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**INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION**

CICAD

Organization of American States

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**PROGRAM PROPOSAL FOR TECHNICAL ASSISTANCE OF INTERNATIONAL
COOPERATION IN ASSET RECOVERY
XXXIX GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
MONTEVIDEO, URUGUAY**



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Program Proposal for Technical Assistance of International Cooperation in Asset Recovery

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1. Introduction

Since its creation, the Group of Experts for the Control of Money Laundering (GELAVEX) of the Inter-American Drug Abuse Control Commission (CICAD/OEA) has been undertaking initiatives on issues related to the prevention, detection, investigation, prosecution, and control of money laundering, the financing of terrorism and its related offenses.

To this end, model legislation has been drafted, as well as recommendations for best practices that highlight the importance of international cooperation in this field¹. These documents are frequently used as a reference point in international forums and provide direction to Member States when updating their national legislation in conformity with international standards.

The experience acquired by the Sub-Working Group on International Cooperation and Forfeiture of GELAVEX has allowed for the identification of obstacles in the international recovery of assets of illicit origin. For this reason, the optimization of international cooperation was considered a priority and this led to the proposal for a Program of Technical Assistance to be developed by the Executive Secretariat (ES/CICAD) with help from GELAVEX.

Following this suggestion, at the XXXVII meeting of GELAVEX, held in September 17-18, 2013 in Brasilia, Brazil, the plenary group entrusted ES/CICAD with the task of designing a program along the lines expressed in the meeting. Later, in the fifty fourth ordinary sessions of CICAD, which took place on December 11-13 in Bogota, Colombia, the initiative was approved by the Commission.

The resolution of the forty fourth ordinary session of the General Assembly of the OAS, in June 3-5, 2014, in Asunción, Paraguay, also stressed the need to “improve the efficacy of the international cooperation in the matter of asset recovery.”²

In response to this mandate, the Executive Secretariat (ES/CICAD) began the process of designing the proposal for the Technical Assistance Program on International Cooperation in Asset Recovery, and an update on the progress was presented at the XXXVIII meeting of GELAVEX, on May 22-23, 2014 in Washington, DC, United States of America.

On this occasion, the delegates were satisfied with the proposal, and encouraged the ES/CICAD to complete the design and to present it at the plenary at the XXXIX Meeting of GELAVEX, which will take place on September 25-26 in Montevideo, Uruguay.

2. Justification

As was expressed by the Sub-Working Group on International Cooperation and Forfeiture in the XXXVII meeting of GELAVEX, it is common for criminals to obtain the proceeds of crime in one country and transfer them to another where they can be invested in different types of assets³.

¹ See, for example, the Model Regulations on Money Laundering Crimes related to Illicit Drug Trafficking and other Grave Crimes of CICAD, 1992.

² See: § 103 of the Resolution.

³ See: “Study of the Identification of Mechanisms of International Cooperation (formal and informal) that Allow an Adequate Exchange of Information for the Prevention and Repression of Money Laundering, the financing of Terrorism, and the Recuperation of Criminal Assets” , p. 9-10

The assets can be, for example, kept in a bank account under the name of the criminal, their family or a figurehead's name, stored in a safety deposit box or used for the acquisition of property or the creation of businesses. In this case the biggest challenge lies in identifying, locating and recovering these assets that are hidden in different jurisdictions and, many times, under the name of individuals unrelated to the crime that may or may not have known about the illicit origin of the assets.

While there is a general consensus among the countries of the hemisphere on the importance of cooperation in locating and recovering criminal assets, in practice there is neither the adequate legislation to allow for the proceedings of forfeiting and recovering assets, nor specific procedures to detail what a country must do when a third party requests assistance⁴.

In these cases, international regulation encourages the foreign judicial authority to order a seizure/forfeiture and requests that the other State execute it. The main objective is to safeguard the assets, documents, or information that could be subject to seizure or used as proof, and therefore prevent their disappearance.

However, the recovery of assets implies coordination and collaboration among the national agencies of countries with different legal traditions (i.e. common law versus civil law) and procedures that pose true obstacles to cooperation. The Sub-Working Group on International Cooperation and Forfeiture of GELAVEX considers the following to be the most problematic issues:

a. In relation to **legal terminology**, there are differences in the definitions of the *criminal infractions*, a fact that can create problems in the assessment of dual criminality which is necessary for international cooperation; differences in the definition of *precautionary measures* for the seizure of assets, since some States employ the term *embargo*, while others refer to it as *confiscation*, *freezing*, *forfeiture*, etc.; and differences in the definition of *seizure*, since in various jurisdictions cooperation can be solicited within a procedure defined as *in rem forfeiture* or civil forfeiture⁵;

b. The **procedural differences**, for example, in relation to the prerequisites for requests for cooperation and the standards for the collection and the definition of what constitutes evidence vary among states, which can cause problems and misunderstandings between cooperating jurisdictions.

3. Objectives

3.1. General

To identify the practical difficulties experienced by OAS Member States in the international recovery of illicit assets, and develop tools so that the identification, location and recovery of assets can be executed harmoniously, effectively and in conformity with international standards concerning money laundering and the financing of terrorism.

⁴ OAS. Administration Systems of Assets of Latin America and Guide for the Administration of Seized and Forfeited Assets of Organized Crime, 2011, p. 74-75

⁵ The reference to "civil" in some states is linked to civil procedure, which impedes international cooperation for understanding that it is not a matter of civil law (although the measure imposed is related to criminal acts). The problem is complicated further in cases in which the expression "forfeiture" is used, because it is not present in the majority of United States jurisdictions nor in other continents.

