lines of action as effective

measures that Member States could implement in order to improve their anti AML/CFT systems.

II Actions or goals for 2020

a) Strengthening the capacity of law enforcement agencies responsible for the persecution and prosecution of money laundering offences and related crimes;

The various technical assistance programs and trainings implemented by the Executive Secretariat (ES) at continental level in AML/CFT matters during the past 5 years; as well as the results from mutual evaluations of FATF-Style regional bodies suggest certain efficiency in the management of justice bodies, especially in view of the low number of judicial processes initiated and also in the low number of condemnatory sentences.

A comprehensive AML/CFT training program to strength the technical-legal capacities of judges and prosecutors in the investigation and judgment of such cases within the adversarial criminal process is crucial to achieve major efficiency in the prevention and combat systems of such criminal activities. This program should contain key issues such as typology and logic of money laundering offence, principles and international regularoty legal frameworks of money laundering, national legislation on money laundering, procedural and criminal aspects linked to money laundering trials, and international legal cooperation.

The ES CICAD has been a pioneer on this type of technical assistance, in particular through its “Judges and Prosecutors Program” which has been executed with prestige in the continental level, especially for its renowned network of international experts. The continuity of this program, complemented by the work currently performed by the Group of Experts for the Control of Money Laundering of CICAD (identification and analysis of risk factors associated with money laundering and terrorism financing at the continental level, as well as Working Guide in patrimonial investigation) may significantly help to overcome the deficiencies of the implementation of the legal workframe.

b) Improving the effectiveness of international cooperation

The Group of Experts for the Control of Money Laundering (GELAVEX) of CICAD has developed a proposal that, through the SE of CICAD and under GELAVEX monitoring, to design a program to optimize the international cooperation, which contains: 1) The Framework of international cooperation arrangements for the recovery of assets that serve as a reference to Member States in the Hemisphere; 2) a training program for implementating the provisions included in the document referred in the previously; 3) Design a data-based structured to facilitate international cooperation. This proposal seeks to harmonize domestic legislations to streamline international legal assistance in assets recovery, overcoming current deficiencies in terms of agility in judging, standardizing terminology, providing mutual assistance in cases of in rem forfeiture (even if the countries does not have a in rem forfeiture law), property management that was required to be seizure by a foreign country, homologation of judgments or forfeitures, division of seized assets, among other matters that are still not fully regulated.

c) Developing and / or strengthening Forfeiture systems, including asset investigation, administration of criminal assets and its specialized units

The SE has been executing, since 2008, the Seized and Forfeited Asset Management Project – BIDAL, developed, approved and monitored by the GELAVEX, which Confiscation is the main tool for strategic international criminal policy aimed at breaking the economic and financial power of transnational criminal organizations.

The lack of an effective system for assets management generates high costs for the State, as seized assets stock and the criminal process does not progress in the same rate of their deterioration.

Asset forfeiture is a cross-cutting issue: confiscated assets should be used not only to strengthen the fight against drug trafficking and organized crime, but also to reduce drug demand, supporting the development of public policies in prevention, treatment and social integration.

GELAVEX has been working and keeps working on this topic. Currently, a self-assessment guide of the forfeiture systems has been developed, together with a patrimonial investigation guide, documents that have been approved on the last GELAVEX Plenary Meeting held in Brasilia on September 2013.

A technical assistance program aimed at developing and strengthening systems of forfeiture, including the effective management of seized and forfeited assets through a special unit, will contribute to the establishment of standards of good governance and administrative transparency in the management of such assets, ensuring its maximum gain.

- d) To advance in the study of methodological tools that allow each country to develop its analysis of risk factors, in cooperation with specialized international organizations.