3.2. Specifics

- Identify the main challenges that the OAS member States face in international asset recovery;
- Optimize and promote the exchange of information in order to prevent and fight money laundering, the financing of terrorism and its related offenses, facilitating the recovery of illicit assets;
- Provide technical assistance to the OAS member States in implementing the recommendations of the international treaties concerning the recovery of illicit assets;
- Contribute to institutional strengthening and the capacity building of specialists in asset recovery;
- Build confidence in the institutions and the public servants of the OAS member States related to the recovery of assets;
- Improve administrative and judicial cooperation between the OAS member States in money laundering, the financing of terrorism and its related offences;
- Promote the adoption of mechanisms for the sharing assets of illicit origin between States that collaborate in their identification and recovery;
- Facilitate the exchange of knowledge, experiences and best practices in asset recovery.

4. Products

- I. Development of a situational assessment to identify the challenges that the OAS member States face in international asset recovery that will serve as the basis for products II, III, and IV;
- II. Development of guidelines for the implementation of international standards in the recovery of assets as a reference to the OAS member States;
- III. Creation of a Structured Information Repository to facilitate international cooperation in asset recovery;
- IV. Training in international cooperation in asset recovery.

5. Methodology

5.1. Development of a situational assessment of each OAS Member State

The situational assessment will provide precise and detailed information on the national investigation, identification, freezing, seizure and forfeiture of criminal assets mechanisms of each OAS member State using a variety of sources:

- Documents published by GELAVEX and its strategic partners, such as the FATF mutual evaluations in relation to the implementation of the FATF recommendations 3 and 38⁶.

⁶ Such recommendations make reference to reciprocal judicial assistance, to freezing and seizure.

- Variables, indicators, and the experiences of the key practitioners responsible for the different phases of the process of international asset recovery.

The situational assessment will identify the legal and operational obstacles that delay, complicate and may even inhibit international cooperation in asset recovery. This will allow for the allocation of resources and help plan the upcoming activities of technical assistance and training conducted by the ES/CICAD, GELAVEX and its strategic partners.

5.2. Development of guidelines for the implementation of international standards in asset recovery as a reference to the OAS member States

For this activity a Working Group would be created, coordinated by the ES/CICAD, which would be led by a Principal Consultant and include accredited professionals with experience in these areas, experts from key organisms of OAS member States and the strategic partners of GELAVEX.

The Principal Consultant would be an extremely qualified professional with relevant experience in the field who would be tasked with the creation of a first draft of the guidelines based on a review of the legal standards, the available bibliography and the information collected in the diagnostic assessment.

The Working Group will keep in contact virtually and will also meet physically on two occasions:

i) The first meeting will aim to consolidate a first draft of the guidelines based on the preliminary version presented by the Principal Consultant. The rough draft would be sent to members of GELAVEX and published in the information repository (see Product III), so that those who are interested can review it and submit the comments they may have;

ii) The second meeting would be focused on the discussion of the document and the incorporation of relevant changes. Based on the contributions of the Working Group, the Principal Consultant will proceed with the creation of the draft of the guidelines.

Afterwards, the draft of the guidelines would be presented to the GELAVEX, where there will be an opportunity to discuss them and, if the Group agreed upon, they would be brought to the Commission for approval.

5.3. Creation of a Structured Information Repository

The Structured Information Repository will be a tool to review information related to asset recovery that will help users to understand the process of mutual assistance in asset recovery.

This tool would be available on the web page of the Anti-Money Laundering Section of CICAD/OAS, and will be a useful tool for professionals involved in the process of asset recovery (e.g. judges, investigators, prosecutors, attorneys, personnel of agencies for the administration of seized assets, FIU employees, etc.). It will contain different sections in which the materials will be organized in a didactic manner and would be regularly updated by the ES/CICAD.

For each country a page will include:

- i. Essential information for cooperation in asset recovery, such as points of contact in each Member State, their legal bases and the judicial and institutional networks that can offer help;
- ii. The main points of the situational assessment (Product I), such as the national legislation on the topic;
- iii. Instructions for mutual legal assistance requests: the procedure to follow (e.g. requirements, formalities, deadlines, etc.) and forms necessary to request and respond to requests for assistance.

Other general documents with additional information on the topic of asset recovery will also be available, such as:

- i. The reports, analysis and documents produced by GELAVEX and its strategic partners in relation to international cooperation and forfeiture;
- ii. Case studies of asset recovery that can serve as a reference for OAS member States.

5.4. Training courses

The situational assessment provides an in depth analysis of the process of asset recovery in the Member States and through the information repository relevant information will be made available for those who work with the recovery of criminal assets, such as legislators, judges, prosecutors, members of the Financial Intelligence Unit, members of police forces, personnel of offices for the administration of seized assets and lawyers.

Nevertheless, for the progress in this area to be concrete it is essential to train these specialists, through courses designed to:

- a. Provide an overview of relevant regulation;
- b. Instruct on the procedures for requesting cooperation in asset recovery by using the Structured Information Repository;
- c. Encourage the exchange of knowledge, experiences and good practices;
- d. Strengthen the network of professionals involved in the process of asset recovery in the OAS member States.

Four regional workshops will be developed in: i) Mesoamerica; ii) the Andes Region; iii) The Southern Cone; iv) The Caribbean, designed for the experts of the OAS member States, representatives of collaborating organizations and specialists of SE/CICAD.

6. Estimated Timeline

The present timeline reflects, in an approximate and general manner, the elements of the Proposed Program of Technical Assistance on International Cooperation in Asset Recovery, that is: i) the development of a situational assessment; ii) the creation of a structured information repository; iii) the development of guidelines for the implementation of international standards in the recovery of assets as a reference to the OAS member States and iv) the training activities on international cooperation in asset recovery.

